

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

Petitions: 45-004-13-1-5-00260-16
45-004-16-1-5-00509-17
45-004-16-1-5-00512-17¹
45-004-17-1-5-00286-19

Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-08-126-004.000-004
Assessment Years: 2013, 2016, 2017

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013, 2016 and 2017 assessments of his property located at 2584 W. 9th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the property at \$11,700 (Land at \$6,100 and Improvements at \$5,600) for 2013 and \$4,900 (Land only) for both 2016 and 2017.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On November 12, 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 hearing officers Joseph James and Robert Metz. They were all sworn as witnesses.

RECORD

4. The official record contains the following:
 - a. Petitioner Exhibit A: Property record card (“PRC”) for 2014-2018
 - Petitioner Exhibit B: PRC for 2014-2017
 - Petitioner Exhibit C: PRC for 2013-2016
 - Petitioner Exhibit D: PRC for 2008-2013
 - Petitioner Exhibit E: GIS map

¹ Nowacki filed duplicate appeals for 2016.

- b. The record for the 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. 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. Here, the assessment decreased from 2012 to 2013 and from 2015 to 2016. Nowacki therefore bears the burden of proof for both 2013 and 2016. The burden of proof for 2017 depends on the outcome for 2016.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The property is in an area with little to no chance of development. Lake County owned the property for almost 30 years until Nowacki purchased it for the nominal amount of \$25 at an auction attended by hundreds of eligible bidders. The tax sale is the only market for these properties and a bid is an indication of market value. But Nowacki concedes the property is worth more than the \$25 he paid for it. He believes the value of the property is \$1,800, and he is confident that he could sell the property for that amount. *Nowacki testimony; Pet'r Exs. A, B, C, D.*
 - b. It defies logic that the Assessor could value the property at \$12,000. There was never an improvement on the parcel, just a pile of rubble. After five or six years of appeals, the Assessor finally removed the improvement value from the 2013 assessment. It is incomprehensible that the change would not carry forward to 2014. In other words, the taxpayer is expected to correct the same error year after year. It is as if the Assessor has no responsibility to have an accurate assessment. The taxpayer is not supposed to have to go through this frustrating process year after year. It damages the property owner and creates such a burden on the community that it destroys market value. *Nowacki testimony; Pet'r Exs. A, B, C, D, E.*
 - c. U. S. Steel had its taxes reduced by 60% after it appealed its assessment. To make up for the loss in assessed valuation, the Assessor raised the assessments on all other properties resulting in a tax crisis in the city. The legislature had to enact laws to ensure properties were assessed at market value. Over-assessment destroys market value and destroys communities. *Nowacki testimony.*

8. The Assessor's case:

- a. There was a demolition permit issued in 2011. Although it was Nowacki's responsibility to inform the township assessor when the building was demolished, the GIS map does not show an improvement on the property during 2013. The Assessor therefore agrees to the removal of the improvement value for that year, and she recommends a land only value of \$4,900 for all three years under appeal. *James testimony; Metz testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2013, 2016 or 2017 assessments. However, we accept the Assessor's concession that the 2013 assessment should be \$4,900. 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. For 2016 and 2017, the valuation date was January 1st of each respective year. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessment should be \$1,800 for all three years on appeal, 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 for 2013 or 2016, he failed to make a prima facie case for lowering either year's assessment. Nevertheless, the Assessor conceded that the 2013 assessment should be \$4,900, and we accept the Assessor's concession.
- e. We now turn to the 2017 assessment. Because Nowacki's challenge to the 2016 assessment was unsuccessful, the property's assessment remained unchanged from 2016 to 2017. Nowacki therefore retains the burden of proof for 2017. He relied on the same evidence and arguments and we therefore reach the same conclusion—he failed to make a prima facie case for a lower assessment.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2013 assessment reduced to \$4,900. For 2016 and 2017, we find for the Assessor and order no change.

ISSUED: February 10, 2020

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>>.