

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

**Petition No.:** 45-003-17-1-5-00391-19  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-304-019.000-003  
**Assessment Year:** 2017

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. James Nowacki appealed the 2017 assessment of an unimproved parcel located at 4313 West 26<sup>th</sup> Place in Gary, Indiana.
2. On February 20, 2019, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the assessment at \$3,000.
3. Nowacki timely appealed to the Board, electing to proceed under our small claims procedures. On July 25, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petition.<sup>1</sup> Neither the Board nor the ALJ inspected the property.
4. Nowacki appeared *pro se*. Lake County Hearing Officer Robert Metz appeared for the Assessor. Both were sworn.

**Record**

5. The official record for this matter is made up of the following:
  - a) Exhibits:

Petitioner Exhibit A: Twp GIS maps,  
Petitioner Exhibit B: Subject property record card page 1 (2012-2016),  
Petitioner Exhibit C: Subject property record card page 1 (2017-2021).<sup>2</sup>

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<sup>1</sup> Mr. Metz stated the Assessor did not receive Notice of Hearing from the Board, but he waived the 30-day notice at the hearing. *See* Ind. Code § 6-1.1-15-4 (b).

<sup>2</sup> The Respondent did not submit any exhibits into the record.

- b) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

### **Motion to Postpone Hearing**

6. At the start of the hearing, Nowacki noted that an objection to the “land value survey” had been filed with the Department of Local Government Finance (“DLGF”) and the DLGF had not yet had a hearing or ruled on the objection. He requested that the hearing in this case be postponed until after the DLGF ruled on the objection. The ALJ took Nowacki’s request under advisement.
7. According to the Board’s procedural rules, a motion for continuance made less than two business days prior to the hearing may only be granted upon a showing of extraordinary circumstances. As discussed above, Nowacki did not make his request until the hearing had commenced. In this case, we do not find that he has demonstrated extraordinary circumstances. Nowacki didn’t provide any reason why the pending DLGF proceeding prevented him from making his request more than two business days prior to the hearing. In addition, Nowacki failed to show how the DLGF proceedings could specifically impact the subject property and the assessment year under appeal. For these reasons, we deny his request to postpone the hearing.

### **Findings of Fact**

8. The subject property is an unimproved parcel of approximately .16 acres. On May 22, 2009, Nowacki purchased the property at an auction for \$90. *Nowacki testimony; Pet’r Ex. C.*

### **Contentions**

9. Summary of the Petitioner’s case:
- a) Nowacki contended the subject parcel is assessed higher than its market value. In support of this, he testified that the property has restricted access because the city has blocked off the street. He also stated that the general area suffers from “overgrowth” and there are two abandoned houses located to the west of the subject property. *Nowacki testimony; Pet’r Ex. A.*
- b) Nowacki noted that the property is receiving a 20% negative influence factor for the lack of access, but argued that this should be increased to at least a 50%. He stated that a negative 50% influence factor would reduce the assessed value to \$2,000, which is “right near” his requested value of \$1,700 on the property. *Nowacki testimony; Pet’r Ex. C.*
- c) Finally, Nowacki argued that his 2009 purchase of the subject property for \$90 indicated that the subject property’s assessment was too high, though he admitted that

he did not believe \$90 represented fair market value. *Nowacki testimony; Pet'r Exs. B & C.*

10. Summary of the Respondent's case:

- a) The Assessor argued that Nowacki did not present any substantial evidence to support his requested negative 50% influence factor on the land or his requested assessment of \$1,700. The Assessor requested no change in the assessment. *Metz testimony.*

**Analysis**

11. The Petitioner failed to make a prima facie case for reducing the property's 2017 assessment.

- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.<sup>3</sup> The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
- b) 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. True tax value does not mean "fair market value" or "the value of the property to the user." Indiana Code § 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.
- c) 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. *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 complied according to generally accepted appraisal principles. See *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).
- d) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (In.

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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. 50 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

Tax Ct. 2005). For the 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5(a).


- e) Nowacki argued that the 2017 assessment should be \$1,700, 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 lowering an 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.
- f) Instead, Nowacki simply argued that the property should receive a 50% negative influence factor for its lack of access. This amounts to an attack on the methodology used to develop the assessment. Even if the Assessor made errors, simply attacking her methodology is insufficient. *Eckerling*, 841 N.E.2d at 674, 678. Although Nowacki pointed to some deficiencies with the subject property, he did not offer any market-based evidence quantifying the effect those issues had on the property’s market value-in-use.
- g) We also note that Nowacki’s purchase of the subject property on May 22, 2009, for \$90 is also insufficient evidence of value. The sale occurred eight years prior to the January 1, 2017, valuation date, and he offered no evidence to relate the sale price back to that date as required by *Long*.
- h) Because Nowacki offered no probative market-based evidence to demonstrate the subject property’s market value-in-use as of the valuation date, he failed to make a prima facie case for a lower assessment.
- i) Where the Petitioner has not supported its 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 and conclusions, the Board orders no change to the subject property’s 2017 assessment.

ISSUED: OCTOBER 24, 2022

  
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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>