

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

Petition: 45-004-13-1-5-01190-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-427-008.000-003
Assessment Year: 2013

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

Procedural History

1. Mr. Nowacki contested the 2013 assessment of his property located at 4903 West 26th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$6,600 for 2013.
2. Nowacki filed a Form 131 petition 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 petition. 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 (2010-2013)
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.

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.

Summary of Contentions

7. Nowacki's case:
 - a. The transfer of ownership portion of the property record card is inaccurate. It erroneously shows he purchased the property in 1990. The previous owner supposedly owned the property since January 1, 1990. Further, there should be a transfer to the commissioners because he purchased it at a commissioners' sale. People researching the property depend on the property record card to be accurate. Nowacki contended that when the ownership is not accurate, taxpayers do not know if any information on the card is correct. *Nowacki testimony; Pet'r Exs. B & C.*
 - b. When he acquired the property for a nominal amount at a commissioners' sale it was attended by hundreds of eligible and able bidders. To a large degree this gives an indication of the value of the property if, out of all those bidders, no one was interested in buying the property for more than a nominal amount. *Nowacki testimony.*
 - c. Nowacki contends that the property value is \$4,000 for 2013. This reflects the size of the lot. It is on a street and there is some limited ownership in the area, a trailer park and a few houses. Other houses in the area are abandoned or collapsed. *Nowacki testimony; Pet'r Ex. A.*
 - d. When he purchased the property, the assessed value was \$6,500. Since that time the value has gone up and down and is currently at \$5,700. This goes to the point that the values are not accurate because there was nothing happening in the market to cause those changes. *Nowacki testimony; Pet'r Exs. B & C.*
8. The Assessor's case:
 - a. The Assessor recommends no change for 2013. *James testimony.*

ANALYSIS

9. Nowacki failed to make a case for a 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." 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, as well as 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 for 2013. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessment should be \$4,000 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. Nowacki contends the property record card is inaccurate, specifically regarding the transfer of ownership. Nowacki believes this casts doubt on the accuracy of the other information on the property record card. He did not provide any evidence to show other information on the card was incorrect nor did he show how any changes to ownership would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of error in the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, Nowacki needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Id. See also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is).
- e. To the extent Nowacki was asserting that his purchase price for a nominal amount reflects the property's correct 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*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, however, Nowacki failed to

- prove that the sale met the requirements of an open-market, arm's-length transaction. Nor did he provide the purchase price or date of the sale. Consequently, the purchase is not probative evidence of the property's market value-in-use.
- f. We also give no weight to his claims regarding the property's fluctuating assessment. The change the property's assessment from year to year 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).
- g. 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 Industries. 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 assessed value.

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>>.