

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

Petitions: 45-003-09-1-5-01508-16
45-003-13-1-5-00352-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-19-101-028.000-003
Assessment Years: 2009 & 2013

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

PROCEDURAL HISTORY

1. Nowacki contested the 2009 and 2013 assessments of his property located at 4308 W. 30th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the residential property at \$7,300 (Land \$4,100 and Improvements \$3,200) for 2009 and \$4,200 for 2013.¹
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On March 25, 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 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 1: Property record card for 2008-2012
Petitioner Exhibit 2: Property record card for 2013-2016
Petitioner Exhibit 3: Property record card for 2016-2018
 - b. The record for this matter also includes the following (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the

¹ The Form 115 for 2009 shows these values. However, the form was not issued as a result of a PTABOA decision but as the result of an informal meeting between the taxpayer and the Assessor. The Assessor presented testimony that the improvement value for 2009 was shown as \$32,000 but it should actually be zero because there are no improvements on the property.

Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

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 a decrease in the property's assessment from 2008 to 2009. The assessment did not change between 2012 and 2013. Nowacki therefore has the burden of proof for both 2009 and 2013.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. Nowacki contends there is no improvement on the property. There has never been an improvement on the property. Every time he told the Calumet Township Assessor's staff this, they indicated that they would send someone to the property or say that their records show there is an improvement. The Assessor now says, after 10 years, that there is no improvement on the property. *Nowacki testimony.*
 - b. When this appeal process started ten years ago, the assessed value was \$36,100. That was very clearly not the value. They admit it now. This shows the struggle property owners face in Lake County and particularly Calumet Township. They hope you will go away, die or, in some fit of insanity you'll pay ten times the taxes you are supposed to pay in the hope you'll get it back later. *Nowacki testimony; Pet'r Ex. 1.*
 - c. For the last six years, the values have vectored closer to his value of \$2,800. It was actually down to \$2,800 in 2016 but the Assessor raised it back to \$3,500. *Nowacki testimony; Pet'r Exs. 2 & 3.*
8. The Assessor's case:
 - a. The Assessor admits that there is no improvement on this parcel. The improvement is on the adjacent parcel. The assessment should be for land only, \$4,100 for 2009 and \$4,200 for 2013. *James testimony.*

ANALYSIS

9. The Assessor conceded that there is no improvement on the subject property, and that the 2009 assessment should be reduced to \$4,100 for land only. Nowacki sought a further reduction for 2009 but failed to make a prima facie case supporting his requested value. Nowacki also failed to make a prima facie case for reducing the subject 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.* March 1st was the legal assessment date for both 2009 and 2013. Ind. Code § 6-1.1-2-1.5(a).
 - c. Initially, we give no weight to his claims regarding the property's decreasing assessment. The Assessor's decision to decrease the property's assessment in subsequent years does not prove that the 2009 and 2013 assessments were incorrect. As the Tax Court has explained, "each tax year—and each appeal process--- stands alone." *Fisher v. Carroll County Ass'r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year 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).
 - d. Nowacki contends the subject property's assessment for 2009 and 2013 should be \$2,800 for each year. 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).

- e. Nowacki contends the appeal process is burdensome and has been ongoing for ten years in the case of the 2009 appeal and for six years on the 2013 appeal. Indiana Code § 6-1.1-15-1.2(k) provides Nowacki the right to appeal directly to the State if the PTABOA fails to issue a determination within 180 days after notice of appeal was filed. Therefore, the lengthy appeal process was due, in part, to Nowacki's inaction.
- f. Petitioner failed to make a prima facie case for changing the assessments. Where a Petitioner has not supported its 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). The Assessor did concede that there was no improvement on the property in 2009 and the assessed value should be \$4,100 for land only. The 2013 assessed value should remain the same.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the subject property's 2009 assessment reduced to \$4,100. We find for the Assessor for 2013, and order no change to the value.

ISSUED: June 4, 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>>.