

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

Petitions: 45-003-13-1-5-01221-16
45-003-14-1-5-01137-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-481-004.000-003
Assessment Years: 2013, 2014

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2014 assessments of his property located at 4729 W. 28th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant lot at \$1,400 for 2013 and 2014.
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 2010-2014
Petitioner Exhibit C: PRC for 2010-2013
Petitioner Exhibit D: GIS map
 - 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. Nowacki therefore bears the burden of proof for 2013. The burden of proof for 2014 depends on the outcome for 2013.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. This subject property is an inaccessible, unbuildable lot in an area with zero development. The PRC shows the roads are paved and utilities are available. There are no paved streets, no sidewalks, and no utilities. The property has negligible value. The PRC incorrectly shows the neighborhood life cycle as static. The assessed value has decreased from \$3,600 in 2010 to \$1,200 currently. This indicates a declining neighborhood life cycle. It also proves the property was over-assessed in prior years. Nowacki believes the fair market value of the property is \$500 for both years. His proposed value is one that a willing buyer and a willing seller would agree to in an arm's-length transaction. *Nowacki testimony; Pet'r Exs. A, B, C, D.*
 - b. He acquired the property 10 years ago for a nominal bid at an auction attended by hundreds of people. At that point, the property had circulated through the bidding process for 25 years with no one offering even a nominal bid because the property had little value due to the corrosive effect of over-assessment. Nowacki contends the assessed valuation is an inflated value brought about by the reduction in U.S. Steel's assessment. After the U.S. Steel reduction, assessed values in Calumet Township substantially increased. Some people lost their homes. Some people just walked away from their investments. Because of the over-assessments, the city's population has also declined precipitously. The normal conduct of commerce cannot happen without proper assessments. *Nowacki testimony.*
8. The Assessor's case:
 - a. The Assessor recommends no change in value for 2013 or 2014. *James testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2013 or 2014 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.* For 2013 and 2014, the valuation date was March 1st of each respective year. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the 2013 assessment should be \$500, 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. We also give no weight to his claims regarding the property's decreasing assessment. The Assessor's decision to decrease the property's assessment between 2010 and 2018 does not prove that the 2013 or 2014 assessments were 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. Nowacki further contends that some of the property’s characteristics are incorrect on the PRC. But even if the Assessor made errors, simply challenging the methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*
- 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 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).
- g. Because Nowacki failed to make a prima facie case for reducing the property’s 2013 assessment, its assessment remained unchanged from 2013 to 2014. Nowacki therefore retains the burden of proof for 2014. Nowacki relied on the same evidence and arguments for 2014, 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 find for the Assessor and order no change to the assessments.

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>>.