

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

Petitions: 45-004-13-1-5-00308-16
45-004-16-1-5-00936-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-08-132-006.000-004
Assessment Years: 2013 and 2016

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

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2016 assessments of his property located at 2326 W. 10th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant lot at \$2,200 for 2013 and \$2,100 for 2016.
2. Nowacki filed Form 131 petitions with the Board for both years 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 petitions. 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

¹ Neither party offered any exhibits.

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. The subject property's assessment increased by 10% from 2012 to 2013. The Assessor therefore has the burden of proof for 2013. To the extent Nowacki requests an assessed value below the property's 2012 assessment; he has the burden of proof. The subject property's assessment decreased by \$100 from 2015 to 2016. Thus, Nowacki bears the burden for 2016.

SUMMARY OF CONTENTIONS

7. The Assessor's case:

- a. Although the subject's property record card indicates that the condition of the neighborhood is improving, the Assessor has no evidence to support the 10% increase in the subject property's assessed value from 2012 to 2013. The Assessor therefore acknowledges that the 2013 assessment should revert to the 2012 value of \$2,000.
James testimony.

8. Nowacki's case:

- a. The subject property is a 25' by 85' lot containing less than 0.05 acres. It is too small to build on "under any circumstances." The county had owned the subject property since 1987. It went through numerous tax sales before Nowacki purchased it.
Nowacki testimony.
- b. The subject's current property record card erroneously describes its neighborhood as improving when it is actually declining. The Assessor's description of the property's neighborhood is also inconsistent with the lower assessments imposed on it for 2016 and 2017. Nowacki requests an assessment of \$900 for both years under appeal.
Nowacki testimony.

ANALYSIS

9. The Assessor conceded that the subject property's 2013 assessment should revert to its 2012 value. Nowacki sought a further reduction for 2013, but he failed to make a prima facie case supporting his requested value. Nowacki also failed to make a prima facie case for reducing the subject property's 2016 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 and 2016, the valuation dates were March 1, 2013 and January 1, 2016, respectively. Ind. Code § 6-1.1-2-1.5(a).
- c. Because the Assessor conceded that he could not meet his burden to support the 2013 assessment, Nowacki is entitled to have his 2013 assessment revert to its 2012 value of \$2,000. Despite that concession, Nowacki requested an assessed value below the property’s 2012 assessment. He ultimately requested the same assessment and relied on the same arguments for both years under appeal. We will therefore address them together.
- d. Nowacki contends the subject property’s 2013 and 2016 assessments should be \$900, but he failed to present any probative market-based evidence to support that value for either year. 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).
- e. Instead, Nowacki focused on the discrepancy between the Assessor’s description of the subject property’s neighborhood as improving and the subject property’s declining assessments. But simply highlighting such an inconsistency is not enough to support Nowacki’s requested assessments. 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.” *Eckerling*, 841 N.E.2d at 678.
- 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 for either 2013 or 2016.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the subject property's 2013 assessment reduced to \$2,000. With respect to the subject property's 2016 assessment, we find for the Assessor and order no change.

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>>.