

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

Petitions: 45-004-13-1-5-00353-16
45-004-15-1-5-01820-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-09-04-476-008.000-004
Assessment Years: 2013, 2015

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2015 assessments of his property located at 9229 Sunrise Boulevard in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$4,500 for both years.
2. Nowacki filed Form 131 petitions 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 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 of subject property
Petitioner Exhibit B: GIS map of subject property
Petitioner Exhibit C: Property record card for 2014-2018
Petitioner Exhibit D: Property record card for 2012-2015
 - b. The record for the 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 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, there was no change in the property's assessment from 2012 to 2013 or from 2014 to 2015. Nowacki therefore bears the burden of proof for both years under appeal.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The subject property is located adjacent to 9225 Sunrise Boulevard, the subject of a previous appeal petition.¹ The properties are very similar, with only a negligible difference in acreage and frontage. They are located in the same undeveloped area with no streets and no utilities. And they are both situated under high voltage power lines, although the subject is a little closer to them. But in 2013, 9225 Sunrise Boulevard was valued at \$9,700 and the subject was valued at \$4,500. While their assessments are now more closely aligned, it has taken years of appeals to correct. *Nowacki testimony; Pet'r Exs. A, B, D.*
 - b. The Property Record Card ("PRC") only provides an approximate value. It is more reflective of whimsy than fact. The Assessor does not intend it to be accurate or useful. For instance, it says the subject has all public utilities when there is no electricity available at the property. *Nowacki testimony; Pet'r Exs. C, D.*
 - c. This property has churned through the system since 1970. A nominal bid of \$25 was all that was required to purchase it, but Nowacki concedes the property is worth more than his \$25 purchase price. He believes he would have a reasonable chance of selling the property for \$3,200. And he thinks that potential buyers would balk if the property were offered at \$4,500 or more. Nowacki urges the Board to reduce the subject's 2013 and 2015 assessments to \$3,200. *Nowacki testimony; Pet'r Exs. C, D.*
8. The Assessor's case:
 - a. Although 9225 Sunrise Boulevard was originally valued at \$9,700 for 2013, the PTABOA reduced its assessment to \$4,500. The PTABOA also reduced the subject's 2013 assessment from \$9,000 to \$4,500 by applying a -50% influence factor. *James testimony.*

¹ On October 21, 2019, our ALJ held a hearing on Nowacki's appeal of the 2013 and 2015 assessments for his property located at 9225 Sunrise Boulevard in Gary just before hearing this matter.

- b. The Assessor recommends no change to the 2013 and 2015 assessments. *James testimony*.

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2013 or 2015 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." 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 dates for the years under appeal were March 1, 2013 and March 1, 2015. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the assessment should be \$3,200 for both 2013 and 2015, but he failed to present any probative market-based evidence to support that value for either year. 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 intended the 2013 assessment of 9225 Sunrise Boulevard to serve as valuation evidence under Indiana Code § 6-1.1-15-18, he still misses the mark. Not only was 9225 Sunrise Boulevard's original 2013 assessment higher than the subject's (\$9,700 versus \$9,000), we note that the PTABOA reduced both properties' 2013 assessments to \$4,500.

- e. Finally, Nowacki claims that there are errors on the PRC related to the utilities available at the subject property. However, simply pointing out an error is insufficient to rebut the presumption that an assessment is correct. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, taxpayers must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*
- f. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use, 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 assessments.

ISSUED: _____

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>>.