

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

Petitions: 45-004-13-1-5-00264-16
45-004-15-1-5-01814-16
45-004-16-1-5-00451-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-16-431-038.000-004
Assessment Years: 2013, 2015, 2016

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013, 2015, and 2016 assessments of his property located at 2676 Adams 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	\$3,600	\$6,300	\$9,900
2015	\$3,600	\$5,800	\$9,400
2016	\$3,000	\$2,000	\$5,000

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

Petitioner Exhibit C: W. 35th Avenue; land comparison approach; and PRC (2015-2019)
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; two GIS maps^{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 remained the same from 2012 to 2013, and decreased from 2014 to 2015. Nowacki therefore bears the burden of proof for 2013 and 2015. The burden for 2016 will be determined based on the outcome for 2015.

OBJECTIONS

7. The Assessor objected to Petitioner Exhibits A-C. He objected on the basis of relevance and admissibility. The Assessor provided no argument in support of his objections.³ 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 sufficient reason to exclude them. We therefore overrule the Assessor's objections, and note that these documents do not affect the outcome.

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 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 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. It is also necessary in order to compile and maintain a complete record.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. Nowacki purchased the property for a nominal amount in 2001. The property had been churning through the sale and auction processes over and over with no bidders at the time he purchased it. The property is irredeemable. While it is an historic structure, it has only a single layer of brick. The wood structure which supports the brick is compromised. The roof has collapsed. The property was beyond repair when he purchased it. The structure is not an improvement, but rather a liability that needs to be demolished and has no value. He would be willing to accept a value of \$1,800 for the land only. This amount represents what a buyer and seller under no obligation would buy or sell the property for. *Nowacki testimony; Pet'r Ex. D.*
 - b. Exhibits A, B, and C emphasize the over-assessment of property in Calumet Township. *Nowacki testimony; Pet'r Exs. A, B, C.*
9. The Assessor's case:
 - a. The Assessor concedes that the structure on the property was in very poor condition during the years under appeal, which is why he is recommending lowering the improvement value to \$2,000 for 2013 and 2015. The Assessor recommends no change for 2016. *James testimony.*

ANALYSIS

10. Nowacki failed to make a case for reducing the 2013, 2015 or 2016 values. 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 is the legal assessment date for 2013 and 2015. January 1st is the assessment date for 2016. Ind. Code § 6-1.1-2-1.5(a).

2013 and 2015 Assessments

- c. Nowacki contends the 2013 and 2015 assessments should be \$1,800 for land only 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. 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).
- e. 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.
- f. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013 and 2015, 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). However, the Assessor conceded that the improvement values for both 2013 and 2015 should be reduced to \$2,000, making the assessment for each year \$5,600. We accept the Assessor's recommendation.

2016 Assessment

- g. Because the 2015 final assessed value is greater than the 2016 assessment of \$5,000, Nowacki bears the burden in 2016 as well.
- h. Although Nowacki again requested an assessment of \$1,800, he relied on the same arguments and evidence he presented for the 2013 and 2015 appeals. We therefore reach the same conclusion—he failed to make a case for a reduction in the assessment.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2013 and 2015 assessments reduced to \$5,600 for each year. We order no change to the 2016 assessment.

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>>.