

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

Petition: 45-003-13-1-5-00234-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-377-018.000-003
Assessment Year: 2013

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

PROCEDURAL HISTORY

1. James Nowacki contested the 2013 assessment of his property located at 4110 W. 28th Place in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$3,400.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On April 15, 2019, 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 E. James. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner Exhibit A:	GIS map for 4110 W. 28 th Place Approx.
Petitioner Exhibit B:	Property record card for 2014-2018
Petitioner Exhibit C:	Property record card for 2009-2013
5. The official record for this matter also includes (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

6. 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. I.C. § 6-1.1-15-17.2(b) and (d).

7. Because the assessment did not change from 2012 to 2013, Nowacki bears the burden of proof.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. Nowacki acquired the property in 2009 for \$125 at an auction attended by hundreds of eligible bidders. The county owned the property since 1992, and the property churned through the tax sale process for 17 years. *Nowacki testimony; Pet'r Exs. B, C.*
 - b. The assessed value of the property has decreased from \$3,400 to the current \$2,800. He believes the market value of the property is \$2,400. However, in order to avoid decades of arguments on the value he would be willing to accept a value 10% higher, or \$2,700. There is only a \$100 difference between his value and the current assessment. *Nowacki testimony; Pet'r Exs. B, C.*
9. The Assessor's case:
 - a. The Petitioner has not presented any market evidence, and the Assessor recommends no change to the assessment. *James testimony.*

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's 2013 assessment. We reach our conclusion 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 contended the assessment should be \$2,400 or \$2,700. But he failed to present any probative market-based evidence to support either 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. To the extent that Nowacki contended his 2009 purchase established a market value of \$125, we disagree. The purchase price of a property can be the best evidence of its value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 918 N.E.2d 311,315 (Ind. Tax Ct.2010). But Nowacki failed to provide sufficient evidence to show that the sale met the requirements of an open market transaction. Nor did he relate the purchase price to the relevant valuation date. Consequently, in this case the purchase price is not probative evidence of the market value-in-use.
 - e. 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 for that 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 2013 assessment.

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>>.