

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

Petition No.: 45-003-18-1-5-00475-21
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-304-019.000-003
Assessment Year: 2018

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. James Nowacki appealed the 2018 assessment of an unimproved parcel located at 4313 West 26th Place in Gary, Indiana.
2. On April 7, 2021, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the assessment at \$3,000.
3. Nowacki timely appealed to the Board, electing to proceed under our small claims procedures. On October 3, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. Neither the Board nor the ALJ inspected the property.
4. Nowacki appeared *pro se*. Lake County Hearing Officer Robert Metz appeared for the Assessor. Both were sworn.

Record

5. The official record for this matter is made up of the following:

a) Exhibits:

Petitioner Exhibit A: Subject property record cardo (2017-2021),
Petitioner Exhibit B: GIS map,
Petitioner Exhibit C: Parcel identification information,
Petitioner Exhibit D: Subject property’s valuation history,
Petitioner Exhibit E: Three appraisal reports prepared by Steven Kovachevich of Kovachevich & Co., Inc. for 2517-2521 Washington Street, 1109 Oklahoma Street and 739-29 West 35th Avenue,

Petitioner Exhibit F: City of Gary Redevelopment Commission Notice to Bidders and related documents,
Petitioner Exhibit G: Procedure for Appeal of Assessment.¹

- b) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

Objection

6. The Respondent objected to Petitioner Exhibits E, F and G on the grounds that Nowacki failed to provide copies of the exhibits at the hearing. The ALJ took the objection under advisement.
7. The Petitioner's Exhibits E, F and G were emailed to the Indiana Board of Tax Review on Sunday, October 2, 2022, but Nowacki failed to provide copies of the exhibits at the hearing. The Hearing Instructions that Nowacki received specifically states that a complete set of exhibits **must** be provided to the Board and the opposing party at the hearing. Because Nowacki did not provide copies of Exhibit E, F and G at the hearing, the Respondent's objection is sustained and the exhibits are excluded.

Findings of Fact

8. The subject property is an unimproved parcel of approximately .15 acres. On May 22, 2009, Nowacki purchased the property for \$90. *Pet'r Ex. A.*

Contentions

9. Summary of the Petitioner's case:
- a) Nowacki contends that the county's "land order" for the years 2018 through 2021 was submitted on April 6, 2022; which was four years late. He testified that the 2014 through 2017 land order was submitted June 27, 2018, which was also four years late. In addition, he claimed that the county failed to meet the requirements set forth by Indiana Code § 6-1.1-4-13.6, which requires the county's land order to be submitted in a timely fashion. Nowacki acknowledged that according to the Real Property Assessment Manual ("Manual"), an assessment determined by an assessing official in accordance with the Manual shall be presumed correct. But he argued that because the last two land orders have been late, the land values "would certainly be subject to questioning and dispute." *Nowacki testimony.*
- b) Nowacki argued that he purchased the subject property on May 22, 2009, for \$90 after it had "churned" through the tax sale year after year. He noted the tax sale was advertised and well attended by eligible bidders. He asserted the purchase price was

¹ The Respondent did not submit any exhibits into the record.

an indication that the subject property's assessment was too high, though he admitted he did not believe that \$90 represented its market value. *Nowacki testimony; Pet'r Ex. A.*

- c) Nowacki also offered some testimony/argument regarding the excluded exhibits. First, he argued that the excluded appraisals of properties other than the subject property showed that properties in Calumet Township were over-assessed. Second, he argued that the sale/listing of various properties by the City of Gary Redevelopment Commission supported his requested value of \$1,700. *Nowacki testimony.*

10. Summary of the Respondent's case:

- a) The Assessor argued that Nowacki did not present any substantial evidence to support his requested assessment of \$1,700. In addition, the Assessor noted that Nowacki had offered no proof to support his contention that the land orders were untimely. The Assessor requested no change in the assessment. *Metz testimony.*

Analysis

11. The Petitioner failed to make a prima facie case for reducing the property's 2018 assessment.

- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
- b) The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.² 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). Instead, it is 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.
- c) Evidence in an assessment appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared in accordance 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). A party may also offer actual construction costs, sales

² The Department of Local Government Finance has adopted a new assessment manual and guidelines that apply to assessments for 2021 forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. See *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

- d) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2018 assessment, the valuation date was January 1, 2018. See I.C. § 6-1.1-2-1.5(a).
- e) Nowacki argued that the 2018 assessment should be \$1,700, 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 lowering an assessment, taxpayers must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Eckerling*, 841 N.E.2d at 674, 678.
- f) As discussed above, Nowacki offered some argument and testimony related to the excluded exhibits. We note that even if the exhibits had not been excluded, Nowacki would still not be entitled to any relief. A party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable properties are comparable to the property under appeal. See *Long*, 821 N.E.2d at 470-71. Conclusory statements that properties are “similar” or “comparable” do not suffice; instead, parties 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. They must similarly explain how those relevant differences affect values. *Id.* Nowacki did not meaningfully explain the differences between the purportedly comparable properties and the subject property, nor did he offer any reliable evidence quantifying the effect those differences had on the respective values. Without such an analysis, this evidence is insufficient to support any reduction in value.
- g) We also note that Nowacki’s purchase of the subject property on May 22, 2009, for \$90 is also insufficient evidence of value. The sale occurred nine years prior to the January 1, 2018, valuation date, and he offered no evidence to relate the sale price back to that date as required by *Long*.
- h) Finally, Nowacki claims that a deficient land order led to properties being assessed incorrectly, but he offered no evidence to support that claim. In addition, he failed to show why that claim, even if true, would relieve him of his burden of offering market-based evidence to show his property’s market value-in-use. The Tax Court has repeatedly explained that a taxpayer cannot make a case merely by pointing to an assessor’s incorrect application of assessment regulations but must instead offer

market-based evidence to show that the assessment does not reflect its property's market value-in-use. *Piotrowski*, 177 N.E.3d at 132.

- i) Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. 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 and conclusions, the Board orders no change to the subject property's 2018 assessment.

ISSUED: 12/30/2022

Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Timothy Schultz
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>