

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

Petitions: 45-003-13-1-5-01207-16
45-003-14-1-5-01144-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-478-0199.000-003
Assessment Years: 2013 & 2014

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

PROCEDURAL HISTORY

1. Mr. Nowacki contested the 2013 and 2014 assessments of his property located at 4811 West 27th Place in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential property at \$1,400 for 2013 and for 2014.
2. Nowacki filed Form 131 petitions 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 petitions. 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 (2011-2014)
Petitioner Exhibit C: Property Record Card (2015-2019)
 - 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, 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 was reduced from \$2,800 in 2012 to \$1,400 in 2013. Nowacki therefore bears the burden of proof for 2013. The burden of proof for 2014 depends on the outcome for 2013.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. Nowacki contends that while his property is in the Bellevue subdivision, the area across the street is actually half the value of the front foot value applied to the Bellevue lots. That neighborhood is more usable in that it has streets and improvements. Nowacki contends that the Bellevue subdivision is assessed incorrectly. *Nowacki testimony*.
 - b. Nowacki argues that the property record card is inaccurate. The ownership information and property characteristics are wrong. The values are not based on market value. They are based on this erroneous, intangible something called a neighborhood. Maybe the neighborhood is wrong. No one can determine where these neighborhoods are even located. *Nowacki testimony; Pet'r Exs. B & C*.
 - c. In 2011, the property was valued at \$4,500. Lots in the same subdivision were valued at \$2,200, \$3,800, and \$3,600 for 2011. They all have the same value now. Nowacki contends that the valuations varied dramatically a few years ago. The values were all inaccurate. There is no consistency. *Nowacki testimony; Pet'r Ex. B*.
 - d. Nowacki argues that the Assessor violates state laws, professional standards, and procedures, which result in erroneous assessed values. They have implications and ramifications that are undeniable. The township refuses to make corrections. The PTABOA, by accident, makes some corrections. It is up to the State to come in and bring some order to the assessment process in Calumet Township. *Nowacki testimony*.
 - e. The tax sale includes 30,000 properties. The majority of those properties, 90% or 95%, are in Calumet Township. This is obviously a problem and it's a problem only for Calumet Township. It may be because officials are not doing their jobs or because they apply factors to value that are immaterial. *Nowacki testimony*.

8. The Assessor's case:
 - a. The Assessor recommends no change in value for either year. *James testimony.*

ANALYSIS

9. Nowacki failed to make a case for a reducing the property's 2013 and 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." 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 also 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 2013 and 2014. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the assessed value should be \$500 for 2013 and 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 do not assist 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 double the rate of an adjacent 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 assessment, one approach they may take is to provide 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 *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).
- f. While Nowacki contends his assessment is too high compared to properties in an adjacent subdivision, he presented no evidence showing the base rate in the purportedly comparable subdivision, nor did he present any evidence showing the adjacent 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. Nowacki contends the characteristics on the property record card are not accurate. 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).
- h. Nowacki failed to make a prima facie case for changing the assessment for either year. Where a petitioner has not supported its 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 2013 or 2014 assessed values.

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>>.