

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

Petition: 45-004-13-1-5-00315-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-16-338-020.000-004
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 2678 Polk Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$5,900.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On July 9, 2018, 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 Robert Metz and Joseph E. James, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record for this matter 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; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.¹

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

¹ Neither party offered any exhibits.

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 subject property's assessment decreased from 2012 to 2013. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The subject property is located in a declining neighborhood lined with vacant, abandoned structures in various stages of decay. The subject is a buildable lot but there is little potential for building an improvement on it given the dilapidated, distressed, and blighted appearance of improvements in the area. *Nowacki testimony.*
 - b. The property record card shows the neighborhood is static. According to the Assessor's records, however, the subject's assessment has decreased 30% in five years indicating the neighborhood is declining. *Nowacki testimony.*
 - c. Nowacki claims these inaccurate, reckless, and outrageous assessments drive people from their properties. The Assessor is supposed to provide accurate, market rate assessments. *Nowacki testimony.*
 - d. The subject property was in the county's inventory for 20 years, and Nowacki acquired it for the minimum bid of \$25. There is simply no way, other than by an almost criminal level of neglect, that a property purchased for \$25 would be valued at \$7,500 and then a year later be reduced to \$5,900, and, finally, in 2017 be assessed at \$2,800. *Nowacki testimony.*
 - e. Nowacki contends a valuation of \$1,800 would be reflective of the subject property's fair market value. In addition to correcting the subject's value, such a reduction would go a long way to providing a service to other property owners that just walk away from these properties rather than fight for five years. *Nowacki testimony.*
8. The Assessor's case:
 - a. The Assessor requests the subject property's 2013 assessment remain at \$5,900. *James testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the subject 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 subject property’s 2013 assessment should be \$1,800, 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. To the extent Nowacki was asserting that his purchase price of \$25 reflects the subject property’s correct value, we disagree. The purchase price of a property can be the best evidence of a property’s value. *Hubler Realty Co. v. Hendricks Co. Ass’r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, however, Nowacki failed to provide any indication that the sale met the requirements of an open-market, arm’s-length transaction. Nor is there evidence of when the sale closed, much less an attempt to relate the purchase price to the valuation date. Consequently, the purchase price is not probative evidence of the subject property’s market value-in-use.
- e. We also give no weight to his claims regarding the subject property’s decreasing assessment. Putting aside the fact that the decreasing assessment appears to correspond with his view of the surrounding area as a neighborhood in decline, the Assessor’s decision to decrease the subject 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).

- f. Because Nowacki offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use, 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, we find for the Assessor and order no change to the subject property's 2013 assessment.

ISSUED: October 1, 2018

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>>.