

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

Petitions: 45-004-11-1-5-00349-16
45-004-13-1-5-00262-16
45-004-15-1-5-01817-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-05-33-276-014.000-004
Assessment Years: 2011, 2013, 2015

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

PROCEDURAL HISTORY

1. Nowacki contested the 2011, 2013, and 2015 assessments of his property located at 9331-35 Indian Boundary in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential lot at \$5,300 for all years in this appeal.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On June 10, 2019, 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. Hearing Officers Robert Metz and Joseph E. James represented the Assessor. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner Exhibit A:	Property record card for 2007-2011
Petitioner Exhibit B:	Property record card for 2012-2015
Petitioner Exhibit C:	Property record card for 2011-2013
Petitioner Exhibit D:	GIS map of the subject parcel
5. The official record for this 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

6. 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).
7. The property's value decreased from 2010 to 2011, and remained unchanged from 2012 to 2013 and from 2014 to 2015. Nowacki therefore bears the burden of proof for all of the years under appeal.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. The Lake County Commissioners owned this property from 1991-2003. They offered it for sale several times during that period. Someone finally purchased the property in 2003, but they apparently lost interest in it and transferred it to another entity. The property subsequently reverted to the Commissioners, and Nowacki purchased it at auction in 2009 for a minimum bid. *Nowacki testimony; Pet'r Exs. A, B & C.*
 - b. After his purchase, Nowacki immediately worked to have the assessment reduced to the reasonable amount of \$3,500. That would have been approximately 35% of the assessed value at that time. Since 2007, the property's assessed value has bounced from \$8,400 to \$8,700, then to \$8,500 and \$10,600. The assessment is now down to \$5,300, but it really should be \$3,500. *Nowacki testimony; Pet'r Exs. A, B & C.*
 - c. The Lake County Board of Commissioners and the Assessor know this property has no value because there was no interest in the property when the Commissioners offered it for sale. The Director of the Redevelopment Commission has stated that vacant lots in Gary have no value. And Peter Ellis, an expert on real estate development, said property in Gary has no value. *Nowacki testimony.*
 - d. The over-assessment of property in Calumet Township is a plague, the result of which is the destruction of market value in Gary. It depopulates the city and makes it impossible for market investors to buy and hold property. *Nowacki testimony.*
9. The Assessor's case:
 - a. The Assessor contends the value for all three years is \$5,300. *James testimony.*

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's 2011, 2013, or 2015 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.* The valuation dates for the 2011, 2013 and 2015 assessments were March 1st of each year. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the property's assessments for all of the years under appeal should be \$3,500, 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. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2011, 2013, or 2015, 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 2011, 2013, and 2015 assessments.

ISSUED: August 29, 2019

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>>.