

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

Petitions: 45-003-17-1-5-00782-18
45-003-18-1-5-00741-20
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-482-033.000-003
Assessment Years: 2017 and 2018

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

PROCEDURAL HISTORY

1. Nowacki contested the 2017 and 2018 assessments of his property located at 4824 West 29th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$1,900 for both years.
2. Nowacki filed Form 131 petitions 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 petitions. 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 (2017-2020)
Petitioner Exhibit C: Property Record Card (2012-2016)
 - 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 assessed value 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 assessed value. Ind. Code § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property did not change from 2016 to 2017. Nowacki therefore bears the burden of proof for 2017. The burden of proof for 2018 depends upon the outcome for 2017.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. Nowacki contends that the Assessor should value the property at \$900, which is still nine times what he paid for it. This amount reflects fair market value. The property is an unbuildable lot based on its dimensions. It is located on the edge of a larger, inaccessible area. The chance for eventual improvement under the current situation is zero to negligible. *Nowacki testimony; Pet'r Ex. A.-C.*
 - b. While potential exists for individual lots to be assembled into a larger parcel, the Assessor should not value the property for a potential use. It must be assessed as it is used on the assessment date. While the property has very little value as an individual lot, it should be assessed as acreage, divided by the square footage. *Nowacki testimony.*
 - c. Beginning in 1994, the county owned the property. The county offered it for sale time and time again, when finally, Nowacki bought it for a nominal amount. That amount is not completely a reflection of its value because it could have more value if combined with other parcels. The assessed value for 2017 and 2018 should be \$900. *Nowacki testimony.*
8. The Assessor's case:
 - a. The Assessor recommends no change in the assessed value. *James's testimony.*

ANALYSIS

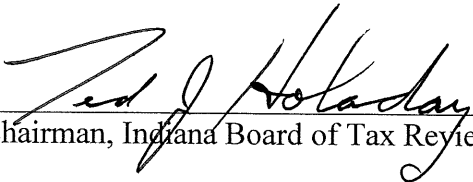
9. Nowacki failed to make a prima facie case for a reducing the property's 2017 or 2018 assessment. The Board reached this decision for the following reasons:

- 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 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 dates for these appeals are January 1, 2017 and January 1, 2018. Ind. Code § 6-1.1-2-1.5(a).
- c. While Nowacki contends the assessed value should be \$900, he failed to present any probative market-based evidence to support that value for 2017 or 2018. Statements unsupported by probative evidence are conclusory and provide no helpful information 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 contends the property should be assessed as acreage. This argument goes solely to the methodology used by the Assessor. 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 demonstrate that the values they request accurately reflect the property's true market value-in-use. *Id.*
- e. Because Nowacki offered no probative market-based evidence to prove his contended market value-in-use for either year, he failed to make a case for a lower assessed value. Where a taxpayer has not supported his claim with probative evidence, the Assessor'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 2017 or 2018 assessed values.

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>>.