

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

Petition: 45-004-17-1-5-00281-19
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-09-234-001.000-004
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 parcel located at 1166 Pyramid Drive in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 determination valuing the vacant platted lot at \$2,300.
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 parcel.
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 contends that the subject parcel is assessed higher than its market value. He bought the parcel for \$532 at a commissioner’s certificate sale in 2009, after it had “circulated through tax sales” for nearly 20 years with no buyers. While Nowacki is

willing to accept an assessment of \$1,000, he contends that the parcel's market value is probably around \$100. *Nowacki argument and testimony, Pet'r Exs. B-C.*

7. Nowacki contends that the parcel is both unbuildable and unimprovable, which he acknowledged are two distinct things. While he did not define "unimprovable," he pointed to the fact that the parcel is designated as an out lot, and that it is only "25 feet," which is too small for any building. *Nowacki argument and testimony; Pet'r Ex. A.*
8. Nowacki compared the "extended value" shown on the parcel's property record card with that of another parcel he owns at 1101 Pyramid Drive. Nowacki noted that the "extended value" difference between the two properties is \$87, but the assessed value difference is \$100, which he argues does not make any sense.¹ *Nowacki argument and testimony.*

B. The Assessor's Contentions

9. The Assessor argues that Nowacki did not provide any evidence to support his requested assessment of \$1,000. 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 did not argue that the burden should shift. And the assessment did not change between 2016 and 2017. *Metz testimony; 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 3.² 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.

¹ Nowacki also appealed 1101 Pyramid Drive's assessment, but he did not offer that property record card as evidence in this proceeding. Nonetheless, the difference Nowacki pointed to is easily explained: assessed values are rounded to the nearest \$100. *See* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 104.


² 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).

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 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 alternately argued that the 2017 assessment should be either \$1,000 or \$100, but he failed to present any probative market-based evidence to support either value. Statements that are unsupported by probative evidence are conclusory and of no value to us in making our 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, 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. Nowacki simply argued that the subject parcel is unbuildable and “unimprovable.” But he did not offer any market-based evidence quantifying the effect those limitations have on the parcel’s market value-in-use. Similarly, while he testified that he bought the subject parcel for \$532 in 2009, that sale price has no probative weight. The sale occurred more than seven years before the relevant valuation date, and Nowacki offered no evidence to relate the sale price to a value as of that valuation date. Indeed, he did not even show that the sale price was a reliable indication of the parcel’s market value-in-use on the sale date.
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 lowering its assessment.

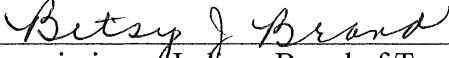
Conclusion

17. Nowacki failed to offer probative market-based evidence to show that his parcel was assessed for more than its market value-in-use. We therefore find for the Assessor and order no change.

Date: 2/7/2022



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>.