

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

Petition: 45-004-16-1-5-01057-18¹
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-15-129-001.000-004
Assessment Year: 2016

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

PROCEDURAL HISTORY

1. Nowacki contested the 2016 assessment of his property located at 2201-45 Industrial Boulevard in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$17,900 (land at \$16,200 and improvements at \$1,700).
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On November 1, 2021, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Hearing Officer Robert Metz. Both testified under oath.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: GIS map
 - Petitioner Exhibit B: Property Record Card (2018-2020)
 - Petitioner Exhibit C: Property Record Card (2014-2017)

 - Respondent Exhibit 1: Aerial map dated 2/19/2017

¹ Nowacki’s Form 131 listed 2017 as the assessment year under appeal, but the Form 115 he attached to it was for 2016. At the beginning of our hearing, the parties stipulated that 2017 had been settled and that the hearing would instead be used to address the 2016 assessment. We have amended the petition number to reflect that change.

- b. The record for the 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.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 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's assessment, 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).
6. Here, the property's assessment decreased from 2015 to 2016. Nowacki therefore bears the burden of proof.

OBJECTIONS

7. Nowacki objected to the admission of Respondent Exhibit 1 claiming that the aerial map is not relevant because it might not be a photo of the subject property. He also objected because the date on the map could not be substantiated. Our ALJ took the objections under advisement. Because Nowacki's objections go more to the weight the evidence should be given rather than its admissibility, we overrule them and admit the exhibit.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. The Assessor changed the assessed value of the subject property's improvements from \$27,700 in 2014 to \$3,600 in 2015. She then dropped its assessment to \$1,800 in 2016 before reducing it to zero for 2017 through 2020. But it had no value in any of the years because what the Assessor calls an improvement was a pile of rubble. *Nowacki testimony; Pet'r Exs. A-C.*
 - b. The changes to the subject's assessed value were not attributable to market factors but to the gross over-assessment of the property. The property should be assessed at \$7,000. But in keeping with the value attributed to it for 2017, 2018, 2019, and 2020, Nowacki is willing to accept \$7,500. *Nowacki testimony.*
 - c. The Assessor's map shows a parcel located on Malcolm X Boulevard not on Industrial Boulevard, which is the street name associated with the subject's address. There is also no way to substantiate that the map depicts the parcel's condition as of Sunday, February 19, 2017. *Nowacki testimony; Resp't Ex. 1.*

9. The Assessor's case:
- a. The Assessor's map demonstrates that there was a substantial structure at the subject property on February 19, 2017, not a pile of rubble. While Nowacki argues that the map does not show his property because the parcel on the map fronts Malcolm X Boulevard instead of Industrial Boulevard, his map has a similar issue—it depicts the parcel as being located on Virginia Street. And unlike the Assessor's map, there is no date on Nowacki's map. Although Calumet Township elected to remove the improvement in 2017, it is the Assessor's position that since the improvement was still there in 2017, it was also there in 2016. *Metz testimony; Resp't Ex. 1.*

ANALYSIS

10. Nowacki failed to make a prima face case for reducing the property's 2016 assessment. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2, 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). It is instead 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.
 - b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *Id. See also Kooshtard Prop. VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Cost or sales information for the property under appeal may also be used, as well as sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id. See also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Regardless of the type of valuation evidence used, a party must also relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for this appeal is January 1, 2016. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the 2016 assessment should be \$7,500, 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 a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Eckerling v. Wayne Co. Ass’r*, 841 N.E.2d at 674,678 (Ind. Tax Ct. 2006).

- d. Although Nowacki claimed that there were no improvements on the property in 2016, he failed to support his testimony regarding the non-existence of a structure with any probative evidence. There is no indication that the GIS map he submitted, which was printed in 2021, accurately reflects the property as it was on January 1, 2016. Even if it does, the map still fails to offer a clear enough picture of the property to support his claim that the improvements were but a pile of rubble.
- e. We also give no weight to his claims regarding the property’s decreasing assessments. The Assessor’s decision to change its assessment in any given year does not prove that the 2016 assessment is incorrect. As the Tax Court has explained, each tax year and each appeal process stand alone. *Fisher v. Carroll Cty Ass’r*, 74 N.E.3d 582, 588 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- f. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2016, he failed to make a case for a lower assessment.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2016 assessment.

ISSUED: 01/20/2022



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>>.