

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

**Petition:** 45-003-13-1-5-00278-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-354-011.000-003  
**Assessment Year:** 2013

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 assessment of his property located at 4403 W. 28<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$3,400.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On May 20, 2019, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by its Hearing Officers Robert Metz and Joseph E. James. They all were sworn as witnesses.

**RECORD**

4. The official record contains the following:

|                       |  |
|-----------------------|--|
| Petitioner Exhibit A: | Property record card (“PRC”) for 2014-2018 |
| Petitioner Exhibit B: | Property record card for 2008-2015         |
| Petitioner Exhibit C: | GIS map of the subject parcel              |
| Respondent Exhibits:  | None                                       |
5. The official record for this matter also includes (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.

## 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. The assessed value of this property did not change from 2012 to 2013. Nowacki bears the burden of proof in this appeal.

## SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. When Nowacki purchased the property in 2009 the assessed value was \$3,400. Since that time, he has been appealing the assessed value. The value has since declined to the current assessed value of \$2,800, only \$400 more than his target value of \$2,400. *Nowacki testimony; Pet'r Exs. A & B.*
  - b. According to Nowacki, an assessed valuation within 10% of \$2,400 would be acceptable. Even if he could get the current value of \$2,800 for 2013, it would be close enough. *Nowacki testimony.*
  - c. Nowacki contends the actual value of the property did not change from the 2013 over-assessed value of \$3,400 to the current over-assessed value of \$2,800. In fact, the market never supported either of these values. *Nowacki testimony.*
  - d. The neighborhood is largely abandoned, vacant, over-grown, and low-lying. These conditions and the excessive over-assessments are the reasons owners abandon their properties and investors have little interest in acquiring them. *Nowacki testimony.*
9. The Assessor recommends no change to the assessment.

## ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the 2013 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). 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.*
- c. Nowacki failed to present any probative market-based evidence to support a value of \$2,400. 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. 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 2013 assessment of this property.

ISSUED: July 30, 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>>.