

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

Petitions: 45-004-13-1-5-00246-16
45-004-17-1-5-00288-19
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-16-427-036.000-004
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 2584 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	\$1,800	\$6,200	\$8,000
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; two GIS maps¹

- 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 decreased from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The assessed value increased more than 5% from 2016 to 2017. The Assessor therefore bears the burden of proof for 2017.

OBJECTIONS

7. The Assessor objected to Petitioner Exhibits A-C. He objected on the basis of relevance and admissibility. He argued the appraisals do not provide information on the subject property, and that Nowacki was not the intended user of the appraisals.² 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.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
- a. Nowacki purchased the property in 2009 for \$26 at an auction attended by hundreds of eligible bidders. This amount closely reflects how the property would be valued by buyers and sellers under no obligation to buy or sell. The value paid for a property strongly shows the market value-in-use of the property. This property has negligible

¹ The Assessor submitted no exhibits.

² The Assessor's arguments in support of their objections were made in an earlier hearing under petition 45-004-13-1-5-00242-16. The ALJ took notice of the previous arguments in this proceeding.

value. It is an unbuildable lot because of the frontage. Nowacki requests a value that takes into consideration the improvement is a collapsed structure. The Director of Redevelopment has said that most of the vacant lots in the city have no value. This is supported by the appraisals he submitted as well as the fact that he paid a nominal amount for the property at auction. He would be willing to accept a value of \$900 for the land only. *Nowacki testimony; Pet'r Exs. A, B, C, D.*

- b. The property values in the land comparison approach show a consistent over-valuation of properties. Nowacki acknowledges that each page of the land comparison approach shows 1109 Oklahoma and not the individual properties. He contends that the charts in all three appraisals are identical. *Nowacki testimony; Pet'r Exs. A, B, C.*

9. The Assessor's case:

- a. Overhead maps and Google street views show the property was destroyed sometime between October 2016 and February 2017. It is currently collapsed and just a pile of rubble. The structure was intact in 2013. A house in good condition would not be assessed at \$6,000 or \$4,000, as was shown in the 2013 assessment. The Assessor recommends no change for 2013, but concedes that the total assessed valuation for 2017 should be \$2,700, which represents \$1,500 for land and \$1,200 for improvements. *James testimony.*

ANALYSIS

10. Nowacki failed to make a case for reducing the 2013 value. The Assessor failed to make a case to support its 2017 assessment. 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 legal assessment date for 2013. January 1st was the assessment date for 2017. Ind. Code § 6-1.1-2-1.5(a).

2013 Assessment

- c. Nowacki contends the 2013 assessment should be \$900 for land only and zero 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 of \$26 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. Consequently, the 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, 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).

2017 Assessment

- h. As discussed above, the Assessor has the burden for 2017. He conceded that the 2017 assessment should be reduced to the 2016 value of \$2,700.
- i. Although Nowacki requested an assessment below \$2,700, he relied on the same arguments and evidence he presented for the for the 2013 appeal. We therefore reach the same conclusion—he failed to make a case for a further reduction.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order no change to the 2013 assessed value and order the 2017 assessment reduced to \$2,700.

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>>.