

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

Petitions: 45-004-13-1-5-00269-16
45-004-15-1-5-01833-16
45-004-16-1-5-00480-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-16-430-028.000-004
Assessment Years: 2013, 2015 & 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 2015 appeal with the PTABOA. The PTABOA issued notice of its final determination on August 17, 2016. On October 3, 2016, Petitioner filed a Form 131 petition with the Board.
3. 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.
4. 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.
5. 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.
6. James Nowacki, Petitioner, was sworn and testified. Robert Metz and Gordona Bauhan, Lake County Hearing Officers, were sworn as witnesses for the Respondent.

Facts

7. The subject property is a vacant residential lot located at 2636 Jefferson Street in Gary.

8. The PTABOA determined the following values:

Year	Land
2013	\$3,600
2015	\$2,900
2016	\$2,400

9. Petitioner requested an assessed value of \$1,200 for each year at issue.¹

Record

10. 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,
Petitioner Exhibit 3: PRC for 2013- 2016,

Respondent Exhibit 1: Real Property Maintenance Report.

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

11. 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.

12. 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

¹ Petitioner claimed a value of \$900 on the Forms 131 for each year at issue but requested a value of \$1,200 at the hearing.

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).

13. 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).
14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The assessed value increased from \$1,800 in 2012 to \$3,600 in 2013 which is an increase of more than 5%. Respondent, therefore, has the burden of proof for 2013. The assessed value decreased from \$3,600 in 2014 to \$2,900 in 2015. Petitioner therefore has the burden for 2015. The burden for 2016 depends on the outcome for 2015.

Summary of Parties’ Contentions

16. Respondent’s case:
 - a. Mr. Metz acknowledges that the assessment increased from \$1,800 in 2012 to \$3,600 in 2013. He admitted he has “no explanation as to the increase.” *Metz testimony*.
 - b. Respondent contends that the Real Property Maintenance Report shows that Mr. Nowacki purchased the property or that it was transferred to him in 2011 rather than in 1900 as the PRCs indicate. *Metz testimony; Resp’t Ex. 1*.
17. Petitioner’s case:
 - a. Petitioner contends the property is a buildable lot in an area with no utilities, no sidewalks, and no potential for development. He contends he would value the property at \$1,200. *Nowacki testimony*.
 - b. Petitioner contends there are numerous errors on the PRCs. For example, he claims it shows he owned the property in 1900 and paid nothing for it. He contends that while the property is in an area with no sidewalks, no paved roads, and no utilities, the PRC inaccurately shows that it has all of those characteristics. He further contends that the PRC also shows the neighborhood life cycle as “static.” However, the fluctuating

assessed values indicate the neighborhood is not in fact static. *Nowacki testimony; Pet'r Exs. 1-3.*

- c. Petitioner contends the property is in a TIF district. He claims that “the nature of TIFs are such that they cannot allow accurate assessed valuations because they collapse.” He further claims that TIF districts are the reason there is fraud in the township and in Respondent’s office. *Nowacki testimony; Pet'r Exs. 1-3.*
- d. Petitioner contends this appeal goes back seven years which he claims is too long. *Nowacki testimony.*
- e. Petitioner contends that the tax system in Gary is abusive and burdensome and that the people in the community need some relief. He believes that eventually the burden will be lifted and that the blue-ribbon panel convened by Respondent will possibly facilitate that outcome. *Nowacki testimony.*

ANALYSIS

- 18. The Board finds that the assessed value should be changed for 2013 while the 2015 and 2016 assessed values should not be changed. The Board reached this decision for the following reasons:
 - a. 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 and 2015 assessments was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). The valuation date for 2016 was January 1, 2016. Ind. Code § 6-1.1-2-1.5.

- c. Respondent had the burden of proof for 2013. Respondent failed to offer any probative evidence to support the 2013 assessed value. Therefore, Petitioner was entitled to have the assessment reduced to the 2012 value of \$1,800.
- d. Petitioner, however, sought a lower value. He contends the property should be assessed at \$1,200 for 2013. That said, Petitioner presented no evidence to support that value. Furthermore, Petitioner did not present any evidence to support a reduction in either the 2015 or 2016 assessed values. 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).
- e. Petitioner contends there are numerous errors on the PRCs, specifically regarding the date of ownership and the characteristics of the property. Petitioner did not show how any changes to those characteristics or the date of ownership would affect the market value-in-use of the property. Simply contesting the methodology of an assessment is insufficient to make a prima facie case of an error in the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E. 2d at 647, 677 (Ind. Tax Ct. 2006). To successfully make a case, Petitioner needed to show the assessment 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).
- f. Petitioner complains the tax system is burdensome and the appeal has taken seven years to be heard. First, Petitioner filed the 2013 appeal with Calumet Township on February 13, 2013, which is not seven years ago. Second, pursuant to Ind. Code § 6-1.1-15-1(o), Petitioner 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 the Petitioner's own inaction.
- g. Respondent did not present any evidence to show that the 2013 assessment was correct. Petitioner failed to make a prima facie case for any further reduction for that year. Petitioner had the burden of proving that the 2015 value was incorrect and failed to meet it. He also had the burden of proof for 2016 and failed to meet that as well.

CONCLUSION

- 19. Respondent failed to establish a prima facie case that the 2013 assessed value was correct. Petitioner was entitled to have the 2013 value reduced to the 2012 value of \$1,800. Petitioner, however, requested a lower value and failed to establish a prima facie case for any further reduction. Petitioner failed to establish a prima facie case for a reduction for either 2015 or 2016.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 value should be changed to \$1,800. The 2015 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>>.