

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

Petition: 45-003-13-1-5-00324-16
Petitioner: Mr. James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-19-128-011.000-003
Assessment Year: 2013

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

Procedural History

1. Mr. Nowacki contested the 2013 assessment of his property located at 4009 W. 30th Place in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination on December 9, 2015 valuing the vacant residential lot at \$3,400.
2. Mr. Nowacki filed a Form 131 petition with the Board and elected to proceed under the Board’s small claims procedures. On September 23, 2019, Ms. Ellen Yuhan, the Board’s designated administrative law judge (“ALJ”), held a hearing on Mr. Nowacki’s petition. Neither she nor the Board inspected the property.
3. Mr. Nowacki appeared pro se. Mr. Robert Metz and Mr. Joseph E. James, Lake County Hearing Officers, represented the Assessor. They were all sworn as witnesses.

Record

4. The official record contains the following:

Petitioner Exhibit A:	GIS map of the subject property
Petitioner Exhibit B:	GIS map of the subject property
Petitioner Exhibit C:	Property record card for 2008-2013
Respondent Exhibits:	None

5. 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 the Board’s ALJ; (3) an audio recording of the hearing.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official’s determination has the

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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. The value of this property did not change from 2012 to 2013. Mr. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

8. Mr. Nowacki presented the following case:
 - a. Mr. Nowacki contended that the Assessor corrected the assessment from \$3,400 in 2013 to \$1,800 currently. There have been no recognized changes in the characteristics of the property or the area surrounding it except that the parcel was valued too highly. Mr. Nowacki requested that the Board correct the 2013 assessment to reflect the current assessment. *Nowacki testimony; Pet’r Exs 1 & 2.*
 - b. The state legislature passed a law making it a crime to deliberately assess properties incorrectly, Mr. Nowacki testified. It is generally expected that this might be applied when an assessor assesses property below its market value he contended. Assessing property at below market value would be an obvious benefit to a property owner trying to reduce his or her tax liability. *Nowacki testimony.*
 - c. Mr. Nowacki contended that it is also damaging to assess property at values that are too high, particularly in an area like Gary, because properties assessed for too much are often abandoned by their owners. He testified that the properties then churn through the tax sale system and corrupt insiders take advantage of these instances. Mr. Nowacki alleged that insiders are never going to pay property taxes and that they put the properties into shell corporations or trade them among themselves. *Nowacki testimony.*
 - d. Mr. Nowacki contended that assessing property too highly has real consequences and has caused the deterioration of the city resulting in loss of life, loss of opportunity and higher sociological costs. The system of assessing properties too highly makes it impossible for people to own property he stated. He alleged that such assessment is also fodder for the corrupt influences in Lake County government. The system has created a massive backlog of appeals and properties that churn through the tax sale system and subjects taxpayers to more expense and less opportunity for development. *Nowacki testimony.*
 - e. According to Mr. Nowacki, this property has been in the possession of the county commissioners since 1968. He alleged that the county clings to the idea that these properties should just churn through the system, and that they are a part of the corrupt culture of Lake County, and that they are subject to insider manipulation and fraud.

As a consequence, the county has subjected the residents of the city to deteriorating conditions that result in violence. *Nowacki testimony*.

9. The Assessor presented the following case:
 - a. The Assessor recommended no change to the 2013 assessed value. *James testimony*.

ANALYSIS

10. Mr. 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.* The assessment valuation date for 2013 was March 1 in accordance with Indiana Code. Ind. Code § 6-1.1-2-1.5(a).
 - c. Mr. Nowacki contended that the property's 2013 assessment should be \$1,800 but he failed to present any probative market-based evidence to support that value.¹ 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).

¹ On the Form 131 petition, Mr. Nowacki requested a revised assessed value of \$2,500. At the hearing, he requested that the Board correct the assessment to the current value of \$1,800.

- d. The Board also gives no weight to his claims regarding the property's decreasing assessment. The Assessor's decision to decrease the property's assessment in later years does not prove that the 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. Mr. Nowacki contended that assessments which are too high are responsible for the city's deteriorating condition. He referenced state statutes and asserted that deliberately assessing property incorrectly is a crime. Mr. Nowacki referred generally to Indiana statutes which make it a crime to knowingly assess properties incorrectly.
- f. The Board can only consider the property and tax year on appeal and, in a valuation dispute, decide whether the Assessor correctly determined the value. Much of Mr. Nowacki's testimony was irrelevant to the issue of value. None of his testimony established any criminal activity on the part of the Assessor.
- g. Mr. 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).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board finds for the Assessor and orders no change to the subject property's 2013 assessment.

ISSUED: November 8, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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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>>.