

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

Petition: 45-004-14-1-5-01152-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-11-277-027.000-004
Assessment Year: 2014

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

PROCEDURAL HISTORY

1. Mr. James Nowacki contested the 2014 assessment of his property located at 1309 Stevenson Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$1,900 for 2014.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On December 7, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by hearing officer Joseph E. James. Both were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: GIS map
Petitioner Exhibit B: Property Record Card (2012-2014)
Petitioner Exhibit C: Property Record Card (2016-2020)
 - 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. Ind. Code. § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property remained unchanged from 2013 to 2014. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The property is in neighborhood 2550. Other comparable lots are in neighborhood 2554. Nowacki contends that there are no appreciable differences in the neighborhoods but the base rate for his property is \$152. Neighborhood 2554 has a base rate of \$115 although the lots are the same as his. *Nowacki testimony; Pet'r Exs. B & C.*
 - b. No one is able to determine where these neighborhoods are. The GIS maps do not show the neighborhood. The only apparent authority for these neighborhoods is a dog-eared map hanging in Calumet Township offices. *Nowacki testimony; Pet'r Ex. A.*
 - c. Nowacki argues that the only way these lots can be developed is through assemblage. In fact, the existing subdivision is a hindrance and an obstacle to assemblage. *Nowacki testimony.*
 - d. The value has decreased from \$3,100 in 2012 to \$1,700 more recently. These amounts are significantly more than the values of the properties previously appealed. The other parcels went down about two-thirds in value. This one decreased just a percentage. Nowacki contends that there is no reason for this lot to be valued any differently than the other parcels. *Nowacki testimony; Pet'r Exs. B & C.*
 - e. The property record cards are inaccurate, and there are many errors on the property record cards. *Nowacki testimony.*
8. The Assessor's case:
 - a. The Assessor recommends no change for 2014. *James testimony.*

ANALYSIS

9. Nowacki failed to make a case for a reducing the property's 2014 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." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5(a); Ind. Code § 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. *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) Taxpayers may use 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.* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals 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 1 is the legal assessment date for 2014. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the assessment should be \$500 for 2014, 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 subject property's base rate is significantly more than the rate of a similar subdivision. We interpret and address this argument as a challenge to the uniformity and equality of his assessment. The Tax Court has held that when taxpayers challenge the uniformity and equality of their assessed values, one approach he or she may adopt involves the presentation of assessment ratio studies comparing the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales 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)
 - e. 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*, 643 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 *Dept. 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. While Nowacki contends his assessment is too high compared to properties in a similar subdivision, he did not present any evidence showing the subdivision was comparable to the subject property. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 at 470 (Ind. Tax Ct. 2005).
- g. We also give no weight to his claims regarding the property's decreasing assessment. The decrease in the property's assessed value first in 2012 and then in 2016 does not prove that the 2014 assessment was incorrect. As the Tax Court has explained, each tax year---and each appeal process--- stands alone. *Fisher v. Carroll Cnty Ass'r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year, therefore, has little bearing on its true tax value in another. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- h. While Nowacki contends the property record card is inaccurate he did not show how any changes to the property record card would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of an error in the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d at 678 (Ind. Tax Ct. 2006).
- i. Nowacki failed to make a prima facie case for changing the 2014 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 Industries. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

We find for the Assessor and order no change to the 2014 assessment.

ISSUED: February 26, 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>>.