

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

**Petitions:** 45-004-13-1-5-00255-16  
45-004-16-1-5-00470-17  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-07-356-027.000-004  
**Assessment Years:** 2013 & 2016

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

**Procedural History**

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 20, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2016 appeal with the PTABOA. The PTABOA issued notice of its final determination on March 9, 2017. On April 24, 2017, Petitioner filed a Form 131 petition with the Board.
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on May 21, 2018. Neither the ALJ nor the Board inspected the property.
5. James Nowacki, Petitioner, was sworn and testified. Robert Metz and Gordona Bauhan, Lake County Hearing Officers, were sworn as witnesses for the Respondent.

**Facts**

6. The subject property is a vacant residential lot located at 4282 W. 21<sup>st</sup> Avenue in Gary.
7. For 2013, the property was assessed at \$4,100. For 2016, the property was assessed at \$3,300.

8. Petitioner requested an assessed value of \$1,900 for both years.<sup>1</sup>

### **Record**

9. The official record contains the following:

a. Exhibits:

Petitioner Exhibit 1:	Property record card (“PRC”) for 2012-2016,
Petitioner Exhibit 2:	PRC for 2009- 2013,

- b. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeal; (2) all orders, notices, and memoranda issued by the Board or the ALJ; (3) the digital recording of the hearing; and (4) these Findings and Conclusions.

### **Burden**

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

---

<sup>1</sup> Petitioner claimed a value of \$2,500 on the Forms 131 for each year at issue but requested a value of \$1,900 at the hearing.

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value did not change from 2012 to 2013. Petitioner, therefore, has the burden of proof for that year. The assessed value actually decreased from 2015 to 2016. Consequently, Petitioner also has the burden for 2016.

### **Summary of Parties' Contentions**

15. Petitioner's case:
  - a. Petitioner contends the value of the property should be \$1,900 for each year at issue. While that value is significantly higher than what he paid, he contends it is nonetheless a value supported by the market. *Nowacki testimony.*
  - b. Petitioner contends the assessment history for the property shows the assessments varied between \$4,100 in 2009 to \$3,300 in 2016. He argues there is no logical basis for such changes in assessed values and that there is no evidence that anyone could provide that would show these sorts of properties are being sold or traded in the range of their assessed values. *Nowacki testimony; Pet'r Exs. 1 & 2.*
  - c. Petitioner contends that even Respondent recognizes that there are problems with the valuations in Calumet Township. However, rather than using his authority to fix the problem, he convened a blue-ribbon panel of real estate experts and academics to examine the issue. The findings of that panel have yet to be released. *Nowacki testimony.*
  - d. Petitioner contends that the effect of over-assessment is that it artificially raises the tax burden on property owners. He argues property owners are entitled to have their property assessed at market value and that people abandon their properties when they realize that they are worth less than the cost of owning them and paying taxes on them. *Nowacki testimony.*
  - e. Petitioner contends that the city has made efforts to find investors, but those investors seem to be more interested in uses that are detrimental to the city. He claims the strategy is to get rid of the residents and bring in "undesirable" uses like garbage dumps, trucking companies, and waste disposal companies. He contends that this is good for outside interests but bad for the people who live there. *Nowacki testimony.*
16. Respondent's case:
  - a. Respondent contends Petitioner has failed to present any probative evidence to support his values. Respondent recommends no change in the assessed value for either 2013 or 2016. *Metz testimony.*

## ANALYSIS

17. Petitioner failed to make a prima facie case for a reduction in the assessed values. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
  - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 assessment date was March 1, 2013. For the 2016 assessment, the valuation date was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
  - c. Petitioner contends the property should be assessed at \$1,900 for each year at issue. Petitioner presented no 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 assessment for either year. 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).

## CONCLUSION

18. Petitioner failed to establish a prima facie case that the 2013 and the 2016 assessed values were incorrect. Consequently, the Board finds for Respondent.

## FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 and 2016 values should not be changed.

ISSUED: August 16, 2018

---

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>>.