

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

Petition: 45-003-17-1-5-00008-21
Petitioner: Andy Young
Respondent: Lake County Assessor
Parcel: 45-08-18-427-034.000-003
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 2620 Waite Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$4,300.
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 1B: Property Record Card
 - Petitioner Exhibit 2B: Parcel valuation history
 - 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. 1 st Avenue
Petitioner Exhibit 12:	Appraisal of Jerry J. Kulik for 9400-08 E. 1 st 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 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 remained unchanged from 2016 to 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. 106 (allowing an objecting party to require the introduction of the parts of the document

¹ Young provided a single set of Exhibits 4-15 during the hearing held for Petition No. 45-003-17-1-5-00007-21. He requested that they be made part of the record in this appeal as well. Our ALJ admitted the exhibits, subject to the objections the Assessor raised during the hearing on Petition No. 45-003-17-1-5-00007-21. 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.

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. The subject property is a vacant lot completely cut off from services. The city put blocks in the streets, so you have to walk to the property. The city had a plan to raze every structure in this area and offer it for redevelopment. 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. Those properties are located right next to the subject. *Young testimony; Pet'r Ex. 6.*
 - b. 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 \$2,700. For some reason, the county did not honor the agreement by putting the agreed values into the system. Young asserts that the property's value should be no more than \$2,700 because the Assessor's trending factors would have driven its value downward since 2012. *Young testimony; Pet'r Ex. 4.*
 - c. Young contends the base rates in Calumet Township are arbitrary because they are not based on any market values. If they were, the assessments would be significantly lower. The base rates are completely inconsistent, even among contiguous properties with the same characteristics. There should only be a 20% variation between different properties within a township. In these types of abandoned and overgrown neighborhoods, there is no defensible reason that some properties have a base rate of \$56 while others have base rates of \$171 or \$200. If the State would step in and help develop accurate base rates, they would not have all these incorrect and inconsistent assessments of vacant lots. *Young testimony; Pet'r Ex. 13.*
10. The Assessor's case:
 - a. Because Young has not provided any evidence supporting his requested value, 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 \$2,700, 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. Although Young calculated a per lot value for lots he claims are 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 \$2,700 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 \$2,700 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. Finally, Young 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. 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.

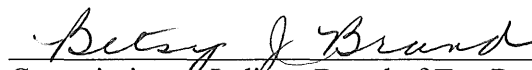
FINAL DETERMINATION

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



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>>.