

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

Petition No.: 45-003-16-1-5-00733-20
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel No.: 45-08-19-101-018.000-003
Assessment Year: 2016

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

PROCEDURAL HISTORY

1. On November 16, 2016, James Nowacki ("Nowacki") appealed the 2016 assessment of his property located at 4301 West 29th Avenue in Gary. On October 21, 2020, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued a final determination valuing the property at \$6,900 (land at \$4,900 and improvements at \$2,000).
2. On December 1, 2020, Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On August 12, 2024, Natasha Marie Ivancevich, our designated administrative law judge ("ALJ"), held an in-person hearing. Neither she nor the Board inspected the property.
3. Nowacki appeared *pro se* and testified under oath. Edward Gholson, an employee from the Assessor's office, appeared on behalf of the Lake County Assessor and testified under oath.

RECORD

4. Nowacki submitted the following exhibits:

Petitioner Exhibit A:	Property Record Card
Petitioner Exhibit B:	GIS Map
Petitioner Exhibit C:	Parcel Identification Information
5. The Assessor submitted the following exhibits:

Respondent Exhibit 1:	Property Record Card
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6. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

FINDINGS OF FACT

7. The subject property consists of approximately .48 acres of land with a ruined structure. *Pet'r. Ex. A.*
8. The assessment under appeal of \$6,900 is a decrease from the prior year's assessment of \$18,200. *Pet'r Ex. A.*

PARTIES' CONTENTIONS

A. Nowacki's Contentions

9. Nowacki argued the property is located in an area with many vacant and collapsing structures and its only access is by a dilapidated dirt and gravel road. He also argued that the structure is a pile of debris or rubble and has no value. In support of this, he noted the Assessor removed the improvements from the assessment for the 2020, 2021, and 2022 assessment years. *Nowacki testimony.*
10. Nowacki further argued he bought the subject property for either \$25 or \$50 at a Commissioner's Tax Sale. He argued the purchase price at tax sale is an indication the value is too high, although he admits he does not believe the tax sale purchase price represents the market value. Instead, he argued the property should be valued at \$3,400. *Nowacki testimony.*
11. Last, Nowacki argued that the assessment greatly fluctuated between assessment years and that the Assessor could not reasonably argue all those assessments were correct. *Nowacki testimony.*

B. Assessor's Contentions

12. The Assessor contended Nowacki did not provide any evidence of value. In addition, the Assessor argued that the improvements were correctly assessed based on a field inspection. *Gholson testimony.*

BURDEN OF PROOF

13. Generally, the taxpayer seeking review of an assessing official's determination has the burden of proof. I.C. § 6-1.1-15-17.2¹ 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 where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2 (b) and (d).

¹ I.C. § 6-1.1-15-17.2 was repealed by P.L. 174-2022 on March 21, 2022. In *Elkhart Cty. Assessor v. Lexington Square, LLC*, 219 N.E.3d 236 (Ind. Tax Ct. 2023) the Tax Court held that I.C. § 6-1.1-15-17.2 continues to apply to appeals filed before that date.

14. If the assessor has the initial burden to prove the original assessment was correct and fails to meet it, the burden shifts to the taxpayer to prove the correct assessment. If neither party meets its burden, the assessment reverts to the prior year's level. I.C. § 6-1.1-15-17.2 (b); *Southlake Ind., LLC v. Lake County Assessor*, 174 N.E.3d 177, 179 (Ind. 2021). Furthermore, the statutory term "correct assessment" referenced in I.C. § 6-1.1-15-17.2 refers to "an accurate, exact, precise assessment." *Southlake Ind., LLC v. Lake County Assessor*, 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). Thus, to meet the burden under I.C. § 6-1.1-15-17.2, an assessor must provide probative, market-based evidence that the assessment is "*exactly and precisely*" correct. *Id.* (emphasis in original).
15. Here, the assessment under appeal decreased from the prior year's assessment. Thus, Nowacki has the burden of proof.

ANALYSIS

16. Nowacki failed to make a case for reducing the assessment.
 - 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 Assessor*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
 - b) Real property is assessed based on its true tax value. I.C. § 6-1.1-31-5. 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 DLGF's rules. 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." 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.
 - c) In order to meet its burden of proof, a party "must present objectively verifiable, market-based evidence" of the value of the property. *Piotrowski v. Shelby Cty. Assessor*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal "methodology" of the "assessment regulations." *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). This is because the "formalistic application of the Guidelines' procedures and schedules" lacks the market-based evidence necessary to establish the market value-in-use of a specific property. *Piotrowski*, 177 N.E.3d at 133.

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).

- d) Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is ‘similar’ or ‘comparable’ simply because it is on the same street are nothing more than conclusions ... [and] do not constitute probative evidence.” *Marinov v. Tippecanoe Cty. Assessor*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property’s value as of the valuation date. *O’Donnell v. Dept. of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For the 2016 assessment, the valuation date was January 1, 2016. *See* I.C. § 6-1.1-2-1.5.
- e) Here, Nowacki had the burden of proof. Nowacki argued the assessment should be reduced to \$3,400 because the structure was a pile of debris and the location was not desirable. It is possible that the structure has no value, it is also possible that even in its current state, the foundation retains some modest value. Because neither party presented reliable evidence of value, we are unable to conclude one way or the other. As the party with the burden of proof, Nowacki needed to provide market-based evidence to “demonstrate that [his] suggested value accurately reflects the property’s true market value-in-use.” *Eckerling*, 841 N.E.2d 674, 677-78. Because Nowacki failed to provide any market-based evidence proving the value of the subject property, he has failed to make a case for any change in the assessment.
- f) Nowacki did point to his purchase of the subject property. But a party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell* at 95. Nowacki did not provide any reliable evidence relating his purchase to the relevant assessment date.
- g) Nowacki also pointed to the fluctuation of the assessment over time, but 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). Absent the application of the burden-shifting statute, the subject property’s assessment in years not under appeal or its fluctuation between years are of little relevance. Rather, the focus is what the value should be as of the relevant assessment date.

FINAL DETERMINATION

- 17. Nowacki had the burden of proof but failed to present any probative evidence supporting any change in the assessment. The Assessor did not request a change in the assessment or present any evidence of value. For these reasons, we order no change to the 2016 assessment.

ISSUED: NOVEMBER 11, 2024


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>.