

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

Petitions: 45-003-17-1-5-00775-18
45-003-18-1-5-00470-21
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-17-477-015.000-003
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 2742 Garfield 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 12, 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 testified under oath.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Property Record Card (2017-2020)
Petitioner Exhibit B: Property Record Card (2015-2017)
Petitioner Exhibit C: Property Record Card (2011-2015)
Petitioner Exhibit D: GIS map
 - 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. A critical element of value is the size of the lot. The GIS map shows that the length of the property is only slightly larger than its width of 37 feet, perhaps 55 or 60 feet long. Decreasing its lot size from 300 feet to 55 feet results in a value one-sixth of the current \$2,400 assessment, or \$400, which was Nowacki's original target price for this property. *Nowacki testimony; Pet'r Exs. A-D.*
 - b. The property record cards ("PRCs") are pointless, worthless, and useless. In this case, the size is wrong, the ownership is wrong, and the characteristics are wrong. There is no access to the property and no possibility of development. It is also entirely within the wetland designation and is governed by the Little Calumet River Basin. The lot has less than a nominal value. It should be valued at \$100. *Nowacki testimony; Pet'r Exs. A-D.*
8. The Assessor's case:
 - a. Prior to this hearing, Calumet Township corrected the property's lot size and applied a -50% influence factor. They did not share the corrected lot size, but they recommended a \$1,500 assessment for both years. Nowacki has not submitted any evidence to support either a \$400 value or a \$100 value. *Metz testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2017 assessment. However, the Assessor conceded that the 2017 assessment should be reduced to \$1,500. The Assessor had the burden for 2018 and conceded that the 2018 assessment should be reduced to \$1,500 as well. Although Nowacki sought a further reduction, he failed to make a prima facie case supporting his requested value. 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 Property 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 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 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 at 674, 678 (Ind. Tax Ct. 2006).
- d. Although Nowacki claims that his property is inaccessible and there is no possibility of development because it is located within a designated wetland, he did not offer any market-based evidence quantifying the effect these issues have on his property’s value. The same is true of his claims regarding errors on the PRCs. While Calumet Township admittedly used an incorrect lot size, Nowacki simply highlighted the error. He did not submit evidence from which we could even determine the lot’s

actual size, much less market-based evidence indicating that its value was only \$100 on January 1, 2017.

- 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 prima facie case for a lower assessment. Nevertheless, the Assessor conceded that the 2017 assessment should be reduced to \$1,500, and we accept her concession.

2018 Assessment

- f. We now turn to the 2018 assessment. Because the 2018 assessment is higher than the resulting 2017 assessment, the Assessor bears the burden of proof. However, instead of offering valuation evidence in support of the assessment, she conceded that the 2018 assessment should be reduced to \$1,500 as well. Nowacki is therefore entitled to have his 2018 assessment reduced to \$1,500.
- g. That does not end our inquiry, however, because Nowacki requested an assessment of \$100. 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 further reduction.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2017 and 2018 assessments changed to \$1,500.

ISSUED: OCTOBER 12, 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>>.