

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

Petitions: 45-003-13-1-5-00170-16
45-003-17-1-5-00770-18
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-14-151-027.000-003
Assessment Years: 2013 & 2017

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2017 assessments of his property located at 7262 W. 24th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential lot at \$16,400 for 2013 and \$11,200 for 2017.
2. Nowacki filed Form 131 petitions with the Board for both years and elected to proceed under our small claims procedures. On December 3, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by its Hearing Officers, Robert W. Metz and Joseph James. They were all sworn as witnesses.

RECORD

4. The official record for this matter 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; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.¹

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

¹ Neither party offered any exhibits.

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 no change in the subject property's assessment from 2012 to 2013. There was a decrease from 2016 to 2017. Nowacki therefore bears the burden of proof for both years at issue.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. Nowacki contends the Redevelopment Commission sold 20 or 21 lots for \$4,000, or \$200 each. These lots were not contiguous or part of a larger development but scattered throughout the city. He argues that this establishes a value for lots all over the city. *Nowacki testimony.*
 - b. Petitioner claims that property values have been vectoring down from 2010 through 2017. In 2010, which is not an appeal year but a base year, the value was \$32,000. This included a "structure" which was a pile of rubble. The value for this "improvement" was finally removed from the assessment. In 2017, the lot is valued at \$11,200. The value has decreased by 66% over a seven-year period. *Nowacki testimony.*
 - c. Nowacki contends there is an almost uninterrupted continuum of over-assessment of these lots. This is not something that started with his ownership. The previous owner abandoned the subject property in 2001. He contends that if the property had a value of \$32,000, the previous owner should have been able to sell it for something. He instead walked away. This abandonment is a direct result of the incorrect, over-assessment of these properties. *Nowacki testimony.*
 - d. At a recent PTABOA hearing, a property owner who had purchased a property at tax sale for some minimal amount argued that the parcel was unbuildable and was worth \$300. When the owner produced a letter from the city stating the lot was unbuildable, the PTABOA agreed to reduce the value of the lot. Its assessed value went from \$3,000 to \$300, or just 10% of its original assessed value. Nowacki admits the subject property is buildable, but he has appealed other unbuildable properties. *Nowacki testimony.*
 - e. Nowacki believes a reasonable assessed value for this property is \$5,000, which is significantly more than what he paid for it. The current assessment is out of line with the actual value of the property. *Nowacki testimony.*
8. The Assessor's case:

- a. The Assessor contends that Nowacki provided no market evidence to support his requested valuation. The Assessor recommends no change in the assessments. *James testimony*.

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2013 or 2017 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 January 1, 2017, respectively. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the property's 2013 and 2017 assessments should be \$5,000, but 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 disagree with Nowacki's assertion that the sale of properties by the Redevelopment Commission reflects market value for lots in the city. This is essentially relying on a sales comparison approach to establish the market value-in-use. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9. (Incorporated by reference at 50 IAC 2.4-1-2) (Stating that the sales comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also Long*, 821 N.E.2d 466,469.

- e. The effective use of the sales comparison approach as evidence in a property tax appeal requires the proponent to compare the properties and their attendant attributes. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. The proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- f. Here, Nowacki failed to show where the sale properties were located or how they compared to the property under appeal. Nowacki presented no evidence that the Redevelopment Commission’s sale met the requirements of an open market transaction or that the purchase price was allocated equally to each lot sold. It was also unclear how many lots were sold, and no terms or details of the sale were provided.
- g. 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 2010 and 2017 does not prove that the 2013 or 2017 assessments were 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 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).
- h. 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 subject property’s 2013 and 2017 assessments.

ISSUED: February 11, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

James Nowacki
7262 W. 24th Avenue
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- 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>>.