

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-13-1-5-00248-16
45-004-17-1-5-00290-19
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-16-426-009.000-004
Assessment Years: 2013, 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2017 assessments of his property located at 2545 Madison Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the property as follows:

Year	Land	Improvements	Total
2013	\$1,800	\$5,900	\$7,700
2017	\$1,500	\$2,000	\$3,500

2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On January 27, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Cover letter for Kovachevich appraisal for 2517-2525 Washington; land comparison approach; and property record cards (“PRC”s) (2015-2019)
 - Petitioner Exhibit B: Cover letter for Kovachevich appraisal for 739-29 W. 35th Avenue; land comparison approach; and PRC (2015-2019)

Petitioner Exhibit C: Cover letter for Kovachevich appraisal for 1109 Oklahoma Street; land comparison approach; PRC (2015-2019); and tax bill

Petitioner Exhibit D: Notices of Hearing; PRCs for the subject (2011-2019)^{1,2}

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. The value of the property did not change from 2012 to 2013. The value decreased from 2016 to 2017. Nowacki therefore bears the burden of proof for both years.

OBJECTIONS

7. The Assessor objected to Petitioner Exhibits A-C on the basis of relevance and admissibility. However, the record for this proceeding contains no argument or basis for these objections. The ALJ took the objections under advisement. Because the exhibits provide information about other Lake County properties, we find them at least minimally relevant to this proceeding. Whether Nowacki is listed as an intended or authorized user for these appraisals is not a sufficient reason to exclude them. We therefore overrule the Assessor's objections, and note that these documents do not affect the outcome.³

SUMMARY OF CONTENTIONS

8. Nowacki's case:
- a. Nowacki purchased the property for a nominal value in 2002 at an auction attended by hundreds of eligible bidders. Purchase price is a strong indication of value. This

¹ Nowacki provided only one set of Exhibits A, B, and C for all hearings held this date. The Board subsequently made copies for the other three case records. This is not the Board's responsibility. 52 IAC 2-7-1 provides that evidence must be submitted into the record of a proceeding for it to be considered by the Board. In future hearings, the parties must submit a copy of all evidence they wish to be considered into the record at each hearing.

² The Assessor submitted no exhibits.

³ The record contains no argument or basis in support of the Assessor's objections. The parties must fully state and support their contentions, objections, and all elements of their case at each proceeding so that they may be considered by the Board. This is also necessary to compile and maintain a complete record at each proceeding.

amount closely reflects how the property would be valued by buyers and sellers under no obligation to buy or sell. Properties like this churn through the system without any ownership. The property has nominal value. The structure on the property is a liability, and should not be valued as an improvement in the assessment. He would be willing to accept a value of \$900 for the land only. *Nowacki testimony; Pet'r Ex. D.*

- b. The Director of Redevelopment has said that most of the vacant lots in the city have zero value. This is supported by the appraisals he submitted, and that he paid only a nominal amount for the property at auction. Exhibits A, B and C show the gross over-assessment of the three parcels at 520%, 600% and 3,400% of their appraised values. Nowacki acknowledges that each copy of the land comparison in Exhibits A, B, and C shows it was prepared for the appraisal of 1109 Oklahoma. However, he contends that the land comparison charts in all three appraisals are identical. *Nowacki testimony; Pet'r Exs. A, B, C.*

9. The Assessor's case:

- a. The Assessor recommends no change in value for 2013 or 2017. *James testimony.*

ANALYSIS

10. Nowacki failed to make a case for reducing the 2013 or 2017 assessments. The Board reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.; see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.; see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices).

The party must offer relevant market-based evidence. March 1st was the assessment date for 2013. January 1st was the assessment date for 2017. Ind. Code § 6-1.1-2-1.5(a).

- c. Nowacki contends the assessment should be \$900 for land for both years under appeal with no value for improvements, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. To the extent Nowacki was asserting that his purchase price reflects the subject property's correct value, we disagree. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Nowacki failed to provide any indication that the sale met the requirements of an open market transaction nor did he present evidence of when the sale closed or relate the purchase price to the valuation date. Nowacki also failed to provide the purchase price he paid for the property. Consequently, the unknown purchase price is not probative evidence of the property's market value-in-use.
- e. Nowacki further claims that the appraisals show the three purported comparable properties are over-assessed; therefore the subject property must also be over-assessed. We interpret and address this argument as a challenge to the uniformity and equality of his assessment. The Tax Court has previously held, "when a taxpayer challenges the uniformity and equality of his or her assessment, one approach he or she may adopt involves the presentation of assessment ratio studies which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals." *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed).
- f. The data Nowacki submitted for the three properties is insufficient to support a uniform and equal argument. Not only did Nowacki provide incomplete appraisals, he failed to compare the properties to the subject property. He did not address similarities or differences. Although Nowacki presented data for other Lake County

properties, he did not show that his incomplete data met the standards of a ratio study or constituted a statistically reliable sample.

- g. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013 or 2017, he failed to make a case for lower assessments. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2013 and 2017 assessments.

ISSUED: April 23, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.