

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

**Petitions:** 45-004-11-1-5-00223-16  
45-004-13-1-5-00222-16  
45-004-15-1-5-01829-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-05-33-277-027.000-004  
**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 9418-9422 Pottowattomi<sup>1</sup> Trail in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the property at \$7,600 for 2011, \$15,800 for 2013 and \$7,700 for 2015.
2. Nowacki filed Form 131 petitions with the Board 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 as witnesses.

**RECORD**

4. The official record contains the following:

Petitioner Exhibit A:	Property record card for 2007-2011
Petitioner Exhibit B:	Property record card for 2009-2012
Petitioner Exhibit C:	Property record card for 2012-2015
Petitioner Exhibit D:	Property record card for 2015-2018
Petitioner Exhibit E:	Aerial map of the subject property

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<sup>1</sup> This is the spelling used in the documents submitted to us.

5. The 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. The property's assessment decreased from 2010 to 2011, remained the same from 2012 through 2014, and decreased in 2015. Nowacki therefore bears the burden of proof for each year under appeal.

### **SUMMARY OF CONTENTIONS**

8. Nowacki's case:
  - a. According to the property record cards, the Assessor combined the subject lot with an adjacent lot into a single tax parcel. Yet an aerial GIS map shows they were not combined. The adjacent parcel, which Nowacki also appealed, was assessed separately. The subject lot is only 40' x 94', but the property record card shows it as 80' x 94'. The lot did not grow. *Nowacki testimony; Pet'r Exs. A-E.*
  - b. Nowacki asks for additional time to allow the parties to discuss and correct what he characterized as "flagrant" errors in the assessments of two adjacent lots as well as a third property on the same street. In the alternative, he would accept an assessment of \$3,500 for each lot. *Nowacki testimony and argument.*
9. The Assessor's case:
  - a. There was an error in the subject lot's measurements. That error was corrected for 2015 forward. The most current property record card has the correct measurements of 40' x 94'. The Assessor assumes Nowacki is right that the lot never changed in size. But the hearing was to determine the property's market value rather than to address errors on the property record card. And Nowacki offered no credible evidence to support his requested value of \$3,500. *James and Metz testimony and argument; Pet'r Ex. D.*
  - b. The Assessor asks us to deny Nowacki's request to continue the hearing. These appeals have been pending for years, but this is the first time Nowacki raised the issue of lot size. *Metz and James testimony and argument.*

## ANALYSIS

10. As an initial matter, we deny Nowacki's request to continue the hearing so he and the Assessor may discuss errors on the property record cards for the subject property and other lots on the same street. Nowacki had ample time to do that before the hearing.
11. Turning to the merits, Nowacki failed to make a prima facie case for reducing the property's assessment to \$3,500, although he did show an error in the 2013 assessment that should be corrected. We reach this decision 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 market-based evidence to support his contention that the property was worth only \$3,500. 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).
  - d. But Nowacki did show an error in the property's 2013 assessment. The property record card inexplicably shows the lot as having been combined with an adjacent lot in 2012,<sup>2</sup> even though that adjacent lot continued to be separately assessed. That effectively doubled the lot size from 40' x 94' to 80' x 94' and led to a corresponding increase in the assessment for a few years, including 2013.<sup>3</sup> The Assessor agreed that

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<sup>2</sup> A note on the property record card indicates that the erroneous combination occurred on April 20, 2012.

<sup>3</sup> The PTABOA's determination of \$7,700 for 2015, which closely mirrors the lot's assessment immediately before the erroneous combination, appears to be based on the correct, uncombined lot measurements.

the lot did not change in size. Thus, the 2013 assessment was based on erroneous measurements. The Assessor must correct those measurements for 2013 and change the value to \$7,700.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor with regard to the 2011 and 2015 assessments. But we find that the Assessor must correct the subject lot's measurements for 2013 and change the value to \$7,700.

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>>.