

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

Petition: 45-004-16-1-3-00949-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-02-353-001.000-004
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 7726 East 9th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$22,800 (land \$20,700, improvements \$2,100).
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On May 24, 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 Officers Joseph James and Jessica Rios. All were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: GIS map
Petitioner Exhibit B: Property Record Card (2016-2020)
Petitioner Exhibit C: Property Record Card (2010-2015)
 - b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (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. Ind. Code § 6-1.1-15-17.2 (b) and (d).

6. Here, the value of the property decreased from 2015 to 2016. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:

- a. The assessed value is far too high. While the township characterizes part of the land as undeveloped and unusable, it is completely unusable and inaccessible. The land map very clearly shows that a significant part of the property is under water. In March 2021, the township corrected the land to 3.1536 acres of wetlands and .0256 acres of usable undeveloped land. But this property did not suddenly change in 2021. The township merely became aware of the overlay feature on the GIS site that allowed them to see the wetlands on the map. *Nowacki testimony; Pet'r Exs. A-C.*
- b. The property record cards show the Assessor valued the property for \$7,200 in 2010 and 2011. In 2013, the Assessor inexplicably raised the value to \$25,000, or 3.5 times the previous year. The Assessor made no effort to make an accurate assessed value for this property. *Nowacki testimony; Pet'r Exs. B and C.*
- c. Nowacki also contends that the property record card is inaccurate. It shows he owned the property since 1990. He acquired it in 2011 or 2012. It shows he paid \$0 for the property, which is not accurate. The only correct fact on the card is the notation that the property is in a tax increment financing ("TIF") district. *Nowacki testimony; Pet'r Exs. B and C.*
- d. When assessments increase in a TIF district, such as this airport development zone, the district receives additional funds over and above the regular budget of the city and other taxing bodies. The taxing authorities create value where it doesn't exist which is scandalous. *Nowacki testimony.*
- e. Nowacki contends that he has contested the value of the property since he acquired it more than five years ago. Property owners shouldn't have to subject themselves to this torturous process. *Nowacki testimony.*

8. The Assessor's case:

- a. The property does appear to be wetlands, but Nowacki has not shown how that affects the value. The Assessor recommends no change in the assessed value. *James's testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for a 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." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5(a); Ind. Code § 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 Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Taxpayers may use cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id. See also* § Ind. Code 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 assessed value should be \$7,200 but 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. Nowacki argues that the assessed value of the land is over-stated because the majority of it is wetlands and the remainder is undeveloped unusable. In making such a claim, however, Nowacki was required to submit probative evidence that (1) identified his land's deviation from the norm and (2) quantified the impact of that deviation on the land's value. *Kooshtard Property VIII v. Shelby Co. Assessor*, 902 N.E.2d 913,916 (Ind. Tax Ct. 2009).

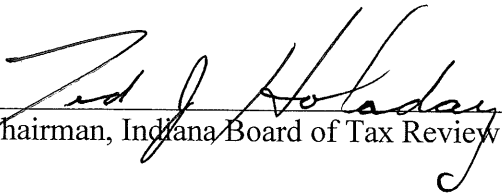
land's deviation from the norm and (2) quantified the impact of that deviation on the land's value. *Kooshtard Property VIII v. Shelby Co. Assessor*, 902 N.E.2d 913,916 (Ind. Tax Ct. 2009).

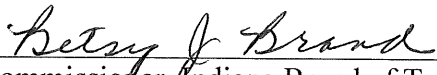
- e. Here, while Nowacki argued that a large portion of the land was wetlands, he submitted no probative evidence to show how the wetlands impact the property's value. His contention that the property is worth \$7,200 is merely a conclusion that is not supported by probative evidence. See *Whitley*, 704 N.E.2d 1113, 1118. Such unsupported conclusions do not sufficiently prove that the Board should change an assessed value. *Id.*
- f. Moreover, even if Nowacki had shown that the Assessor erred in failing to adjust his value for the wetlands, he did not prove that the Assessor's value was wrong or what an alternate value should be. Even if the Assessor made errors, simply attacking methodology is insufficient. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, taxpayers must use market-based evidence to prove that their requested value accurately reflects the property's true market value-in-use. *Id.*
- g. Nowacki contends the characteristics of the property are incorrect on the property record card. This argument also attacks the Assessor's methodology. So, even if the Assessor made errors, simply challenging the methodology is insufficient to make a prima facie case of an error in the assessment. *Id.*
- h. Nowacki complains the appeal process is lengthy and torturous. But, pursuant to Ind. Code § 6-1.1-15-1(o), he had the right to appeal directly to the Board if the petition was not heard by the PTABOA within 180 days as required by Ind. Code § 6-1.1-15-1(k). Therefore, the lengthy appeal process was due, in part, to his own inaction.
- i. 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. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Industries. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

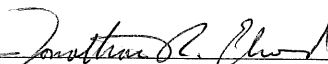
FINAL DETERMINATION

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

ISSUED: 7-16-21


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>.