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

Petitions:	**45-003-18-1-5-00638-20**
	45-003-21-1-5-00022-23
	45-003-22-1-5-00612-23
Petitioner:	**Jim Nowacki**
Respondent:	**Lake County Assessor**
Parcel:	**45-07-13-426-037.000-003**
Assessment Years:	**2018, 2021, 2022**

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

Procedural History

1. Jim Nowacki contested the 2018, 2021, and 2022 assessments of his property located at 4710 West 26th Avenue in Gary. For each year, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued a determination valuing the property at $5,700, all for land.

2. Nowacki then filed Form 131 petitions for all three years with us. On April 25, 2024, our designated administrative law judge, Joseph Stanford ("ALJ"), held a consolidated hearing on Nowacki's petitions. Neither he nor the Board inspected the property. Nowacki and Matthew Ingram of the Lake County Assessor's office testified under oath.

3. At the beginning of the hearing, Nowacki "objected" to what he characterized as the refusal by the Calumet Township Assessor and the PTABOA to address his appeals of the subject property's 2019 and 2020 assessments. According to Nowacki, this led to his appeals being heard "out of order."

4. Although phrased as an objection, Nowacki was not seeking to exclude any evidence. Indeed, he did not ask for any specific relief. Instead, he said that he wanted his complaint noted for the record and that he was prepared to proceed. Under those circumstances, there was nothing for either us or the ALJ to rule on. In any case, Nowacki was not at the mercy of the PTABOA. He could have appealed the 2019 and 2020 assessments directly to us when the PTABOA failed to act on his initial appeal notices within 180 days. *See* Ind. Code § 6-1.1-15-1.2(k).

Record

5. The official record for this matter includes the following:[1]

[1] Some of Nowacki's exhibits are printed on both sides of the paper. For example, Exhibit A-3 is printed on the reverse side of Exhibit A-2. The Assessor did not submit any exhibits.

Exhibit A-1:	Subject property record card ("PRC"),
Exhibit A-2:	Aerial photograph showing the subject property,
Exhibit A-3:	Enlarged aerial photograph showing the subject property,
Exhibit A-4:	"Special Message to Property Owner" for the subject property for 2023-pay-2024,
Exhibit B-1:	PRC for 4522 West 26th,
Exhibit B-2:	Aerial photograph showing 4522 West 26th Appr. Avenue,
Exhibit B-3:	Aerial photograph showing the subject property and 4522 West 26th.

6. The record also includes: (1) all petitions and other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Findings of Fact

7. The subject property is a 57-foot-by-290-foot vacant parcel of land. The property was assessed for $5,500 in 2017. The assessment rose to $5,700 for 2018, an increase of 3.6%. The assessment then remained at $5,700 through 2022. *Nowacki testimony; Ex. A-1.*

Parties' Contentions

A. Nowacki's Contentions

8. Nowacki argued that his assessment was too high when compared to the assessment of a property at 4522 West 26th, which is only 300-400 feet away. The subject property was assessed using an adjusted base rate that was nearly 50% higher than the adjusted rate used to assess the other property. Nowacki acknowledged that the properties are in different assessment neighborhoods. But he does not believe that justifies the difference in base rates. According to Nowacki, the properties have similar, if not identical, surroundings. Indeed, Nowacki claimed that Calumet Township has nearly 100 assessment neighborhoods, with no discernable difference between many of them. *Nowacki testimony and argument; Exs. A-1 through B-3.*

9. Although the Assessor claimed that a separate challenge to base rates in Lake County had already been decided by the Department of Local Government Finance ("DLGF"), Nowacki indicated that the DLGF's determination had been appealed. According to Nowacki, another action challenging the county's base rates for later years was also still pending. *Nowacki testimony and argument.*

B. The Assessor's Contentions

10. The Assessor argued that the assessment should not be changed because Nowacki failed to offer any evidence to support a different value. *Ingram argument.*

11. As to Nowacki's concern regarding the difference in base rates used to assess the subject property and another nearby property, the land base rates for their respective assessment neighborhoods are different. And contrary to Nowacki's claims that differences in base rates among assessment neighborhoods were arbitrary, the DLGF had already rejected such a claim when it issued a determination upholding the county's 2022 land order. The Assessor simply used the applicable front-foot base rate to assess each property and adjusted that rate based on the property's depth. The Assessor also consistently applied a negative 20% influence factor to all properties—including the subject property and 4522 West 26th—that were at least 50 feet wide. *Ingram testimony.*

Conclusions of Law

A. Burden of Proof

12. Generally, a taxpayer has the burden of proof when challenging a property's tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." I.C. § 6-1.1-15-20(a) (effective March 21, 2022).

13. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b); *see also* I.C. § 6-1.1-15-17.2 (repealed effective March 21, 2022).[2] Subject to certain exceptions, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.* If the burden has shifted, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15- 20(f).

14. The 2018 assessment represented an increase of only 3.6% over the prior year's assessment. Indeed, Nowacki conceded that he had the burden of proof for his 2018 appeal. Similarly, there was no change to the property's assessment between 2020 and 2021, so Nowacki had the burden of proof in his 2021 appeal. Finally, assigning the burden of proof for Nowacki's 2022 appeal necessarily depends on what we determine for 2021.

B. The 2018 and 2021 Appeals

15. Because the parties presented the same evidence and arguments for Nowacki's 2018 and 2021 appeals and Nowacki has the burden of proof for both years, we discuss those two appeals together.

---

[2] Indiana Code I.C. § 6-1.1-15-17.2 governed the burden of proof in assessment appeals, like Nowacki's 2018 appeal, that were filed before the effective date of its repeal. *Elkhart Cty. Ass 'r v. Lexington Square, LLC*, 219 N.E.3d 236, 243-44 (Ind. Tax Ct. 2023). That statute had a similar 5% threshold to trigger a shift in the burden of proof from a taxpayer to an assessor, although what the assessor had to prove and the consequences for failing to meet the burden differed from the current burden-shifting statute. *See id.* at 241-42.

16. We are the trier of fact in property tax appeals, and our charge is to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence" before us. I.C. § 6-1.1-15-20(f). Our conclusion "may be higher or lower than the assessment or the value proposed by a party or witness." *Id.* Regardless of which party has the initial burden of proof, either party "may present evidence of the true tax value of the property, seeking to decrease or increase the assessment." I.C. § 6-1.1-15-20(e).

17. 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." 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

18. To meet its burden of proof, a party "must present objectively verifiable, market-based evidence" of the property's value. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal "methodology" of the "assessment regulations." *PIA Builders & Developers, LLC v. Jennings Cty. Ass'r*, 842 N.E.2d 899, 900, (Ind. Tax Ct. 2006). This is because the "formalistic application" of the procedures and schedules from the DLGF's assessment guidelines lacks the market-based evidence necessary to establish a specific property's market value-in-use. *Piotrowski,* 177 N.E.3d at 133.

19. Market-based evidence may include "sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles." *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that "another property is 'similar' or 'comparable' simply because it is on the same street are nothing more than conclusions ... [and] do not constitute probative evidence." *Marinov v. Tippecanoe Cty. Ass'r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019).

20. Nowacki generally argued for a reduced assessment because the subject property had an adjusted base rate that was much higher than the adjusted base rate for a nearby property. In doing so, Nowacki essentially claimed that the Assessor did not properly apply mass-appraisal methodology. As explained above, that does not suffice to prove a property's market value-in-use. It similarly fails to establish an actionable lack of uniformity and equality in assessments. *See Westfield Golf Practice Ctr. v. Hamilton Cty. Prop. Tax Bd. of App.*, 859 N.E.2d 396, 398-99 (Ind. Tax 2007) (rejecting taxpayer's lack-of-uniformity-and-equality claim where it focused solely on the different base rate used to assess its property compared to other driving ranges without showing the market values-in-use for any of the properties). Instead, Nowacki needed to offer market-based evidence to show his property's value. He failed to do so.

21. For these reasons, Nowacki failed to make a prima facie case for changing the 2018 or 2021 assessments.

B. The 2022 Appeal

22. The subject property's 2022 assessment is $5,700, the same as the amount we determined for 2021. Nowacki therefore had the burden of proof. He offered the same evidence for 2022 as he offered for his 2018 and 2021 appeals, which for the reasons we have already discussed, failed to make a prima facie case for changing the assessment.

Conclusion

23. We find for the Assessor and order no change to the subject property's 2018, 2021, and 2022 assessments.

Date: July 23, 2024

Jonathan R. Elrod
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>.