

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

Petitions: 45-003-13-1-5-01194-16
45-003-14-1-5-01179-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-478-005.000-003
Assessment Years: 2013 & 2014

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

Procedural History

1. Mr. Nowacki contested the 2013 and 2014 assessments of his property located at 4839 West 27th Place in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential property at \$2,200 for 2013 and \$1,400 for 2014.¹
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On November 23, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by hearing officer Joseph E. James. Both were sworn as witnesses.

Record

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: GIS map
Petitioner Exhibit B: Property Record Card (2010-2014)
Petitioner Exhibit C: Property Record Card (2015-2019)
 - b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

¹ The Assessor’s records show \$2,200 for both years but the Form 115 for 2014 shows \$1,400.

Burden of Proof

5. 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. Ind. Code § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The burden of proof for 2014 depends on the outcome for 2013.

Summary of Contentions

7. Nowacki's case:
 - a. The property record card is so fraught with errors it is practically useless. The entire document is inaccurate. Nowacki contended that it seems as if ownership doesn't matter, the characteristics don't matter, and the land computation doesn't matter. For instance, the transfer of ownership portion of the card shows he purchased it in 1900. His grandparents weren't even born in 1900. It also shows he purchased it for nothing, but he did pay something for the property even if it was just a nominal amount. *Nowacki testimony; Pet'r Exs. B & C.*
 - b. The property record card shows the topography of the property accurately except that there are no utilities, no paved streets, or sidewalks. The property is distant from anything that would be considered an improvement or an amenity. *Nowacki testimony; Pet'r Ex. A.*
 - c. The land computations don't appear to have any reference to the numbers indicated on the valuation records. On Exhibit C, the calculation for the land value is \$1,300. On Exhibit B, the same property, the same numbers, and a slight difference in the market factor shows a value of \$1,400, but \$1,400 is not shown on the valuation record. *Nowacki testimony; Pet'r Exs. B & C.*
 - d. In 2011, the property was valued at \$3,600. Then it decreased by one-third to \$2,200 in 2013 and 2014. It is currently assessed at \$1,300, which is a 60% decrease from when he purchased the property. This proves the property was over-assessed because nothing has changed on the property. It is still the same unimproved property today and it is still over-assessed. *Nowacki testimony; Pet'r Exs. B & C.*
 - e. Nowacki argued that the legislature enacted laws that properties are to be assessed at fair market value and taxes are to be capped at 1%, 2%, or 3% depending on the classification. But the Indiana Constitution doesn't protect taxpayers from an

Assessor's office that is going to ignore their own work or is going to deliberately manipulate an assessment that is erroneous. The Assessor has the responsibility to fairly assess property and, when the assessments are inaccurate, to correct them in a timely manner. *Nowacki testimony*.

8. The Assessor's case:

a. The Assessor recommends no change for 2013 or 2014. *James testimony*.

ANALYSIS

9. Nowacki failed to make a case for a reducing the property's 2013 and 2014 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." Ind. Code § 6-1.1-31-6 (c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5(a); Ind. Code § 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. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *Id. See also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Cost or sales information for the property under appeal may also be used, as well as sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id. See also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). The party must offer relevant market-based evidence. March 1 is the legal assessment date for 2013 and 2014. Ind. Code § 6-1.1-2-1.5(a).

c. Nowacki contends the assessed value should be \$500 for 2013 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. Nowacki contends there are numerous errors on the property record card, specifically regarding the transfer of ownership and the characteristics of the property. Nowacki

- did not show how any changes to ownership or characteristics would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of error in the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, Nowacki needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Id.* See also *P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899,900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is).
- e. As to the land computations, Petitioner's Exhibit B shows land data that reflects the change the PTABOA made in 2014 by applying a 50% influence factor. Petitioner's Exhibit C shows the land computation for 2019 but the land computation for that year is not relevant to the assessment year at issue.
 - f. We also give no weight to Nowacki's claims regarding the property's decreasing assessed value. The decrease to the property's assessed value in 2016 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 *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
 - g. Nowacki failed to make a prima facie case for reducing the 2013 assessment. Accordingly, the burden of proof remains with Nowacki for 2014. He offered the same evidence and arguments for 2014 and similarly failed to prove the assessment was incorrect for that year.
 - h. Nowacki failed to make a prima facie case for lower assessments. 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 Industries v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

We find for the Assessor and order no change to the 2013 and 2014 assessed values.

ISSUED: February 19, 2021

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>>.