

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

Petitions: 45-003-17-1-5-00390-19 and 45-003-18-1-5-00553-21
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-325-007.000-003
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 \$3,100. For 2018, the PTABOA issued a determination valuing it at \$3,400.¹
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 filed a required “land-value survey” five years late. Nowacki indicated that he wanted to wait for the Department of Local Government Finance (“DLGF”) to hear a petition he filed asking it to review the land-value survey before proceeding with the hearing on his appeals before us.
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 a 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. 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

¹ At the hearing, Lake County Hearing Officer Robert Metz indicated that the Calumet Township Assessor’s office told him that the PTABO had determined a value of \$3,100. Nowacki agreed that the assessment was \$3,100.

his individual appeals, he was free to offer evidence and make relevant arguments on that point.

Record

6. 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 (2013-2016).

7. 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

8. The subject property is a vacant platted lot located at 4201 West 25th Avenue in Gary. Nowacki bought the property for \$90 in 2009, after it had spent “decades churning through the tax sale.” *Nowacki testimony*.

Contentions

A. Nowacki’s Contentions

9. Nowacki argues that the subject property is assessed higher than its market value. The property is a “decent-sized” corner lot located close to the Lake Sandy Jo superfund site. The adjusted base rate is \$81 per front foot, which is lower than the base rates for other properties that Nowacki owns in the general area. While the assessment has been reduced over time, he claims that it is still too high. *Nowacki argument and testimony, Pet’r Ex. A.*

10. In requesting a \$2,400 assessment, Nowacki concedes that the property is worth much more than he paid for it. Nevertheless, he argues that the property was offered at auctions to willing buyers in an open market many times without anyone else bidding on it. Nowacki claims that he set the property’s market value by writing a check for it and that there is no market evidence to establish a higher value. According to Nowacki, the county is required to determine market value by analyzing sales. But without a fair land-value survey, Nowacki finds it inconceivable that the Assessor could arrive at a fair assessment. *Nowacki argument and testimony; Pet’r Ex. A-B.*

B. The Assessor’s Contentions

11. The Assessor argues that the 2017 and 2018 assessments are correct and that Nowacki offered no evidence to prove otherwise. *Metz argument and testimony.*

Analysis

12. 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).
13. 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.
14. 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).
15. Nowacki contends that his property should be assessed at \$2,400 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."). 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. Indeed, he failed to show that his purchase price from a tax sale was a reliable indication of the property's value at the time he bought the property.
16. 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

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).

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

17. 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>>.