

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

**Petitions:** 45-003-11-1-5-00256-16  
45-003-13-1-5-01162-16  
45-003-14-1-5-01219-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-454-008.000-003  
**Assessment Years:** 2011, 2013 & 2014

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

**Procedural History**

1. Nowacki contested the 2011, 2013 and 2014 assessments of his property located at 3435 W. 28<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the residential property at \$5,000 (Land \$4,200 and Improvements \$800) for 2011, \$4,200 (Land only) for 2013, and \$3,300 (Land only) for 2014.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On March 25, 2019, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by its Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

**Record**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit 1: Aerial map  
Petitioner Exhibit 2: Aerial map  
Petitioner Exhibit 3: Property record card for 2014-2018  
Petitioner Exhibit 4: Property record card for 2010-2015
  - b. Respondent Exhibit 1: Comparable sales analysis  
Respondent Exhibit 2: Six exterior photographs  
Respondent Exhibit 3: Aerial maps for 2013 and 2018

Respondent Exhibit 4: Exterior photograph (2013)

- b. The record for this matter 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; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

### **Objections**

5. Nowacki objected to the Assessor's exhibits because he knows nothing about the improvement the Assessor claims is on the property. He is appealing the land value. Further, the improvement the Assessor shows is not an improvement in the sense that he would consider it an improvement. Nowacki offered no legal basis or argument in support of his objection. Evidence pertaining directly to the attributes of the subject property is relevant to this proceeding. His objection is overruled and the Assessor's exhibits are admitted into the record.

### **Burden of Proof**

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. 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).
8. There was no change in the assessment between 2010 and 2011 or from 2012 to 2013. Nowacki therefore bears the burden of proof for 2011 and 2013. The burden of proof for 2014 will be determined based on the outcome of the 2013 appeal.

### **Summary of Contentions**

9. Nowacki's case:
  - a. This property is in a largely low-lying area where there is little or no development and little or no potential for development. This property churned through the system for 36 years, coming up repeatedly at auction with no interest. Nowacki claims this is because of property tax over assessment. *Nowacki testimony.*
  - b. When Nowacki acquired the property in 2010, the assessed value was \$5,000. Since then it has gone up to \$5,200, down to \$4,200, up to \$5,100, down to \$4,200, down to \$4,100. He stated that the Assessor had since reduced the 2016, 2017, and 2018 values to the \$2,800 value he is requesting for the years under appeal. It has taken eight years to reach a reasonable valuation. *Nowacki testimony; Pet'r Exs. 3 & 4.*

- c. Nowacki contends he has never seen the improvement the Assessor claims is there. If someone is living in some squalid shelter on the property, it is not an improvement in the sense that he would consider it an improvement. *Nowacki testimony*;
10. The Assessor's case:
    - a. The Assessor contends there is an improvement on this parcel that has not been assessed for property tax purposes. They claim Nowacki's evidence also shows there is an improvement on the parcel. The house is in poor condition, but it is apparently habitable. There are security cameras and a satellite dish that appear on the exhibits. Several cars appear in the photos of the premises, at least some of which had valid license plates. *James testimony; Resp. Exs.2-4; Pet'r Exs. 1 & 2.*
    - b. The Assessor looked at sales of comparable, single-family dwellings of similar size in the area that sold between 2010 and 2015. The indicated value based on those sales is \$17,700. The Assessor recommends the assessed value for 2011, 2013, and 2014 be changed to \$17,700. *James testimony; Resp. Ex. 1.*

#### ANALYSIS

11. Nowacki failed to make a prima facie case for reducing the subject property's assessments. 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. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must 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 the 2011, 2013 and 2014 assessments at issue was March 1<sup>st</sup> of each assessment year. Ind. Code § 6-1.1-2-1.5(a).

- c. Nowacki contends the appeal process is burdensome and has been ongoing for eight years in the case of the 2011 appeal. But, pursuant to Ind. Code § 6-1.1-15-1(o), Nowacki had the right to appeal directly to the State if his petitions were not heard by the PTABOA within 180 days as required by Ind. Code § 6-1.1-15-1(k). Therefore, the lengthy appeal process was due, in part, to Nowacki's inaction.
- d. Nowacki argues the property should be assessed for \$2,800 for each year at issue. However, 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).
- e. Petitioner failed to make a prima facie case for changing the assessments. 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). Based on the lack of change to the 2013 assessment, Nowacki had the burden for 2014. He failed to make a prima facie case to support changing the assessment for 2014 as well.
- f. We also give no weight to his claims regarding the property's decreasing assessment. The Assessor's decision to decrease the property's assessment in subsequent years does not prove that the 2011, 2013 and 2014 assessments were incorrect. As the Tax Court has explained, "each tax year—and each appeal process--- stands alone." *Fisher v. Carroll County Ass'r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year 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).
- g. Alternatively, the Assessor claims the assessment for all years should be increased because there is an unassessed improvement on the property. Nowacki's petition opened the door for all parties to submit evidence as to the total value of the property. The Assessor presented evidence of seven sales of improved properties in the area. The Assessor claims the median price for the sales was \$26.32 per square foot, and argued for the property to be assessed at \$17,700 for all years in issue.
- g. The Assessor's evidence falls well short of the standard for proving the market value of property. The Assessor provided only the barest general information for the sales, and chose a "median" price to apply to the alleged square footage of the subject's improvement in an attempt to complete a sales-comparison approach. However, the Assessor presented no evidence of the specific attributes of the subject or comparables; it did not compare the property attributes; nor did it make adjustments based on those comparisons. In short, the Assessor failed to present sufficient market-based evidence to prove the properties' market value-in-use.

- h. Neither Nowacki or the Assessor provided the evidence necessary to prove the market value-in-use for any of the years under appeal.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the PTABOA's assessments for 2011, 2013 and 2014 should remain unchanged.

ISSUED: June 4, 2019

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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>>.