

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

Petition: 45-004-18-1-5-00630-20
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-05-33-277-027.000-004
Assessment Year: 2018

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

Procedural History

1. On August 1, 2019, James Nowacki filed a Form 130 petition contesting his property's 2018 assessment. The Lake County Property Tax Assessment Board of Appeals issued a Form 115 determination valuing the property at \$7,900, all for land. That represents a \$300 or 3.9% increase over the previous year's assessment of \$7,600.
2. Nowacki then filed a Form 131 petition with us and elected to proceed under our small claims procedures. On July 25, 2023, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on Nowacki's petition. Neither he nor the Board inspected the property.
3. Nowacki represented himself. Assessment specialist Matthew Ingram appeared for the Assessor. Both testified under oath.

Record

4. Neither party submitted any exhibits. The record 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.

Findings of Fact

5. The subject property is a vacant, 40-foot-wide lot located at 9418-22 Pottowattomi¹ Trail in Gary. It is adjacent to another 40-foot-wide lot that Nowacki owns. Nowacki bought the property in 2010. *Nowacki, Ingram testimony.*

¹ This is the spelling on Nowacki's Form 131 petition.

Parties' Contentions

A. Nowacki's Contentions

6. According to Nowacki, the subject property's assessment history has been a "wild roller coaster ride." The assessment has fluctuated from a high of \$19,700 in 2012 to a low of \$7,600 in 2017. Nowacki attributed most of that fluctuation to his claim that in some of the years, the Assessor had incorrectly combined the subject lot with Nowacki's adjacent lot for purposes of determining a value and then applied that combined value to each lot separately. *Nowacki testimony and argument.*
7. Nowacki argued that the property is difficult to market because it is only 40 feet wide. He believes \$3,500 is a fair value for the property in 2018 and asked for the assessment to be reduced to that amount. *Id.*
8. At the end of his closing statement, Nowacki said he was disappointed with the hearing being held telephonically rather than in-person. He alternately said that he would just "push through" despite those concerns and that he "object[ed] to the entire hearing." *Id.*

B. The Assessor's Contentions

9. According to the Assessor's witness, Mark Ingram, the Calumet Township Assessor applied a negative 50% influence factor to land with less than 50 feet of frontage and a negative 20% influence factor to land with more than 50 feet of frontage. Because Nowacki's adjacent parcels have a combined 80 feet of frontage, they each received a negative 20% influence factor. That resulted in an assessment of \$7,900 for the subject property. *Ingram testimony.*
10. In any case, the Assessor argued that Nowacki failed to offer any evidence that would warrant changing the assessment. *Ingram argument.*

Conclusions of Law and Analysis

11. Before analyzing the merits of Nowacki's appeal, we first address his complaint about the hearing being held telephonically rather than in-person. We mailed notice of the hearing to the parties on June 7, 2023—48 days before the hearing date. The notice clearly stated that the hearing would be held telephonically. An attached sheet contained instructions for mailing or emailing evidence to us and the opposing party before the hearing, as well as instructions for calling in to the hearing. That sheet also instructed the parties, "[i]f you believe a telephonic conference would cause a hardship, you may request a continuance and explain why an in-person hearing is necessary." Nowacki did not request a continuance. Instead, he proceeded with the hearing and did not voice any concerns until the hearing was nearly complete. Even then, he did not specify what, if any, relief he was requesting. We therefore find that Nowacki waived any objection to the hearing being held telephonically.


12. Turning to the merits, an assessment determined by an assessing official is normally presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. A petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2021).
13. 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); MANUAL at 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). 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 2.²
14. 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 or comparable properties, and any other information compiled according to generally accepted appraisal principles. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
15. Nowacki failed to offer any probative evidence to contest the assessment or to show the subject property's true tax value. He claimed that the property's assessment has fluctuated over time, and that in some years the subject property was combined with an adjacent lot and effectively assessed twice. But he did not allege that happened in 2018, which is the year under appeal. As the Tax Court has explained, "each tax year—and each appeal process—stands alone." *Fisher v. Carroll Cty. Ass'r*, 74 N.E.3d 582, 588 (Ind. Tax Ct. 2017). While Nowacki claimed that \$3,500 is a "fair value" for the property, he offered no evidence to support that value.

Conclusion

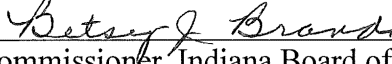
16. Nowacki failed to offer any evidence to show that his assessment should be reduced. We therefore find for the Assessor and order no change.

² The 2011 Real Property Assessment Manual, which applied to the assessment date at issue in this appeal, used the same definition. 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.

Date: 10-17-2023



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>>.