

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

Petition: 45-003-14-1-5-01217-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-427-011.000-003
Assessment Year: 2014

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

Procedural History

1. Nowacki contested the 2014 assessment of his property located at 2535 Jennings Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$4,600.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On April 12, 2021, 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 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 A: Property Record Card (2016-2020),
Petitioner Exhibit B: Property Record Card (2011-2015),
Petitioner Exhibit C: GIS map.
 - 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 2013 to 2014. Nowacki therefore bears the burden of proof.

Summary of Contentions

7. Nowacki’s case:
 - a. Nowacki acquired the property at an auction in 2009 and he has been appealing the assessment ever since. In 2016, the Assessor finally reduced the assessment to \$2,700, but it took seven years to get to that point. The \$2,700 assessment is only \$100 more than his target value of \$2,600. He has accepted that value for the 2016 through 2020 assessment years and would be willing to accept that value for 2014. *Nowacki testimony; Pet’r Exs. A, B.*
 - b. The property churned through the system for years. There were no buyers for it even at nominal amounts. When he purchased the property, it was over-assessed, and he tried to prevail upon the assessor’s office to correct the assessment. Finally, a correction was made. That correction indicates that he was right because there were no mitigating factors that caused a loss in value. The location is the same. The conditions of the surrounding area are appreciably the same. The market is the same. *Nowacki testimony.*
 - c. Taxpayers are supposed to bring evidence to their hearings. His evidence is persuasive in that it shows that he and the Assessor are now in agreement concerning the assessed value. Nowacki contends the current value should be applied to the 2014 appeal year. *Nowacki testimony; Pet’r Exs. A, B.*
8. The Assessor’s case:
 - a. The bottom of Petitioner Exhibit B shows Review Group 2016. This indicates a cyclical reassessment and would explain the decrease in 2016. *Metz testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for a reducing the property’s 2014 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.

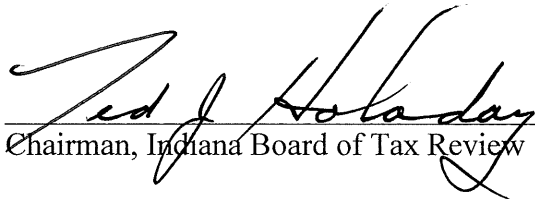
- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Taxpayers may 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.*; *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. Otherwise, the evidence lacks probative value. *See Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for this appeal is March 1, 2014. I.C. § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessment should be \$2,600 but 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. We also give no weight to his claims regarding the property’s decreasing assessment. The decrease to the property’s assessed value in 2016 does not prove that the 2014 assessment was incorrect. As the Tax Court has explained, “each tax year – and each appeal process – stands alone.” *Fisher v. Carroll Cnty Ass’r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. *See Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- e. Nowacki contends the appeal process is long, tedious, and exhausting; however, these are not reasons to change the assessed value to \$2,600. And pursuant to Ind. Code § 6-1.1-15-1(o), he had the right to appeal directly to the Board if his petition was not heard by the PTABOA within 180 days as required by Ind. Code § 6-1.1-15-1(k). Therefore, the lengthy appeal process was due, in part, to Nowacki’s inaction.
- f. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2014, he failed to make a 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, 1221-22 (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 2014 assessment.

ISSUED: 6-23-21


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>.