

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

Petitions: 45-003-13-1-5-01184-16
45-003-14-1-5-01176-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-278-015.000-003
Assessment Years: 2013 and 2014

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2014 assessments of his property located at 4964 W. 25th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential lot at \$5,700 for 2013 and \$3,600 for 2014.
2. Nowacki timely filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On July 13, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions.¹ Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by 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: GIS map
 - Petitioner Exhibit B1: Property record card (“PRC”) (2010-2013)

¹ Before presenting his case, Nowacki made an oral motion to continue the hearing because he did not yet have a copy of the minutes from a PTABOA meeting held on July 8th, 2020. Our ALJ denied his motion and proceeded with the hearing. Under our procedural rules, a motion for continuance can only be granted if the request is (1) made prior to the hearing, (2) good cause is shown, and (3) the request is served on all parties. 52 IAC 4-7-2(a). Additionally, a request made less than two business days prior to the hearing can only be granted upon a showing of extraordinary circumstances. 52 IAC 4-7-2(b). Because Nowacki failed to establish any extraordinary circumstances necessitating a continuance, we adopt our ALJ’s ruling.

Petitioner Exhibit B2:	PRC (2010-2014)
Petitioner Exhibit B3:	PRC (2016-2019)
Petitioner Exhibit C:	Cover letter for Kovachevich appraisal for 739-29 W. 35 th Avenue, Land Comparison Approach, and PRC (2015-2019)
Petitioner Exhibit D:	Cover letter for Kovachevich appraisal for 2517-2525 Washington Street, Land Comparison Approach, and PRCs (2015-2019) for each parcel
Petitioner Exhibit E:	Cover letter for Kovachevich appraisal for 1109 Oklahoma Street, Land Comparison Approach, PRC (2015-2019), and 2020 tax bill
Petitioner Exhibit F:	Minutes of the June 24, 2020 PTABOA Meeting ^{2, 3}

- 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. Here, the value of the property remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. We will determine the burden of proof for 2014 based on the outcome of the 2013 appeal.

OBJECTIONS

7. The Assessor objected to the admission of Petitioner Exhibits C, D and E on relevancy grounds. The ALJ took the objections under advisement. Because the exhibits provide information about the values of other Lake County properties, we find them at least minimally relevant to this proceeding. We therefore overrule the objections.

² Nowacki provided only one set of Exhibits C-F for all hearings held on this date. The ALJ granted Nowacki's request that the exhibits be considered in the other four hearings held on July 13, 2020. The ALJ cautioned Nowacki that he had been instructed in previous findings to submit copies of exhibits for all hearings and that he should do so in the future.

³ The Assessor did not submit any exhibits.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. PTABOA members agree there are no sales and no arm's-length transactions to support the assessed values. According to a Calumet Township official, the property record cards are irrelevant and the characteristics on the card have no bearing on the value of a property. There is also collusion between Board members and property owners. *Nowacki testimony; Pet'r Ex. F.*
 - b. This parcel is in an area contiguous with an area called Lake Sandy Jo. The City of Gary has offered 138 parcels, including one 35-acre parcel, in the Lake Sandy Jo area for \$255,000. The city had two appraisals done as required by law, but it refuses to release the data from the appraisals so other properties could be accurately assessed. *Nowacki testimony.*
 - c. The subject parcel has value only when consolidated with similar properties for potential commercial development. It churned through the system for decades. He acquired the property in 2009 for \$242 at an auction attended by hundreds of eligible, capable bidders. He has been appealing the assessment ever since. His proposed value is \$3,000, which is 12 times what he paid for it. He considers this a fair value unlike the Assessor's value, which is exorbitant. *Nowacki testimony; Pet'r Exs. B1-B3.*
 - d. The Kovachevich appraisals contain a list of properties that were used in performing the appraisals. They ranged over the entire Lake County/Calumet Township area because there were so few arm's-length transactions. The most salient point is that all the properties are assessed at a value many, many times their market value. *Nowacki testimony; Pet'r Exs. C-E.*
 - e. The evidence of the appraisals ordered by Metz, the city's offer of the 138 parcels, the testimony at the PTABOA meeting and the evidence of the properties being offered at an auction all show that these properties are assessed at hundreds of times more than their actual value. *Nowacki testimony; Pet'r Exs. C- F.*
9. The Assessor's case:
 - a. The township official never said the property records were irrelevant. He said, correctly, that the section of the property record card showing the characteristics of the property is not used to calculate the value of the property. It is for data purposes only. This has been explained to Nowacki many times. *Metz testimony; James testimony.*

- b. Although the Kovachevich appraisals are addressed to Metz, he did not request or commission the appraisals. The Assessor recommends no change to the 2013 or 2014 assessments. *Metz testimony; James testimony.*

ANALYSIS

10. Nowacki failed to make a case for reducing the property's 2013 or 2014 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 March 1, 2014. Ind. Code § 6-1.1-2-1.5(a).

2013 Assessment

- c. Nowacki contends the assessment should be \$3,000 for 2013, 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 \$242 purchase price established the property's market value-in-use, 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*, 918 N.E.2d 311,315 (Ind. Tax Ct.2010). But Nowacki failed to provide sufficient evidence that his purchase met the requirements of an open market transaction. He also failed to relate his purchase price to the relevant valuation date. Consequently, his purchase price is not probative evidence of the property's market value-in-use.
- e. Nowacki alternatively contends the city's offering of 138 lots for a total price of \$255,000 in the adjacent Lake Sandy Jo area supports a lower value for his property. We infer Nowacki is attempting to rely on a sales comparison approach to establish the market value-in-use of the subject property.
 - f. For sales comparison data to be probative, the purportedly comparable properties must be sufficiently comparable to the property under appeal. To establish that properties are comparable, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Long*, 821 N.E.2d at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
 - g. The type of analysis required by *Long* is lacking from Nowacki's case. The evidence presented fails to provide enough information for us to conclude the purportedly comparable properties are indeed comparable to the subject property. Nowacki also failed to quantify and adjust for differences. Additionally, he is relying on a current offer price, not a completed sale occurring near the relevant valuation date.
 - h. Nowacki claims the Kovachevich appraisals show that the three properties he appraised are over-assessed, and that the subject property is likewise 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).

- i. Nowacki's evidence is insufficient to support a uniform and equal claim. He only offered the cover page and "Land Comparison Approach" page from each of the three appraisals, making it impossible for us to evaluate how Kovachevich reached his value conclusions. Furthermore, Kovachevich appraised the three properties as of January 1, 2017. Thus, the evidence lacks probative value because Nowacki failed to relate Kovachevich's value conclusions to the 2013 valuation date at issue here. Additionally, he failed to convince us that his dataset complies with the professional standards for ratio studies or that the three properties he used constitute a statistically reliable sample.
- j. As for Nowacki's allegations regarding the PTABOA, we note that the testimony at the PTABOA meeting did not specifically address any of Nowacki's properties. Nowacki also completely failed to explain how this information supports his requested valuation.
- k. Finally, Nowacki contends the property records are irrelevant to the value of the property, specifically the section of the card showing the characteristics of the property. This argument goes solely to the methodology used by the Assessor. Even if the Assessor made errors, simply attacking her methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*
- l. 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).

2014 Assessment

- m. Because the assessed value decreased from 2013 to 2014, Nowacki bears the burden in 2014 as well.
- n. Nowacki again requested a value of \$3,000, and he relied on the same evidence he presented for the 2013 appeal. 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 find for the Assessor and order no change to the 2013 or 2014 assessments.

ISSUED: October 13, 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>>.