

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

Petition: 45-003-17-1-5-00771-18
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-14-233-033.000-003
Assessment Year: 2017

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

PROCEDURAL HISTORY

1. Nowacki contested the 2017 assessment of his property located at 2276 Colfax Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$2,500.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims’ procedures. On June 9, 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 Officer Robert Metz. Both 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 (2011-2015)
Petitioner Exhibit C: Property Record Card (2013-2016)
Petitioner Exhibit D: Property Record Card (2017-2021)
 - 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. Ind. Code § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property decreased from \$3,900 in 2016 to \$2,500 in 2017. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:
 - a. After Nowacki bought the property at an auction in 2011, he has appealed the assessed value every year. It has always been too high. In 2011, the assessed value was \$8,700, and it decreased ever since. It is now close to his proposed value of \$1,900. *Nowacki testimony; Pet'r Exs. B-D.*
 - b. The property churned through the system for years. No one could argue that a property was ever worth \$8,700 when he purchased it for \$25. If the Assessor had arrived at the 2017 value of \$2,500 before then, he probably would have accepted it. This would have saved thousands of dollars in time and effort. *Nowacki testimony.*
 - c. The Assessor took seven years to arrive at an amount that is at least within an arguable difference with an accurate value. Owners experience a horrible, torturous process to get some relief. *Nowacki testimony.*
8. The Assessor's case:
 - a. The Assessor recommends no change in the assessed value. *Metz testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2017 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

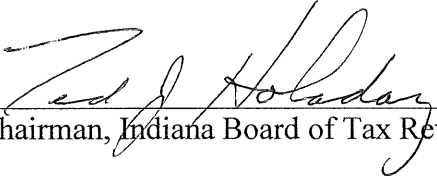
determined under the rules of the Department of Local Government Finance (“DLGF”). Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.

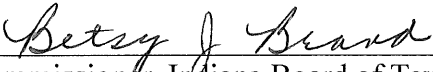
- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *Id. See also Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 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. 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 date for this appeal is January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the value should be \$1,900 but failed to present any probative market-based evidence to support that value. Statements that are 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. We also give no weight to his claims regarding the property’s decreasing assessed value. While the value decreased from 2011 to 2017, the decreasing value does not prove that the 2017 assessed value was incorrect. As the Tax Court has explained, each tax year and each appeal process, stands on its own. *Fisher v. Carroll Cnty Ass’r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. *See Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- f. Because Nowacki offered no probative market-based evidence to demonstrate that the property’s correct market value-in-use for 2017, 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 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>.