

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

**Petitions:** 45-003-13-1-5-00174-16  
45-003-17-1-5-00768-18  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-14-127-020.000-003  
**Assessment Years:** 2013 & 2017

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2017 assessments of his property located at 7001 W. 22<sup>nd</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$13,800 for 2013 and \$11,700 for 2017.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On March 25, 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 Metz and Joseph E. James. They were all sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: Aerial map  
Petitioner Exhibit B: Aerial map  
Petitioner Exhibit C: Property record card for 2015-2018  
Petitioner Exhibit D: Property record card for 2011-2015
  - b. The record for this matter also includes the following (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

## BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. 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) and (d).
6. There was no change in assessment between 2012 and 2013 or 2016 and 2017. Nowacki therefore bears the burden of proof for both years.

## SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. The Assessor acquired this property 18 years ago in 2001. It churned through the system for years due to a lack of interest. Nowacki acquired the property in 2010 for a minimum bid. *Nowacki testimony.*
  - b. Nowacki purchased the property in anticipation of getting the assessed value corrected. Perhaps there are more realistic people who don't buy real estate in Gary because the assessments are too high and the process for getting the assessments corrected is sometimes impossible because the assessor won't do a proper market valuation. *Nowacki testimony.*
  - c. Market value is the value determined by a willing buyer and a willing seller, neither in any need to buy or sell. Nowacki would sell the property for \$5,000, and he believes that is a reasonable market value for the property. The Assessor's value is just wishful thinking. *Nowacki testimony.*
8. The Assessor's case:
  - a. Based on the evidence provided, the Assessor recommended no change in value for either 2013 or 2017. *James testimony.*

## ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the subject property's 2013 or 2017 assessments. 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); 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). Regardless of the appraisal method used, a party must 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 dates for the years under appeal were March 1, 2013 and January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the property should be assessed at \$5,000 for each year in issue. However, 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).
- d. Petitioner failed to make a prima facie case for changing the assessments. Where a 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

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property’s 2013 and 2017 assessments.

ISSUED: June 4, 2019

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

James Nowacki  
7001 W. 22<sup>nd</sup> Avenue  
Page 3 of 4

**- 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>>.