

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

Petitions: 45-004-13-1-5-00182-16
45-004-15-1-5-01827-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-05-33-132-012.000-004
Assessment Years: 2013 and 2015

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2015 assessments of his property located at 1021-25 Spencer Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$8,600 for both years.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On April 1, 2019, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by its Hearing Officer, Robert Metz. They were both sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Property record card for 2013-2017
Petitioner Exhibit B: Property record card for 2014-2018
Petitioner Exhibit C: Aerial map
 - b. The 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; 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. Ind. 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). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
6. There was no change in the subject property's assessment from 2012 to 2013 or from 2014 to 2015. Nowacki therefore bears the burden of proof for both years at issue.

MOTION TO DEFER RULING

7. Nowacki made a motion that the Board defer any ruling on this petition pending publication of a report in May 2019 addressing the assessment problems in Calumet Township. He believes the report will affect not only the outcome of these petitions, but also appeals that we have heard in the past. We deny Nowacki's motion. *See* 52 IAC 2-8-8(a) ("No posthearing evidence will be accepted unless it is requested by the administrative law judge or the board.")

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. This property was in the County inventory for some time. Nowacki purchased it for the minimum bid and immediately put in an appeal to reassess the property. *Nowacki testimony.*
 - b. This property is in an area that has some value, but it clearly is not worth the rather extraordinary assessment of \$428 per front foot. Market value for the property would be \$4,000. *Nowacki testimony; Pet'r Exs. A, B.*
 - c. The property record card shows the roads are proposed, which means they are only on a map. This is the first time in hundreds of petitions that the property record card is accurate in this aspect. *Nowacki testimony; Pet'r Exs. A, B.*
9. The Assessor's case:
 - a. In the absence of any evidence, the Assessor recommends no change to the assessments. *Metz testimony.*

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's 2013 or 2015 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 date for the 2013 and 2015 assessments at issue in these appeals was March 1 of each assessment year. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the 2013 and 2015 assessments should be \$4,000, 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. 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 2013 and 2015 assessments.

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>>.