

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

**Petitions:** 45-004-11-1-5-00221-16  
45-004-13-1-5-00232-16  
45-004-15-1-5-01822-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-05-32-328-002.000-004  
**Assessment Years:** 2011, 2013 & 2015

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

**PROCEDURAL HISTORY**

1. James Nowacki contested the 2011, 2013, and 2015 assessments of his vacant lot located at 6909 Hemlock Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the lot at \$15,400 for each year.
2. Nowacki filed Form 131 petitions with us and elected to proceed under our small claims procedures. On March 11, 2019, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by hearing officers Robert W. Metz and Joseph James. All three were sworn in and testified.

**RECORD**

4. The official record contains the following:

Petitioner Exhibit A:	Property record card for 2009-2013
Petitioner Exhibit B:	Property record card for 2013-2016
Petitioner Exhibit C:	Property record card for 2014-2018
Petitioner Exhibit D:	Aerial map of the subject property
5. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

## 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. Ind. Code § 6-1.1-15-17.2(b), (d).
7. The subject lot's assessment decreased from 2010 to 2011 and it remained the same from 2012 through 2015. Nowacki therefore bears the burden of proof for each year under appeal.

## SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. Nowacki contends the lot is worth only \$5,000. It is on a "paper" street in an area of the subdivision overlooked by builders. *Nowacki testimony*.
  - b. Contrary to what the property record cards indicate, Nowacki did not buy the lot in 1969. He bought it at an auction, although he did not say when the auction occurred. He does not remember the price he paid, but it was probably only a couple of hundred dollars. He agrees the lot is worth more than that. Capable and eligible bidders attend auctions for lots like the subject lot. But there is little interest, even at minimum bid amounts, because people do not want properties that are assessed for so much more than they are worth. *Nowacki testimony; Pet'r Exs. A-C*.
  - c. According to Nowacki, comparing the subject lot's size to the size of other lots he has appealed shows that its assessment is excessive. The properties he has appealed are not assessed consistently. *Nowacki testimony; Pet'r Exs. A-C*
9. The Assessor's case:
  - a. Nowacki offered no market-based evidence to support his requested value. The Assessor therefore argues that the assessment should remain the same. *James argument*.

## ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the subject lot's assessment for any of the years at issue. We reach this conclusion 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) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the 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). For each assessment year under appeal, the valuation date was March 1 of that year.
- c. Nowacki contends the lot should be assessed at \$5,000 for each year under appeal. But he failed to offer any probative market-based evidence to support that value. Although he testified that he bought the lot at auction, he did not say when the sale occurred (and therefore did not relate it to the relevant valuation dates), and he could not remember the amount he bid. In any case, he acknowledges that the lot is worth more than what he paid for it.
- d. Nowacki also argues that the subject lot’s assessment was excessive when compared to the assessments for other lots he has appealed. A taxpayer may offer evidence of comparable properties’ assessments to show the market value-in-use of a property under appeal. I.C. § 6-1.1-15-18. But “the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices.” I.C. § 6-1.1-15-18(c). Nowacki did not apply generally accepted appraisal or assessment practices. He did nothing to compare the two lots, other than to baldly assert that they were similarly sized. *See Long* 821 N.E.2d at 471 (holding that taxpayers needed to explain how any relevant differences between their property and purportedly comparable properties affected values).
- e. Finally, Nowacki claims there are errors on the subject lot’s property record card, specifically concerning the year he bought the lot. But simply pointing out an error is insufficient to rebut the presumption that an assessment is correct. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, taxpayers must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*

- f. Because Nowacki offered no probative evidence to demonstrate the subject lot's market value-in-use, he failed to make a prima facie case for lowering its assessment.

**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 subject property's 2011, 2013 and 2015 assessments.

ISSUED: June 10, 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>>.