

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

Petitions: 45-004-13-1-5-01205-16
45-004-14-1-5-01203-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-16-181-008.000-004
Assessment Years: 2013 and 2014

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

PROCEDURAL HISTORY

1. Mr. Nowacki contested the 2013 and 2014 assessments of his property located at 2433 Tyler Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential property at \$2,300 for both years.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On February 22, 2021, 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 officer Robert Metz. Both were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: GIS map
Petitioner Exhibit B: Property Record Card (2011-2013)
Petitioner Exhibit C: Property Record Card (2012-2014)
Petitioner Exhibit D: Property Record Card (2016-2020)
 - 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, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessed value. Ind. Code § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property did not change 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.

OBJECTIONS

7. The Assessor objected to Nowacki's testimony when he read from a report that he said IU Northwest prepared for the Lake County Assessor about assessed values. He referred to it alternatively as the "Examination of Contributing Factors" and the "Blue Ribbon Commission." The Assessor objected because Nowacki did not submit the report as evidence. The Board notes that the testimony does not affect the outcome of the determination. It provided no specific information about the subject property and Nowacki used it to provide general background. The Board overrules the objection.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. Nowacki argued that the assessed value is too high. Since he first bought the property, its fluctuating values prove that the assessed value is incorrect. The assessed value was \$4,400 when he bought the vacant lot. It then increased to \$4,500 and then decreased to \$2,300, increased again to \$4,500 and was finally reduced to \$1,100 in 2017. *Nowacki testimony; Pet'r Exs. B-D.*
 - b. Nowacki contended that a report shows that when properties in Calumet Township were professionally appraised, they were shown to be outrageously over-assessed at more than three times their value. Some were even higher. He contended that the subject property was assessed at four times its actual value when he purchased it in 2011. *Nowacki testimony; Pet'r. Exs. B and C.*
 - c. If the Assessor values the property at \$2,300 even after she applied a 50% influence factor, the value is still significantly out of line with the market. *Nowacki testimony; Pet'r Exs. B and C.* Nowacki contends that as a professional in the real estate business, he has been buying and selling properties for 20 years. This background provides him with the requisite knowledge to know that the values are incorrect. *Nowacki testimony.*

9. The Assessor's case:
- a. The Assessor contended that Nowacki was not reading the property record card correctly. The assessed value was \$2,300 in 2012 and remained steady through 2016. The value decreased in 2017 to \$1,100 and is currently at that value. The value is correct and the Assessor recommends no change. *Metz testimony.*

ANALYSIS

10. Nowacki failed to make a case for reducing the property's 2013 and 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." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5(a); Ind. Code. § 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. *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.* Ind. Code § 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). The party must offer relevant market-based evidence. March 1 is the legal assessment date for 2013 and 2014. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the assessed value should be \$1,100 for 2013 and 2014, 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. Nowacki also contends the Assessor applied an influence factor to an incorrect land value. This argument solely attacks methodology which is insufficient as the Tax Court has held. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct.

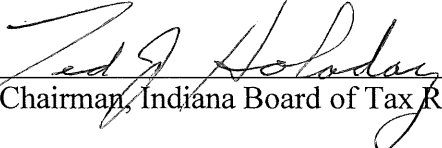
2006). Instead, a taxpayer must use market-based evidence to demonstrate that their suggested value accurately reflects the property's true market value-in-use. *Id.*

- e. Nowacki contends property values change from year to year which proves that the subject's value is incorrect. As the Tax Court has explained, each tax year and each appeal process stand alone. *Fisher v. Carroll Cnty Ass'r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessed value in one year, therefore, has little bearing on its true tax value in another. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- f. Nowacki failed to make a prima facie case for changing the assessed value for either year. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Industries. v. Dept. of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above, we find for the Assessor and order no change to the 2013 and 2014 assessed values.

ISSUED: 5-14-21



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>>.