

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

Petition: 45-003-13-1-5-00176-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-481-018.000-003
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 4701 W. 28th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$2,600.¹
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On December 3, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by Robert W. Metz and Joseph James, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Respondent Exhibit 1:	Real Property Maintenance Report 2013 pay 2014
Respondent Exhibit 2:	Property record card for 2013-2017
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; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.²

¹ The Real Property Maintenance Report shows the 2013 value at \$1,600. Mr. James contends this is the correct value and taxes would have been based on that value.

² Nowacki offered no exhibits.

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 assessment decreased from 2012 to 2013. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. Nowacki acquired the property at an auction attended by hundreds of willing and able bidders for the minimum bid of just over \$100. He states that the property bounced around the tax sale system for 40 years because no one had any interest in the property. *Nowacki testimony.*
 - b. Nowacki contends he has been appealing the value of the property since 2009 when he purchased it. The assessment has decreased from \$4,000 to \$2,600 to \$1,600 and now it remains at \$1,300, a 66% decrease in value. The downward trend reflects the collapse of the real estate market. He contends a fair market value for the property is \$600 and hopes the Board will recognize that it is a great disservice to the community to have properties over-assessed. It makes it impossible to attract market rate investment in the city when the only way to get around the assessor's reckless over-assessment is to do something unavailable to honest, law-abiding citizens. *Nowacki testimony.*
 - c. Petitioner's research shows that, historically, real estate values increase .25% annually. He states that Gary property values haven't realized this increase. Lots advertised for \$1,500 100 years ago are not worth \$1,500 today. *Nowacki testimony.*
 - d. The 2013 assessment shows a value on the property record card of \$2,600. According to the information submitted by the Assessor, the auditor corrected that to \$1,600 but it's not clear if that was because of an error in the auditor's office, an error in the assessor's office or both. He will not argue that the value didn't go down but a difference of \$1,000 is significant. *Nowacki testimony.*
 - e. He states that the assessor shouldn't over-assess the property just so they can apply a 50% influence factor. That's like marking up prices before a sale so you can say they've been marked down. This is an unbuildable, landlocked lot marked up to \$3,000 so they can mark it down with a 50% factor. We shouldn't have that sort of "chicanery" to defraud property owners. *Nowacki testimony.*

9. The Assessor's case:

- a. James admitted that the assessed value for 2013 should be \$1,600. This is the value reflected on the Property Maintenance Report (PMR) submitted as Exhibit 1. He speculated that the inconsistency between the values for 2013 shown on the PRC, PRM and the 115 issued by the PTABOA on November 30, 2015 was attributable to a -30% adjustment made for landlocked property. James does not know why the 2013 value was adjusted on the PRM, but not on the PRC. *James testimony.*

ANALYSIS

10. Nowacki failed to make a prima facie case for 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. 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, the valuation date was March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the property's 2013 assessment should be \$600 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 2009 and

2017 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 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. To the extent Nowacki was asserting that his purchase at auction established market value, we disagree. The purchase price of a property can be the best evidence of a property’s value. *Hubler Realty Co. v. Hendricks Co. Ass’r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Nowacki failed to provide any indication that the sale met the requirements of an open market transaction nor did he present evidence of when the sale closed or relate the purchase price to the valuation date. Consequently, the purchase price is not probative evidence of the property’s market value-in-use.
- 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 for his requested value of \$600. 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 Assessor’s admission, the Board finds for the Petitioner and reduces the assessed value to \$1,600 for 2013.

ISSUED: February 11, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

James Nowacki
4701 W. 28th Avenue
Page 4 of 5

- 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>>.