

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

Petitions: 45-003-13-1-5-01168-16
45-003-17-1-5-01055-18
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-14-402-017.000-003
Assessment Years: 2013 and 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 2610 Oakwood Drive in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the residential property at \$21,900 (land at \$18,500 and improvements at \$3,400) for 2013 and \$12,600 (land only) for 2017.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. After multiple continuances, Nowacki’s petitions were set for hearing on August 10, 2020. Nowacki failed to appear for the hearing and the Board issued Notices of Dismissal pursuant to 52 IAC 2-10-1. Nowacki timely requested the Board reinstate his appeals to which the Assessor did not object. The Board granted Nowacki’s request and rescheduled the petitions for hearing. On November 9, 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: Subject property record card (“PRC”) (2017-2019)
 - Petitioner Exhibit C: Subject PRC (2014-2017)
 - Petitioner Exhibit D: Subject PRC (2010-2015)
 - Petitioner Exhibit E: PRC for 2601 Fairbanks

Petitioner Exhibit F: PRC for 2621 Fairbanks
Petitioner Exhibit G: PRC for 2632 Stevenson
Petitioner Exhibit H: PRC for 2626 Stevenson

- b. The record 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 decreased from 2012 to 2013 and from 2016 to 2017. Nowacki therefore bears the burden of proof for 2013 and 2017.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
- a. Nowacki acquired the property for the nominal amount of \$25 in 2009 at an auction attended by hundreds of eligible bidders. None of them saw value in the alleged garage. Nor did they think that the subject property was worth twice as much as similar properties in the same area. *Nowacki testimony*.
- b. There was no improvement on the property in 2013. What the Assessor calls a garage was an unusable pile of rubble at the time Nowacki acquired the property. It was not removed in 2017—it collapsed into non-existence. While its value was reduced to \$0 starting in 2017, the Assessor valued this non-existent improvement at \$3,400 in 2013. *Nowacki testimony; Pet'r Exs. B-D*.
- c. Nowacki submitted PRC's for four properties from Neighborhood 2552, which is near the subject property (Neighborhood 2553) in the same dilapidated community. There is no noticeable difference between the respective neighborhoods, certainly not enough to characterize a smaller lot being worth twice as much. Although three of the properties have improvements, all four lots have some comparability to the subject. The property at 2601 Fairbanks Street has 1.04 acres while the subject lot is 75' by 235'. In 2017, 2601 Fairbanks had a land value of \$4,100 compared to the subject's land value of \$12,600. The property at 2621 Fairbanks is slightly larger than the subject at 75' by 302'. It had values of \$9,800 in 2013 and \$8,300 in 2017. Similarly, the property at 2632 Stevenson Street, which is also a larger lot, had values

of \$9,800 in 2013 and \$7,100 in 2017. Finally, the property at 2626 Stevenson Street, again a larger lot, had values of \$9,800 in 2013 and \$8,300 in 2017. *Nowacki testimony; Pet'r Exs. E-H.*

- d. Even though the four lots are larger than the subject property, they all have assessments that are about half the value of what the subject is assessed for. Nowacki is not arguing that the four properties are properly assessed, they are just assessed much lower than his property. Although identical properties cannot be found because of the impact of location, these four are relatively comparable. Additionally, the fact that three of the four have influence factors less than the 20% influence factor applied to the subject further illustrates the value difference between these comparables and the subject property. Based on the comparables' land values, the subject property's land value should be reduced by at least half. That would make the assessment slightly more than \$6,000, which is much closer to Nowacki's requested value of \$4,500 than the Assessor's value of \$12,600. In Nowacki's opinion, the subject should be valued at \$4,500 for both 2013 and 2017. *Nowacki testimony; Pet'r Exs. B, E-H.*

8. The Assessor's case:

- a. There was a garage on the property in 2013. It was demolished in 2017, which is why there is no improvement value for 2017. After the garage was removed, Calumet Township applied a -20% influence factor to the property. *James testimony.*
- b. The four properties Nowacki discussed are not comparable to the subject. The PRC's Nowacki introduced (Exhibits E-H) show that they are in a different geographical neighborhood with different land rates. They are also larger than the subject property, with one having over an acre of land. *James testimony.*

ANALYSIS

9. 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). 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 January 1, 2017. Ind. Code § 6-1.1-2- 1.5(a).

2013 Assessment

- c. Nowacki contends the 2013 assessment should be \$4,500 for land only, 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. We start by finding against Nowacki on his claim that there were no improvements on the property in 2013. He failed to support his testimony regarding the non-existence of a garage with any factual evidence. The only evidence he introduced that might have supported his claim were the GIS maps he submitted, but there is no indication that the maps, which were printed in 2020, accurately reflect the property as it was on March 1, 2013. Nor do they offer a clear enough picture of the property to be useful.
- e. To value the land, Nowacki presented an assessment comparison approach relying on four purportedly comparable properties. Taxpayers may introduce this type of evidence to prove market value-in-use in a proceeding concerning residential property assessments as long as the “*comparable properties* [are] located in the same taxing district or within two (2) miles of a boundary of the taxing district.” Ind. Code § 6-1.1-15-18(c)(1) (emphasis added).
- f. While all four of the properties appear to be in the same taxing district as the subject, a party offering assessment data must also show that the properties are comparable to the subject using generally accepted appraisal and assessment practices. I.C. § 6-1.1-15-18(c); *see also Long*, 821 N.E.2d at 470-71. Conclusory statements that a property is “similar” or “comparable” do not suffice; instead, taxpayers must explain how the properties compare to each other in terms of characteristics that affect market

value-in-use. *Long*, 821 N.E.2d at 471. Taxpayers must similarly explain how relevant differences affect values. *Id.*

- g. The type of analysis required by *Long* is lacking from Nowacki's case. His testimony that all four lots have "some comparability to the subject" and that they are "relatively comparable" are precisely the type of conclusory statements the Tax Court explained are insufficient to prove comparability. Furthermore, Nowacki did not even attempt to quantify and adjust for relevant differences such as location and size. We therefore conclude that his assessment comparison approach lacks probative value.
- h. 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.
- i. 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).

2017 Assessment

- j. Nowacki requested a valuation of \$4,500 for 2017 as well. He relied on the same arguments and evidence he presented for 2013, 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 2017 assessments.

ISSUED: February 5, 2021

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>>.