

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

**Petitions:** 45-004-11-1-5-00186-16  
45-004-13-1-5-00224-16  
45-004-15-1-5-01824-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-05-33-276-037.000-004  
**Assessment Years:** 2011, 2013 & 2015

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

**PROCEDURAL HISTORY**

1. James Nowacki contested the 2011, 2013 and 2015 assessments of his vacant lot located at 9442 Juniper Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the lot at \$4,800 for all three years.
2. Nowacki filed Form 131 petitions with us and elected to proceed under our small claims procedures. On March 11, 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 his hearing officers, Robert W. Metz and Joseph James. All three were sworn in and testified.

**RECORD**

4. The official record contains the following:

|                       |                                    |
|-----------------------|------------------------------------|
| Petitioner Exhibit A: | Property record card for 2007-2011 |
| Petitioner Exhibit B: | Property record card for 2012-2015 |
| Petitioner Exhibit C: | Property record card for 2014-2018 |
| Petitioner Exhibit D: | Aerial map of the subject property |
5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

## 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), (d).
7. Nowacki bears the burden of proof for all three years under appeal. The assessment decreased from 2010 to 2011 and from 2012 to 2013, and it remained the same from 2014 to 2015.

## SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. Nowacki contends that his property is worth only \$3,500 because it is an unbuildable lot in an area of the subdivision where there is little or no interest in development. The property bounced through the tax-sale system for 35 years before he bought it at auction. He contends that over-assessment of properties damages the community because it makes it harder to find buyers and for buyers to maintain ownership.  
*Nowacki testimony; Pet'r Exs. A, C.*
9. The Assessor's case:
  - a. The Assessor agrees that the subject property is unbuildable because it has only 35 feet of frontage. He applied a negative 50% influence factor to account for that. In any case, Nowacki offered no market evidence to support his requested valuation.  
*James testimony and argument.*

## ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's assessment for any of the years at issue. We reach this conclusion for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting "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).
- c. Nowacki did not offer any probative evidence to support his contention that the property was worth only \$3,500. While the fact that the lot is unbuildable likely affects its value, Nowacki offered no market-based evidence to quantify that effect. Statements that are unsupported by probative evidence are conclusory and of no value to us in making our determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). Nowacki therefore failed to make a prima facie case for reducing his assessments.

**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 subject property’s 2011, 2013, and 2015 assessments.

ISSUED: June 10, 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>>.