

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

Petition No.: 45-004-17-1-5-00291-19
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-15-433-011.000-004
Assessment Year: 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 2017 assessment of his vacant land located at approximately 2612-16 M.L. King Drive in Gary, Indiana.
2. On January 23, 2019, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the assessment at \$8,100.
3. Nowacki timely appealed to the Board, electing to proceed under our small claims procedures. On April 28, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. 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: GIS maps,
Petitioner Exhibit B: Subject property record card (2017-2021),
Petitioner Exhibit C: Subject property record card (2014-2018),
Petitioner Exhibit D: Subject property record card (2010-2014).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.

Contentions

6. Summary of the Petitioner's case:

- a) Nowacki argues that the subject parcel is assessed higher than its market value. The parcel is inaccessible due to a barricade along M.L. King Drive. Access to the property is also prevented by a wetland area located several feet off of Industrial Boulevard and M.L. King Drive. The property is hindered by a dedicated right-of-way. *Nowacki testimony; Pet'r Ex. A.*
- b) Nowacki paid a nominal amount for the property. The property was purchased at an auction, which was attended by hundreds of eligible bidders. He requests a value of \$1,000 on the property, which he feels is reasonable. *Nowacki testimony.*
- c) Nowacki contends there are errors on the property record card ("PRC"). One such error shows that Nowacki purchased the property on January 1, 1900, for zero dollars. He argues this type of error is indicative of errors throughout the assessment process, especially when the information on the PRC is used to form the property's value. *Nowacki testimony; Pet'r Exs. B-E.*

7. Summary of the Respondent's case:

- a) The Assessor contends that Nowacki did not present any substantial evidence to support his requested value of \$1,000. Therefore, no change is recommended. *Metz testimony.*

Analysis

8. The Petitioner failed to make a prima facie case for reducing the property's 2017 assessment.

- 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

² The Department of Local Government Finance adopted a new assessment manual for assessments from 2021 forward. 52 IAC 2.4-1-2.

(“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.

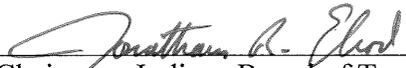
- c) Evidence in an assessment appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared in accordance with the Uniform Standards of Professional Appraisal Practice often will be probative. *Id.* See also *Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 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 2017 assessment, the valuation date was January 1, 2017. See Ind. Code § 6-1.1-2-1.5(a).
- e) Here, Nowacki argued that the 2017 assessment should be \$1,000, 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). 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) Nowacki simply argued that the subject property is inaccessible due to a barricade and wetland and that it is hindered by a dedicated right-a-way. But he did not offer any market-based evidence quantifying the effect those limitations have on the property’s market value-in-use.
- g) Nowacki stated he purchased the subject property for a nominal amount, but he failed to provide the date the property was purchased, the amount paid or any evidence relating it to the valuation date. Therefore, we can give that evidence no weight.
- h) Because Nowacki offered no probative market-based evidence to demonstrate the subject property’s market value-in-use for 2017, he failed to make a prima facie case for a lower 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).

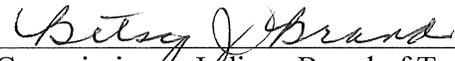
Final Determination

9. Nowacki failed to offer probative market-based evidence to show that his property was assessed for more than its market value-in-use. We therefore find for the Assessor and order no change to the assessment.

ISSUED: _____



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>>