

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

Petition: 45-003-13-1-5-00363-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-19-102-009.000-003
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 4431 W. 30th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$3,400.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On May 20, 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 Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner Exhibit A:	Property record card (“PRC”) for 2008-2015
Petitioner Exhibit B:	Property record card for 2014-2018
Petitioner Exhibit C:	GIS map of the subject parcel
Respondent Exhibits:	None
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; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

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 did not change from 2012 to 2013. Nowacki bears the burden of proof in this appeal.

SUMMARY OF CONTENTIONS

8. Nowacki’s case:
 - a. Nowacki purchased the property in 2008. When he began his appeal, he had a proposed value of \$2,500. If he could get an assessment within 10% of the actual market value of the property, he would accept it. With a \$2,500 market value, an assessed value of \$2,800 would be acceptable. *Nowacki testimony.*
 - b. According to Nowacki, there is no explanation for how the property values go up and down. There is no requirement for the Assessor to explain the randomness of its assessments. The assessed values have gone from \$3,300 to \$3,400 to \$3,200 down to \$2,100 and back up to \$2,800 as of 2018. There is no market activity around the property to support the values or changes. *Nowacki testimony.*
 - c. Nowacki testified that after eight years of fighting, the Assessor’s values are getting close and if the State takes the average of the Assessor’s results, it will decide that his proposed market value is accurate. *Nowacki testimony.*
9. The Assessor recommends no change to the assessment.

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the 2013 assessment of this property. 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). 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.*
- c. Nowacki failed to present any probative market-based evidence to support the \$2,500 assessment he seeks. 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 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: July 30, 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>>.