

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

**Petitions:** 45-004-12-1-5-01507-16  
45-004-13-1-5-00305-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-27-404-003.000-004  
**Assessment Years:** 2012, 2013

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2012 and 2013 assessments of his property located at 1113-17 E. 41<sup>st</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential lot at \$3,900 for 2012 and \$13,200 for 2013.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On October 21, 2019, 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 of the subject parcel  
Petitioner Exhibit B: GIS map of the subject parcel  
Petitioner Exhibit C: Property record card for 2014-2018  
Petitioner Exhibit D: Property record card for 2011-2013
  - 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 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).
6. Here, the property's assessment decreased from 2011 to 2012. Nowacki therefore bears the burden of proof for 2012. Regardless of the outcome of the 2012 appeal, the property's assessment will have increased more than 5% from 2012 to 2013. The Assessor therefore has the burden of proof for 2013.

## SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. Since Nowacki acquired the subject property, he has been appealing its assessment. The issues and problems have been mitigated to a degree in past years, but the assessments have not been fair or accurate from 2012 to the present. When Nowacki acquired the property in 2011, it was assessed at almost \$5,000. It is currently down to \$3,800, but that is still not correct. Nowacki believes the property is worth \$1,500. *Nowacki testimony; Pet'r Exs. C, D.*
  - b. This property has churned through the system for 30 years. It has come up for auction repeatedly during that time. The Assessor claims it is worth \$5,000 but the market does not even value it at a nominal amount. At an auction attended by hundreds of eligible and able buyers, no one was interested in purchasing it because of the over-assessment. Nowacki acquired it for a nominal bid of \$125. *Nowacki testimony; Pet'r Exs. C, D.*
  - c. Properties have to be assessed at fair market value. This will start a base for investment. People will not look at properties that are over-assessed. The over-assessment of property creates a toxic environment. This affects not only the properties that are lost at the tax sale but also properties down the street. The over-assessment inhibits investment and development in the city. It creates a culture where illegal, corrupt, and fraudulent activities can occur. *Nowacki testimony.*
8. The Assessor's case:
  - a. The Assessor recommends no change to the 2012 assessment of \$3,900. And he recommends the Board reduce the 2013 assessment to \$3,900. *James testimony.*

## ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2012 assessment. As for 2013, the Assessor conceded that we should reduce the property's assessment to \$3,900. Nowacki sought a further reduction for 2013, but he failed to make a prima facie case supporting his requested value. 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) (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 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.* For 2012 and 2013, the valuation dates were March 1, 2012 and March 1, 2013, respectively. Ind. Code § 6-1.1-2-1.5(a).

### 2012 Assessment

- c. Nowacki contends the 2012 assessment should be \$1,500, 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).
- d. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use, he failed to make a prima facie case for lowering his 2012 assessment. 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).

2013 Assessment

- e. As discussed above, the Assessor has the burden for 2013. He conceded we should reduce the assessment to \$3,900.
- f. Although Nowacki requested an assessment below \$3,900, he relied on the same arguments and evidence he presented for the 2012 appeal. We therefore reach the same conclusion—he failed to make a prima facie case for a further reduction.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we order no change to the 2012 assessment and order the 2013 assessment reduced to \$3,900.

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

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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>>.