

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

**Petition:** 45-003-17-1-5-00783-18  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-13-481-038.000-003  
**Assessment Year:** 2017

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

**PROCEDURAL HISTORY**

1. Nowacki contested the 2017 assessment of his property located at 2808 Clark Road in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$2,100.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claim procedures. On May 24, 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 Officers Joseph James and Jessica Rios. All 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 (2017-2020)  
Petitioner Exhibit C: Property Record Card (2012-2016)
  - 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 assessed value 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 did not change from 2016 to 2017. Nowacki therefore bears the burden of proof.

#### SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. The property is merely vacant land without any access to it by road or street, and thus, the assessed value is too high. It has no access to Clark Road because the frontage ceased to exist after a significant portion of it was taken for a right-of-way. There is no access to any adjacent road. *Nowacki testimony; Pet'r Ex. A.*
  - b. There would be some value to the property to speculative investors if it were part of an assemblage with other lots, but the property has no value individually. The Assessor should value the property as acreage, because the property has very little or zero value as an individual lot. *Nowacki testimony.*
  - c. The assessed value of the property goes up and down, demonstrating that the assessments are irrational. The value was \$3,400 in 2012. Then it decreased to \$1,800 for three years. It then increased to \$2,100 for 2016 and 2017. That was a significant 30% increase for those two years. The assessed value in 2020 was \$1,600. Nowacki would be willing to accept the \$1,600 value because it is close to his proposed value of \$1,500 for 2017. *Nowacki testimony; Pet'r Exs. B and C.*
8. The Assessor's case:
  - a. The Assessor recommends no change in the assessment. *James testimony.*

#### ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the property's 2017 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 assessed value reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2021 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. See also* 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). 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 date for this appeal is January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessed value 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 provide no information 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. Nowacki contends the property should be assessed as acreage. This argument goes solely to the methodology used by the Assessor. Even if the Assessor made errors, simply attacking his methodology is insufficient. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, a taxpayer must use market-based evidence to demonstrate that the requested value accurately reflects the property's true market value-in-use. *Id.*
- e. We also give no weight to his claim about the property's changing assessments. As the Tax Court has explained, each tax year and each appeal process stand alone. *Fisher v. Carroll Cnty Ass'r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessed value 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. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use, he failed to make a case for a lower assessed value. When a taxpayer has not supported his claim with probative evidence, the Assessor's duty to support the assessed value with substantial evidence is not

triggered. *Lacy Diversified Industries. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

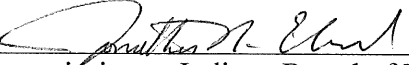
**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2017 assessed value.

ISSUED: 7-16-21

  
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>.