

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

**Petition Nos.:** 45-004-17-1-5-00289-19  
45-004-18-1-5-00460-21  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-16-427-026.000-004  
**Assessment Years:** 2017 & 2018

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 and 2018 assessments of his property located at 2544 Adams Street in Gary, Indiana.
2. On January 23, 2019, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the 2017 assessment at \$2,400 for the land. On April 7, 2021, the PTABOA increased the 2018 assessment to \$3,000 for land and \$3,400 for improvements for a total of \$6,400.
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 petitions. 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 (2019-2021),  
Petitioner Exhibit C: Subject property record card (2015-2018),  
Petitioner Exhibit D: Subject property record card (2010-2014).

Respondent Exhibit 1: Photograph of subject property,

Respondent Exhibit 2: Photograph of subject property.

- 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.

### **Objection**

6. Nowacki objected to Metz's testimony that the subject house was not a pile of rubble but instead "pretty substantial", on the grounds that Nowacki believed the house was a pile of rubble. The ALJ took the objection under advisement. We find the objection goes more to the weight of the testimony rather than its admissibility, and that the testimony is at least minimally relevant to the value of the subject property. Thus, the objection is overruled.

### **Contentions**

7. Summary of the Petitioner's case:
  - a) Nowacki argues that the subject property is assessed higher than its market value. He contends that the house on the property is a collapsed pile of rubble that carried a zero assessed value on the property record card from 2014 through 2017. Then in 2018 the Assessor placed a \$3,400 sound value on the house, even though the house has not changed and is a liability to the property. *Nowacki testimony; Pet'r Exs. C-D.*
  - b) The property went through the tax sale process for years and was presented to hundreds of eligible bidders without generating any bids. Nowacki purchased the property on October 21, 2009, for \$26 at an auction. He requests an assessed value of \$2,000 on this property for 2017 and 2018, which is a "100 times" more than his purchase price. *Nowacki testimony; Pet'r Ex. B-D.*
8. Summary of the Respondent's case:
  - a) The Assessor contends photographs show the house on the subject property is "pretty substantial." The Assessor claims the house's assessed value was omitted from the 2017 assessment but included on the 2018 assessment. Therefore, the county is requesting for both 2017 and 2018 an assessment of \$2,400 for the land and \$3,400 for a total assessed value of \$6,400. *Metz testimony; Resp't Exs. 1-2*

### **Analysis**

9. The Petitioner failed to make a prima facie case for reducing the property's 2017 and 2018 assessments.

- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.<sup>1</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 complied 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. For the 2018 assessment, the valuation date was January 1, 2018. See Ind. Code § 6-1.1-2-1.5(a).

#### 2017 Assessment:

- e) Here, Nowacki contends that the 2017 assessment should be \$2,000, 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) To the extent Nowacki relies on his purchase price, we give that evidence no weight. Nowacki bought the property on October 21, 2009, eight years prior to the January 1, 2017, valuation date, and he offered no evidence to relate his purchase price to that

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

date. This failure renders the transaction devoid of probative value regardless of any other factors.

- g) 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.
- h) We now turn to the Assessor's evidence. Metz presented two photographs of the subject property and requested that a \$3,400 sound value be reinstated to the house. It is not sufficient for the Assessor to supply photographs or suggest an assessment. Instead, the Assessor must present probative market-based evidence to support that value. Because the Assessor failed to do that, we order no change to the 2017 assessment.

2018 Assessment:

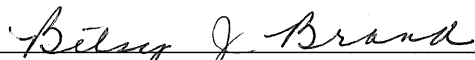
- i) We now turn to the 2018 assessment. Nowacki offered the same evidence and arguments he presented for the 2017 appeal, therefore we reach the same conclusion. Nowacki failed to make a prima facie case for lowering his 2018 assessment.
- j) Where the Petitioner has not supported its claim with probative 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**

- 10. Nowacki failed to offer probative market-based evidence to show that his property was assessed for more than its market value-in-use in 2017 and 2018. The Assessor failed to offer any probative evidence to show the 2017 assessed value should be increased. We therefore order no change to either year under appeal.

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>>