

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

**Petition:** 45-003-14-1-5-01141-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-13-481-004.000-003  
**Assessment Year:** 2014

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

**Procedural History**

1. Mr. Nowacki contested the 2014 assessment of his property located at 4729 West 28<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$1,400 for 2014.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On December 7, 2020, 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 Joseph E. James. 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 (2010-2014)  
Petitioner Exhibit C: Property Record Card (2015-2019)
  - 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 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 remained unchanged from 2013 to 2014. Nowacki therefore bears the burden of proof.

## Summary of Contentions

7. Nowacki's case:
  - a. Nowacki contended that there is no street, streetlight, fire hydrant, or sidewalk near his property. There are no improvements for hundreds of feet. A person would not know which side of the property was the front or the back. But this lot is assessed at 50% more than the adjacent lot. *Nowacki testimony; Pet'r Exs. A-C.*
  - b. The base rate of parcels across the street is approximately half of the base rate for the subject property. But, in that area, there is some activity. There are roads and improvements. The area where his property is located is completely vacant. The Assessor will argue that the properties are in a different neighborhood, but according to Nowacki, no one knows where the neighborhoods are because the neighborhood maps are unavailable. *Nowacki testimony; Pet'r Ex. A.*
  - c. Nowacki contends that while the valuation process should be based on requirements of Indiana law, it is not. It is based on actions taken at the township and the county levels. Nowacki argues that the system is so arbitrary that two adjacent lots in the same block are assessed at different values. *Nowacki testimony; Pet'r Ex. A.*
8. The Assessor's case:
  - a. The Assessor recommends no change for 2014. The only reason the adjacent lot was reduced was because the Form 115 showed \$900, which was an error. *James testimony.*

## ANALYSIS

9. Nowacki failed to make a case for a reducing the property's 2014 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 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. March 1 is the legal assessment date for 2014. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the assessed value should be \$500 for 2014, 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).
- d. Nowacki claims his property’s base rate is double the rate of an adjacent subdivision. We interpret and address this argument as a challenge to the uniformity and equality of his assessment. The Tax Court previously has held that when taxpayers challenge the uniformity and equality of his or her assessment, one approach they may adopt involves the presentation of assessment ratio studies comparing the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals. *Westfield Golf Practice Ctr, LLC v. Wash. Twp. Ass’r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007).
- e. Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that sold. *Bishop v. State Bd. Of Tax Comm’rs*, 643 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property’s owner may be entitled to an equalization adjustment. *See Department of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed).

- f. While Nowacki contends his assessed value is too high compared to properties in an adjacent subdivision, he presented no evidence showing the base rate in the purportedly comparable subdivision nor did he present any evidence showing the adjacent subdivision was comparable to the subject property. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 at 470 (Ind. Tax Ct. 2005).
- g. Nowacki contends the characteristics on the property record card are not accurate but he did not show how any changes to the property record card would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of an error in the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d at 678 (Ind. Tax Ct. 2006).
- h. Nowacki failed to make a prima facie case for changing the 2014 assessment. 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 Indus. 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 order no change to the 2014 assessment.

ISSUED: February 26, 2021

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.