

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

Petition: 45-003-13-1-5-01504-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-376-015.000-003
Assessment Years: 2013

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013 assessment of his property located at 4208 W. 28th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the parcel at \$6,900 (land only) for 2013.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On January 13, 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 his Hearing Officer, Robert Metz. Both were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Property record card (“PRC”) for 2015-2019
 - Petitioner Exhibit B: PRC for 2010 -2013
 - Petitioner Exhibit C: GIS map
 - Petitioner Exhibit D: Cover letter for Kovachevich appraisal for 739-29 W. 35th Avenue, Gary
 - Petitioner Exhibit E: PRC for 739-29 W. 35th Avenue (2015-2019)
 - Petitioner Exhibit F: Cover letter for Kovachevich appraisal for 2517-2525 Washington Street, Gary
 - Petitioner Exhibit G: PRC for 2517 Washington Street (2015-2019)
 - Petitioner Exhibit H: PRC for 2521 Washington Street (2015-2019)
 - Petitioner Exhibit I: PRC for 2525 Washington Street (2015-2019)

Petitioner Exhibit J: Cover letter for Kovachevich appraisal for 1109 Oklahoma Street, Gary
Petitioner Exhibit K: PRC for 1109 Oklahoma Street (2015-2019)
Petitioner Exhibit L: 2019 tax bill for 1109 Oklahoma Street¹

- 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 property's assessment did not change from 2012 to 2013. Nowacki therefore bears the burden of proof.

OBJECTIONS

7. The Assessor objected to Petitioner Exhibits D-L. He first argued they were not relevant to the proceeding. He also argued the supporting appraisals are not admissible as they were prepared solely for use by the Assessor's office, and Nowacki is not an intended or authorized user. The ALJ took the objections under advisement. Because the exhibits provide information regarding other Gary properties, they do have at least minimal relevance to this proceeding. The Board is in no position to know or address how Mr. Nowacki obtained these documents. 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 objections, and note that these exhibits do not affect the outcome.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
- a. This subject property churned through the system for over 20 years before Nowacki purchased it for the nominal bid of \$100. The assessed value is 70 times what he paid for the property. Had the property been correctly assessed, there would have been more interest at the auction. Although the property is a good size, it is in an area with collapsed, abandoned buildings and abandoned vehicles. There is no development in the area that would explain the difference between the purchase price and assessed

¹ The Assessor submitted no exhibits.

value. This area has negative market influences that do not support the assessed value. Nowacki is willing to stand by his proposed value of \$5,400, even though he believes that may still be too high. *Nowacki testimony; Pet'r Exs. A, B, C.*

- b. Appraisals for the three properties represented in Exhibits D-L show they are over-assessed by 520% to 3,400%. The appraiser used the values of many other properties in and near Gary to determine the appraised values for the three properties in D-L. With few exceptions, tax sales are the only market for property in Gary. *Nowacki testimony; Pet'r Exs. D-L.*

9. The Assessor's case:

- a. Nowacki presented no substantive evidence as to the value of the subject property. The evidence in Exhibits D-L is not relevant to this property. The Assessor requests no change to the assessed value. *Metz testimony.*

ANALYSIS

10. Nowacki failed to make a case for reducing the 2013 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). Normally a party does not make a case for changing an assessment simply by showing how the DLGF's assessment guidelines should have been applied. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the

assessment is correct.”) Instead, the party must offer relevant market-based evidence. *See id.* The assessment date for this appeal is March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).

- c. Nowacki contends the assessment for 2013 should be \$5,400, 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. Nowacki’s data 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, 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).

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 assessment.

ISSUED: April 15, 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>>.