

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

**Petition:** 45-003-17-1-5-00389-19  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-427-003.000-003  
**Assessment Year:** 2017

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

**Procedural History**

1. James Nowacki contested the 2017 assessment of his property. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 determination valuing the property at \$4,600.
2. Nowacki then filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On June 29, 2022, our designated administrative law judge, Joseph Stanford (“ALJ”), held a hearing on Nowacki’s petition. Neither he nor the Board inspected the property.
3. Nowacki represented himself. Lake County Hearing Officer Robert Metz appeared for the Assessor. Both testified under oath.
4. At the beginning of the hearing, Nowacki verbally requested a continuance because he alleged that Lake County submitted its “land-value survey” for the years 2017 through the present to the Department of Local Government Finance (“DLGF”) “five years late.” Nowacki indicated that he wanted to wait for the DLGF to hold a hearing and rule on that question before proceeding with the hearing in front of us.
5. The ALJ properly denied Nowacki’s request and proceeded with the hearing. Absent extraordinary circumstances, a motion for continuance must be in writing and be submitted at least two days before the scheduled hearing. *See* 52 IAC 4-7-2. Nowacki first requested his continuance verbally after the hearing had begun. And he did not identify any extraordinary circumstances justifying his failure to comply with our rule. In any case, his vague reference to a proceeding before the DLGF would not have been sufficient grounds for a continuance even if he had timely filed his request.
6. Without citing to any authority, Nowacki argued that we are responsible for protecting the integrity of the assessment system for all taxpayers in Lake County. But he has filed an appeal on an individual assessment, which is all that is before us. To the extent he believed that procedural or other errors in the land-value survey entitled him to relief in

his individual appeals, he was free to offer evidence and make relevant arguments on that point.

### **Record**

7. The official record for this matter includes the following:

Petitioner Exhibit A: Two GIS maps,  
Petitioner Exhibit B: Property record card (2017-2021),  
Petitioner Exhibit C: Property record card (2012-2016),  
Petitioner Exhibit D: Property record card (2007-2012).

8. The record also includes: (1) all petitions and other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

### **Findings of Fact**

9. The subject property is a vacant platted lot located at 3319 West 25<sup>th</sup> Street in Gary. Nowacki bought the property for \$183 in 2009, after it had “churned through” tax sales for years. *Nowacki testimony.*

### **Contentions**

#### **A. Nowacki’s Contentions**

10. Nowacki argues that the subject property is assessed higher than its market value. The property is “nicely located” on a thoroughfare, but it is close to the Lake Sandy Joe superfund site. It was assessed using an adjusted base rate of \$88 per square foot. Nowacki apparently contends that another lot he owns and has appealed is in a better location but has an adjusted base rate of only \$81 per square foot. He argues that the adjusted base rates are inconsistent. *Nowacki argument and testimony, Pet’r Exs. A-C.*

11. According to Nowacki, the Assessor failed to meet her responsibility of submitting her land-value survey in a timely manner and therefore lacks any evidence to substantiate assessed values. And that affects what the county does far more than Nowacki’s appeals do. *Nowacki argument.*

#### **B. The Assessor’s Contentions**

12. The Assessor argues that Nowacki did not offer any evidence to support his requested assessment of \$2,800. As to Nowacki’s claims about the land-value survey, the Assessor was, and always has been, in compliance with state rules. *Metz argument and testimony.*

## Analysis

13. Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.<sup>1</sup> A petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
14. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 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). Instead, it is determined under the DLGF's rules. 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.
15. Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the year under appeal was January 1, 2017. *See* I.C. § 6-1.1-2-1.5(a).
16. Nowacki contends that his property should be assessed at \$2,800. But he offered no probative market-based evidence to support that value. *See Eckerling*, 841 N.E.2d at 674, 678 (requiring taxpayers to offer market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use."). Although Nowacki testified that the property is located next to a superfund site, he did not offer any market-based evidence to quantify how that factor affected its market value-in-use. Similarly, while Nowacki indicated that another property was assessed using a lower adjusted base rate, he did not meaningfully compare the two properties. *See Long*, 821 N.E.2d at 470-471 (holding that taxpayers' sales data for other properties lacked probative value where they failed to compare how the characteristics of those properties compared to their property and to explain how any differences affected market value-in-use).
17. To the extent Nowacki relies on his 2009 purchase price, we give that evidence no weight. Nowacki bought the property more than 7 ½ years before the January 1, 2017, valuation date. He offered no evidence relating his purchase price to that date. And he

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<sup>1</sup> The Department of Local Government Finance has adopted a new assessment manual and guidelines that apply to assessments for 2021 forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).


failed to show that the price he paid at a tax sale was a reliable indicator of the property's market value-in-use, even in 2009.

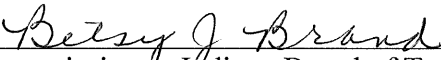
18. Finally, while Nowacki claims that a delinquent and inaccurate land-value survey led to properties being assessed incorrectly, he offered no evidence to support that claim. And he did not explain why, even if that were true, it would relieve him of his burden of offering market-based evidence to show his property's true market value-in-use. The Tax Court has repeatedly explained that a taxpayer cannot make a case merely by pointing to an assessor's incorrect application of assessment regulations but must instead offer market-based evidence to show that the assessment does not reflect its property's market value-in-use. *Piotrowski*, 177 N.E.3d at 132.

### Conclusion

19. Nowacki failed to offer any market-based evidence to show that his property was assessed for more than its market value-in-use. We therefore find for the Assessor and order no change.

Date: 9/27/2022

  
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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>.