

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

Petition: 45-003-13-1-5-00175-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-483-020.000-003
Assessment Year: 2013

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013 assessment of his property located at 4734 W. 29th Avenue in Gary.¹ The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$2,200 for 2013.
2. Nowacki filed a Form 131 petition with the Board 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 petition. 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 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; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.²

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

¹ Mr. Nowacki incorrectly listed the property address as 4734 W. 23rd Avenue on the Form 131. The parcel number and the legal description are for 4734 W. 29th Avenue.

² Neither party offered any exhibits.

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 property's assessment from 2012 to 2013. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The county owned this property since 1994. It was offered at auction several times during the 25 years before he purchased it for just over \$100. *Nowacki testimony.*
 - b. After acquiring the property, Nowacki immediately made efforts to appeal the assessed value. In 2010, the property was valued at \$3,600. The Assessor reduced the assessed value to \$2,200 in 2012. It was further reduced to \$1,900 for 2016 and 2017. All of these values are in excess of market value for an unbuildable lot. *Nowacki testimony.*
 - c. During a recent PTABOA hearing, the property owner of an unbuildable lot on Doty Street in Hammond appealed its assessed value. Upon receipt of a letter identifying the property as unbuildable, the PTABOA reduced the value from \$3,300 to \$300. *Nowacki testimony.*
 - d. Nowacki contends a reasonable value for the property should be \$900. The 2013 assessed value was \$2,200. He states that the value has gone down since 2013, and this is one of those instances where there is a "disconnect" between market activity and the assessor's office. *Nowacki testimony.*
 - e. Nowacki contends the ulterior motive for over-assessing properties is to "prop up" the local city and county government as well as entities that are affected by taxes collected in Gary. He states that you may be able to get a few more shekels in the short term from the unfortunate property owners who are not able to leave. The long-term effect is that you create mass abandonment in the city because people walk away from their properties. *Nowacki testimony.*
8. The Assessor's case:
 - a. The Assessor contends there is no market evidence to support a change in the assessment. The Assessor recommends no change for 2013. *James testimony.*

ANALYSIS

9. Nowacki 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.* For 2013, the valuation date was March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the subject property’s 2013 assessment should be \$900 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 give no weight to Nowacki’s comparison of the Doty Street property in Hammond. Petitioner failed to present any evidence to compare the attributes and value of that property to the subject property for 2013. Because Nowacki offered no probative market-based evidence to demonstrate the subject property’s correct market value-in-use, 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 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 assessed value.

ISSUED: February 11, 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>>.