

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

Petitions: 45-004-15-1-5-01816-16
45-004-17-1-5-01049-18
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-12-128-013.000-004
Assessment Years: 2015 and 2017

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

PROCEDURAL HISTORY

1. Mr. Nowacki contested the 2015 and 2017 assessments of his property located at 3526-28 E. 10th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential property at \$2,100 for 2015 and \$1,700 for 2017.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On February 22, 2021, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on his 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
Petitioner Exhibit B: Property Record Card (2013-2017)
Petitioner Exhibit C: Property Record Card (2012-2015)
Petitioner Exhibit D: 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, or when 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 increased more than 5% from 2014 to 2015. The Assessor bears the burden of proof for 2015. The value remained the same from 2016 to 2017. Nowacki therefore bears the burden of proof for 2017.

SUMMARY OF CONTENTIONS

7. The Assessor's case:
 - a. The Assessor contends that the property value increased from 2014 to 2015 because the office changed the classification from exempt to residential. While the Assessor was unsure of the reason for the change, he opined that it may have been because the county held the property and then sold it to Nowacki in 2011. The Assessor conceded that this change in ownership was four years before the first year under appeal in this case, so he was not certain why its classification had changed but it explained the adjustment in assessed value. *Metz testimony.*
 - b. In 2016, the Assessor applied a higher negative influence factor, reducing the value to \$1,700. The property is correctly valued and the Assessor recommends no change for any of the years under appeal. *Metz testimony.*
8. Nowacki's case:
 - a. A property's exempt status does not affect the value. The Assessor's argument that the value increased because ownership changed is completely incorrect. Nowacki contended that no rational mind would say that the value of the property went up 50% because ownership changed. *Nowacki testimony; Pet'r Exs. B & C.*
 - b. Nowacki argued that a recent report on assessed values in Lake County provides unique insight into the property values in Calumet Township. He contended that according to the report, Calumet Township properties are over-assessed by 3.7 times their actual market value. Some properties were significantly over-assessed by more than that, but they were all outrageously over-assessed. *Nowacki testimony.*
 - c. The report goes further to discuss sociological factors such as the economy and government to determine how properties should be valued. Nowacki contended that

while state law includes none of these factors, maybe it should. The law may need to be changed. *Nowacki testimony.*

- d. Nowacki argued that a property's purchase price, when acquired at an auction with hundreds of potential buyers, might represent market value. But that is not necessarily true in Calumet Township, because the market is so flooded with over 20,000 properties at auction. So, the properties are not adequately exposed to the market. *Nowacki testimony.*
- e. The subject property is an unbuildable lot. It is worthless, but still, the Assessor applied a negative 50% influence factor to the totally fictitious value of \$4,200. *Nowacki testimony; Pet'r Exs. A-C.* The assessed value fluctuates from year to year without any basis for the changes, which further reflects that it is not accurate. *Nowacki testimony; Pet'r Exs. B and C.*

ANALYSIS

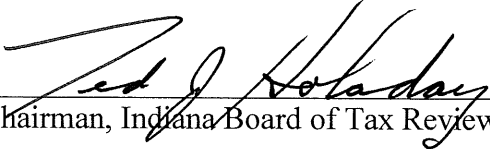
- 9. The Assessor failed to make a prima facie case supporting the 2015 value. Nowacki failed to make a case for further reduction. Nowacki also failed to make a case for reducing the property's 2017 assessment. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 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). 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.* 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). The party must offer relevant market-based evidence. March 1 is the legal assessment date for 2015. January 1 is the assessment date for 2017. Ind. Code § 6-1.1-2-1.5(a).

- c. The Assessor contends the 2015 assessed value increased because the property classification changed from exempt status to residential land. The value of the property has nothing to do with its exempt status. Exemptions provide a decrease to property taxation and do not affect value. Because the Assessor failed to support the 2015 assessment, the value reverts to the 2014 value of \$1,300.
- d. That does not end the Board's inquiry because Nowacki requested a value of \$1,200. Nowacki contends the value should be \$1,200 for 2015 and 2017, but he failed to present any probative market-based evidence to support that argument. 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).
- e. Nowacki also contends the Assessor applied an influence factor to a fictitious base rate. This argument goes solely to the methodology used by the Assessor. Even if the Assessor made errors, simply attacking methodology is insufficient. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, a taxpayer must use market-based evidence to demonstrate that their requested value accurately reflects the property's true market value-in-use. *Id.*
- f. As to the report Nowacki referenced, it was not offered as evidence and thus the Board may not consider it. He simply contended that properties are over-assessed generally but did not offer any specific comparable examples from it. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 at 470 (Ind. Tax Court 2005).
- g. Nowacki contends property values change too drastically each year and this demonstrates that the assessed value for the subject property is incorrect. As the Tax Court has explained each tax year and each appeal process stands alone. *Fisher v. Carroll County 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. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- h. Nowacki failed to make a prima facie case for changing the assessment for either year. Where a 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 Industries. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

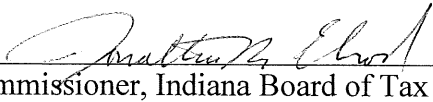
FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2015 assessed value lowered to the previous year's value of \$1,300 and order no change to the 2017 assessed value.

ISSUED: 5-14-21


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>.