

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

Petition Nos.: 45-003-17-1-5-00383-19
45-003-18-1-5-00474-21
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-304-015.000-003
Assessment Years: 2017 & 2018

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. James Nowacki appealed the 2017 and 2018 assessments of his vacant lot located at 4401 West 26th Place in Gary, Indiana.
2. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the assessment of \$3,000 for both years.
3. Nowacki timely appealed to the Board, electing to proceed under our small claims procedures. On April 28, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions. Neither the Board nor the ALJ inspected the property.
4. Nowacki appeared *pro se*. Lake County Hearing Officer Robert Metz appeared for the Assessor. Both were sworn.

Record

5. The official record for this matter is made up of the following:
 - a) Exhibits:

Petitioner Exhibit A: GIS maps,
Petitioner Exhibit B: Subject property record card (2017-2021),
Petitioner Exhibit C: Subject property record card (2014-2018),
Petitioner Exhibit D: Subject property record card (2009-2014),
Petitioner Exhibit E: Subject property record card (2008-2013).¹

¹ The Respondent did not submit any exhibits into the record.

- b) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

Contentions

6. Summary of the Petitioner's case:

- a) Nowacki contends the subject property's \$3,000 assessment does not reflect its actual market value. Nowacki purchased the property on May 21, 2009, for \$113 at a commissioner's certificate sale, after it had "churn" through the system for a long time. He said this should be considered an arm's length transaction, because it was exposed to the open market, well-advertised and was presented to hundreds of eligible bidders at a public auction. He contends that at any given auction 20,000 parcels are "churned" through the tax sale system year after year. Nowacki requests an assessed value of \$1,700 on this property for 2017 and 2018. *Nowacki testimony; Pet'r Ex. B-E.*
- b) According to Nowacki, when there is a "preponderance of sales" in a location such as Calumet Township, the State recognizes these sales prices, and the Assessor is to use these sales to value properties. Nowacki contends the Assessor is "reluctant" to use these auction sales in forming their values, and instead places arbitrary values on properties. *Nowacki testimony.*
- c) Nowacki testified that the County Commissioners hired a consultant to study the tax sale system to determine why properties churn through the system year after year and decade after decade. Nowacki argues that the consultant has suggested that the Assessor has to consider the Commissioner's certificate sales when establishing a property's value, especially when they are the vast majority of the sales in the area. *Nowacki testimony.*
- d) Nowacki testified the property is in a sparsely populated area. The neighboring properties have holes in their roofs. In addition, many of the neighboring properties are vacant and abandoned, because the people have walked away from them. *Nowacki testimony; Pet'r Ex. A.*

7. Summary of the Respondent's case:

- a) The Assessor contends that Nowacki did not present any substantial evidence to support his requested value of \$1,700. Therefore, no change is recommended. *Metz testimony.*
- b) Metz testified that the county has never recognized auction sales as arm's length transactions. *Metz testimony.*

Analysis

8. The Petitioner failed to make a prima facie case for reducing the property's 2017 and 2018 assessments.
- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.² The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
 - b) 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 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). Instead, it is 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.
 - c) 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. *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, sales or assessment information for 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).
 - d) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2017 assessment, the valuation date was January 1, 2017. For the 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5(a).

2017 Assessment:

- e) Here, Nowacki contends that the 2017 assessment should be \$1,700, 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 lowering an assessment, taxpayers must use market-based evidence to "demonstrate that their

² The Department of Local Government Finance adopted a new assessment manual for assessments from 2021 forward. 52 IAC 2.4-1-2.

suggested value accurately reflects the property's true market value-in-use." *Eckerling*, 841 N.E.2d at 674, 678.

- f) To the extent Nowacki relies on his purchase price, we give that evidence no weight. Nowacki bought the property on May 21, 2009, eight years prior to the January 1, 2017, valuation date, and he offered no evidence to relate his purchase price to that date. That failure renders the transaction devoid of probative value regardless of any other factors.
- g) Because Nowacki offered no probative market-based evidence to demonstrate the subject property's market value-in-use for 2017, he failed to make a prima facie case for a lower assessment.

2018 Assessment:

- h) We now turn to the 2018 assessment. Nowacki offered the same evidence and arguments he presented for the 2017 appeal, therefore we reach the same conclusion. Nowacki failed to make a prima facie case for lowering his 2018 assessment.
- i) Where the Petitioner has not supported its claim with probative evidence, the Respondent'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).

Final Determination

- 9. Nowacki failed to offer probative 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 for either year under appeal.

ISSUED: _____



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>