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

Petition: **45-003-17-1-5-00007-21**
Petitioner: **Andy Young**
Respondent: **Lake County Assessor**
Parcel: **45-08-18-427-031.000-003**
Assessment Year: **2017**

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

PROCEDURAL HISTORY

1. Young contested the 2017 assessment of his property located at 2548 Waite Street in Gary. The Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination valuing the residential property at $7,400 (land at $5,400 and improvements at $2,000).

2. Young filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On September 27, 2021, Ellen Yuhan, our designated Administrative Law Judge ("ALJ") held a hearing on Young's petition. Neither she nor the Board inspected the property.

3. Young appeared pro se. The Assessor appeared by Hearing Officers Robert Metz and Jessica Rios. All were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:

   a. Petitioner Exhibit 1-3: Photographs of the subject property
      Petitioner Exhibit 4: Settlement Agreement
      Petitioner Exhibit 5: List of properties listed for sale in Gary
      Petitioner Exhibit 6: Notice to Bidders: Request for Proposals
      Petitioner Exhibit 7: Appraisal of Steven Kovachevich for 2517-2521 Washington Street
      Petitioner Exhibit 8: Appraisal of Steven Kovachevich for 739-29 W. 35th Avenue
      Petitioner Exhibit 9: Appraisal of Steven Kovachevich for 1109 Oklahoma Street

Petitioner Exhibit 10:	Land Comparison Chart from Kovachevich appraisals
Petitioner Exhibit 11:	Appraisal of Jerry J. Kulik for 9410-14 E. 1st Avenue
Petitioner Exhibit 12:	Appraisal of Jerry J. Kulik for 9400-08 E. 1st Avenue
Petitioner Exhibit 13:	Chapter 2, page 9, Real Property Assessment Guidelines
Petitioner Exhibit 14:	Response to Andy Young's letter to Mr. Dull
Petitioner Exhibit 15:	Andy Young's letter to Mr. Dull
Petitioner Exhibit 16:	Property Record Card
Petitioner Exhibit 17:	Parcel valuation history[1]

b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (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 property's assessment decreased from $8,700 in 2016 to $7,400 in 2017. Young therefore bears the burden of proof.

OBJECTIONS

7. The Assessor objected to Exhibits 5-12 for relevancy. The Assessor also objected to Exhibits 7-9 on the additional ground that they are not complete documents. Finally, he objected to Exhibit 11 because it is marked as confidential and Young is not named as an intended user in the appraisal. Young countered that he was using the information to build a case that the base values throughout the township are wrong. Our ALJ took the objections under advisement.

8. Because the exhibits provide information about other Lake County properties, we find them to be at least minimally relevant to the issue at hand. To the extent the Assessor was concerned that introducing incomplete copies of Exhibits 7-9 would be misleading, she was free to offer the rest of the documents to avoid that problem. *See* Ind. Evid. R.

[1] Young provided only one set of Exhibits 4-15 for all hearings held on this date. In future hearings, the parties must prepare and submit a copy of all evidence they wish to be considered into the record at each hearing.

106 (allowing an objecting party to require the introduction of the parts of the document it wants considered alongside the objectionable material). And we do not find the fact that Exhibit 11 is marked confidential to be sufficient grounds to exclude it. We therefore overrule the Assessor's objections.

SUMMARY OF CONTENTIONS

9. Young's case:

a. Young's primary dispute with his property's assessment is the value of the improvement. In his opinion, the improvement should not be assessed at all because it detracts from the property's value. The photograph on the county's website does not show the current state of his property. It has not looked that way since the 1980s or 1990s. The Assessor apparently has not been out to inspect the property in 20 years. Market value should take all factors into consideration, and one primary factor of marketability is desirability. His property would be more desirable if it did not have a structure that needed to be demolished at significant cost. The lot next door, which has nothing on it, is more marketable because it does not have a structure requiring $10,000 worth of demolition work. Young contends that his property's land should be assessed at $3,100, and there should be no improvement value. *Young testimony; Pet'r Exs. 1-3, 17.*

b. In October 2019, the City of Gary's Redevelopment Commission published a Notice to Bidders requesting redevelopment proposals for 138 lots it was offering for sale for a minimum bid of $275,000. Pricing the one 35-acre parcel at the lowest acreage value of $2,000 would leave $205,000 for the other 137 parcels, making their values about $1,496 each. Some are also double-and triple-lots, further lowering their value. Those properties are exactly the same as the subject and are located right next to it. *Young testimony; Pet'r Ex. 6.*

c. As part of a 2012 settlement agreement reached in a Chapter 11 bankruptcy case, Young and several other entities he owns came to an agreement with Lake County for a proper assessment of the subject property and other properties he owned. The subject's agreed value was $6,200. For some reason, the county did not honor the agreement by putting the agreed values into the system. Young asserts that those values should be adhered to, and that any subsequent changes could not exceed 5%. Otherwise, the Assessor would be bearing the burden of proof in this case. *Young testimony; Pet'r Ex. 4.*

d. The Calumet Township Assessor has not properly developed base rates. They come up with an arbitrary base rate and just apply it rather than determining what the market value is for a certain property, group of properties, or neighborhood. That is why everything is wrong, and why Gary has an average of 12,000-15,000 parcels in tax default every year. The assessment handbook states that the maximum allowable percentage variance in base rates should not exceed 20% for neighborhoods that have

