

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

**Petition:** 45-003-13-1-5-01172-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-451-023.000-003  
**Assessment Year:** 2013

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 assessment of his property located at 3828 W. 27<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the vacant residential property at \$3,400.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. After multiple continuances, Nowacki’s petition was set for hearing on August 10, 2020. Nowacki failed to appear for the hearing and the Board issued a Notice of Dismissal pursuant to 52 IAC 2-10-1. Nowacki timely requested the Board reinstate his appeal to which the Assessor did not object. The Board granted Nowacki’s request and rescheduled the petition for hearing. On November 9, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Hearing Officer Joseph E. James. They were both sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: GIS map  
Petitioner Exhibit B: Property record card (“PRC”) (2015-2019)  
Petitioner Exhibit C: PRC (2008-2013)
  - b. The record 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; and (3) an audio recording of the hearing.

## BURDEN OF PROOF

5. 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).
6. Here, the value of the property remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof.

## SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. Nowacki acquired the property at an auction in 2009 and he has been appealing the assessment ever since. In 2016, the Assessor finally reduced its assessment to \$2,900, but it took seven years to get to that point. The \$2,900 assessment is only about 3% different than Nowacki's target value of \$2,800. Although Nowacki is requesting a valuation of \$2,800, he is willing to accept a valuation of \$2,900. *Nowacki testimony; Pet'r Exs. B, C.*
  - b. The property churned through the system for years. There is no real evidence of this property being desirable or being sought after. It is in an area adjacent to the interstate and there is little incentive to develop it. Value could be added to this property by assemblage, but any potential value from assemblage does not mean that the value is there now. *Nowacki testimony; Pet'r Ex. A.*
  - c. By their nature, assessments are generally behind. The market is moving, and the Assessor is assessing based on the market trend. In this case, the Assessor has shown that the property's value is going down. But the market was already convinced because the property had been languishing in the County's ownership for 100 years according to the PRC when Nowacki purchased it for \$90. *Nowacki testimony; Pet'r Exs. B, C.*
8. The Assessor's case:
  - a. Calumet Township saw that the property's value was going down, so it reduced the market factor applied to the property in 2016 from 1.00 to 0.85, which lowered the assessment to \$2,900. But the Assessor recommends no change in value for 2013. *James testimony.*

## ANALYSIS

9. Nowacki failed to make a case for reducing the 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. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See 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) So may cost or 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. *Id.*; *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Regardless of the type of valuation evidence used, a party must also 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 date for this appeal is March 1, 2013. Ind. Code § 6-1.1-2- 1.5(a).
  - c. Nowacki contends the assessment should be \$2,800 for 2013, 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. We give no weight to his claims regarding the property’s decreasing assessment. The Assessor’s decision to decrease the property’s assessment in 2016 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. To the extent Nowacki was asserting that his purchase at auction established market value, we disagree. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). However, Nowacki failed to provide any indication that the sale met the requirements of an open market transaction. He also failed to relate the purchase price to the valuation date. Consequently, the purchase price is not probative evidence of the property's market value-in-use.
- f. Because 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, we find for the Assessor and order no change to the 2013 assessment.

ISSUED: February 5, 2021

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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>>.