

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

Petitions: 45-003-17-1-5-00388-19 and 45-003-18-1-5-00554-21
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-327-007.000-003
Assessment Years: 2017 and 2018

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

Procedural History

1. James Nowacki contested the 2017 and 2018 assessments of his property. For 2017, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 determination valuing the property at \$4,000. For 2018, the PTABOA issued a Form 115 valuing it at \$4,800.¹
2. Nowacki then filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On June 29, 2022, our designated administrative law judge, Joseph Stanford (“ALJ”), held a hearing on Nowacki’s petitions. Neither he nor the Board inspected the property.
3. Nowacki represented himself. Lake County Hearing Officer Robert Metz appeared for the Assessor. Both testified under oath.
4. At the beginning of the hearing, Nowacki verbally requested a continuance because he alleged that Lake County submitted its “land-value survey” for the years 2017 through the present to the Department of Local Government Finance (“DLGF”) “five years late.” Nowacki indicated that he wanted to wait for the DLGF’s ruling on objections to the survey before proceeding with the hearing.
5. The ALJ properly denied Nowacki’s request and proceeded with the hearing. Absent extraordinary circumstances, a motion for continuance must be in writing and be submitted at least two days before the scheduled hearing. *See* 52 IAC 4-7-2. Nowacki first requested his continuance verbally after the hearing had begun. And he did not identify any extraordinary circumstances justifying his failure to comply with our rule. In any case, his vague reference to a proceeding before the DLGF would not have been sufficient grounds for a continuance even if he had timely filed his request.

¹ At the hearing, Lake County Hearing Officer Robert Metz stated that “the Auditor’s office made a correction for 2018,” lowering the assessment to \$4,000. The parties agreed that the assessment for 2018 is \$4,000.

6. Without citing to any authority, Nowacki argued that we have an affirmative duty to make sure that assessors submit their land-value surveys in a legal and timely manner. We disagree. Nowacki has filed appeals on individual assessments, which is all that is before us. To the extent he believed that procedural or other errors in the land-value survey entitled him to relief in his individual appeals, he was free to offer evidence and make relevant arguments on that point.

Record

7. The official record for this matter includes the following:
 - Petitioner Exhibit A: Two GIS maps,
 - Petitioner Exhibit B: Property record card (2018-2021),
 - Petitioner Exhibit C: Property record card (2012-2016),
 - Petitioner Exhibit D: Property record card (2007-2012).
8. The record also includes: (1) all petitions and other documents filed in these appeals, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Findings of Fact

9. The subject property is a vacant platted lot located at 4001 West 25th Avenue in Gary. Nowacki bought the property for \$208 in 2009, after it had circulated through tax sales for 35 years. *Nowacki testimony.*

Contentions

A. Nowacki's Contentions

10. According to Nowacki, both the assessment years are covered by what he characterized as an inaccurate and delinquent land-value survey. He claims that the subject property is assessed higher than its market value. The property is in a superior location compared to two other properties Nowacki owns, which are also under appeal. Yet the subject property, while still over-assessed, has a lower adjusted base rate than those properties. Nowacki argues that there should be "some logic" to the adjusted base rates. *Nowacki argument and testimony, Pet'r Ex. A.*
11. The property was offered at auctions to willing buyers in an open market many times, but nobody else bid on it. If the market value were \$6,000, as it was assessed in 2009, somebody would have bid that much. *Nowacki argument and testimony; Pet'r Ex. A-C.*

B. The Assessor's Contentions

12. The Assessor argues that Nowacki did not offer any evidence to support his requested assessments of \$2,500. The other properties that Nowacki referenced are twice as deep as the subject property, and that affects their adjusted base rates. *Metz argument*.

Analysis

13. Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.² A petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
14. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 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). Instead, it is determined under the DLGF's rules. 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.
15. Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with the Uniform Standards of Professional Appraisal Practice often will be probative. *See 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). A party may also offer actual construction costs, sales information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation dates for the years under appeal were January 1, 2017, and January 1, 2018, respectively. *See* I.C. § 6-1.1-2-1.5(a).
16. On his Form 131 petitions, Nowacki requested that his property be assessed at \$2,500 for each year. But he offered no probative market-based evidence to support that value. *See Eckerling*, 841 N.E.2d at 674, 678 (requiring taxpayers to offer market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use."). While Nowacki pointed to the assessments of other properties that he owns to argue that assessments are inconsistent, he did not meaningfully compare those properties to the subject property. *See Long*, 821 N.E.2d at 470-471 (holding that taxpayers' sales data for other properties lacked probative value where they failed to

² The Department of Local Government Finance has adopted a new assessment manual and guidelines that apply to assessments for 2021 forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

compare how the characteristics of those properties compared to their property and to explain how any differences affected market value-in-use).

17. To the extent Nowacki relies on his 2009 purchase price, we give that evidence no weight. Nowacki bought the property at tax sale more than 7 ½ years before the January 1, 2017, valuation date (and more than 8 ½ years before the January 1, 2018, valuation date). He offered no evidence relating his purchase price to those dates. And he failed to show that the price he paid at a tax sale was a reliable indicator of the property's market value-in-use, even in 2009.
18. Finally, while Nowacki claims that a delinquent and inaccurate land-value survey led to properties being assessed incorrectly, he offered no evidence to support that claim. And he did not explain why, even if that were true, it would relieve him of his burden of offering market-based evidence to show his property's true market value-in-use. The Tax Court has repeatedly explained that a taxpayer cannot make a case merely by pointing to an assessor's incorrect application of assessment regulations but must instead offer market-based evidence to show that the assessment does not reflect its property's market value-in-use. *Piotrowski*, 177 N.E.3d at 132.

Conclusion

19. Nowacki failed to offer any market-based evidence to show that his property was assessed for more than its market value-in-use. We therefore find for the Assessor and order no change.

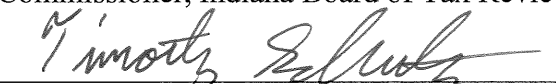
Date: 9/27/2022



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>>.