

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

**Petitions:** 45-003-13-1-5-00164-16  
45-003-14-1-5-01183-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-428-021.000-003  
**Assessment Years:** 2013 and 2014

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2014 assessments of his property located at 2669 Waite Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant platted lot at \$4,600 for 2013 and \$2,900 for 2014.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On October 15, 2018, 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 Robert W. Metz and Gordona Bauhan, his Hearing Officers. They were all sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit 1: Property Record Card (“PRC”) for 2008-2013  
Petitioner Exhibit 2: PRC for 2009-2014
  - b. Respondent Exhibit A: PRC for 2009-2015
  - c. 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.

## BURDEN OF PROOF

5. 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). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
6. Here, there was no change in the property's assessment from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The burden for 2014 depends on the outcome of the 2013 appeal.

## OBJECTIONS

7. Nowacki objected to the admission of the Assessor's Exhibit A because he contends the assessed values shown on the PRC are incorrect.<sup>1</sup> The Assessor acknowledged that the PRC does not reflect the PTABOA's determination for 2014. Our ALJ took the objection under advisement. Because the exhibit is relevant and material to this appeal, we overrule the objection.

## SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. The property is in the same area as the other parcels appealed today and its neighborhood characteristics are the same. The property is on a "paper street." The land and the surrounding area have never been developed, and there is no potential for development under the current circumstances. *Nowacki testimony.*
  - b. Nowacki contends the value of the property should be \$2,400. He is prepared to be flexible and accept an error of 10%. While an actual market value for this property is \$2,400, he is willing to accept \$2,600 as the property's value. *Nowacki testimony.*
  - c. The 2013 assessment of \$4,600 is inaccurate because the PTABOA corrected the property's 2014 assessment to \$2,900. There were no changes to the property during those years that would have affected its value. The 2013 assessment should therefore be reduced to \$2,900. Even though that value is still not an accurate market value, it

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<sup>1</sup> We note that the PRC Nowacki entered into the record as Exhibit 2 reflects the same assessed values for 2009, 2011, 2012, 2013, and 2014 as the Assessor's exhibit.

is at least moving in the right direction. The Assessor needs to fix the problem for this property and all the properties and not blame the computer system. *Nowacki testimony; Pet'r Exs. 1, 2.*

9. The Assessor's case:
  - a. The Assessor acknowledged that the PRC does not reflect the PTABOA's decision changing the property's assessment to \$2,900 for 2014. The previous computer system did not give the Assessor the ability to make changes to the record. While the current system allows such changes, the Assessor still cannot make a change to 2014 that would be visible on a PRC. However, the Auditor's office would have revised Nowacki's 2014 taxes to reflect the PTABOA's decision. *Bauhan testimony; Metz testimony; Resp't Ex. A.*

#### ANALYSIS

10. Nowacki failed to make a prima facie case for a reducing the property's 2013 or 2014 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 2013 and 2014 assessments at issue was March 1 of each respective assessment year. Ind. Code § 6-1.1-2-1.5(a).
  - c. Nowacki contends the property's 2013 assessment should be \$2,400, but he is willing to accept a value of \$2,600. Nevertheless, he failed to present any probative market-

based evidence to support either valuation. 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. Alternatively, Nowacki contends we should reduce the property's 2013 assessment to align with the PTABOA's \$2,900 valuation for 2014. But the PTABOA's decision to decrease the property's assessment in 2014 does not prove that its 2013 assessment was incorrect. As the Tax Court has explained, "each tax year—and each appeal process—stands alone." *Fisher v. Carroll Cnty. Ass'r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year, therefore, 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).
- e. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013, he failed to make a prima facie case for a lower 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).
- f. Because Nowacki failed to make a prima facie case for reducing the property's 2013 assessment, its assessment decreased from 2013 to 2014. Nowacki therefore retains the burden of proof for 2014. Nowacki relied on the same evidence and arguments for 2014, and we therefore reach the same conclusion—he failed to make a prima facie case for a lower assessment.

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2013 and 2014 assessments.

ISSUED: January 11, 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>>.