

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

Petition: 45-003-13-1-5-00340-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-19-128-010.000-003
Assessment Year: 2013

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013 assessment of his property located at 4017 W. 30th Place in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the vacant residential lot at \$3,400 for 2013.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On October 21, 2019, 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 Officer Joseph James. Both were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: GIS map for subject property
Petitioner Exhibit B: GIS map for subject property
Petitioner Exhibit C: Property record card for 2015-2018
Petitioner Exhibit D: Property record card for 2008-2013
 - 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 property's assessment remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The subject property is in a nearly inaccessible area. It churned through the county's inventory for 30 years with no buyers. Nowacki acquired it in 2009 for a nominal amount, and he has been appealing its assessment ever since. The assessment has been decreasing since 2013 and the current assessment of \$1,800 is fair. The problem is that it has taken years to get to this point because the appeal process is interminable. And the physical conditions around the property have not changed appreciably. The only difference between 2013 and today is that the bushes and weeds have grown taller. He contends the assessment should be \$2,500 for 2013. *Nowacki testimony; Pet'r Exs. A, B, C, D.*
 - b. The legacy of over-assessment in the city started with the reduction in assessed value granted to U.S. Steel. That led to increased assessed valuations for everyone else, which caused a crisis in the city. People lost their homes, investors could not meet their escrow payments, and properties lost value overnight because the taxes went through the roof. Banks that foreclosed on properties did not want to keep them because of the terrible expense of holding them. *Nowacki testimony.*
 - c. The legislature enacted laws to protect citizens from the Assessor and local government. State government required properties be assessed at fair market value, and the legislature established tax caps. They felt there was a pressing need to do this because the Assessor and local government were destroying the city. The local officials had created a disaster as bad as a hurricane, tornado or any other terrifying act of nature that would destroy a community. The legislature could not protect the citizens from acts of nature. However, they could protect the citizens from the Assessor and local government. *Nowacki testimony.*
8. The Assessor's case:
 - a. The Assessor recommends no change to the 2013 assessed value. *James testimony.*

ANALYSIS

9. 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 valuation date for this appeal is March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the 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. We also give no weight to Nowacki's claims regarding the property's decreasing assessment. The Assessor's decision to decrease the property's assessment between 2013 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 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, we find for the Assessor and order no change to the 2013 assessment.

ISSUED: January 9, 2020

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>>.