

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

Petition Nos.: 45-004-16-1-5-01169-19
45-004-17-1-5-01186-19
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-09-04-476-009.000-004
Assessment Years: 2016 & 2017

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 2016 and 2017 assessments of his property located at 9301 Sunrise Boulevard in Gary, Indiana.
2. On October 16, 2019, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the assessments at \$4,600 for land for both assessment years.
3. Nowacki timely appealed to the Board, electing to proceed under our small claims procedures. On August 25, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petitions. 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 card (2017-2021),
Petitioner Exhibit B: Subject property record card (2013-2016),
Petitioner Exhibit C: Subject property’s valuation history (2002-2021),
Petitioner Exhibit D: Two GIS maps.¹

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

- 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.

Motion to Postpone Hearing

6. At the start of the hearing, Nowacki noted that he was “objecting to these proceedings” because he had a pending petition with the Department of Local Government Finance (“DLGF”) regarding the “land value survey.” The ALJ took Nowacki’s request under advisement.
7. According to the Board’s procedural rules, a motion for continuance made less than two business days prior to the hearing may only be granted upon a showing of extraordinary circumstances. As discussed above, Nowacki did not make his request until the hearing had commenced. In this case, we do not find that he has demonstrated extraordinary circumstances. Nowacki did not provide any reason why the pending DLGF proceeding prevented him from making his request more than two business days prior to the hearing. In addition, Nowacki failed to show how the DLGF proceedings could specifically impact the subject property and the assessment year under appeal. For these reasons, we overrule his objection.

Findings of Fact

8. The subject property is an unimproved parcel measuring 60 feet by 120 feet. On October 21, 2009, Nowacki purchased the property for \$25. *Pet’r Ex. A.*

Contentions

9. Summary of the Petitioner’s case:
- a) Nowacki contended the subject property’s \$4,600 assessment does not reflect its actual market value. He noted the property is undeveloped and should be assessed on a per acre basis rather than by front footage. He also testified that there is a multi-unit development located close to the subject property, but the development trails off, leaving the subject property in a “transition area.” He requested an assessed value of \$3,200 for both assessment years. *Nowacki testimony; Pet’r Ex. D.*
10. Summary of the Respondent’s case:
- a) The Assessor argued that Nowacki did not present any substantial evidence to support his request to assess the land on a per acre basis or his requested assessment of \$3,200. For that reason, 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 2016 and 2017 assessments.
 - a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.² 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. 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). Instead, it is 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.
 - 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 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 2016 assessment, the valuation date was January 1, 2016. For the 2017 assessment, the valuation date was January 1, 2017. See Ind. Code § 6-1.1-2-1.5(a).

2016 Assessment:

- e) Nowacki argued that the 2016 assessment should be reduced to \$3,200, 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

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).

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) Instead, Nowacki simply argued that the property should be assessed on a per acre basis rather than by front footage. This amounts to an attack on the methodology used to develop the assessment. Even if the Assessor made errors, simply attacking her methodology is insufficient. *Eckerling*, 841 N.E.2d at 674, 678. Although Nowacki pointed to some deficiencies with the subject property, he did not offer any market-based evidence quantifying the effect those issues had on the property’s market value-in-use.
- g) Because Nowacki offered no probative market-based evidence to demonstrate the subject property’s market value-in-use as of the valuation date, he failed to make a prima facie case for a lower assessment.

2017 Assessment:

- h) We now turn to the 2017 assessment. Nowacki offered the same evidence and arguments he presented for the 2016 appeal, therefore we reach the same conclusion. Nowacki failed to make a prima facie case for lowering his 2017 assessment.
- 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

- 12. Nowacki failed to offer probative market-based evidence to show that his assessment was incorrect for either year under appeal. Thus, we order no change to the assessments.

ISSUED: 11/21/2022



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>