

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

Petition: 45-001-17-1-5-01059-18
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-32-129-002.000-004
Assessment Year: 2017

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

PROCEDURAL HISTORY

1. Nowacki contested the 2017 assessment of his property located at 2327 W. 45th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant lot at \$500.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On November 1, 2021, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Hearing Officer Robert Metz. Both testified under oath.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: GIS map
Petitioner Exhibit B: Property Record Card (2017-2020)
 - b. The record for the 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. 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).

6. Here, the property's assessment decreased from 2016 to 2017. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The property that the Assessor characterizes as a sliver is basically a magic marker line down the center of the GIS map. The Assessor shows the property has 0.11 acres but zero frontage. With zero frontage the property has no dimension in geometry. It is not buildable. Nor is it usable. It is simply a place holder. Properties such as this are routinely valued at a nominal value. The Board should correct the Assessor's work and give the property a nominal value of \$100.¹ *Nowacki testimony; Pet'r Exs. A, B.*
 - b. In 2016, the Assessor valued the property at \$1,100. In 2017, the value dropped to \$500. It was raised back to \$1,100 in 2018 before being corrected to \$500 where it has since remained. *Nowacki testimony; Pet'r Ex. B.*
8. The Assessor's case:
 - a. This parcel could possibly be a vacated alley. The Assessor does not calculate actual frontage when the value is calculated on a per acre or per square foot basis, which is how this property was assessed. Because Nowacki has not presented any substantial evidence to support his requested value, the Assessor recommends no change. *Metz testimony.*

ANALYSIS

9. Nowacki failed to make a prima face case for reducing the property's 2017 assessment. 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); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2, 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

¹ On Nowacki's Form 131, he requested a value of \$300. During the hearing, he requested an \$100 assessment.

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 Prop. 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* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Regardless of the type of valuation evidence used, a party must also 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.* The valuation date for this appeal is January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the 2017 assessment should be \$100, 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). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d 674,678 (Ind. Tax Ct. 2006).
- d. We also give no weight to his claims regarding the property’s fluctuating assessments. The Assessor’s decision to change its assessment in any given year does not prove that the 2017 assessment is incorrect. As the Tax Court has explained, each tax year and each appeal process stand alone. *Fisher v. Carroll Cty Ass'r*, 74 N.E.3d 582, 588 (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).
- e. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2017, he failed to make a case for a lower assessment.

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 2017 assessment.

ISSUED: 01/20/2022



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>>.