

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

**Petition:** 45-003-13-1-5-00322-16  
**Petitioner:** Mr. James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-19-128-006.000-003  
**Assessment Year:** 2013

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

**Procedural History**

1. Mr. Nowacki contested the 2013 assessment of his property located at 3849 W. 30<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination on December 9, 2015 valuing the vacant residential lot at \$3,400.
2. Mr. Nowacki filed a Form 131 petition with the Board and elected to proceed under the Board’s small claims procedures. On September 23, 2019, Ms. Ellen Yuhan, the Board’s designated administrative law judge (“ALJ”), held a hearing on Mr. Nowacki’s petition. Neither she nor the Board inspected the property.
3. Mr. Nowacki appeared pro se. Mr. Robert Metz and Mr. Joseph E. James, Lake County Hearing Officers, represented the Assessor. They were all sworn as witnesses.

**Record**

4. The official record contains the following:

Petitioner Exhibit A:	GIS map of the subject property
Petitioner Exhibit B:	GIS map of the subject property
Petitioner Exhibit C:	Property record card for 2008-2013
Respondent Exhibits:	None
5. The official 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 the Board’s ALJ; (3) an audio recording of the hearing.

## 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) and (d).
7. The value of this property did not change from 2012 to 2013. Mr. Nowacki therefore bears the burden of proof.

## SUMMARY OF CONTENTIONS

8. Mr. Nowacki presented the following case:
  - a. Mr. Nowacki contended that the only change in the property is that the Assessor corrected the assessment from \$3,400 in 2013 to \$1,800 currently. He stated that there had been no recognized changes in the characteristics of the property or the area surrounding it and that no influences would have caused the property value to decrease by almost half. He testified that the property is a vacant lot in an area with little or no development and that maps clearly showed the lack of development. He contended that the only difference was that the parcel assessment has been too high and to say that the value changed because conditions had changed was not true. *Nowacki testimony; Pet'r Exs 1 & 2.*
  - b. Mr. Nowacki alleged that while the condition of the property had not changed, conditions in the city had declined. He shared that several shootings had taken place in the last evening prior to the hearing. Mr. Nowacki stated that while this information might not bear directly upon his appeal in the case, that the violence was the result of the reckless disregard for accurate assessments, which caused abandonment of properties. If there had not been such abandonment in the city, the level of crime and violence might not have been so high. *Nowacki testimony.*
  - c. Mr. Nowacki contended that the property had churned through the tax sale system since 1989 and that the original owner walked away from the property. The property had been for sale at auctions and commissioners' sales for many years with no interest. Eventually, he purchased the property for a nominal bid in 2009, and that appealed the assessments since then. *Nowacki testimony.*
  - d. Mr. Nowacki stated that the appeals process had been lengthy and time-consuming but it sometimes resulted in a favorable resolution. He said he was gratified that the assessment has been corrected for more current years. He requested that the Board apply the correct assessment for 2013. *Nowacki testimony.*

9. The Assessor presented the following case:
  - a. The Assessor recommended no change to the 2013 assessed value. *James testimony.*

#### ANALYSIS

10. Mr. Nowacki failed to make a prima facie case for reducing the property's 2013 assessment. 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 assessment valuation date for 2013 was March 1 as required by the Indiana Code. Ind. Code § 6-1.1-2-1.5(a).
  - c. Mr. Nowacki contended that the property's 2013 assessment should be \$2,500 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).
  - d. The Board also gives no weight to Mr. Nowacki's claims regarding the property's decreasing assessment. The Assessor's decision to decrease the property's assessment in later years does not prove that the 2013 assessment was incorrect. As the Tax Court has explained, "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)

- e. Because Mr. Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his 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, the Board finds for the Assessor and orders no change to the subject property's 2013 assessment.

ISSUED: November 8, 2019

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.