

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

**Petitions:** 45-003-13-1-5-00183-16  
45-003-17-1-5-01058-18  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-377-019.000-003  
**Assessment Years:** 2013 & 2017

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2017 assessments of his property located at 3842 W. 28<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$10,300 for 2013 and \$2,800 for 2017.
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 A: Property record card for 2015-2018  
Petitioner Exhibit B: Property record card for 2010-2015  
Petitioner Exhibit C: Aerial map  
Petitioner Exhibit D: Aerial map
  - 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.

## 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).
6. Here, there was a decrease in the subject property's assessment from 2012 to 2013 and from 2016 to 2017. Nowacki therefore bears the burden of proof for both 2013 and 2017.

## SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. The property is in a dilapidated area with collapsed buildings, nearly impassable streets, and burned out cars. Squatters and dope dealers might find the dilapidation to be an amenity but property owners would not. This neglect is part of the strategy to run down communities so that the largest property owner in the area is the city. Private ownership has been abandoned. *Nowacki testimony; Pet'r Exs. C & D.*
  - b. The County acquired the property in 1996, and he purchased it in 2010. He has been appealing the assessment since he acquired it. During this time, the property values have vectored down from \$13,000 in 2010 to the current value of \$3,300. *Nowacki testimony; Pet'r Exs. A & B.*
  - c. Nowacki contends that the evidence one would present for the burden of proof would be market sales. He believes any market sale would only bring a few hundred dollars. All transfers are either the county acquiring property because people stopped paying their taxes and abandoned the property or transfers to the City of Gary who acquired the tax certificates or commissioners' deeds. You might say these are not applicable, but these determine the market because there are no other sales. *Nowacki testimony.*
  - d. Nowacki believes a reasonable value for the property for both years under appeal would be \$1,800. He would sell it for \$1,800, but no one will buy a property that is assessed for twice that amount. *Nowacki testimony.*
8. The Assessor's case:
  - a. The Assessor spoke with the Calumet Township Assessor's Office. They agreed that the 2013 value should be reduced to \$2,800. That would make the values for the two contested years consistent at \$2,800. *James testimony.*

## ANALYSIS

9. The Assessor conceded the subject property's 2013 assessment should be reduced to \$2,800. Nowacki sought a further reduction for 2013 but failed to make a prima facie case to support his requested value. Nowacki also failed to make a prima facie case for reducing the subject property's 2017 assessment. 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 dates for the years under appeal were March 1, 2013 and January 1, 2017, respectively. Ind. Code § 6-1.1-2-1.5(a).
  - c. Initially, we 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 2013 and 2017 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).
  - d. Nowacki contends the property should be assessed at \$1,800 for each year in issue, 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).

- e. Nowacki made vague reference to market sales of property for a few hundred dollars, which may have been a reference to his purchase of the property in 2010 for \$495.<sup>1</sup> He further contends the sales at county auctions and commissioner's sales determine the market for these properties. To the extent Nowacki was asserting that his purchase price reflects the property's correct value, we disagree. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Nowacki did not prove that the sale met the requirements of an open-market, arm's-length transaction. Nor did he attempt to relate the purchase price to the valuation dates. Consequently, the purchase price is not probative evidence of the property's market value-in-use.
- f. 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). However, the Assessor testified that the 2013 value should be reduced to \$2,800. The Board accepts the Assessor's concession that the 2013 assessment should be reduced to \$2,800.

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the subject property's 2013 assessment reduced to \$2,800. With respect to the subject property's 2017 assessment, we find for the Assessor and order no change.

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

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<sup>1</sup> Petitioner Exhibits A and B show \$495 as the purchase price.

**- 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>>.