

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

Petitions: 45-004-13-1-5-01157-16
45-004-14-1-5-01158-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-12-253-010.000-004
Assessment Years: 2013 and 2014

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2014 assessments of his property located at 1145-51 Hanley Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential property at \$5,900 for both 2013 and 2014.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On August 24, 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 Hearing Officer Joseph E. James. They were both sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: GIS map
 - Petitioner Exhibit B: Three property record cards (“PRCs”) for the subject property
 - Petitioner Exhibit C: Cover letter for Kovachevich appraisal for 739-29 W. 35th Avenue, Land Comparison Approach, and PRC (2015-2019)
 - Petitioner Exhibit D: Cover letter for Kovachevich appraisal for 1109 Oklahoma Street, Land Comparison Approach, PRC (2015-2019), and tax bill

Petitioner Exhibit E: Cover letter for Kovachevich appraisal for 2517-2525 Washington Street, Land Comparison Approach, and PRCs (2015-2019) for each parcel
Petitioner Exhibit F: E-mail from Andy Young regarding PTABOA meetings
Petitioner Exhibit G: Minutes of the July 22, 2020 PTABOA meeting
Petitioner Exhibit H: Minutes of the July 8, 2020 PTABOA meeting¹

- 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. Here, the value of the property remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The burden for 2014 depends on the outcome of the 2013 appeal.

OBJECTIONS

7. The Assessor objected to a portion of Nowacki's testimony in which he claimed that the Assessor's Office deliberately over-assessed property so it would be over-taxed. Because the Assessor failed to offer any legal basis for his objection, we overrule it and admit the testimony.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
- a. State law says assessed values have to be based on market value. Taxpayers are also protected by tax caps. But if a property owner is not given a proper assessment, their constitutional rights are violated because the tax caps are not applied to market value but to the arbitrary and capricious values given by the township and the county.
Nowacki testimony.

¹ The Assessor did not submit any exhibits.

- b. The subject property is in an area that is somewhat built up, but there is no activity and no interest in developing the lot. Although the Assessor characterizes the neighborhood as static, it declined significantly. This is supported by the fact that it was in the county inventory since 1982. It churned through the system for 30 years before Nowacki acquired it in 2011 for \$25 at an auction attended by hundreds of eligible bidders. That purchase price does not determine fair market value, but it is certainly evidence that the value of the property is less than its assessed value. *Nowacki testimony; Pet'r Exs. B1-B3.*
- c. The state-authorized assessment done by Cole, Layer, Trumble was so fraught with errors that Calumet Township rejected it and made its own arbitrary decisions as to value. The Kovachevich appraisals show assessments are out of whack with appraised values and sales prices. The assessments are totally inaccurate, especially concerning vacant lots. The most salient point is that all the properties are assessed at a value many, many times their market value. *Nowacki testimony; Pet'r Exs. C-E.*
- d. U.S. Steel had its taxes reduced by 60%. To make up for the loss in assessed value, the Assessor raised the assessments on all other properties. There was nothing that added value to these properties. The result was to destroy value because there is a correlation between high taxes and lower values. People were driven from their homes because they were unable to pay their taxes. *Nowacki testimony.*
- e. There is collusion between members of the PTABOA and petitioners. Citizens giving fair, honest testimony are subject to the frightening power being exerted by people who can simply take your property through no moral or legal method, but by simply assessing a property without any basis. *Nowacki testimony; Pet'r Exs. F-H.*

9. The Assessor's case:

- a. The Assessor recommends no change in value for 2013 or 2014. *James testimony.*

ANALYSIS

10. Nowacki failed to make a case for reducing the 2013 or 2014 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). Regardless of the type of valuation evidence used, a party must also relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation dates for this appeal are March 1, 2013 and March 1, 2014. Ind. Code § 6-1.1-2- 1.5(a).

2013 Assessment

- c. Nowacki contends that the 2013 assessment should be \$1,800, 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. Nowacki claims the Kovachevich appraisals show that the three properties he appraised are over-assessed, and that the subject property is likewise 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).
- e. Nowacki's evidence is insufficient to support a uniform and equal challenge. He only offered the cover page and "Land Comparison Approach" page from each of the three

appraisals, making it impossible for us to evaluate how Kovachevich reached his value conclusions. Furthermore, Kovachevich appraised the three properties as of January 1, 2017. Thus, the evidence lacks probative value because Nowacki failed to relate Kovachevich's value conclusions to the valuation date at issue here. Additionally, he failed to convince us that his dataset complies with the professional standards for ratio studies or that the three properties he used constitute a statistically reliable sample.

- f. To the extent Nowacki was asserting that his purchase at auction established market 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). However, Nowacki failed to provide any indication that the sale met the requirements of an open market transaction. He also failed to relate the purchase price to the valuation date. Consequently, the purchase price is not probative evidence of the property's market value-in-use.
- g. As for Nowacki's allegations regarding the PTABOA, we note that the testimony at the PTABOA meeting did not specifically address any of Nowacki's properties. Nowacki also completely failed to explain how this information supports his requested valuation.
- h. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013, he failed to make a prima facie case for a lower assessment. 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).

2014 Assessment

- i. Because Nowacki failed to make a prima facie case for reducing the property's 2013 assessment, its assessment remained unchanged from 2013 to 2014. Nowacki therefore retains the burden for 2014. Nowacki relied on the same evidence and arguments for 2014, and we therefore reach the same conclusion—he failed to make a prima facie case for a lower assessment.

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 2014 assessments.

ISSUED: November 10, 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>>.