

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

Petitions: 45-004-11-1-5-00188-16
45-004-15-1-5-01832-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-05-33-277-023.000-004
Assessment Years: 2011 & 2015

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

PROCEDURAL HISTORY

1. James Nowacki contested the 2011 and 2015 assessments of his vacant lot located at 9330 Pottowattomi Trail¹ in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the lot at \$7,600 for both years.
2. Nowacki filed Form 131 petitions with us and elected to proceed under our small claims procedures. On March 11, 2019, 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 his hearing officers, Robert W. Metz and Joseph James. All three were sworn in and testified.

RECORD

4. The official record contains the following:

Petitioner Exhibit A:	Property record card for 2007-2011
Petitioner Exhibit B:	Property record card for 2012-2015
Petitioner Exhibit C:	Property record card for 2015-2018
Petitioner Exhibit D:	Aerial map of the subject property
5. The record 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.

¹ This is the spelling used in the documents Nowacki submitted. Some of the documents list the address as 9330, while others list it as 9330-34.

BURDEN OF PROOF

6. 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 to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d).
7. Nowacki's assessment decreased from 2010 to 2011 and from 2014 to 2015. He therefore bears the burden of proof for both years under appeal.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. At the hearing, one of the Assessor's representatives testified that the Calumet Township Assessor had combined the subject lot and another lot into a single tax parcel. Nowacki did not know about the combination. He did not ask for it, and he is not even sure he owns the other lot. In light of that information, Nowacki asks us to "defer" our decision on these appeals so he can address the issue with the township assessor. *Nowacki argument.*
 - b. As for his requested valuation, Nowacki points to 9442 Juniper Avenue, another lot he has appealed. It is smaller than the subject lot and is assessed at \$4,800. For the sake of continuity and uniformity, Nowacki believes both lots should be assessed at \$3,500. *Nowacki testimony and argument.*
 - c. Finally, the subject lot's assessment has fluctuated over the past eight years, ranging from \$7,500 to \$19,000. Nowacki believes assessments in the area are arbitrary, which hurts the real estate market. *Nowacki testimony and argument; Pet'r Exs. A-C.*
9. The Assessor's case:
 - a. A note on the property record card indicates that the subject lot was combined with an adjacent lot in 2012. A later notation indicates the lots were not combined. In any case, the property record card was corrected to reflect measurements of 40' x 93' instead of 82' x 93'. The assessment decreased correspondingly. *James and Metz testimony; Pet'r Exs. A-C.*
 - b. The Assessor opposes Nowacki's request to defer these appeals. Nowacki could have addressed any issues surrounding the combination of the two lots before the hearing. *Metz argument.*
 - c. Nowacki did not offer any probative evidence to support his claim for reducing the assessment. Although he pointed to the assessment for a lot from Juniper Avenue, he

did not offer a property record card for that lot. In any case, Nowacki is appealing the Juniper Avenue lot's assessment because he thinks it is wrong. *Metz testimony*.

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the 2011 or 2015 assessments. We reach this conclusion for the following reasons:
- a. As an initial matter, we deny Nowacki's request to defer the hearing so he can discuss the error on the property record card with the Calumet Township Assessor. Nowacki had ample time to do that before the hearing. Moreover, the erroneous combination did not affect the assessments under appeal. The lots were not combined until 2012, and the PTABOA determined the subject lot's 2015 assessment at \$7,600, apparently based on the lot's actual dimensions rather than on the larger, combined parcel.²
 - a. Turning to the merits, Nowacki failed to make a prima facie case for reducing his assessments. 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." I.C. § 6-1.1-31-6(c), (e). It is instead 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.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct).
 - c. Nowacki failed to offer any market-based evidence to support his requested value of \$3,500. His only attempt to support a valuation conclusion was his reference to the Juniper Avenue lot. A taxpayer may offer evidence of comparable properties' assessments to show the market value-in-use of a property under appeal. I.C. § 6-1.1-15-18. But "the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." I.C. § 6-1.1-15-18(c).
 - d. Nowacki did not apply generally accepted appraisal or assessment practices. He did little to compare the two lots aside from indicating that the Juniper Avenue lot was

² The PTABOA's determination for 2015 mirrors the pre-combination value from 2011.

half the size of the subject lot and was assessed at \$4,800. He did not even bother to offer the property record card for the Juniper Avenue lot, despite the Assessor pressing him to do so. That falls well short of the analysis required by generally accepted appraisal and assessment practices. See *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005) (holding that taxpayers were responsible for explaining their property's characteristics, how they compared to the characteristics of purportedly comparable properties, and how any differences affected value).

- e. Finally, we give no weight to Nowacki's arguments about the subject lot's fluctuating assessments. Much of that fluctuation appears to stem from the erroneous combination of lots, which did not affect the years under appeal. In any case, "each tax year—and each appeal process—stands alone." *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 e.g. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
- f. Because Nowacki offered no probative evidence to demonstrate the property's market value-in-use, he failed to make a prima facie case for lowering its assessment.

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 subject property's 2011 and 2015 assessments.

ISSUED: June 10, 2019

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>>.