

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

**Petition:** 45-004-16-1-5-00446-17  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-16-427-036.000-004  
**Assessment Year:** 2016

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2016 assessment of his property located at 2584 Adams Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the residential property at \$2,700.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On February 22, 2021, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by hearing officer Robert Metz. 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 (2012-2016)<sup>1</sup>  
Petitioner Exhibit C: Property Record Card (2018-2020)
  - b. The record for the matter 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.

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<sup>1</sup> The property record card is incorrect for 2016 with a value of \$6,700 and reflects the value before the PTABOA lowered it to \$2,700.

### 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 decreased from 2015 to 2016. Nowacki therefore bears the burden of proof.

### SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. Nowacki argued that the subject property is an unbuildable lot, and the assessed value should therefore be lowered from \$2,700 to \$900. The lot size is 25 feet by 125 feet, which is slightly smaller than most. The GIS map shows the condition of the property's improvement, a structure which is a heap of rubble with overgrown weeds surrounding it. It defies rational thought that a collapsing structure, in an area with little to no market value, would have positive worth. *Nowacki testimony; Pet'r Exs. A-C.*
  - b. Nowacki acquired the property at auction for \$25, but the Assessor valued it previously at \$6,000. Properties are valued at multiple times their actual value in Calumet Township. This is in direct violation of Indiana law requiring that property must be valued at market rates. *Nowacki testimony; Pet'r Exs. B and C.*
  - c. While the lot's land value for 2016 was \$700 and the improvement was valued at \$2,000, in 2020, the land value increased to \$1,500 and the improvement decreased to \$1,200. This change shows that the land value fluctuates based on the value given to the improvement. This is an incorrect method of assessing property. Nowacki contended that the township valued property this way after U.S. Steel won its appeal back in 2009 or 2010. He argued that the township lost assessed valuation at U.S. Steel, so they raised everybody else's assessment. This destroyed the city and created a crisis that required the state government to step in. *Nowacki testimony; Pet'r Exs. B and C.*
  - d. He agrees with the Assessor that \$700 is a fair value for the land, but he contests the improvement's assessed value. Nowacki would accept \$200 for the improvement, which is actually only rubble, to bring the total value to his proposed \$900. *Nowacki testimony.*

8. The Assessor's case:
- a. The property record card shows that in April 2018 the improvement was a burnt-out structure valued at \$2,000. The Assessor testified that sometimes property is assessed at a higher value to motivate the owner to clean up the rubble, and to bring the City of Gary back to its glory days of yesteryear. *Metz testimony; Pet'r Exs. B and C.*
  - b. There is no proof that the structure was merely rubble in 2013, 2014, or 2015, and when the Assessor's Office conducted an on-site visit, they reduced the assessed value for the structure accordingly, so it is accurate. The Assessor recommends no change to the 2016 assessed value. *Metz testimony.*

#### ANALYSIS

9. Nowacki failed to make a prima facie case for a reduction in the assessed 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." 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 but 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. January 1 is the assessment date for 2016. Ind. Code § 6-1.1-2-1.5(a).
  - c. While Nowacki contends the assessed value should be \$900 for land only and zero for improvements, 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. We disagree with Nowacki's assertion that his \$25 purchase price reflects the subject property's correct value for 2016. The purchase price can be the best evidence of a property's value, but Nowacki failed to provide any support that the sale price related to the assessment date under appeal or that the transaction was one typical of an arms-length sale. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Thus, the purchase price is not probative evidence of the property's market value-in-use.
- e. Nowacki contends that the fluctuating property values prove that the property is not valued at market. The Tax Court has explained that 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).
- f. Nowacki failed to make a prima facie case for changing the assessed value. Normally, 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 Industries. v. Department of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). But we cannot ignore the admission by the Assessor that the value of the improvements was based on a sound value<sup>2</sup> estimate intended to "motivate" owners to clean up the rubble rather than assess its true tax value. This admission rebuts the presumption of correctness, and the Assessor has failed to prove the value of the improvements. Because Nowacki has admitted the improvements have a value of \$200, the Board finds the subject property should be valued at \$700 for the land and \$200 for the improvements for a total of \$900.

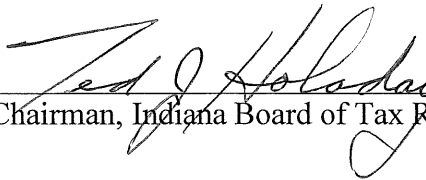
#### FINAL DETERMINATION

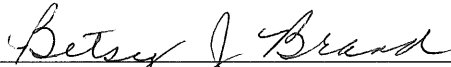
In accordance with the above findings of fact and conclusions of law, we find for Mr. Nowacki and order the assessed value for 2016 changed to \$900.

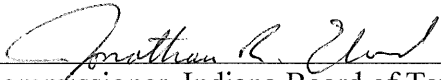
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<sup>2</sup> "Sound value" is defined in the 2011 Real Property Guidelines Glossary on p. 21.

ISSUED: 5-14-21

  
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>.