

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

Petition: 45-003-13-1-5-01505-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-352-029.000-003
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 4426 W. 28th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$2,200.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On April 12, 2021, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Hearing Officers Robert Metz and Jessica Rios. All were sworn as witnesses.

Record

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Property Record Card (2016-2020),
Petitioner Exhibit B: Property Record Card (2010-2015),
Petitioner Exhibit C: GIS map.
 - b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (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 value of the property remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof.

Summary of Contentions

7. Nowacki’s case:
 - a. The county acquired the property in 1998. It churned through the property tax system for a dozen years before he purchased it at a 2010 auction for a nominal amount. He is not arguing that the price he paid is market value, but it does indicate that the market value was much lower than the assessed value. *Nowacki testimony*.
 - b. After he acquired the property, he appealed the value consistently and expected that he would be able to have the property properly assessed. He appealed at the township level and at the PTABOA. Now, a dozen years later it is finally being heard at the State level. *Id.*
 - c. When he purchased the property, it was assessed at \$2,200. It remained at that value through 2015. In 2016, the Assessor reduced the assessment to \$1,900. His target value is \$1,500 so there is some movement in the right direction, but it still needs more work. *Nowacki testimony; Pet’r Exs. A, B.*
 - d. The fact that the property was over-assessed is proven conclusively because the assessor’s office reduced it. Nothing happened to the property to affect the value other than the relentless process of appealing before the township, the PTABOA, and now the Board. *Nowacki testimony; Pet’r Exs. A, B.*
8. The Assessor’s case:
 - a. Because there is no evidence directly focused on the year under appeal, the Assessor recommends no change to the assessed value. *Metz testimony*.

ANALYSIS

9. Nowacki failed to make a prima facie case for a 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.

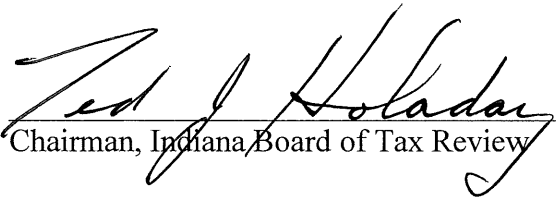
- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Taxpayers may use cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Regardless of the type of valuation evidence used, a party must also 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 this appeal is March 1, 2013. I. C. § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessment should be \$1,500 but 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 claims regarding the property’s decreasing assessment. The decrease to the property’s assessed value in 2016 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 Cty. 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).
- e. Nowacki contends the appeal process is long and tedious; however, this is not a reason to change the assessed value to \$1,500. And pursuant to Ind. Code § 6-1.1-15-1(o), he had the right to appeal directly to the Board if his petition was not heard by the PTABOA within 180 days as required by Ind. Code § 6-1.1-15-1(k). Therefore, the lengthy appeal process was due, in part, to Nowacki’s inaction.
- f. 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 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, 1221-22 (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 assessment.

ISSUED: 6-23-21


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>.