

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

**Petition:** 45-004-16-1-5-00950-17  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-11-476-001.000-004  
**Assessment Year:** 2016

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2016 assessment of his property located at 6200-6400 West 21<sup>st</sup> in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$36,700 (land \$36,200, improvements \$500).
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claim procedures. On May 24, 2021, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Hearing Officers Joseph James and Jessica Rios. All were sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: GIS map  
Petitioner Exhibit B: Property Record Card (2016-2020)  
Petitioner Exhibit C: Property Record Card (2011-2015)
  - 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 assessed value, or where it is above the level determined in a taxpayer's successful appeal of the prior year. Ind. Code § 6-1.1-15-17.2 (b) and (d).

6. Here, the value of the property increased more than 5% from 2015 to 2016. The Assessor conceded she had the burden of proof.

#### SUMMARY OF CONTENTIONS

7. The Assessor's case:

- a. The Assessor made a major error valuing the property between 2015 and 2016 by increasing the assessed value from \$20,300 to \$279,200, which she corrected. The Assessor recommends the value revert to the 2015 value of \$20,300. *James's testimony.*

8. Nowacki's case:

- a. Nowacki argues that the Assessor should have valued the property at \$13,200.<sup>1</sup> This is a seven-acre property in the airport development zone which was used as a sanitary landfill previously known as the J-Pit. Prior owners illegally dumped various materials there and the State closed it. It is now a federal Superfund site and a revenue stream for grant money from the federal government to be processed through the city's environmental department. *Nowacki testimony.*

- b. Nowacki contends that although the Assessor did not properly identify it on the property record card, a large part of the parcel consists of a wetlands area with permanent standing water. The property also has a steep slope which is not wetlands. The Assessor does not take into consideration that this is a totally inaccessible and unusable pit. *Nowacki testimony; Pet'r Exs. A-C.*

- c. When he bought the property in 2011 for \$25, the assessed value was too high. Then from 2011 to 2014, its assessed value increased from \$17,000 to \$20,000. Then it jumped to \$279,000. Nowacki contends that the township assessor, the county assessor and the PTABOA see no problem with these drastic increases, reflecting gross incompetence. *Nowacki testimony; Pet'r Ex. C.*

- d. The dramatically fluctuating value of the property's improvements over time, also reflect its inaccuracy. The Assessor valued the property's improvements at \$1,600 in 2011. Then she changed it to \$1,400 in 2012, \$2,600 in 2013, \$2,800 in 2014, \$3,000 in 2015 and, finally, \$500 for 2016 through 2019. In 2020, it increased again to

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<sup>1</sup> On the Form 131 appeal form, Nowacki requested a value of \$17,100. At the hearing, he requested the lower value of \$13,200.

\$3,000. There is no logical explanation for these drastic changes. *Nowacki testimony; Pet'r Exs. B and C.*

- e. While the Assessor states that the assessed value should be reduced to the 2015 amount, her best effort is to roll it back--not correct it, just roll it back. Even that would not have happened if Nowacki had not gone through this torturous process with the township assessor, the PTABOA and now the State. The value should be \$13,200. *Nowacki testimony.*

#### ANALYSIS


9. The Assessor agreed the assessed value should be lowered to the 2015 value. Nowacki failed to make a prima facie case for a further reduction. 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); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2, 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5(a); Ind. Code § 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. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *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). Taxpayers may use sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id. See also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Regardless of the type of valuation evidence used, a party must also 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 date for this appeal is January 1, 2016. Ind. Code § 6-1.1-2-1.5(a).
  - c. The Assessor had the burden of proof. She agreed that the property's assessed value should revert to the 2015 value of \$20,300. This does not, however, end the Board's inquiry because Nowacki argued that the Board should further decrease it to \$13,200.

- d. While Nowacki contends the assessment should be \$13,200 he failed to present any probative market-based evidence to support that value. Statements unsupported by probative evidence are conclusory and provide no helpful information 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 contends that the assessed value of the land is too high because part of it consists of wetland areas and the remainder is a steep slope. In making such a claim, however, Nowacki needed to submit probative evidence that (1) identified his land's deviation from the norm and (2) quantified the impact of that deviation on the land's value. *Kooshtard Property VIII v. Shelby Co. Assessor*, 902 N.E.2d 913, 916 (Ind. Tax Ct. 2009).
- f. Here, while Nowacki argued that part of the land was a wetland area, he submitted no probative evidence to prove how this impacted the property's value. His contention that the property is worth \$13,200 is merely a conclusion that is not supported by probative evidence. See *Whitley*, 704 N.E.2d 1113, 1118. Such unsupported conclusions do not sufficiently prove that an assessment change must be made. *Id.* Further, Nowacki failed to show that the "unusable undeveloped" land classification did not adequately account for the property's unusable and undeveloped land.
- g. Moreover, even if Nowacki had shown that the Assessor erred by failing to adjust his land value for the wetlands and the slope, he failed to show the assessment did not accurately reflect the market value of the property. His arguments go solely to the methodology used by the Assessor. Even if the Assessor made errors, simply attacking their methodology is insufficient. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*
- h. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2016, he failed to make a case for a lower assessment.

#### FINAL DETERMINATION

The Assessor accepted the burden of proof and requested that the Board decrease the 2016 assessment to the 2015 level of \$20,300. Nowacki sought an even lower value but failed to make a case for a further reduction. The Board orders the assessed value be changed to \$20,300 to reflect the value from the prior year.

ISSUED: \_\_\_\_\_

  
Chairman, Indiana Board of Tax Review

  
Commissioner, Indiana Board of Tax Review

  
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>>.