

INDIANA BOARD OF TAX REVIEW

Small Claims

Final Determination

Findings and Conclusions

Petitions: 45-003-17-1-5-00774-18
45-003-18-1-5-00734-20
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-14-403-032.000-003
Assessment Years: 2017 and 2018

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

PROCEDURAL HISTORY

1. Nowacki contested the 2017 and 2018 assessments of his property located at 2548 Fairbanks in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential property at \$12,600 for both years.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims’ procedures. On June 9, 2021, 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 Robert Metz. Both were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: GIS map of the subject property
 - Petitioner Exhibit B: Subject Property Record Card (2009-2012)
 - Petitioner Exhibit C: Subject Property Record Card (2012-2016)
 - Petitioner Exhibit D: Subject Property Record Card (2017-2020)
 - Petitioner Exhibit E: GIS map of 2626 Stevenson
 - Petitioner Exhibit F: Property Record Card for 2626 Stevenson
 - Petitioner Exhibit F2: Property Record Card for 2632 Stevenson
 - Petitioner Exhibit G: GIS map of 2549 E. Oakwood Drive
 - Petitioner Exhibit H: Property Record Card for 2549 E. Oakwood Drive

- 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.

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, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessed value. Ind. Code § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property did not change from 2016 to 2017. Nowacki therefore bears the burden of proof for 2017. The burden of proof for 2018 depends on the outcome for 2017.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. Nowacki contends that the Assessor should have valued his property at \$4500 for 2017 and 2018. He also argues that the Assessor made mistakes which are reflected in the fluctuating values. When he acquired his property in 2009, the assessed value was \$59,000, which erroneously included a nonexistent improvement. The value then decreased to \$18,500 and to \$12,600 in 2016. It remained there for the years under appeal, which demonstrates the inaccuracy of these values. *Nowacki testimony; Pet'r Exs. A-D*
 - b. Significantly larger properties nearby, at 2626 Stevenson and 2632 Stevenson, are assessed at less than half his assessed value.¹ Although these two properties are adjacent to each other, even their assessed values are not consistent for 2017 and 2018. Yet another property, 2549 E. Oakwood, is contiguous to Nowacki's and has the same characteristics and size, but it is assessed at \$6,900 for both 2017 and 2018 while his property is valued at \$12,600. This is illogical and incorrect. *Nowacki testimony; Pet'r Exs. F, F2, G, H.*
 - c. Nowacki does not argue that these other properties are assessed correctly. Instead, he contends the Assessor made mistakes that are reflected on the property record cards. For instance, the subject property neighborhood life cycle status is described as static even though the property values plummeted. The date of his purchase is incorrect. The purchase price is wrong. The county makes no effort to correct these mistakes. *Nowacki testimony; Pet'r Exs. B-D.*

¹ Throughout the hearing, Nowacki incorrectly claimed the values of the comparable properties were less than half his assessed value, while the property record cards he submitted as evidence refute these contentions.

d. The neighborhoods exist on a dog-eared map in the Calumet Township Assessor's office that hasn't changed in 30 years. These random lines on a map reference nothing and are meaningless. A directly adjacent lot to his property should not be in a different neighborhood. All these mistakes indicate that his assessed values for 2017 and 2018 are incorrect. *Nowacki testimony*.

8. The Assessor's case:

a. The subject property is in neighborhood 2553. The properties Nowacki claims are comparable are in different neighborhoods. The properties on Stevenson are in neighborhood 2552 with a base rate of \$119. The Oakwood Drive property is in neighborhood 2554 and has a base rate of \$115. *Metz testimony; Pet'r Exs. B-D, F, F2, H*.

b. The Assessor recommends no change in the assessed value. *Metz testimony*.

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2017 or 2018 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); 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." 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). Taxpayers may use cost or sales information for the property under appeal, 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 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 dates for these appeals are January 1, 2017 and January 1, 2018. Ind. Code § 6-1.1-2-1.5(a).

2017 Assessment

- c. Nowacki contends the assessed value should be \$4,500 for the years under appeal, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and provide no assistance 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. We also give no weight to his claims that the decreasing assessed values are indicative that the assessed value is wrong. The decreases from 2009 to 2017 do not prove that the 2017 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).
- e. Nowacki presented an assessment comparison approach relying on three purportedly comparable properties. Taxpayers may introduce this type of evidence to prove market value-in-use in a proceeding concerning residential property assessments if the comparable properties are in the same taxing district or within two miles of a boundary of it. Ind. Code § 6-1.1-15-18(c)(1).
- f. While all three of the properties appear to be in the same taxing district, a party offering assessment data must also show that the properties are comparable to the subject using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18(c). *See also Long*, 821 N.E.2d at 470-71. Conclusory statements that property is "similar" or "comparable" do not suffice. Instead, taxpayers must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. Taxpayers must also explain how relevant differences affect values. *Id.*
- g. The type of analysis required by *Long* is lacking from Nowacki's case. His testimony that all three lots are comparable to the subject is precisely the type of conclusory statement the Tax Court explained is insufficient to prove comparability. Nowacki did not even attempt to quantify and adjust for relevant differences such as neighborhood, or the existence and quality of any improvements.
- h. Nowacki also contended that the property record card is inaccurate. 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*, 841 N.E.2d at 678.

- i. 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 assessed value. Where a taxpayer has not supported his claim with probative evidence, the Assessor's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

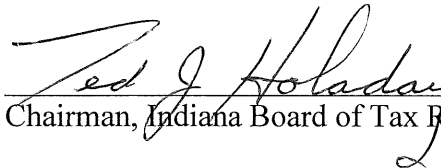
2018 Assessment

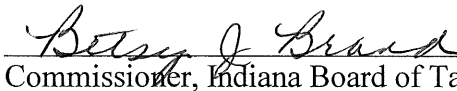
- j. Because the assessed value remained the same from 2017 to 2018, Nowacki bears the burden in 2018 as well.
- k. Although Nowacki again requested a value of \$4,500, he relied on the same evidence he presented for the 2017 appeal. We therefore reach the same conclusion. He failed to make a case for a reduction in the 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 and 2018 assessed values.

ISSUED: 7-16-21


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>>.