

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

**Petition No.:** 45-003-17-1-5-00392-19  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-304-016.000-003  
**Assessment Year:** 2017

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. James Nowacki appealed the 2017 assessment of an unimproved parcel located at 4442 West 26<sup>th</sup> Place in Gary, Indiana.
2. On February 20, 2019, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the assessment at \$3,000.
3. Nowacki timely appealed to the Board, electing to proceed under our small claims procedures. On October 3, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. Neither the Board nor the ALJ inspected the property.
4. Nowacki appeared *pro se*. Lake County Hearing Officer Robert Metz appeared for the Assessor. Both were sworn.

**Record**

5. The official record for this matter is made up of the following:
  - a) Exhibits:

Petitioner Exhibit A: Subject property record card page 1 (2017-2021),  
Petitioner Exhibit B: GIS map,  
Petitioner Exhibit C: Parcel identification information,  
Petitioner Exhibit D: Subject property’s valuation history,<sup>1</sup>

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<sup>1</sup> Petitioner Exhibits E, F and G were emailed to the Indiana Board of Tax Review on Sunday, October 2, 2022, but Nowacki failed to provide copies of the exhibits at the hearing. Nowacki testified that he did not have a printer to print out the exhibits. As noted in the hearing instructions that he received, it was Nowacki’s responsibility to provide copies for both the Board and the opposing party. Despite this failure, the Assessor did not object to the exhibits when asked, for that reason, we include them in the record.

- Petitioner Exhibit E: Three appraisal reports prepared by Steven Kovachevich of Kovachevich & Co., Inc. for 2517-2521 Washington Street, 1109 Oklahoma Street and 739-29 West 35<sup>th</sup> Avenue,
- Petitioner Exhibit F: City of Gary Redevelopment Commission Cover Page, Notice to Bidders: Request for Proposals, Instructions to Bidders, Proposal Form, Offering Sheet – Lake Sandy Jo Scattered Sites, Sealed Bid – Invitation to Bid – Lake Sandy Jo and scattered sites, RFP area map, Exhibit B – Transmittal Letter, Exhibit C – Non-Collusion Affidavit, Exhibit D – No Default or Breach and Exhibit E – No Bankruptcy,
- Petitioner Exhibit G: Procedure for Appeal of Assessment.<sup>2</sup>

- b) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

### **Findings of Fact**

6. The subject property is an unimproved parcel of approximately .16 acres. On May 22, 2009, Nowacki purchased the property for \$113. *Pet'r Ex. A.*

### **Contentions**

7. Summary of the Petitioner's case:
- a) Nowacki contended that the county's "land order" for the years 2014 through 2017 was submitted on June 27, 2018, which was four years late. For this reason, he claimed the county failed to meet the requirements of Indiana Code § 6-1.1-4-13.6. Nowacki acknowledged that according to the Real Property Assessment Manual ("Manual"), an assessment determined by an assessing official in accordance with the Manual shall be presumed correct. But he argued that because the land order was late the land values "could be considered suspect without it being applied according to the Manual." *Nowacki testimony.*
- b) Nowacki contended the subject parcel is assessed higher than its market value. In support of this, he offered the City of Gary Redevelopment Commission – Notice to Bidders: Request for Proposals for several properties located at Lake Sandy Jo. He stated the properties are similar to the subject in that they are north of the expressway, inaccessible, similar in size and condition. *Nowacki testimony; Pet'r Exs. B & F.*
- c) Nowacki claims the City of Gary Redevelopment Commission offered for sale 137 parcels along with an additional 35-acre parcel for a minimum bid of \$275,000.

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<sup>2</sup> The Respondent did not submit any exhibits into the record.

Nowacki calculated the value per parcel by subtracting the value of the “large Sandy Jo properties” from the \$275,000 and then divided the remaining “offer” by the “number of parcels” which comes to a value of \$1,500 per parcel, which is “\$200 less” than his requested value of \$1,700 on the subject property. *Nowacki testimony; Pet’r Ex. F.*

- d) Nowacki testified that the Lake County Assessor’s office hired Steven Kovachevich of Kovachevich & Co., Inc. to analyze the value of vacant residential lots in Calumet Township, which he referred to as the “Blue Ribbon Panel.” Nowacki submitted three appraisals from this analysis for 2517-2521 Washington Street, 1109 Oklahoma Street and 739-29 West 35<sup>th</sup> Avenue. Nowacki argues that the appraisals show the Assessor is assessing vacant residential lots in Calumet Township “multiple times” higher than their appraised values. *Nowacki testimony; Pet’r Ex. E.*
- e) Finally, Nowacki argued that his 2009 purchase of the subject property for \$113 indicated that the subject property’s assessment was too high, though he admitted he did not believe the \$113 represented its “actual” market value. *Nowacki testimony; Pet’r Ex. A.*

8. Summary of the Respondent’s case:

- a) The Assessor argued that Nowacki did not present any substantial evidence to support his requested assessment of \$1,700. The Assessor requested no change in the assessment. *Metz testimony.*

**Analysis**

9. The Petitioner failed to make a prima facie case for reducing the property’s 2017 assessment.

- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass’r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
- b) 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.<sup>3</sup> 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 rules of the Department of Local Government Finance (“DLGF”). Ind. Code § 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-

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<sup>3</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).

use of a property for its current use, as reflected by the utility received by the owner or by a similar user, form the property.” MANUAL at 2.

- c) 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. *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, sales or assessment information for 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).
- d) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (In. Tax Ct. 2005). For the 2017 assessment, the valuation date was January 1, 2017. See I.C. § 6-1.1-2-1.5(a).
- e) Nowacki argued that the 2017 assessment should be \$1,700, 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). To successfully make a case for lowering an assessment, taxpayers must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Eckerling*, 841 N.E.2d at 674, 678.
- f) Nowacki testified about several properties that were offered for sale by the City of Gary as well as three appraisals of vacant lots in Calumet Township. A party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable properties are comparable to the property under appeal. See *Long*, 821 N.E.2d at 470-71. Conclusory statements that properties are “similar” or “comparable” do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. They must similarly explain how those relevant differences affect values. *Id.* Nowacki did not meaningfully explain the differences between the purportedly comparable properties and the subject property, nor did he offer any reliable evidence quantifying the effect those differences had on the respective values. Without such an analysis, this evidence is insufficient to support any reduction in value.
- g) We also note that Nowacki’s purchase of the subject property in 2009, for \$113 is also insufficient evidence of value. The sale occurred eight years prior to the January 1, 2017, valuation date, and he offered no evidence to relate the sale price back to that date as required by *Long*.

- h) Finally, Nowacki claims that a deficient land order led to properties being assessed incorrectly, but he offered no evidence to support that claim. In addition, he failed to show why that claim, even if true, it would relieve him of his burden of offering market-based evidence to show his property's 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 it property's market value-in-use. *Piotrowski*, 177 N.E.3d at 132.
- i) Where the Petitioner has not supported its 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 and conclusions, the Board orders no change to the subject property's 2017 assessment.

ISSUED: 12/30/2022

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Chairman, Indiana Board of Tax Review

Betsy J. Brand  
Commissioner, Indiana Board of Tax Review

Timothy Schultz  
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>>