

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

**Petition:** 45-004-17-1-5-00280-19  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-09-235-002.000-004  
**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 parcel located at 1181 Pyramid Drive in Gary. The Lake County Property Tax Assessment Board of Appeals issued a Form 115 determination valuing the vacant platted lot at \$7,200.
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 parcel.
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 \$4,000. Metz acknowledged that Nowacki prevailed in his 2016 assessment appeal, which lowered the subject parcel’s assessment from \$7,200 to \$4,000. *Metz testimony.*

## B. Nowacki's Contentions

7. The subject parcel is adjacent to another parcel Nowacki owns, which is located at 1110 Pyramid Drive. While Nowacki acknowledged that no two properties are identical, the adjacent parcel is only 169 square feet larger than the subject parcel.<sup>1</sup> From a "marketability standpoint," the two properties "would be considered identical." However, the adjacent parcel's assessment is \$4,900, while the subject's assessment is only \$4,000. This shows a lack of uniformity and accuracy in assessments. *Nowacki argument and testimony; Pet'r Exs. A-C.*
8. Nowacki paid \$484<sup>2</sup> for the parcel in 2009. But he is willing to accept an assessment of \$2,400, which is five times the amount he paid. *Nowacki testimony; Pet'r Exs. B-C.*
9. Nowacki expressed general frustration with the appeal process. He contends that properties are generally over-assessed and that assessing officials refuse to correct errors. As to the subject parcel, he argues that the "error" in the assessment could have been corrected before our hearing, and the parcel's 2018-2021 assessments, which are set at \$7,200, could also be corrected. Instead, he will have to waste time prosecuting appeals for those years. *Nowacki argument; Pet'r Ex. C.*

### Analysis

10. 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).
11. The Assessor conceded both that she had the burden of proof and that the assessment should revert to the previous year's level of \$4,000. 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.
12. 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

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<sup>1</sup> The subject parcel measures 50' x 118' while the adjacent parcel measures 51' x 119'. *Nowacki testimony; Pet'r Ex. B.*

<sup>2</sup> Nowacki testified that he bought the parcel for \$482, but the property record card indicates that he paid \$484.

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”). 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.

13. 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).
14. Nowacki contends that subject parcel's 2017 assessment should be \$2,400. 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 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.
15. Although Nowacki testified that he bought the subject parcel for \$482 in 2009, that sale price has no probative weight. The sale occurred more than seven years before the relevant valuation date, and Nowacki offered no evidence to relate the sale price to a value as of that valuation date. Indeed, he did even not show that the sale price was a reliable indication of the parcel's market value-in-use on the sale date.
16. In addition, Nowacki claims a lack of uniformity and equality in assessments. Unlike the issue of valuation, where Ind. Code § 6-1.1-15-17.2 shifted the burden to the Assessor to prove that the assessment was correct, Nowacki had the burden of proving an actionable lack of uniformity and equality. *See Thorsness v. Porter Cnty. Ass'r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (explaining that the predecessor to Ind. Code § 6-1.1-15-17.2 did not apply to claims based on a lack of uniformity and equality).

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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).


17. As the Tax Court has explained, “[o]ne way to measure uniformity and equality in property assessment is through an assessment ratio study.” *Id.* at 51. Such a study “compare[s] the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals.” *Id.* (citation omitted). Where a ratio study shows an actionable lack of uniformity, a taxpayer may be entitled to an equalization adjustment bringing its assessment to the common level shown by the study. *Id.* In providing guidance about how to compile and evaluate the data necessary for a ratio study, the DLGF has incorporated the International Association of Assessing Officers’ (“IAAO”) Standard on Ratio Studies (July 2007). *See* 50 IAC 27-1-4 (2010); 50 IAC 27-4-5(a) (2010); *see also*, *Thorsness*, 3 N.E.2d at 53-54 (citing to predecessor to 50 IAC 27-1-4).
18. In *Thorsness*, the taxpayer offered evidence showing that while his property was assessed at 99.9% of its sale price, six other properties in his subdivision were assessed at an average of 79.5% of their recent sale prices. *Thorsness*, 3 N.E.3d at 50. At the administrative level, we rejected the taxpayer’s claim on grounds that it neither conformed to professionally accepted standards, nor was based on a statistically reliable sample of properties. *Id.* Although the Tax Court recognized that the taxpayer’s evidence was relevant, it affirmed our conclusion that the evidence lacked probative value to show that his assessment exceeded the common level of assessment for the township. *Id.* at 54.
19. Nowacki did not make an actionable claim for an equalization adjustment based on a lack of uniformity or equality. He failed to show that his analysis complied with the IAAO Standard or that it was based on a statistically reliable representative sample. Indeed, Nowacki’s evidence was even less probative than the evidence offered by the taxpayer in *Thorsness*. Nowacki offered information for only one parcel other than the subject parcel, and he did not show the actual market value-in-use of either parcel. *See Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass’r*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting a claim of lack of uniformity and equality where taxpayer failed to show the market value-in-use of its property or any of the comparable properties on which it based its claim).

### **Conclusion**

20. Neither party met their burden of proof under Ind. Code § 6-1.1-15-17.2. We therefore order that the subject parcel’s 2017 assessment be reduced to the prior year’s level of \$4,000.

Date: 2/7/2022

  
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>.