

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

Petition: 45-003-13-1-5-00317-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-376-011.000-003
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 4025 W. 27th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$2,200.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On June 24, 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 Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record contains the following:
 - a. Petitioner Exhibit A: Property record card for 2009-2013
Petitioner Exhibit B: Property record card for 2014-2018
Petitioner Exhibit C: GIS map of the subject parcel
 - b. The 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

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 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. The property’s value remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki’s case:

- a. Nowacki contends the property is the rear portion of a subdivided lot. It is assessed as frontage, but the frontage is actually a chain link fence that is a barrier to the interstate highway to the north. It is entirely landlocked and there is no legal access to the lot under any circumstances. He was aware of the restrictions and limitations on the property when he purchased it. *Nowacki testimony; Pet’r Exs. A, B, C.*
- b. A not-for-profit entity that paid no taxes previously owned the property. That entity walked away from the property even though it paid no taxes. Lake County acquired the property in 1992, and it churned through the system until he purchased it at auction for a nominal amount. *Nowacki testimony.*
- c. Nowacki contends the assessed value of the property is trending down to the proper level. When he purchased the property, its assessment was \$2,200. The current value is \$1,300. However, this property was never worth \$2,200, and it is not worth \$1,300. *Nowacki testimony; Pet’r Ex. B.*
- d. Nowacki claims the market value of the property is \$600. He bases this value on the fact that the auction bidders determined the value was considerably less than the assessed value. Nowacki contends the value is \$600 because that is the price for which he would sell it. *Nowacki testimony.*
- e. He contends that a reduced assessment for this property will affect other similarly situated eminent domain properties. *Nowacki testimony.*

8. The Assessor’s case:

- a. The Assessor recommends the assessed value be reduced to \$1,500 for 2013. *James testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the 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 property's 2013 assessment should be \$600, 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 claim regarding the property's decreasing assessment. The Assessor's decision to decrease the property's assessment in subsequent years does not prove that its 2013 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. 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. 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). In this case, however, the Assessor specifically requested that we lower the 2013 assessment to \$1,500. We accept the Assessor's concession.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the subject property's 2013 assessment reduced to \$1,500.

ISSUED: August 29, 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>>.