

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

Petitions: 45-004-13-1-5-00261-16
45-004-16-1-5-00450-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-04-184-024.000-004
Assessment Years: 2013 & 2016

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

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 20, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2016 appeal with the PTABOA. The PTABOA issued notice of its final determination on March 9, 2017. On April 24, 2017, Petitioner filed a Form 131 petition with the Board.
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on May 21, 2018. Neither the ALJ nor the Board inspected the property.
5. James Nowacki, Petitioner, was sworn and testified. Robert Metz and Gordona Bauhan, Lake County Hearing Officers, were sworn as witnesses for the Respondent.

Facts

6. The subject property is a vacant residential lot located at 448 Harrison Street in Gary.
7. For 2013, the property was assessed at \$3,300. For 2016, the property was assessed at \$2,000.

8. Petitioner requested an assessed value of \$2,000 for each year at issue.¹

Record

9. The official record contains the following:

a. Exhibits:

Petitioner Exhibit 1:	Property record card (“PRC”) for 2011-2013,
Petitioner Exhibit 2:	PRC for 2013- 2016,

- b. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeal; (2) all orders, notices, and memoranda issued by the Board or the ALJ; (3) the digital recording of the hearing; and (4) these Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

¹ Petitioner claimed a value of \$900 on the Forms 131 for each year at issue but requested a value of \$2,000 at the hearing.

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value did not increase from 2012 to 2013. Petitioner, therefore, has the burden of proof for that year. The assessed value actually decreased from 2015 to 2016. Consequently, Petitioner also has the burden for 2016.

Summary of Parties' Contentions

15. Petitioner's case:
 - a. Petitioner acquired the property for \$50. Petitioner contends the property is not a buildable lot because of its size, but argues it could be buildable with a variance. The lot is in a neighborhood that was desirable in the past and still contains some historic buildings, but Petitioner claims the neighborhood has gone into considerable decline. He contends the decline is the result of blight caused by lack of interest in building in the area and the abandonment of properties. *Nowacki testimony.*
 - b. Petitioner contends the assessment history for the property shows the assessments "jumping" up and down from year to year, which he says is "fraudulent and dangerous" and works to erode any value that the property might have if it were fairly assessed. He contends Respondent's office will say the changes in assessments are the result of corrections, but argues one should not have to correct an assessment every single year. He claims it is "just one wrong assessment and then another" because the property is not worth the assessed value. *Nowacki testimony; Pet'r Exs. 1 & 2.*
 - c. Petitioner contends the value of these properties is determined by what they sell for and, in this subdivision, vacant lots are not sold at all. He claims that there are no properties sold in arm's-length transactions and that the only sales are the properties "churning" through the tax sale system. *Nowacki testimony.*
 - d. Petitioner contends Respondent convened a panel of academics and other experts to look at the assessment problem in Calumet Township. He claims Respondent did so because he recognizes that the assessments are incorrect. He contends that Respondent also recognizes that if the properties are properly assessed, the tax revenue would decrease and "the mismanagement of the city would become so obvious." He contends that property owners, however, "have protection by statute" to have their property assessed at market value. He claims that the efforts of county officials to politicize the process are misdirected and, as a result, "the community suffers because of the destruction of fair market transactions." *Nowacki testimony.*
16. Respondent's case:

- a. Respondent contends Petitioner failed to present any probative evidence to support his values. Consequently, Respondent recommends no change in the assessments for either 2013 or 2016. *Metz testimony*.

ANALYSIS

17. Petitioner failed to make a prima facie case for a reduction in the assessed values. The Board reached this decision for the following reasons:
 - b. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
 - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of 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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 assessment date was March 1, 2013. For the 2016 assessment, the valuation date was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
 - c. Petitioner contends the property should be assessed at \$2,000 for 2013. Petitioner presented no 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. Petitioner failed to make a prima facie case for changing the 2013 assessment. Where a 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).
 - e. Petitioner requested a value of \$2,000 for 2016. Because that is the same value the PTABOA indicated in its final determination for 2016, no further change is required.

CONCLUSION

18. Petitioner failed to establish a prima facie case that the 2013 assessed value was incorrect. The 2016 assessed value was already reduced to Petitioner's requested value of \$2,000. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 and 2016 values should not be changed.

ISSUED: August 16, 2018

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>>.