

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

Petition: 45-003-13-1-5-00327-16
Petitioner: Mr. James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-19-102-011.000-003
Assessment Year: 2013

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

Procedural History

1. Mr. Nowacki contested the 2013 assessment of his property located at 4411 W. 30th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination on December 9, 2015 valuing the vacant residential lot at \$3,400.
2. Mr. Nowacki filed a Form 131 petition with the Board and elected to proceed under the Board’s small claims procedures. On September 23, 2019, Ms. Ellen Yuhan, the Board’s designated administrative law judge (“ALJ”), held a hearing on Mr. Nowacki’s petition. Neither she nor the Board inspected the property.
3. Mr. Nowacki appeared pro se. Mr. Robert Metz and Mr. Joseph E. James, Lake County Hearing Officers, represented the Assessor. They were all sworn as witnesses.

Record

4. The official record contains the following:

Petitioner Exhibit A:	GIS map of the subject property
Petitioner Exhibit B:	GIS map of the subject property
Petitioner Exhibit C:	Property record card for 2008-2013
Respondent Exhibits:	None
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 the Board’s ALJ; (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 value of this property did not change from 2012 to 2013. Mr. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

8. Mr. Nowacki presented the following case:
 - a. Mr. Nowacki contended that the only change related to the property is the correction by the Assessor of the valuation of \$3,400 in 2013 to \$2,100 currently. There have been no recognized changes in the characteristics of the property or the area surrounding it, which is in a wooded area with little development. He stated that the lots have been vacant since their original subdivision. *Nowacki testimony; Pet'r Exs 1 & 2.*
 - b. According to Mr. Nowacki, the city of Gary's condition has deteriorated, with a rampant murder rate and alleged corruption which was exposed in the newspaper, particularly surrounding the tax sales and the effect those sales have had on inhibiting development. He stated that individuals with connections to various county offices have scammed the system to bid on properties so that they can financially benefit. This situation has prevented properties from being transferred to the city to make them available for future development. *Nowacki testimony.*
 - c. Mr. Nowacki contended that for corrupt, criminal perpetrators of this fraud, the assessed valuation doesn't matter. He stated that individuals benefited from high assessments at the township and county offices because the overly high valuation created a mass of property that is subject to fraud. *Nowacki testimony.*
 - d. Mr. Nowacki stated that preliminary findings of a blue-ribbon panel of experts convened by the Assessor may be embarrassing for the hearing officers, the PTABOA, and possibly the State of Indiana. The panel may find that, in spite of state law, assessors may be criminally in violation of the law by not accurately assessing property. He contended that assessing properties too highly created a massive social problem and an obstacle to development. It also created a financial boon for the people who profit and have a vested interest in churning these properties through the system. *Nowacki testimony.*

e. Mr. Nowacki has been appealing the assessments on this property for almost a decade. He stated that he was happy with the current assessment, but a correction must be made for previous years as well. He believed that the county was wrong but perhaps not without a reason. Mr. Nowacki alleged that the assessment was not wrong because of error or neglect, or because someone didn't do his or her job, and the assessment may have been done incorrectly deliberately and with a purpose. He alleged that the incorrect assessment may be part of a criminal conspiracy. *Nowacki testimony*.

9. The Assessor presented the following case:

a. The Assessor recommended that no change be made to the 2013 assessed value. *James testimony*.

ANALYSIS

10. The Board finds that Mr. 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.* The assessment valuation date for 2013 was March 1 in accordance with Indiana Code. Ind. Code § 6-1.1-2-1.5(a).

c. Mr. Nowacki contended that the property's 2013 assessment should be \$2,500 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. The Board also gives no weight to Mr. Nowacki's claims regarding the property's decreasing assessment. The Assessor's decision to decrease the property's assessment in later years 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. The Board can only consider the property and tax year on appeal and, in a valuation dispute, decide whether the assessor is correct about the valuation. Much of Mr. Nowacki's testimony was irrelevant to the issue of value. None of his testimony established any criminal activity in regard to his assessments.
- f. Because Mr. 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, the Board finds for the Assessor and orders no change to the subject property's 2013 assessment.

ISSUED: November 8, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

James Nowacki
4411 W. 30th Avenue
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- 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>>.