

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

Petition: 45-004-17-1-5-00278-19
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-09-236-001.000-004
Assessment Year: 2017

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

Procedural History

1. James Nowacki contested the 2017 assessment of his property located at 1101 Pyramid Drive in Gary. The Lake County Property Tax Assessment Board of Appeals issued a Form 115 determination valuing the vacant platted lot at \$2,200.
2. Nowacki then filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On December 6, 2021, our designated administrative law judge, Joseph Stanford (“ALJ”), held a hearing on Nowacki’s petition. Neither he nor the Board inspected the property.
3. Nowacki represented himself. Lake County Hearing Officer Robert Metz appeared for the Assessor. Both testified under oath.

Record

4. The official record for this matter includes the following:
 - Petitioner Exhibit A: Two GIS maps,
 - Petitioner Exhibit B: Property record card (2013-2017),
 - Petitioner Exhibit C: Property record card (2016-2020).
5. The record also includes: (1) all petitions and other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Contentions

A. Nowacki’s Contentions

6. Nowacki argues that the subject parcel is assessed higher than its market value. The parcel is designated as an “out lot.” It is an “ornamental” lot that is used only as a barrier between a public sidewalk and adjacent improved properties. According to Nowacki, the

parcel is unbuildable and has no commercial value. *Nowacki testimony and argument; Pet'r Ex. A.*

7. Nowacki paid \$532 for the parcel in 2009, after it had been “churning through the system.” He contends that its market value is likely \$100, but he requests an assessment of \$900 because the parcel has sentimental value. *Nowacki argument and testimony; Pet'r Exs. B-C.*
8. Nowacki testified that the parcel is in a poor neighborhood. There is vacant public housing across the street, and a vacant fast-food restaurant and a mostly vacant commercial building nearby. Nowacki believes that overassessment has caused the neighborhood to deteriorate by making properties unmarketable. *Nowacki argument and testimony; Pet'r Ex. A.*

B. The Assessor's Contentions

9. The Assessor contends that Nowacki did not provide any evidence to support his requested assessment of \$900. Therefore, no change should be made. *Metz argument.*

Analysis

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Various statutes, including Ind. Code § 6-1.1-15-17.2, create exceptions to that general rule and assign the burden of proof to the assessor under specified circumstances, such as where a property's assessment has increased more than 5% over the previous year.
11. Nowacki does not argue that the burden should shift to the Assessor. And the assessment did not change between 2016 and 2017. *Pet'r Ex. B.* Nowacki therefore had the burden of proof.
12. 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 3.¹ 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). Instead, it is 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.
13. 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

¹ The Department of Local Government Finance has adopted a new assessment manual and guidelines that apply to assessments for 2021 forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

Professional Appraisal Practice often will be probative. *See 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); *see also, I.C. § 6-1.1-15-18* (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use). Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2017 assessments, the valuation date was January 1, 2017. *See I.C. § 6-1.1-2-1.5(a)*.

14. Nowacki argues that the 2017 assessment should be \$900, 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 suggested value accurately reflects the property's true market value-in-use." *Eckerling* 841 N.E.2d at 674, 678.
15. To the extent Nowacki relies on his 2009 purchase price, we give that evidence no weight. Nowacki bought the property nearly eight years before the January 1, 2017, valuation date, and he offered no evidence to relate his purchase price to that date. And based on Nowacki's testimony that the parcel had been "churning through the system," we infer that he bought it at a tax sale. Given that fact, Nowacki failed to show that the purchase price yielded a reliable indicia of the property's market value-in-use, even in 2009.
16. Because Nowacki offered no probative market-based evidence to demonstrate the subject parcel's correct market value-in-use for 2017, he failed to make a prima facie case for lowering its assessment.

Conclusion

17. 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.

Date: 2/7/2022

Jonathan R. Elrod
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Timothy Schultz
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>>.