

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

**Petition:** 45-004-13-1-5-00277-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-16-154-012.000-004  
**Assessment Years:** 2013

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 elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on June 11, 2018. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn and testified. Robert Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for Respondent.

**Facts**

5. The subject property is a vacant residential lot located at 2361-63 Buchanan Street in Gary.
6. For 2013, the property was assessed at \$1,900.
7. Petitioner requested an assessed value of \$900.

**Record**

8. The official record contains the following:

James Nowacki  
2361-63 Buchanan Street  
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a. Exhibits:

Petitioner Exhibit 1: Aerial map of the subject property,  
Petitioner Exhibit 2: Property record card (“PRC”) for 2011-2013,  
Petitioner Exhibit 3: PRC for 2014-2018,

- 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.

### **Objections**

9. Mr. Metz objected to Petitioner Exhibit 3 because it was irrelevant to an appeal for 2013 as it did not show the year under appeal. Mr. Metz’s objection goes to the weight of the exhibit rather than its admissibility. The Board admits the exhibit but notes that its admission does not affect the final determination.
10. Mr. James objected to Mr. Nowacki’s testimony as to the reasons the owner lost ownership of the property. Mr. James contends the testimony is speculation. The Board agrees the testimony is mere speculation and does not consider it in its determination.

### **Burden**

11. 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.
12. 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).
13. 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).

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

### **Summary of Parties’ Contentions**

16. Petitioner’s case:
  - a. Petitioner contends that even though the assessed value fluctuated from \$3,800 to \$800 between 2011 and 2018, the property was never worth \$3,800. Petitioner’s opinion of value at the time he filed his appeal was \$900. He would be willing to accept that value or the current assessed value of \$800. *Nowacki testimony; Pet’r Exs. 2 & 3.*
  - b. Petitioner contends that he has gone through a five-year process of fighting to get the assessment reduced. He acknowledges that the assessment is now \$100 less than the value he requested at the time of his appeal, but he suspects Respondent will probably still argue it was worth \$3,800 in 2013.<sup>1</sup> *Nowacki testimony.*
  - c. Petitioner contends the previous owner probably lost the property because the assessment was too high. According to Petitioner, this is a technique used to drive property owners from their property and destroy the city. *Nowacki testimony.*
17. Respondent’s case:

Respondent contends Petitioner has not presented any probative evidence to warrant lowering the assessment. Respondent recommends no change in value. *James testimony.*

### **ANALYSIS**

18. Petitioner failed to make a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
  - a. Indiana assesses real property based on its true tax value, which the Department

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<sup>1</sup> Throughout the proceedings, Petitioner claimed the 2013 assessed value was \$3,800. The Form 131, the Form 115, and the PRC all show the final 2013 value at \$1,900.

- 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. *Koostard 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 assessment at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. Petitioner contends the property should be assessed at \$900. 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 contends the appeal process has been going on for five years. Pursuant to Ind. Code § 6-1.1-15-1(o), Petitioner had the right to appeal directly to the Board if his petition was not heard by the PTABOA within 180 days as required by Ind. Code § 6-1.1-15-1(k). Therefore, the alleged lengthy appeal process was due, in part, to the Petitioner’s own inaction.
- e. Petitioner failed to make a prima facie case for changing the assessment. 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

19. Petitioner failed to establish a prima facie case that the 2013 assessed value was 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 value should not be changed.

ISSUED: August 22, 2018

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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>>.