

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

Petition: 45-003-13-1-5-00450-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-483-001.000-003
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 4735 W. 28th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$2,600.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On April 1, 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 its Hearing Officer, Robert Metz. They were both sworn as witnesses.

RECORD

4. The official record contains the following:
 - a. Petitioner Exhibit A: Property record card for 2012-2016
Petitioner Exhibit B: Property record card for 2015-2018
Petitioner Exhibit C: Aerial map
 - b. The record for this matter also includes (1) all pleadings, briefs, motions, and documents filed in this appeal; (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. Ind. 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. There was no change in the subject property's assessment from 2012 to 2013. Nowacki therefore bears the burden of proof.

MOTION TO DEFER RULING

7. Nowacki moved that the Board defer any ruling on these petitions until after publication of a report in May 2019 addressing the assessment problems in Calumet Township. He believes the report will affect not only the outcome of these petitions, but also appeals that we have heard in the past. We deny Nowacki's motion. *See* 52 IAC 2-8-8(a) ("No posthearing evidence will be accepted unless it is requested by the administrative law judge or the board.")

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. According to the property record card, Lake County owned this property for over a century. It churned through the system with little or no value until Nowacki acquired the property at auction for \$25. This fact indicates where the market is for this property. *Nowacki testimony; Pet'r Exs. A, B.*
 - b. This property is in a large area of unimproved parcels. The map does not do justice to the isolation of this property. There are no improved streets, no improved alleys or sidewalks and no utilities are available. But the property record card indicates paved streets and roads, utilities available and a static neighborhood. *Nowacki testimony; Pet'r Exs. A, B, C.*
 - c. This property is identical to parcels across the fictitious street, across the fictitious alley or down the fictitious block. It is in the middle of nowhere, in the middle of unimproved acreage. It should be valued as acreage. *Nowacki testimony; Pet'r Ex. C.*
 - d. The property value has gone down from \$2,600 in 2013 to \$1,400 in 2017. Nowacki contends the 50% decline in three years indicates that his \$600 value was closer to the actual value than the Assessor's valuation. The property was never worth the value the Assessor placed on it. *Nowacki testimony; Pet'r Exs. A, B.*

9. The Assessor's case:
- a. In the absence of any evidence, the Assessor recommends no change to the assessment. *Metz testimony.*

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing this 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 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.* For 2013, the valuation date was March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the 2013 assessment should be \$600, 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. To the extent Nowacki was asserting that his purchase at auction established market value, we disagree. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 918 N.E.2d 311, 315 (Ind. Tax Ct. 2010). But Nowacki failed to provide any indication that sale met the requirements of an open market transaction. Nor did he present evidence of when the

sale closed or relate the purchase price to the valuation date. Consequently, the purchase price is not probative evidence of the property's market value-in-use.

- e. We also give no weight to his claims regarding the decreasing assessment. The Assessor's decision to decrease the assessment between 2013 and 2017 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).
- f. Nowacki contends the characteristics of the property are incorrect on the property record card. But even if the Assessor made errors, simply challenging the methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*
- g. Because Nowacki offered no probative market-based evidence to demonstrate the correct market value-in-use, 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: June 28, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

James Nowacki
4735 W. 28th Avenue
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- 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>>.