

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

Petitions: 45-004-11-1-5-00181-16
45-004-15-1-5-01836-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-05-33-277-028.000-004
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 9424-28 Pottowattomi¹ Trail in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the lot at \$7,600 for both years under appeal.
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 its hearing officers, Robert W. Metz and Joseph James. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner Exhibit A:	Property record card for 2010-2015
Petitioner Exhibit B:	Property record card for 2014-2018
Petitioner Exhibit C:	Aerial map of the subject property
5. The official record for this 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.

¹ This is the spelling used in the documents submitted to us.

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 of proof 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. The subject property's assessment decreased from 2010 to 2011 and from 2014 to 2015. Nowacki therefore bears the burden of proof for both years under appeal.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. This lot is comparable to a property at 9442 Juniper Avenue, which Nowacki also appealed. The subject lot is slightly smaller than the Juniper Ave. lot, and it has a 20% negative influence factor, as compared to the 50% negative influence factor for the Juniper Ave. lot. The Juniper Ave. lot's assessment was reduced from \$7,600 to \$4,800, while the assessments for the subject lot and other lots owned by Nowacki were not. There is no reason for the discrepancy in assessments when all the lots are similar in size, location, and other characteristics. *Nowacki testimony and argument.*
 - b. These lots have bounced around the tax-sale system for years. Nowacki was happy to acquire them, but he was unhappy with their assessments. He believes the lots are all worth only \$3,500. *Nowacki testimony and argument.*
9. The Assessor's case:
 - a. Nowacki did not offer the property record card for the Juniper Ave. lot, so it is unclear what that lot was assessed for in 2011 or 2015. In any case, Nowacki offered no market evidence to support his requested value. *Metz and James testimony and argument.*

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing his 2011 or 2015 assessments. We reach this conclusion for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting "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 contends that the subject lot should be assessed for \$3,500, but he failed to offer any probative market-based evidence to support that value. His only attempt to support a valuation conclusion was his reference to the Juniper Ave. 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, other than to assert that they were similarly sized and were located near each other. And he acknowledged an important difference—the Juniper Ave. lot had a much higher negative influence factor assigned to it than the subject lot did. Nowacki did not identify the characteristics underlying those differing influence factors or explain how they affected the lots’ relative values. He therefore failed to make a prima facie case for changing the subject lot’s assessment. *See Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers needed to explain how any relevant differences between their property and purportedly comparable properties affected values).

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>>.