

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

**Petitions:** 45-004-17-1-5-00276-19  
45-004-18-1-5-00311-21  
45-004-19-1-5-00310-21  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-11-301-002.000-003  
**Assessment Years:** 2017, 2018, and 2019

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2017, 2018, and 2019 assessments of his property located at 1619 E. 15<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the commercial property at \$14,300 (land at \$11,800 and improvements at \$2,500) for all three years.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On November 1, 2021, 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 Robert Metz. Both testified under oath.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: GIS map  
Petitioner Exhibit B: Property Record Card (2017-2019)  
Petitioner Exhibit B2: Second page of Property Record Card (2017-2019)  
Petitioner Exhibit C: Property Record Card (2018-2020)  
Petitioner Exhibit C2: Second page of Property Record Card (2018-2020)
  - 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 2016 to 2017. Nowacki therefore bears the burden of proof for 2017. The burden of proof for 2018 and 2019 will depend on the outcome for the preceding year's appeal.

## SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. The property record card shows that Nowacki purchased the subject property in 1989, which is a gross error. He probably purchased the property in 2010, 2011, or 2012. The property record cards are notoriously inaccurate. *Nowacki testimony; Pet'r Exs. B, C.*
  - b. Nowacki owns half of the parcel and half of the building. The assessment is inaccurate given the general condition of the subject property and some of the adjacent properties. The property should have an assessed value of \$6,500 for each of the three years under appeal. *Nowacki testimony; Pet'r Ex. A.*
  - c. The errors made as part of the subject property's 2019 assessment include the following:
    - The Little Calumet River Basin fees are a tax;
    - The Little Calumet River Basin fees/taxes are arbitrary and capricious;
    - The Little Calumet River Basin fees/taxes are excessive;
    - The Clean Water Act fees are a tax;
    - The Clean Water Act fees/taxes are arbitrary and capricious;
    - The Clean Water Act fees/taxes are excessive;
    - The taxes and/or assessments levied against this property are violative of Article 10, Section 1, of the Indiana Constitution as amended;
    - Taxes and/or assessments levied against this property exceed the rate allowed by the amendment to the Indiana Constitution, Article 10, Section 1;
    - The Little Calumet River Basin fees/taxes bear no relationship to the actual use of the system and, therefore, are arbitrary and capricious;

- The Clean Water Act fees/taxes bear no relationship to the actual use of the system and, therefore, are arbitrary and capricious; and
- The classification process of properties is arbitrary and capricious resulting in gross disparities in fees/taxes levied;

*Nowacki testimony.*

8. The Assessor's case:
  - a. The Little Calumet River Basin fees and the Clean Water Act fees are included on tax bills, but the Assessor is not aware that they are taxes. The parties are here to argue about assessed value, not to argue about taxes. These taxes do not have any bearing on Nowacki's assessed value. *Metz testimony.*
  - b. Nowacki has presented no substantial evidence to support his requested value, and the Assessor recommends no change. *Metz testimony.*

#### ANALYSIS

9. Nowacki failed to make a prima face case for reducing the property's assessed values for 2017, 2018, or 2019. 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); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2, 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. 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 Prop. VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Cost or sales information for the property under appeal may also be used, as well as sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id. See also* I.C. § 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). Regardless of the type of valuation evidence used, a party must also 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.* The valuation dates for these appeals are January 1, 2017, January 1, 2018, and January 1, 2019. Ind. Code § 6-1.1-2-1.5(a).

### 2017 Assessment

- c. Nowacki contends the 2017 assessment should be \$6,500, 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). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Eckerling v. Wayne Co. Ass’r*, 841 N.E.2d at 674,678 (Ind. Tax Ct. 2006).
- d. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2017, he failed to make a case for a lower assessment.

### 2018 Assessment

- e. We now turn to the 2018 assessment. Because Nowacki did not prevail on his 2017 appeal, the assessment remained unchanged from 2017 to 2018. Nowacki therefore retained the burden of proof for 2018. He offered the same evidence and arguments he presented for the 2017 appeal, and we therefore reach the same conclusion—he failed to make a prima facie case for a lower assessment.

### 2019 Assessment


- f. Turning to the 2019 assessment, because Nowacki did not prevail on his 2018 appeal, the assessment remained unchanged from 2018 to 2019. Nowacki therefore retained the burden of proof for 2019 as well. He offered the same evidence and many of the same arguments that he presented for the 2018 appeal, and we again conclude that he failed to make a prima facie case for a lower assessment with respect to those claims.
- g. Nowacki did, however, advance some additional arguments as part of his 2019 appeal. Specifically, he contends that the Little Calumet Basin fees and the Clean Water Act fees are actually taxes, and that they are excessive, arbitrary, and capricious. He further claims that they violate Article 10, Section 1 of the Indiana Constitution and exceed the rate allowed for by an amendment to that Section.
- h. In 2019, the legislature retroactively amended Indiana Code § 6-1.1-15-1.1 to clarify that a taxpayer cannot raise a claim in a property tax appeal related to: “(1) a user fee (as defined in IC 33-23-1-10.5); (2) any other charge, fee, or rate imposed by a political subdivision under any other law; or (3) any tax imposed by a political

subdivision other than a property tax.” Ind. Code § 6-1.1-15-1.1(h)<sup>1</sup>. And the Clean Water Act is a federal law. Consequently, we lack the authority to address Nowacki’s claims.<sup>2</sup>

### 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 2017, 2018, and 2019 assessments.

ISSUED: 01/20/2022

  
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>>.

<sup>1</sup>The amendment adding subsection (h) was retroactively effective on July 1, 2017. 2019 Ind. Acts 195 §1.

<sup>2</sup>Even if we had the authority, we note that Nowacki failed to offer any evidence (such as a tax bill) demonstrating that his property is in fact subject to any of the fees he is attempting to challenge.