

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

Petition: 45-003-16-1-5-00946-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-303-016.000-003
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 4317 W. 26th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$2,900.
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 (2013-2017)
Petitioner Exhibit D: Property Record Card (2007-2012)
 - 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

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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 assessed value, or where it is above the level determined in a taxpayer's successful appeal of the prior year. 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 Assessor made mistakes in applying methodology by differentiating between neighborhoods. Yet it is impossible to determine a distinction between neighborhoods based on observable characteristics. Nowacki contended that the township simply draws arbitrary lines based on a 30-year-old map to which few changes have been made through the decades. Nowacki argued that the Assessor uses the ludicrous approach of separating land into neighborhoods which is useless because two identical lots across from each other may be assessed at significantly different values. The neighborhood factor is insignificant. Only market value matters. *Nowacki testimony.*
 - b. Nowacki contended that the Assessor applied a negative 20% influence factor to the property which is totally inadequate to address issues in relation to value. The city tried to alleviate problems, like dumping and the lack of resources to provide services by initiating a strategic plan to close neighborhoods. Where this property is located, the city installed a jersey block on the road in front of the vacant lot. It receives no services, traffic is hindered, and the property is inaccessible. *Nowacki testimony; Pet'r Ex. A.*
 - c. The county inventory has included this property since 1991, which reflects Mr. Nowacki's request for a lower market value of \$2,000 for 2016. It churned through the tax sale system for 18 years. Nowacki acquired the property for a nominal amount in 2009 at an auction attended by hundreds of eligible bidders. He does not claim that the price paid at auction is fair market value, but it is a strong determinant. The Assessor should value the vacant lot at \$2,000. *Nowacki testimony.*

8. The Assessor's case:
 - a. The Assessor recommends no change in the assessed value. *James 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:

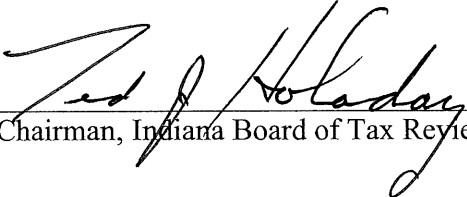
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2, 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." Ind. Code § 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). Parties 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).
- c. 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. While Nowacki contended that the assessed value should be \$2,000 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. Nowacki argued that the use of neighborhoods for assessing purposes is ludicrous and the influence factor applied inadequate. These arguments go 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, a taxpayer must use market-based evidence to demonstrate that a requested value accurately reflects the property's true market value-in-use. *Id.*
- e. Because Nowacki offered no probative market-based evidence to demonstrate his contended market value-in-use for 2016, he failed to make a case for a lower assessed value. When a taxpayer has not supported his claim with probative evidence, the

Assessor's duty to support the assessed value 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>.