

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

Petition: 45-004-13-1-5-00231-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-11-154-034.000-004
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 1140-42 Blaine Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the vacant residential lot at \$2,000.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On April 15, 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 Officers, Robert Metz and Joseph E. James. They were all 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 for 2014-2018
Petitioner Exhibit C: Property record card for 2011-2013
 - 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. The property's assessment did not change from 2012 to 2013.¹ Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The property is an unbuildable lot in an area where there is no interest in development. It appears to be surrounded by wetlands. There is no road. There is nothing across the street and it looks like there is a junkyard down the road. *Nowacki testimony; Pet'r Ex. A.*
 - b. A trust company purchased the property for \$50 in 2008 and apparently walked away from it because of the over-assessment. Nowacki acquired the property at a well-attended auction in 2009 for a nominal amount. He has spent nine years trying to get the proper assessment. The assessment has decreased from \$2,800 to the current value of \$1,700 (a drop of 40%), but that is not enough. Nowacki contends the property is worth \$900 or 18 times the \$50 originally paid for it. It is not worth the assessed value of \$2,800, which is 56 times his purchase price.² *Nowacki testimony; Pet'r Ex. C.*
 - c. Properties like this churn through the system decade after decade. There are no people buying and selling lots like this. There are no listings for these properties. The only market for these properties is the tax sale. There can be no market evidence to support an assessed value of \$2,800 because the property never sold for \$2,800. *Nowacki testimony; Pet'r Ex. C.*
8. The Assessor's case:
 - a. In the absence of any evidence, the Assessor recommends no change to the assessment. *James testimony.*

¹ While the original 2012 assessment was \$2,800, the property record card shows the Assessor reduced the 2012 assessment to \$2,000. *Pet'r Ex. C.*

² Throughout the hearing, Nowacki incorrectly stated the 2013 assessed value was \$2,800. While the original 2013 assessment was \$2,800, the PTABOA reduced it to \$2,000.

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.* For 2013, the valuation date was March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contended the 2013 assessment should be \$900, 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 asserted that his 2009 purchase established a market value of \$50, we disagree. The purchase price of a property can be the best evidence of its 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 the sale met the requirements of an open market transaction. Nor did he present evidence relating the purchase price to the relevant 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 claims regarding the decreasing assessment. The Assessor's decision to decrease the assessment by \$300 starting 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 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. Because Nowacki offered no probative market-based evidence to demonstrate the correct market value-in-use of this property, he failed to make a prima facie case for a lower assessment for either year. 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

- 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>>.