

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

**Petitions:** 45-004-13-1-5-00348-16  
45-004-15-1-5-01845-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-09-04-476-007.000-004  
**Assessment Years:** 2013, 2015

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2015 assessments of his property located at 9225 Sunrise Boulevard in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$4,500 for 2013 and \$4,900 for 2015.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On October 21, 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 Hearing Officer Joseph E. James. Both were sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: GIS map of subject property  
Petitioner Exhibit B: GIS map of subject property  
Petitioner Exhibit C: Property record card for 2014-2018  
Petitioner Exhibit D: Property record card for 2009-2013
  - b. The record for the 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

5. 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).
6. Here, the property's assessment decreased from 2012 to 2013 and remained unchanged from 2014 to 2015. Nowacki therefore bears the burden of proof for both years under appeal.

## SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. The subject property is located under power lines in an area with no roads and no utilities. There is little to no interest in development in this area. Nowacki acquired the property in 2009 at an auction attended by hundreds of capable, eligible bidders. If those bidders had thought this property was worth \$10,000, they would have shown some interest. Instead, he was able to purchase the property for a nominal bid of \$25. *Nowacki testimony; Pet'r Exs. A, B, C, D.*
  - b. Nowacki appealed the assessment for six years with no change. Suddenly, between 2013 and 2014, the assessment decreased by half. The notes on the property record card say the assessor applied a -50% influence factor. But the factors that existed in 2014 existed five years earlier—there was no change to the property. *Nowacki testimony; Pet'r Exs. C, D.*
  - c. This property has churned through the system for 50 years. It had come up for auction many times during that timeframe. Had the Assessor not over-assessed the property, it would have had a buyer who would have shouldered some of the tax responsibility for it. The over-assessment is a cynical, deliberate attempt to destroy the city. *Nowacki testimony.*
  - d. Nowacki concedes the property is worth more than his \$25 purchase price. He thinks he could sell the property for \$3,200 with a little bit of marketing. But no realtor is even going to list the property for the over-assessed value of \$4,900. He contends the subject's 2013 and 2015 assessments should be \$3,200. *Nowacki testimony.*
8. The Assessor's case:
  - a. The Assessor recommends no change to the 2013 and 2015 assessments. *James testimony.*

## ANALYSIS

9. Nowacki failed to make prima facie case for a reducing the property's 2013 or 2015 assessments. 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 March 1, 2015. Ind. Code § 6-1.1-2-1.5(a).
  - c. Nowacki contends the assessment should be \$3,200 for both 2013 and 2015, 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).
  - d. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use, he failed to make a prima facie case for a lower assessment for either year. 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 find for the Assessor and order no change to the assessments.

ISSUED: January 9, 2020

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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>>.