

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

**Petition No.:** 45-003-17-1-5-00385-19  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-354-019.000-003  
**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 property located at 4514 West 29<sup>th</sup> Avenue in Gary, Indiana.
2. On February 20, 2019, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the assessment at \$3,500 for land and \$2,000 for improvements for a total of \$5,500.
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 page 1 (2017-2021),  
Petitioner Exhibit C: Subject property record card page 1 (2015-2018),  
Petitioner Exhibit D: Subject property record card page 2 (sketch area).<sup>1</sup>

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<sup>1</sup> 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. He argues that the collapsed, abandoned house on the property has no value and therefore should be removed. He also stated that the house is actually a liability to the property and has a negative effect on the value. Nowacki testified that the condition of the neighborhood does not attract the construction of new improvements. *Nowacki testimony; Pet'r Ex. A-D.*
- b) Nowacki purchased the property on May 5, 2010, for \$447 at an auction, after it had "churned" through the system for 11 years not attracting any interest. He said it should be considered an arm's length transaction because it was exposed to the market, and there was a willing seller and a willing buyer. He requests a value of \$3,200 on the property, which he feels is reasonable.<sup>2</sup> *Nowacki testimony.*
- c) Nowacki testified that a consultant hired by the county recognized that properties that continually go through the tax sale system are unlikely to find an owner. Nowacki said this was especially true when 90% or more of the sales in an area have gone to auction and there are no bidders because the Assessor continues to set arbitrary values on these properties. *Nowacki testimony.*

7. Summary of the Respondent's case:

- a) The Assessor contends that Nowacki did not present any substantial evidence to support his requested value. Therefore, no change is recommended. *Metz testimony.*
- b) Metz argued that Nowacki left out a "critical" item in his explanation of an arm's length transaction, that both the buyer and seller must be typically motivated. He noted that the county is never typically motivated at an auction. Also, the county is normally unable to obtain the buyers motivation for buying properties at an auction and/or tax sale. Metz contends the Assessor has never been able to find out Nowacki's motivation for buying tax sale properties. *Metz argument.*

### **Analysis**

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

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<sup>2</sup> Nowacki testified, he would accept the Assessor's 2017 land assessment of \$3,500 because it is "within a margin."

- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.<sup>3</sup> 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 ("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 \$3,200, 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 house is abandoned and collapsing, which he claims is a liability to the property and has a negative effect on the value. But he did not offer any market-based evidence quantifying the effect this issue has on the property's market value-in-use.

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<sup>3</sup> The Department of Local Government Finance adopted a new assessment manual for assessments from 2021 forward. 52 IAC 2.4-1-2.

- g) Nowacki stated he purchased the subject property on May 5, 2010, for \$447. But that sale occurred seven years prior to the January 1, 2017, valuation date, and he offered no evidence to relate the sale price to a value as of the valuation date. This failure renders the transaction devoid of probative value.
- 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: \_\_\_\_\_

  
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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>>