

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

**Petitions:** 45-004-13-1-5-00242-16  
45-004-15-1-5-01840-16  
45-004-17-1-5-00287-19  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-16-430-007.000-004  
**Assessment Years:** 2013, 2015, 2017

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013, 2015 and 2017 assessments of his property located at 2625 Madison Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the residential property as follows:

Year	Land	Improvements	Total
2013	\$1,800	\$4,600	\$6,400
2015	\$1,800	\$4,200	\$6,000
2017	\$1,500	\$4,200	\$5,700

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”) (2015-2019)
  - Petitioner Exhibit B: Cover letter for Kovachevich appraisal for 739-29

Petitioner Exhibit C: W. 35<sup>th</sup> 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 and PRCs (2011-2019)<sup>1</sup>

- 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 assessed value of the property decreased in each year under appeal, specifically from 2012 to 2013; from 2014 to 2015; and from 2016 to 2017. Nowacki therefore bears the burden of proof for all years under appeal.

### **OBJECTIONS**

7. The Assessor objected to Petitioner Exhibits A-C. He argued the appraisals do not provide information on the subject property, and that Nowacki was not the intended user of the appraisals. 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.

### **SUMMARY OF CONTENTIONS**

8. Nowacki's case:
  - a. The property originally had a value of \$4,600 on the improvements. This building has been vacant and abandoned for some time. It has also been damaged by fire, and collapsed onto itself. The improvements are not only falsely assessed, but are actually a liability and have a negative effect on the property that should be reflected in the assessment. The Director of Redevelopment has said that most of the vacant

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<sup>1</sup> The Assessor submitted no exhibits.

lots in the city have no value. Nowacki contends the lots do have some value, but not the over-assessed value used by the Assessor's office. Nowacki originally requested different values in his petitions, but now believes the land should be assessed at \$1,500 for all years with no value attached to the improvements. *Nowacki testimony; Pet'r Ex. D.*

- b. The appraiser's land comparison approach shows the sale prices of lots in Gary, Hammond, and East Chicago in arms-length transactions. Many of the addresses are close to the subject. The lots in the comparison were purchased for nominal amounts. These prices represent market value. Exhibits A, B and C show the gross over-assessment of these three parcels at 520%, 600% and 3,400% of their appraised value. 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. He contends that the land comparison charts in all three appraisals are identical. *Nowacki testimony; Pet'r Exs. A, B, C.*
- c. The Assessor's office has done nothing to correct the over-assessment of the appraised properties. It is the Assessor's responsibility to assess these properties correctly. The Assessor's failure to use techniques that result in true market value has destroyed the city; destroyed market value in the city; contributed to the murder rate in the city; and taken actual money from the black residents of the city. *Nowacki testimony; Pet'r Exs. A, B, C.*

9. The Assessor's case:

- a. The appraisal documents do not address the subject property. At the top of each land comparison approach, it shows that the chart was prepared for the appraisal of 1109 Oklahoma, and not the individual properties shown on the cover letters. The chart in the land comparison approach is for vacant lots and the subject parcel is not a vacant lot. Some of the sales are in Hammond and East Chicago, not Gary, and none of the properties were adjusted to account for improvements or the size of the lots. The Lake County Assessor did not change the assessed value of the appraised parcels because they are not under the jurisdiction of the county assessor, and they are not under appeal with the Indiana Board of Tax Review. *James testimony; Pet'r Exs. A, B, C.*
- b. The property is currently in very poor condition, but there's no proof that the improvements are collapsing. A Google view shows the property intact, at least from the exterior, for 2013, 2015, and 2017. Nowacki's values are inconsistent. For 2013, he requested \$900 for the land and \$1,600 for improvements. For 2015, he requested a land only assessment of \$2,500. For 2017, he requested \$1,500 for the land only. The Assessor, therefore, recommends no change for any of the years. *James testimony.*

## ANALYSIS

10. Nowacki failed to make a case for reducing the 2013, 2015 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. *See id.* March 1<sup>st</sup> was the assessment date for 2013 and 2015. January 1<sup>st</sup> was the assessment date for 2017. Ind. Code § 6-1.1-2-1.5(a).
  - c. Nowacki contends the assessment should be \$1,500 for the land with no value for improvements for all years under appeal, 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 that the appraisals show the three 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, 2015 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, 2015 and 2017 assessments.

ISSUED: April 23, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.