

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

Petition: 45-003-13-1-5-00230-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-452-005.000-003
Assessment Year: 2013

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

PROCEDURAL HISTORY

1. James Nowacki contested the 2013 assessment of his property located at 2759 Wright Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$3,800.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On April 15, 2019, 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 its Hearing Officers, Robert W. Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner Exhibit A:	GIS map
Petitioner Exhibit B:	Property record card for 2014-2018
Petitioner Exhibit C:	Property record card for 2013-2017
5. The official record for this matter also includes (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. Because the assessment did not change from 2012 to 2013, Nowacki bears the burden of proof.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. Nowacki acquired the property at an auction attended by hundreds of eligible bidders. He paid \$135, which shows the property was over-assessed. According to the property record card, the Lake County Auditor had the property since 1900. That may not be accurate, but it shows that the property record cards are inaccurate. The result of that is properties are assessed with phony information, which leads to over-assessment and difficulties in getting assessments corrected. *Nowacki testimony; Pet'r Exs. B, C.*
 - b. The assessed value of the property has decreased from \$3,800 in 2013 to \$3,300 in 2018. It decreased because it is painfully obvious to everyone that these properties are over-assessed. The fair market value was established somewhere above the purchase price of \$135, and a reasonable assessment would be \$2,900. *Nowacki testimony; Pet'r Exs. B, C.*
 - c. Although Nowacki believes the market value of the property is \$2,900, he would be willing to accept a value 10% higher, or \$3,200. That is only a \$100 difference between his suggested value and the property's 2018 assessment. He would like to have the subsequent years adjusted in the same manner as well. The Assessor reduced the assessment on a parcel previously heard today to its assessed value from the prior year. The same logic applied to that assessment correction should be applied to this parcel. *Nowacki testimony.*
9. The Assessor's case:
 - a. The Assessor contends the change on a previously appealed parcel was of an objective nature. It involved a pond/sinkhole and there is a protocol for assessing ponds. The issue on this particular parcel is subjective. And because Nowacki has not presented any market evidence in this case, the Assessor recommends no change to the assessment. *James testimony.*

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's 2013 assessment. We reach our conclusion for the following reasons:

- a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting 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 contended the 2013 assessment of this property should be \$2,900 or \$3,200. But he failed to present any probative market-based evidence to support either 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. To the extent Nowacki asserted his 2009 purchase established a market value of \$135, we disagree. The purchase price of a property can be the best evidence of its value. *Hubler Realty Co. v. Hendricks Co. Ass’r*, 918 N.E.2d 311,315 (Ind. Tax Ct.2010). But Nowacki failed to provide any indication that this sale met the requirements of an open market transaction. Nor did he present evidence relating the purchase price to the relevant valuation date. Consequently, in this case the purchase price is not probative evidence of the market value-in-use.
- e. We also give no weight to his claim regarding the decreasing assessment. The Assessor’s decision to decrease the assessment between 2013 and 2018 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 an 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). And the

subsequent years Nowacki would like adjusted (presumably 2014 and 2015) based on the decreasing assessment are not even before us.

- f. Finally, Nowacki argues we should change this assessment because the Assessor corrected the assessed value of another parcel. The Assessor offered testimony explaining that the correction Nowacki is referring to was the result of an objective error involving a pond/sinkhole. Regardless, Nowacki failed to explain how the Assessor's decision regarding that unrelated parcel has any bearing on this 2013 assessment. Thus, we conclude his argument has no merit.
- g. 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).

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 2013 assessment.

ISSUED: June 28, 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>>.