

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

Petitions: 45-003-13-1-5-01216-16
45-003-17-1-5-00784-18
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-481-009.000-003
Assessment Years: 2013 and 2017

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

PROCEDURAL HISTORY

1. Mr. Nowacki contested the 2013 and 2017 assessments of his property located at 4719 West 28th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$1,400 for 2013 and \$1,200 for 2017.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On December 14, 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. They were both 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 (2010-2013)
Petitioner Exhibit C: Property Record Card (2014-2017)
Petitioner Exhibit D: Property Record Card (2016-2019)
 - b. The 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; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. 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, 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). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. Ind. Code § 6-1.1-15-17.2(b).
6. Here, the value decreased from 2012 to 2013. Nowacki therefore bears the burden of proof. There was no change in the assessment between 2016 and 2017. Nowacki bears the burden of proof for 2017.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. According to Nowacki the accuracy of the information on a property record card is crucial, but taxpayers can have no confidence that it is. There are many mistakes on the card. *Nowacki testimony; Pet'r Exs. B-D.*
 - b. In the subdivision across the street, the lots are improved and more accessible than his vacant lot, but the base rate across the street is half that of his subdivision. He argued that assessors are prohibited from allowing a 20% variance in neighborhood base rates without an explanation. With his property, the Assessor has provided no explanation. *Nowacki testimony; Pet'r Ex. A.*
 - c. The property record card shows a value of \$3,600 in 2010 and 2011. In 2012, it decreased to \$2,200. It is now valued at \$1,200, one-third its original value, but the Assessor has given no explanation as to why it decreased. The assessed value should be \$500. *Nowacki testimony; Pet'r Exs. B-D.*
 - d. Taxpayers are expected to bring evidence to their hearings, but the data needed, the neighborhood maps and the base rates, are all unavailable. Nowacki contends that when he finally received the neighborhood map it was outdated and inaccurate. He had to file a public records request to get the rates. This is in violation of Indiana law, which says this information is supposed to be available. *Nowacki testimony.*
8. The Assessor's case:
 - a. The Assessor recommends no change in assessment for 2013 or 2017. *James testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing his property's 2013 or 2017 assessed values. 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"). 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. 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; *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 and 2017, the valuation dates were March 1, 2013 and January 1, 2017, respectively. Ind. Code § 6-1.1-2-1.5(a).
 - c. While Nowacki contends the subject property's 2013 and 2017 assessed values should be \$500, he failed to present any probative market-based evidence to support his argument. 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 claims the subject property's base rate is double the rate of an adjacent subdivision. We interpret this argument to be a challenge to the uniformity and equality of the assessment. The Tax Court has previously held that when taxpayers challenge the uniformity and equality of their assessment, one approach they may adopt involves the presentation of ratio studies comparing the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals. *Westfield Golf Practice Ctr, LLC v. Wash. Twp. Ass'r*, 859 N.E.2d 396,399 n.3 (Ind. Tax Ct. 2007).
 - e. Such studies must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v.*

State Bd. Of Tax Comm'rs, 643 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. See *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222,1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed).

- f. While Nowacki contends his assessed value is too high compared to properties in an adjacent subdivision, he presented no evidence showing the base rate in the purportedly comparable subdivision nor did he present any evidence showing the adjacent subdivision was comparable to the subject property. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d 466 at 470 (Ind. Tax Ct. 2006).

- g. We also give no weight to his claims regarding the property's decreasing assessed values. The decrease in the property's assessed value first in 2012 and then in 2016 do 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 County 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. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).

- h. While Nowacki contends the characteristics on the property record card are not accurate, he did not show how any changes to the property record card would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of an error in the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d at 678 (Ind. Tax Ct. 2006).

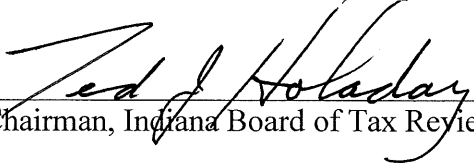
- i. Because Nowacki offered no probative market-based evidence to demonstrate his property's contended correct market value-in-use, he failed to make a prima facie case for a lower assessed value. Where a taxpayer has not supported his claim with probative evidence, the assessor's duty to support the assessed value 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).

- j. The burden of proof was on Nowacki for 2017. He offered the same evidence and arguments for 2017 and similarly failed to prove the assessment was incorrect for that year.

FINAL DETERMINATION

We find for the Assessor and order no change to the subject property's 2013 and 2017 assessed values.

ISSUED: 3-12-21


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>.