the same classification and similar characteristics. In Calumet Township, a neighborhood might have a base rate of $56 while the base rate for a neighborhood right next to it with similar characteristics may be $171. The base rate variance far exceeds 20%. This causes problems in assessment, and nobody takes the time to look and see what is going on in Calumet Township. *Young testimony; Pet'r Ex. 13.*

e. When the City of Gary wants to buy or condemn a property, they tell you it is only worth $300, when it has an assessed value of $2,500-$2,800. They cannot have it both ways, but that is what they are attempting to do. The administration's goal seems to be to take properties away through improper tax foreclosure. This is supported by the city-owned properties Gary offered for sale in October 2008. For example, a property assessed at $14,300 appraised at $150, showing it was over-assessed by 100 times. *Young testimony; Pet'r Ex. 5.*

f. Three appraisals performed for the Lake County Assessor illustrate the same disregard for market value. The three parcels on Washington Street had ended up with the Lake County Auditor, presumably due to non-payment of taxes. The lots sold to the Indiana Land Trust Company on April 6, 2016 for $300 each. They were assessed collectively at $3,800 for 2017 but appraised for $750 as of January 1, 2017. The parcel on 35th Avenue was assessed at $6,000 for 2017 but appraised for $1,000 as of January 1, 2017. And the property at 1109 Oklahoma was assessed at $1,700 for 2017 but appraised for $50 as of January 1, 2017. *Young testimony; Pet'r Exs. 7-9.*

g. Two properties owned by Young's wife were appraised for the Gary Sanitary District ("GSD") as part of an eminent domain action. Her property located at 9410-14 East 1st Avenue was assessed at $2,100 from 2016 thru 2021 but appraised for $300 as of February 15, 2020. Her property located next door, 9400-08 East 1st Avenue, was assessed at $2,600 from 2016 thru 2021 but appraised for $350 as of February 15, 2020. So, here you have examples of two more properties that are assessed at many times their market values. *Young testimony; Pet'r Exs. 11 and 12.*

10. The Assessor's case:

a. Sound value does not necessarily mean the property is sound and fit for habitation. Sound value is a term used by the assessor to note there is an improvement on the property. Whether a property is habitable or not is not for the assessor's office to decide. *Metz testimony.*

b. Young has not offered any solid evidence supporting the value he is requesting. The Assessor recommends no change in the assessment. *Metz testimony.*

ANALYSIS

11. Young failed to make a prima facie case for reducing the property's 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); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2, 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. *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). Cost or sales information for the property under appeal may also be used, as well as 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 date for this appeal is January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).

c. Young contends his property's 2017 assessment should be $3,100, 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). 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." *Eckerling v. Wayne Co. Ass'r,* 841 N.E.2d at 674, 678 (Ind. Tax Ct. 2006).

d. Young did not provide any market-based evidence demonstrating that the subject's improvements are worth nothing—just his opinion. Although he calculated a per lot value for lots he claims are identical and located right next to the subject property, the information he used came from a 2019 request for bids, not an arms-length sale. Furthermore, Young offered no market support for the $2,000/acre value he used to

calculate the purported value of the 35-acre lot. Nor did he establish that the other 137 lots were similar enough to each other for the remaining value to be divided among them equally. Young also offered no explanation for how the $1,496 per lot value he calculated supports a valuation of $3,100 for his parcel. Finally, we note that he failed to relate his evidence to the 2017 valuation date as required by *Long*.

e. Alternatively, Young claims that the property should be assessed at $6,200 in accordance with the 2012 settlement agreement he entered into with the county. However, we have repeatedly rejected attempts to use evidence of settlement negotiations to prove value. Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). We therefore conclude that the settlement agreement has no probative value.

f. Young also contends the Assessor did not properly develop base rates. However, his argument goes solely to the methodology used by the Assessor. Even if the Assessor made errors, simply attacking her methodology is insufficient. *Eckerling,* 841 N.E.2d at 678. Again, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*

g. Finally, Young claims that his comparison of the appraised and assessed values for numerous properties located in Gary demonstrates that they are over-assessed, and that his property must therefore 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).

h. We conclude that the data Young submitted is insufficient to support his uniform and equal claim for several reasons. First and foremost, Young has failed to convince us that his evidence conforms to professionally acceptable standards for ratio studies.

Not only did Young fail to calculate any ratios from the data he presented, most of his data is from 2008, which simply has no bearing on the uniformity and equality of the subject property's 2017 assessment. We reach the same conclusion regarding the two appraisals of his wife's properties, which have effective dates more than three years after the 2017 valuation date. That leaves the three appraisals performed for the Lake County Assessor. While all three appraisals have effective dates of January 1, 2017, Young submitted incomplete copies. Thus, we are unable to evaluate their credibility. Regardless, with only three potentially relevant data points, we cannot say that Young's evidence provides us with a statistically reliable sample.

i. Because Young offered no probative market-based evidence to demonstrate the property's correct market value-in-use, he failed to make a case for a lower assessment. Additionally, because Young failed to demonstrate that his property is assessed above the common level of assessment, we conclude he is not entitled to an equalization adjustment.

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 2017 assessment.

ISSUED: 12/27/2021

Jonathan R. Ebert
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Timothy Ritchey
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>.