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

Petitions:	**45-004-17-1-5-01046-18**
	45-004-18-1-5-00466-21
Petitioner:	**James Nowacki**
Respondent:	**Lake County Assessor**
Parcel:	**45-08-16-430-028.000-004**
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 2636 Jefferson Street in Gary. The Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations valuing the vacant platted lot at $2,400 for both years.

2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On July 26, 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 Officers Robert Metz and Jessica Rios. Nowacki and Metz 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 (2013-2016)
      Petitioner Exhibit C: Property Record Card (2016-2020)

   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'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 remained unchanged 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. The property's assessed value went up from $1,800 in 2013 to $3,600 in 2015. It was then lowered to $2,400 in 2016. The Assessor had it right in 2013—the fair value of this property is $1,800. The uncertainty in assessments affects the market value of the properties in this neighborhood. When the assessed values jump all over the place, it is hard for anybody to understand the values of these locations. Correctly assessing properties would contribute to stability. Although they might lag a little behind, assessed values follow market values in most communities. However, market values in Gary are on a downward slide and the assessed values are not keeping up with how fast the neighborhoods are depreciating. The city has lost about two-thirds of its population since 1970. That loss is due in part to the Assessor over-assessing properties. *Nowacki testimony; Pet'r Exs. A- C.*

8. The Assessor's case:

   a. Nowacki has not provided any evidence to warrant a change in value. The Assessor recommends no change in the assessment. *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." 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 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. Assessor*, 836 N.E.2d 501, 507 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 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 property should be assessed at $1,800, 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 at 674, 678 (Ind. Tax Ct. 2006).

d. Nowacki complained about his property's assessment varying from year to year and argued that this uncertainty affects market values. He also asserted that assessed values in Gary are not declining as fast as the neighborhoods are depreciating. However, he did not offer any market-based evidence quantifying the effect these issues have on his property's value. And without market-based evidence indicating his property's value was $1,800 on January 1, 2017, his opinion of its value is merely a conclusory statement.

e. We also give no weight to his claim regarding the property's 2013 assessment. 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).

f. 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 prima facie case for a lower assessment.

2018 Assessment

g. We now turn to the 2018 assessment. Because Nowacki did not prevail on his 2017 appeal, the assessment remained unchanged from 2017 to 2018. Nowacki therefore retained the burden of proof for 2018. He offered the same evidence and arguments he presented for the 2017 appeal, and we therefore reach the same conclusion—he failed to make a prima facie 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 and 2018 assessments.

ISSUED: OCTOBER 25, 2021

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>.