

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

Petitions: 45-003-12-1-5-01138-16
45-003-13-1-5-00226-16
45-003-17-1-5-00779-18
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-481-028.000-003
Assessment Years: 2012, 2013 & 2017

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

PROCEDURAL HISTORY

1. Nowacki contested the 2012, 2013, and 2017 assessments of his property located at 4716 W. 28th Place in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential lot at \$1,400 for 2012, \$1,500 for 2013, and \$1,200 for 2017.
2. Nowacki filed Form 131 petitions 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 petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his 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 2008-2012
Petitioner Exhibit B: Property record card for 2014-2017
Petitioner Exhibit C: Property record card for 2015-2018
Petitioner Exhibit D: Aerial map
 - 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 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). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
6. At the hearing, our ALJ preliminarily determined the burden of proof rested with Nowacki for all of the years under appeal. We adopt our ALJ's decisions with respect to the 2012 and 2017 assessment years. We conclude, however, that the Assessor has the burden of proof for 2013 because the assessed value increased by more than 5% from 2012 to 2013.

MOTION TO DEFER RULING

7. Nowacki made a motion requesting that the Board defer any ruling on these petitions pending 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

9. Nowacki's case:
 - a. According to the property record card, Lake County owned this property for over a century. It churned through the system until Nowacki acquired the property in 2002. *Nowacki testimony; Pet'r Exs. A, B, C.*
 - b. The subject property is only 150 feet from 4736 W. 28th Place. The subject property has a -50% influence factor that takes into consideration that it is an unbuildable lot and there are no roads, no sidewalks, and no utilities. The property at 4735 W. 28th is identical and had only a -20% influence factor applied. This shows the inconsistency in the assessments of these properties. *Nowacki testimony; Pet'r Exs. A, B, C.*
 - c. Metz commented that there are too many appeals. The Assessor does not comprehend that there are too many appeals because the assessments are wrong. And, of course, the process goes on and on, year after year, and does not deliver justice for the people who have the appeals. *Nowacki testimony.*

- d. The property record card incorrectly shows the neighborhood life cycle as static. The property value has gone down from \$4,400 in 2008 to \$1,200 in 2017. This indicates a declining neighborhood life cycle. *Nowacki testimony; Pet'r Exs. A, B, C.*
- e. The assessed valuation has been reduced by 75% and the value is still not accurate. Nowacki contends the value is \$500, which is much closer to the actual value than the Assessor's valuation. *Nowacki testimony.*
- f. Nowacki has been buying and selling real estate in Gary for over 20 years. He does not claim that when he purchases a property for a minimum bid that that represents the market value. The value may be many times what he paid for it, but it is not a hundred times the purchase price as the Assessor contends. *Nowacki testimony.*

10. The Assessor's case:

- a. In the absence of any evidence, the Assessor recommends no change to the assessments. *Metz testimony.*

ANALYSIS

11. Nowacki failed to make a prima facie case for reducing the property's 2012 or 2017 assessments. The Assessor failed to make a prima facie case that the 2013 assessment was correct, and Nowacki failed to make a case for a further reduction. 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 2012 and 2013,

the valuation date was March 1 of each respective year. The valuation date for 2017 was January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).

2012 Assessment

- c. Nowacki contends the 2012 assessment should be \$500, 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. We also give no weight to his claims regarding the property's decreasing assessment. The Assessor's decision to decrease the property's assessment between 2008 and 2017 does not prove that the 2012 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).
- e. Nowacki also claims the neighborhood life cycle is incorrect on the property record card. However, 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.*
- 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 lowering his 2012 assessment.

2013 Assessment

- h. As discussed above, the Assessor has the burden of proof for 2013. Because the Assessor failed to offer any evidence to support the assessment, Nowacki is entitled to have his assessment reduced to its 2012 assessed value of \$1,400.
- i. Although Nowacki requested an assessment below \$1,400, he relied on the same arguments and evidence he presented for the 2012 appeal. We therefore reach the same conclusion—he failed to make a prima facie case for a further reduction.

2017 Assessment

- j. Nowacki retained the burden of proof for 2017. As with 2013, he relied on the same arguments and evidence he presented for the 2012 appeal. And we again reach the same conclusion—he failed to make a prima facie case for lowering his 2017 assessment.

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 2012 and 2017 assessments. With respect to the 2013 assessment, however, we find for Nowacki and order it reduced to \$1,400.

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>>.