

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

Petition No.: 45-003-18-1-5-00711-20
45-003-21-1-5-00113-23
45-003-22-1-5-00613-23
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel No.: 45-07-13-427-008.000-003
Assessment Year: 2018, 2021, and 2022

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

PROCEDURAL HISTORY

1. James Nowacki (“Nowacki”) appealed the 2018, 2021, and 2022 assessments of his property located at 4903 West 26th Avenue in Gary on July 19, 2019, June 1, 2022, and June 9, 2023, respectively. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued their final determinations as follows:

ISSUED	Land	Improvements	Total
October 07, 2020	\$5,700	\$0	\$5,700
November 30, 2022	\$5,700	\$0	\$5,700
September 20, 2023	\$5,700	\$0	\$5,700

2. Nowacki filed Form 131 Petitions appealing the 2018, 2019, and 2022 PTABOA Determinations on November 16, 2020, January 13, 2023, and October 31, 2023, respectively. 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
5. The Assessor did not submit any exhibits.

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 .26 acres of vacant land. *Pet'r Ex. A.*
8. The assessments under appeal for 2022 and 2021 are identical to the prior year's assessments. *Pet'r Ex. A.*

PARTIES' CONTENTIONS

A. Nowacki's Contentions

9. Nowacki argued that the subject property should receive a larger influence factor because it is located on a mostly impassable gravel road. He also testified that the area was filled with vacant, abandoned properties with collapsed structures and debris. He asked that the assessment be reduced to \$4,000 for each year under appeal. *Nowacki testimony.*
10. Nowacki also argued that the property was purchased for a nominal amount of "probably \$25 or so." He argued this was the general market for the properties in this area due to the lack of services. *Nowacki testimony.*
11. Nowacki objected to these appeals being heard "out of order" with his 2019 and 2020 appeals which he stated were dismissed by the PTABOA. He also claimed this was a denial of his due process. *Nowacki testimony.*

B. Assessor's Contentions

12. The Assessor argued the assessment should not be changed because Nowacki failed to offer any evidence to support a different value. *Gholson testimony.*

BURDEN OF PROOF

13. Generally, the taxpayer seeking review of an assessing official's determination has the burden of proof. However, Indiana has enacted exceptions to that general rule in the form of burden-shifting statutes. Nowacki filed his 2018 appeal on July 19, 2019, his 2021 appeal on June 1, 2022, and his 2022 appeal on June 9, 2023. For the 2018 appeal, we apply Indiana Code § 6-1.1-15-17.2¹. For the 2021 and 2022 appeals, we apply I.C. §

¹ Indiana Code § 6-1.1-15-17.2 was repealed by P.L. 174-2022 on March 21, 2022. In *Elkhart County 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.

6-1.1-15-20 because those appeals were filed after the statute's effective date of March 21, 2022. We address each in turn.

14. I.C. § 6-1.1-15-17.2 assigns the burden of proof to the assessor when 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).
15. I.C. § 6-1.1-15-20 provides a burden shift only if the property's assessment "increased more than 5% over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b)(2). The prior assessment means the final value "as determined by a reviewing authority." I.C. § 6-1.1-15-20(c)(3).
16. Under both these statutes, the burden of proof does not shift if there is no increase over the prior year's assessment. There is no evidence in the record of the assessment in the year preceding the 2018 assessment year. Thus, Nowacki bears the burden of proof for 2018. The 2021 assessment is identical to the prior year's assessment. Thus, the burden remains with Nowacki for 2021. For 2022, assigning the burden of proof necessarily depends on our determination for 2021. We address the burden of proof for that year below.

ANALYSIS

17. Nowacki did not provide market-based evidence supporting a reduction for the 2018 assessment year.
 - 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." 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 County Assessor*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp.*

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).

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.

- 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 each assessment year under appeal, the valuation date was January 1 of the assessment year. I.C. § 6-1.1-2-1.5.
 - e) Here, Nowacki primarily argued that the subject property should receive a larger influence factor. As discussed above, simply relying on the mass appraisal methodology is insufficient to establish a value for a specific property on appeal. Instead, Nowacki needed to use market-based evidence to “demonstrate that the suggested value accurately reflects the property’s true market value-in-use.” *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). But he did not provide any market-based evidence of value that supported his requested assessment of \$4,000.
 - f) Nowacki did point to a prior 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 the purchase price to the relevant assessment date.
 - g) For these reasons, we find Nowacki has failed to make a case for any change in the 2018 assessment. The Assessor did not argue for any change in the assessment or present any evidence of value. Thus, we order no change to the 2018 assessment.
18. Nowacki also had the burden of proof for the 2021 assessment year and relied on the same evidence and argument as for 2018. We come to the same conclusion and order no change in the 2021 assessment.
19. The subject property’s 2022 assessment under appeal is identical to the 2021 assessment as just determined. Thus, Nowacki also bears the burden of proof for that year. I.C. § 6-1.1-15-20. He relied on the same evidence and argument, and we come to the same conclusion. Thus, we order no change to the 2022 assessment.

20. Finally, we note that Nowacki objected to these appeals being heard “out of order” with his 2019 and 2020 appeals, but it is unclear what relief he is seeking. We note that “each tax year and each appeal process-stands alone.” *Fisher v. Carroll Cnty. Ass’r*, 74 N.E.3d 582, 588 (Ind. Tax Ct. 2017). Nowacki pointed to no authority that dictates that appeals be heard in chronological order. He also failed to provide any cogent argument or relevant authority for his claim that this would constitute a denial of due process. To the extent Nowacki has issues with years not under appeal, his remedy is and was to follow the statutory appeal process for those years. Absent a properly filed appeal, we have no authority to grant any relief.

FINAL DETERMINATION

21. Nowacki had the burden of proof for each year but failed to present any probative evidence supporting any change in the assessments. The Assessor did not request a change in the assessments or present any evidence of value. For these reasons, we order no change to the 2018, 2021, and 2022 assessments.

ISSUED: NOVEMBER 12, 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>.