

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

Petition: 45-004-17-1-5-00275-19
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-15-153-002.000-003
Assessment Year: 2017

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

PROCEDURAL HISTORY

1. Nowacki contested the 2017 assessment of his property located at 2305 Connecticut Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant lot at \$1,900.
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 for the subject property
Petitioner Exhibit B: Property Record Card for the subject property (2016-2020)
Petitioner Exhibit C: GIS map for 2309-11 Jefferson Street
Petitioner Exhibit C2: GIS map for 2309-11 & 2357 Jefferson Street
Petitioner Exhibit D: Property Record Card for 2309-11 Jefferson Street
Petitioner Exhibit E: Property Record Card for 2357 Jefferson Street
 - 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 remained the same from 2016 to 2017. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. The properties located at 2309-11 Jefferson Street and 2357 Jefferson Street are similar to the subject property because they are located in the same hundred block just south of 23rd Avenue. They are also very similar in terms of appearance. But the subject property is on a street that is barely habitable and there are two ramshackle structures to the south of it. In comparison, the property at 2309-11 Jefferson Street is located on a nicely paved street with cars on it. There is a nice structure to the south of it and an even better structure further south. And in terms of the overall condition of the surrounding area, the two Jefferson Street properties are in a better neighborhood. *Nowacki testimony; Pet'r Exs. A-E.*
 - b. The assessments for the Jefferson Street properties were \$1,500 for 2016 through 2018. Their assessments dropped to \$700 for 2019 and 2020. In contrast, the subject property was assessed at \$1,900 from 2016 through 2020. The discrepancy cannot simply be explained by the rate. This idea that calling something a neighborhood can create or diminish value makes no sense—it is the market that determines value. In this instance, Nowacki purchased the property for a nominal amount. He is not expecting the property to be valued at that amount, but he is confident the subject property is over-assessed when its condition is compared to the condition of the Jefferson Street properties. Nowacki is requesting an assessment of \$900. *Nowacki testimony; Pet'r Exs. B, D, E.*
8. The Assessor's case:
 - a. Nowacki has not presented any substantial evidence to support his requested value. The Assessor therefore recommends no change. *Metz testimony.*

ANALYSIS


9. Nowacki failed to make a prima face case for reducing the property's 2017 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, 2017. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki contends the 2017 assessment should be \$900, 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).
 - d. In support of his requested value, Nowacki presented an assessment comparison approach relying on two purportedly comparable properties located on Jefferson Street. Taxpayers may introduce this type of evidence to prove market value-in-use in a proceeding concerning residential property assessments as long as the "*comparable properties* [are] located in the same taxing district or within two (2) miles of a boundary of the taxing district." Ind. Code § 6-1.1-15-18(c)(1) (emphasis added).

- e. While the Jefferson Street properties appear to be in the same taxing district as the subject property, a party offering assessment data must also show that the properties are comparable to the subject using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18 (c). *See also Long*, 821 N.E.2d at 470-71. Conclusory statements that a property is “similar” or “comparable” do not suffice. Instead, taxpayers must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E. 2d at 471. Taxpayers must also explain how relevant differences affect value. *Id.*
- f. The type of analysis required by *Long* is lacking from Nowacki’s case. His testimony that the Jefferson Street properties are very similar to the subject property in terms of appearance is precisely the type of conclusory statement that the Tax Court explained is insufficient to prove comparability. Moreover, his description of the Jefferson Street properties as being in a more desirable neighborhood weighs against a finding of comparability. And Nowacki did not even attempt to quantify and adjust for those locational differences. He also failed to explain how their 2017 assessments of \$1,500 support the \$900 valuation he requested. While their 2019 and 2020 assessments of \$700 are closer to his requested value, Nowacki did not relate them to the January 1, 2017 valuation date. We therefore conclude that his assessment comparison approach lacks probative value.
- g. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2017, 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 2017 assessment.

ISSUED: 1/20/2022



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>>.