

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

**Petitions:** 45-003-13-1-5-00282-16  
45-003-14-1-5-01187-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-376-010.000-003  
**Assessment Years:** 2013 & 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 4037 W. 27<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$2,100 for 2013 and \$1,500 for 2014.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On May 20, 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 all were sworn as witnesses.

**RECORD**

4. The official record contains the following:

Petitioner Exhibit A:	Property record card (“PRC”) for 2010-2015
Petitioner Exhibit B:	Property record card for 2014-2018
Petitioner Exhibit C:	GIS map of the subject parcel
Respondent Exhibits:	None
5. The official record for this matter also includes (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

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana 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).
7. The property's value did not change from 2012 to the PTABOA's value for 2013. Therefore, Nowacki has the burden for 2013. The burden of proof for 2014 depends upon the outcome for 2013.

## SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. The property is adjacent to the interstate. It is not a front lot because the frontage would actually be the center of the interstate. The parcel is entirely landlocked. It is unusable because you cannot build on it or develop it in any way. *Nowacki testimony; Pet'r Exs. A-C.*
  - b. Nowacki contends the facts conflict with the PRC data. The property is a rear lot, not a front lot. There are no utilities. The only paved road is the interstate, which cannot be accessed from the lot. The neighborhood life cycle is static, which is accurate if static means there is nothing around the property and no activity in the area. *Nowacki testimony; Pet'r Exs. A-C.*
  - c. The appeals have been ongoing for six or seven years. Nowacki claims the Assessor drags the property owner through the process, ignores clear facts, and mischaracterizes the property on the PRC. *Nowacki testimony.*
  - d. Nowacki contends this lot was never worth the \$2,100 assessed value, nor the \$1,500 value or even the current \$1,300 value. The fair market value is \$600 and not a penny more. *Nowacki testimony.*
9. The Assessor's case:
  - a. The 2013 assessed value should be changed to \$1,500 in order to be consistent with the 2014 value. *James testimony.*
  - b. In 2016 the lot size was corrected from 65' by 170' to 65' by 83'. This correction was not made earlier because no documentation was provided to prove when the State acquired the land. *Metz testimony.*

## ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the 2013 or 2014 assessments of this property. Nevertheless, the Assessor conceded that the assessed value should be reduced to \$1,500 for 2013. The Board reaches its 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 in these appeals was March 1<sup>st</sup> of each assessment year. Ind. Code § 6-1.1-2-1.5(a).
  - c. Nowacki failed to present any probative market-based evidence to support a value of \$600. 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. According to Nowacki, there are multiple errors on the property record card. But even if that is true, simply pointing out an error is insufficient to rebut the presumption that the assessment is correct. *Eckerling*, 841 N.e.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to demonstrate that the suggested value accurately reflects the true market value-in-use. *Id.*
  - e. Because Nowacki offered no probative market-based evidence to demonstrate the 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 his 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. Nowacki failed to make a prima facie case for a reduction in the 2013 assessment; however, the Assessor admitted that the assessed value for 2013 should be \$1,500. We accept the Assessor's admission. With that change, the assessed value for 2013 and 2014 is the same. Nowacki retained the burden of proof for 2014. He relied on the same evidence and arguments 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 Assessor's admission, the Board orders the 2013 assessed value be reduced to \$1,500. For 2014, the Board finds for the Assessor and orders no change.

ISSUED: July 30, 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>>.