

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

Petition: 45-003-13-1-5-00320-16
Petitioner: Mr. James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-19-102-007.000-003
Assessment Year: 2013

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

Procedural History

1. Mr. Nowacki contested the 2013 assessment of his property located at 4555 W. 30th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination on December 15, 2015 valuing the vacant residential lot at \$3,400.
2. Mr. Nowacki filed a Form 131 petition with the Board and elected to proceed under the Board’s small claims procedures. On September 23, 2019, Ms. Ellen Yuhan, the Board’s designated administrative law judge (“ALJ”), held a hearing on Mr. Nowacki’s petition. Neither she nor the Board inspected the property.
3. Mr. Nowacki appeared pro se. Mr. Robert Metz and Mr. Joseph E. James, Lake County Hearing Officers, represented the Assessor. They were all sworn as witnesses.

Record

4. The official record contains the following:

Petitioner Exhibit A:	GIS map of the subject property
Petitioner Exhibit B:	GIS map of the subject property
Petitioner Exhibit C:	Property record card for 2008-2013
Respondent Exhibits:	None
5. The official record for this 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 the ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

BURDEN OF PROOF

6. 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).
7. The value of this property did not change from 2012 to 2013. Mr. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

8. Mr. Nowacki presented the following case:
 - a. Mr. Nowacki contended that the assessed value of the property had decreased from 2008 to the current assessment of \$2,100, which was correct and acceptable. He asserted that the conditions of the property had not changed appreciably. Mr. Nowacki testified that the characteristics of the land were the same today as they were in 2013. The property consisted of a vacant lot in an area with little or no development at any time. The maps clearly showed the lack of development in the area. *Mr. Nowacki's testimony & Pet'r Exs 1 & 2.*
 - b. Mr. Nowacki contended that the property had churned through the tax sale system for years and was available at auction repeatedly. None of the bidders at the auction were interested, and he purchased the property for a nominal amount in 2009. He said he had been appealing the assessments since then. *Mr. Nowacki's testimony.*
 - c. Mr. Nowacki contended that the appeals process was lengthy and time-consuming, but it sometimes resulted in a favorable resolution. He was gratified that the assessment had been corrected for more current years and requested that the Board apply the correct assessment for 2013. *Mr. Nowacki's testimony.*
9. The Assessor presented the following case:
 - a. The Assessor took the position that there should be no change to the 2013 assessed value. *Mr. James' testimony.*

ANALYSIS

10. Mr. Nowacki failed to make a prima facie case for reducing the property's 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. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must 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 assessment valuation date for 2013 was March 1 as prescribed in Ind. Code § 6-1.1-2-1.5(a).
- c. Mr. Nowacki contended that the property’s 2013 assessment should be \$2,500 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. The Board also gives no weight to Mr. Nowacki’s claims regarding the property’s decreasing assessment. The Assessor’s decision to decrease the property’s assessment between 2009 and 2018 does not prove that the 2013 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 e.g. Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998)
- e. Because Mr. Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2013, 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, the Board finds for the Assessor and orders no change to the subject property's 2013 assessment.

ISSUED: November 8, 2019

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>>.