

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

Petitions: 45-004-13-1-5-01506-16¹
45-004-15-1-5-01844-16
45-004-16-1-5-00445-17
45-004-17-1-5-00384-19
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-16-430-024.000-004
Assessment Years: 2013, 2015, 2016 and 2017

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

PROCEDURAL HISTORY

1. Mr. Nowacki contested the 2015, 2016, and 2017 assessed values of his property located at 2620 Jefferson Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the residential property as follows:

Year	Land	Improvements	Total
2015	\$1,800	\$2,800	\$4,600
2016	\$1,500	\$2,000	\$3,500
2017	\$1,500	\$2,800	\$4,300

2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On February 22, 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 officer Robert Metz. Both were sworn as witnesses.

¹ The Assessor requested this petition be excluded from the proceedings because the Board entered a Final Determination for this parcel for the 2013 appeal year on May 5, 2020, petition 45-004-13-1-5-00265-16. The Board did issue the determination and excludes 45-004-13-1-5-1506-16 from this proceeding.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: GIS map
Petitioner Exhibit B: Property Record Card (2011-2015)
Petitioner Exhibit C: Property Record Card (2013-2017)
Petitioner Exhibit D: Property Record Card (2016-2020)
 - 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, 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 property's assessed value decreased from 2014 to 2015. Nowacki therefore bears the burden of proof for 2015. The burden for 2016 depends on the outcome for 2015. Regardless of the outcome for 2016, the 2017 assessed value increased more than 5% from \$3,500 to \$4,300. The Assessor bears the burden of proof for 2017.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. Nowacki contended that there is no improvement on the property and that what exists there is only rubble which is valued too highly. The land and structure should be valued at \$900 for the years under appeal. He has owned the property since 2009 and no one has ever inhabited the collapsed, vacant structure on the lot. For example, in 2011, the property record card shows that the improvement was assessed at \$13,700 and, in 2012, it dropped to \$3,100. *Nowacki testimony; Pet'r Exs. B-D.*
 - b. While the Assessor's office argues that there is an improvement because they contend the GIS picture shows a roofline, that is insane. If it were an inhabitable structure, it would not be assessed at \$2,000. *Nowacki testimony; Pet'r Exs. B-D.*
 - c. According to the notes on the property record card, the Assessor changed the grade from D to C in recent years, which would mean the condition actually improved

somewhat. This is not the case at all. The collapsed structure's condition has worsened over time. *Nowacki testimony; Exs. B-D.*

- d. While the land value has held steady, the Assessor should have applied a negative influence on the property. The influence factor for a vacant, abandoned, unbuildable lot should be 50%. *Nowacki testimony; Pet'r Exs. B-D.*

8. The Assessor's case:

- a. The GIS map on Nowacki's exhibit shows a structure with a roofline. The improvement is assessed at \$2,000 because it is in very poor condition, but the evidence of a roofline in the picture shows there is a structure and it is not merely rubble as Mr. Nowacki contends. *Metz testimony.*
- b. The Assessor argues that Nowacki's exhibits are incomplete because the property record cards he offered as exhibits have only one side. He did not prove that the values are incorrect. The Assessor contends that the values should remain unchanged. *Metz testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for a reduction in the assessed value for 2015 and 2016. The Assessor failed to make a prima facie case that 2017's increased assessed value was correct, and Nowacki failed to make a case for a further reduction. 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 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.* 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). The party must offer relevant market-based evidence. March 1 is the legal assessment date for 2015. January 1 is the assessment date for 2016 and 2017. Ind. Code § 6-1.1-2-1.5(a).

2015 Assessed Value

- c. Nowacki contends the assessed value should be \$900 for land only and zero for improvements, 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. Nowacki failed to make a prima facie case for decreasing the 2015 assessed value. Where a 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 Industries. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

2016 Assessed Value

- e. The burden remained with Nowacki for 2016 and he presented the same evidence. For the same reasons as previously stated, Nowacki failed to make a prima facie case for a reduction in his 2016 assessed value.

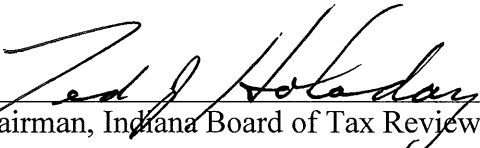
2017 Assessed Value

- f. The Assessor had the burden of proof for 2017 because the assessed value increased more than 5%. Because the Assessor failed to offer any evidence to support the assessed value, Nowacki is entitled to have his assessed value reduced to the 2016 value of \$3,500.
- g. Although Nowacki requested an assessed value of \$900, he relied on the same arguments and evidence he presented for the 2015 and 2016 appeals. We therefore reach the same conclusion. He failed to make a prima facie case for a further reduction.

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 2015 and 2016 assessed values. We find for Mr. Nowacki for 2017 and order the assessed value reduced to the prior year's assessed value of \$3,500.

ISSUED: 5-14-21


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>.