

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

**Petition:** 45-004-17-1-5-00279-19  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-09-235-009.000-004  
**Assessment Year:** 2017

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

**Procedural History**

1. James Nowacki contested the 2017 assessment of his property located at 1110 Pyramid Drive in Gary. The Lake County Property Tax Assessment Board of Appeals issued a Form 115 determination valuing the vacant platted lot at \$7,500.
2. Nowacki then filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On December 6, 2021, our designated administrative law judge, Joseph Stanford (“ALJ”), held a hearing on Nowacki’s petition. Neither he nor the Board inspected the property.
3. Nowacki represented himself. Lake County Hearing Officer Robert Metz appeared for the Assessor. Both testified under oath.

**Record**

4. The official record for this matter includes the following:
  - Petitioner Exhibit A: Two GIS maps,
  - Petitioner Exhibit B: Property record card (2014-2017),
  - Petitioner Exhibit C: Property record card (2016-2020).
5. The record also includes: (1) all petitions and other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

**Contentions**

**A. The Assessor’s Contentions**

6. The Assessor concedes that the assessment should be reduced to \$4,900. Metz acknowledged that Nowacki prevailed in his 2016 assessment appeal, which resulted in a decrease from \$7,500 to \$4,900. Metz believes that the \$7,500 assessment for 2017 may

have stemmed from an error by the Calumet Township Assessor in entering data. *Metz testimony*.

## **B. Nowacki's Contentions**

7. Nowacki characterized the purported data-entry error as a "miscarriage" and a "looming disaster." Specifically, Nowacki believes the Assessor purposely ignored our 2016 determination reducing the assessment to \$4,900 and reverted it back to \$7,500 in 2017 through "malicious intent." Nowacki claims this practice is typical for Lake County assessing officials, and that it violates both statutory and constitutional requirements that property be assessed at market value. Further, Nowacki contends that the practice requires taxpayers to repeatedly appeal assessments for the same property. Nowacki argues that the Assessor could have corrected the error long ago, not only for the 2017 assessment but for 2018-2021 as well. *Nowacki argument and testimony; Pet'r Exs. B-C*.
8. Nowacki paid \$484 for the property in 2009 at a commissioner's "certificate sale" auction. While it is a buildable lot, it is located directly behind a dilapidated vacant building. Vacant properties surround the subject property, including a lot where damaged vehicles are parked. Nowacki believes the subject property's market value is \$2,400. *Nowacki testimony; Pet'r Exs. A-B*.

## **Analysis**

9. 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 identifies two circumstances under which an assessor has the burden of proving the assessment is "correct": 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(a)-(b), (d). If the assessor fails to meet that burden, the burden shifts to the taxpayer to prove the correct assessment value. If neither party meets its burden, the assessment reverts to the prior year's level. I.C. § 6-1.1-15-17.2(b); *Southlake Ind., LLC v. Lake Cnty. Ass'r*, 174 N.E.3d 177, 179 (Ind. 2021).
10. The Assessor conceded both that she had the burden of proof and that the assessment should revert to the previous year's level of \$4,900. Our inquiry does not end there, however, as Nowacki requested an assessment of \$2,400. We must therefore determine whether Nowacki met his burden of showing that his proffered assessment was correct.
11. 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>1</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

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<sup>1</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).

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.

12. 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. *See 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); *see also, I.C. § 6-1.1-15-18* (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use). Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2017 assessments, the valuation date was January 1, 2017. *See I.C. § 6-1.1-2-1.5(a)*.
13. Nowacki failed to present any probative market-based evidence to support his proffered assessment of \$2,400. Statements that are unsupported by probative evidence are conclusory and of no value to us in making our 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 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.” *Eckerling* 841 N.E.2d at 674, 678.
14. To the extent Nowacki relies on his 2009 purchase price, we give that evidence no weight. Nowacki bought the property nearly eight years before the January 1, 2017 valuation date, and he offered no evidence to relate his purchase price to that date, much less to show that his proffered assessment of \$2,400 was correct.
15. Finally, Nowacki argues that our determinations for 2016 and 2017 should carry through to later years. But those later years are not before us in this appeal. 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, 588 (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). That said, the Assessor may have the burden of proof in Nowacki’s appeals of those later assessments.

### **Conclusion**

16. Neither party met their burden of proof under Ind. Code § 6-1.1-15-17.2. We therefore order that the property’s 2017 assessment be reduced to the prior year’s level of \$4,900.

Date: 2/7/2022

Jonathan R. Elert  
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>>.