

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

Petitions: 45-003-13-1-5-01197-16
45-003-14-1-5-01200-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-478-007.000-003
Assessment Years: 2013 & 2014

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

Procedural History

1. Mr. James Nowacki contested the 2013 and 2014 assessments of his property located at 4835 West 27th Place in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential property at \$2,200 for 2013 and \$1,400 for 2014.¹
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On November 23, 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 (2010-2014)
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.

¹ The Assessor’s records show \$2,200 for both years but the Form 115 for 2014 shows \$1,400.

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. Ind. Code § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property remained unchanged from 2012 to 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. The transfer of ownership portion of the property record card is probably accurate as far as the date he acquired the property and the amount paid for it. Nowacki contended that it shows the Auditor assuming ownership in 1969, which may be correct. However, he doubts a prior owner owned the property on January 1, 1900. But at least the Assessor's office got two out of three correct. He argued that this would earn them a D on a test. *Nowacki testimony; Pet'r Exs. B & C.*
 - b. Nowacki paid a nominal amount of just over \$100 for the property. He contended that he could reasonably argue that he bought a property that was worth \$500 for \$100. But he stated that it would be insanity to say that a person bought a property worth \$3,600 for \$100 when there were 500 people at the auction who could have easily bought the property for little more than what he paid for it. *Nowacki testimony.*
 - c. He contended that real damage is done to the marketplace and the community by having incorrect information on the property record cards and by having inaccurate assessments. The city collapses into ruins, businesses leave, and the population declines. The census will show that the population is now one-third of what it was in 1970. *Nowacki testimony.*
 - d. The property record card shows values are not subject to change but that is why he is here. He has spent seven years petitioning, following the process, and attending meetings to affect those changes. It is a cruel hoax to suggest that there's an appeal process where you could submit evidence and have the numbers corrected. *Nowacki testimony.*

- e. The value in 2013 and 2014 of \$2,200 is almost twice what the value is now. In 2015, the value decreased to \$1,200. He should, at least, get the \$1,200 value for 2013 and 2014. *Nowacki testimony.*
 - f. In 2011, the property was valued at \$3,600. Then it decreased by one-third to \$2,200 in 2013 and 2014. It is currently assessed at \$1,300. There is no explanation for a property to drop two-thirds of its assessed value other than the property was never worth that value. *Nowacki testimony; Pet'r Exs. B & C.*
 - g. Nowacki argued that fair taxes are based upon constitutionally protected 1%, 2%, and 3% tax caps and provisions in the statutes that assessed values are supposed to be based on market value. Clearly, this is not the case here. *Nowacki testimony.*
8. The Assessor's case:
- a. The Assessor recommends no change for 2013 or 2014. *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) Cost or sales information for the property under appeal may be used, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id. See also* 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 assessment should be \$500 for 2013 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 his claims regarding the property's decreasing assessed values. The Assessor's decision to decrease the property's assessment in 2016 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 Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- e. Nowacki failed to make a prima facie case for reducing the 2013 assessment. Accordingly, the burden of proof remains with Nowacki for 2014. He offered the same evidence and arguments for 2014 and similarly failed to prove the assessment was incorrect for that year.
- f. Nowacki failed to make a prima facie case for a lower assessed value. 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

We find for the Assessor and order no change to the 2013 and 2014 assessed values.

ISSUED: February 19, 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>>.