

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

**Petitions:** 45-004-13-1-5-00334-16  
45-004-16-1-5-00935-17  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-08-183-024.000-004  
**Assessment Years:** 2013 and 2016

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2016 assessments of his property located at 2540 W. 15<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant lot at \$10,600 for 2013 and \$9,900 for 2016.
2. Nowacki filed Form 131 petitions with the Board for both years and elected to proceed under our small claims procedures. On July 23, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by Robert Metz and Terrance Durosseau, his Hearing Officers. They were all sworn as witnesses.

**RECORD**

4. The official record contains the following:

Petitioner’s Exhibit 1:	Aerial view of the subject property
Petitioner’s Exhibit 2:	2009-2013 Property Record Card for the subject property
Petitioner’s Exhibit 3:	2012-2016 Property Record Card for the subject property
5. The official 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.<sup>1</sup>

### 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. Here, our ALJ preliminarily ruled that the burden of proof for 2013 was on Nowacki based on the Assessor's representation that the 2012 and 2013 assessments were both \$10,600. But the Property Record Card ("PRC") submitted by Nowacki shows that the 2012 assessment was in fact \$5,800. Because the assessment increased by more than 5% from 2012 to 2013, the Assessor has the burden for 2013. However, the property's assessment decreased from \$10,600 in 2015 to \$9,900 in 2016. Nowacki therefore has the burden for 2016.

### SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. The subject property consists of 6 ½ lots that are located in a neighborhood without much development. The two 2016 PRCs Nowacki submitted into evidence were generated at the same time but show different total values under the land computation sections. One card shows total value of \$14,500, while the other shows \$15,400, which is about a 7% difference. *Nowacki testimony; Pet'r Exs. 2 and 3.*
  - b. Nowacki also pointed to the many valuation changes the Assessor made to the property in recent years, including values of \$14,300 in 2009; \$5,800 in 2012; \$10,600 in 2014; and up to \$14,500 in 2016. The PRC describes the subject property's neighborhood characteristics as static, but the property's fluctuating valuations show they are anything but static. Nowacki contends a fair market value for the subject property is \$7,200 for both assessment years. *Nowacki testimony; Pet'r Exs. 2 and 3.*
9. The Assessor's case:
  - a. The discrepancy in the land computations highlighted by Nowacki is the result of the use of different market factors on the two PRCs. The Assessor contends that Nowacki has provided no evidence to support his requested valuations, and that his

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<sup>1</sup> The Assessor offered no exhibits.

2013 and 2016 assessments should therefore remain at \$10,600 and \$9,900, respectively. *Durousseau testimony; Metz testimony.*

#### ANALYSIS

10. The Assessor failed to present a prima facie case supporting the subject property's 2013 assessment. And Nowacki failed to make a prima facie for reducing the subject property's 2016 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.* For 2013 and 2016, the valuation dates were March 1, 2013 and January 1, 2016, respectively. Ind. Code § 6-1.1-2-1.5(a).
  - c. The Assessor has the burden of proving that the subject property's 2013 assessment is correct, but he failed to offer any evidence in support of the assessment. Consequently, he failed to make a prima facie case that the 2013 assessment was correct. Under those circumstances, Nowacki would normally be entitled to have his 2013 assessment reduced to its 2012 assessed value of \$5,800. *See* Ind. Code § 6-1.1-15-17.2(b). However, Nowacki testified that the subject property's fair market value in 2013 was \$7,200. We view this testimony as a concession. Accordingly, we conclude that the subject property's 2013 assessment should be \$7,200.
  - d. We now turn to the 2016 assessment for which Nowacki has the burden of proof. He contends the subject property's 2016 assessment should also be \$7,200, but he failed to present any probative market-based evidence to support that value. Nowacki did offer some general statements about the subject property's neighborhood, but

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 also argued that the Assessor's land computations on the two 2016 PRCs produced total values that differed by 7%. While there appear to be inconsistencies in the two versions of the PRC, the final value as determined by the PTABOA for 2016 is clear and any inconsistency is unimportant. Even if the Assessor made errors in computing or applying a market factor when calculating the original 2016 assessment, simply attacking the Assessor's methodology 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 their suggested value accurately reflects the property's true market value-in-use." *Id.*
- f. We also give no weight to Nowacki's claim regarding the fluctuations in the subject property's assessed values over recent years. The Assessor's decision to increase or decrease the assessment in any given year does not prove that its 2016 assessment is 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).
- g. Because Nowacki offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use for 2016, 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).

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we order the 2013 assessment reduced to \$7,200. We further order no change to the 2016 assessment.

ISSUED: October 19, 2018

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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>>.