

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

**Petitions:** 45-003-13-1-5-01199-16  
45-003-14-1-5-01181-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel** 45-07-13-478-008.000-003  
**Assessment Years:** 2013 & 2014

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

**PROCEDURAL HISTORY**

1. Mr. Nowacki contested the 2013 and 2014 assessments of his property located at 4833 West 27<sup>th</sup> Place in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential property at \$2,200 for 2013 and \$1,400 for 2014.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On December 14, 2020, 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  
Petitioner Exhibit B: Property Record Card (2010-2014)  
Petitioner Exhibit C: Property Record Card (2015-2019)
  - 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 or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The Assessor conceded that the 2013 assessment should be \$1,400. To the extent that Nowacki requests a lower value, the burden of proof is on him. Because there is no increase from 2013 to 2014, Nowacki bears the burden of proof for 2014.

## SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. Nowacki contends that the property record card is inaccurate. There are no roads, no utilities, and no improvements. All the properties in the subdivision look exactly the same, just a mottled texture of trees and vegetation. By contrast, the subdivision across the street shows the same characteristics on the property record cards but more accurately reflects the parcels. There are actually roads, utilities, and improvements there. *Nowacki testimony; Pet'r Exs. A-C.*
  - b. The properties in the subdivision across the street are also better than his, but the base rate of those parcels is approximately half of the base rate for his. Yet those properties are in the same geographic area as his vacant lot. Indiana law does not allow for more than a 20% variance in neighborhood base rates without an explanation, which is missing here. *Nowacki testimony.*
  - c. Nowacki contends that while taxpayers are expected to bring evidence to their hearings, the data they need, including the neighborhood maps and base rates, are unavailable. He had to file a public record request to obtain the rates. This is in violation of Indiana law, which says this information is supposed to be available. *Nowacki testimony.*
  - d. He has appealed the assessed value since he purchased it in 2009. Although no changes were made as a result of his appeals, the assessed value did decrease. It went from \$3,600 in 2010 down to \$2,200 in 2012. It is now valued at \$1,200, one-third its original value, but nothing about the property has changed in that time. *Nowacki testimony; Pet'r Exs. B & C.*

8. The Assessor's case:
  - a. The Assessor recommends that the Board change the value to \$1,400 for 2013 and make no change for 2014. *James testimony.*

#### ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2013 and 2014 assessments. We accept the Assessor's concession that the 2013 assessment should be \$1,400. 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." 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 cost or 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.* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). The party must offer relevant market-based evidence. March 1 is the legal assessment date for 2013 and 2014. Ind. Code § 6-1.1-2-1.5(a).
  - c. Nowacki contends the assessment should be \$500 for 2013 but 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. Nowacki also claims his property's base rate is double the rate of an adjacent subdivision. We interpret this argument as a challenge to the uniformity and equality of his assessment. The Tax Court has previously held that when taxpayers challenge the uniformity and equality of their assessment, one approach they may adopt involves the presentation of assessment ratio studies which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data,

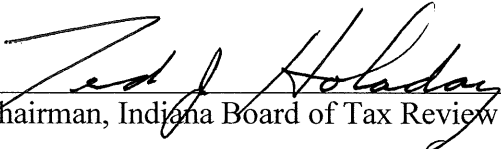
such as sales prices or market value-in-use appraisals. *Westfield Golf Practice Ctr, LLC v. Wash. Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007).

- e. Such studies must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 643 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed).
- f. While Nowacki contends his assessment is too high compared to properties in an adjacent subdivision, he presented no evidence showing the base rate in the purportedly comparable subdivision nor did he present any evidence showing the adjacent subdivision was comparable to the subject property. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 at 470 (Ind. Tax Ct. 2005).
- g. We also give no weight to his claims regarding the property's decreasing assessed value. The decrease to the property's assessed value first in 2012 and then in 2016 do not prove that the 2013 assessment was 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. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- h. While Nowacki contends the characteristics on the property record card are not accurate, he did not show how any changes to it would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of an error in the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d at 678 (Ind. Tax Ct. 2006).
- i. Nowacki failed to make a prima facie case for decreasing the 2013 assessed value although the Assessor recommended that it be changed to \$1,400. The Board accepts the Assessor's concession.
- j. The burden of proof was on Nowacki for 2014. He offered the same evidence and arguments for 2014 and similarly failed to prove the assessed value was incorrect for that year.

**FINAL DETERMINATION**

We accept the Assessor's recommendation that the 2013 assessed value be changed to \$1,400 and order no change to the 2014 assessed value.

ISSUED: 3-12-21

  
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>>.