

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

**Petition:** 45-004-13-1-5-01189-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-11-277-027.000-004  
**Assessment Year:** 2013

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

**Procedural History**

1. Mr. James Nowacki contested the 2013 assessment of his property located at 1309 Stevenson Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential property at \$1,900 for 2013.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On November 23, 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 (2011-2013)  
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's assessment, 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 2012 to 2013.<sup>1</sup> Nowacki therefore bears the burden of proof.

## **Summary of Contentions**

7. Nowacki's case:
  - a. The property record card is a government document which one would generally expect to show some accurate characteristics of the property. Instead, Nowacki contended, it is totally inaccurate. First the transfer of ownership portion of the card shows he purchased it in 1985. He purchased it much later than that. It also shows the previous owner owning the property since 1900, which he expects is also incorrect. Further, there should be a transfer to the commissioners because he purchased it at a commissioners' sale. *Nowacki testimony; Pet'r Exs. B & C.*
  - b. The property record card erroneously states that all public utilities are available. It also erroneously states that there are paved streets and sidewalks. It describes the neighborhood as static. Static means there is no change. The Assessor's own records show there is change because he decreased the assessed value from \$3,100 to the current \$1,700. *Nowacki testimony; Pet'r Exs. A-C.*
  - c. The property churned through the system for years. He purchased it for a nominal amount. He does not expect the property to be assessed at the nominal amount but at \$500, the value that would be indicated by an arm's-length transaction between a willing buyer and a willing seller. *Nowacki testimony.*
  - d. Nowacki contends that Stevenson Street is totally unimproved. Wheeler Street and 13<sup>th</sup> Avenue are vacated. That fact is a strong indication that the property is similar to acreage. It would be just about impossible to improve this parcel as an individual lot. Its only value would be if it were assembled with other parcels. He contended that a lot that is difficult and expensive to assemble to make it profitable decreases the value. *Nowacki testimony; Pet'r Ex. A.*

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<sup>1</sup> Mr. James testified that the 2012 assessed value was \$3,100 but the property record card shows the 2012 value was reduced to \$1,900.

- e. Nowacki argued that when taxpayers bring appeals, the Assessor is supposed to look at them and correct them at that time. Here, the assessed value could have been reduced to \$1,700 when he first appealed the value in 2009 but instead, they wait six years to correct it. Even with the correction, the property is still over-assessed. *Nowacki testimony.*
  - f. Over-assessment is not easily remedied when you have an appeal process that defies the state requirement and the constitutional provisions that properties are to be assessed at fair market value and taxes are to be capped at 1%, 2%, or 3% depending on the classification. This property was over-assessed by 33% and then 20%. It is coming down, but tax bills were generated on the over-assessment. Nowacki contends that his protection under state statute and the Indiana Constitution has already been violated. *Nowacki testimony.*
8. The Assessor's case:
- a. The Assessor recommends no change for 2013. *James testimony.*

#### ANALYSIS

9. Nowacki failed to make a case for a reducing the property's 2013 assessment. 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) Cost or sales information for the property under appeal may 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* 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 for 2013. Ind. Code § 6-1.1-2-1.5(a).

- c. Nowacki contends that the assessment should be \$500 for 2013 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 basis 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 there are numerous errors on the property record card, specifically regarding the transfer of ownership and the characteristics of the property. Nowacki did not show how any changes to ownership or characteristics would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of error in the assessed value. *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, Nowacki needed to show the assessed value does not accurately reflect the subject property's market value-in-use. *Id.* See also *P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is).
- e. Nowacki complains that the appeal process is lengthy. But, pursuant to Ind. Code § 6-1.1-15-1(o), he had the right to appeal directly to the Board if the petition was not heard by the PTABOA within 180 days as required by Ind. Code § 6-1.1-15-1(k). Therefore, the lengthy appeal process was due, in part, to Nowacki's own inaction.
- f. We also give no weight to his claims regarding the property's decreasing assessed value. The Assessor's decision to decrease the property's assessed value in 2016 does not prove that the 2013 assessment was incorrect. As the Tax Court has explained, "each tax year---and each appeal process--- stands alone." *Fisher v. Carroll Cnty Ass'r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year, therefore, has little bearing on its true tax value in another. See e.g. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- g. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013, he failed to make a prima facie case for a lower 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**

We find for the Assessor and order no change to the 2013 assessment.

ISSUED: February 19, 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>>.