

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

Petitions: 45-004-13-1-5-00298-16
45-004-15-1-5-01819-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-15-303-027.000-004
Assessment Years: 2013 & 2015

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

Procedural History

1. Petitioner initiated his 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 his 2015 appeal with the PTABOA. The PTABOA issued notice of its final determination on August 16, 2016. On October 3, 2016, 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 June 25, 2018. Neither the ALJ nor the Board inspected the property.
5. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Terrance Durousseau, Lake County Hearing Officers, were sworn as witnesses for Respondent.

Facts

6. The subject property is a vacant residential lot located at 2512 Pennsylvania Street in Gary.
7. The assessed value was \$2,100 for both 2013 and 2015.
8. Petitioner requested an assessed value of \$900 for each year.

Record

9. The official record contains the following:
 - a. Exhibits:

Petitioner Exhibit 1:	Aerial map of the subject property,
Petitioner Exhibit 2:	Property record card (“PRC”),
 - 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).
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 decreased from 2012 to 2013. Petitioner therefore has the burden of proof for 2013. The assessed value remained the same for 2014 and 2015. Consequently, Petitioner also has the burden of proof for 2015.

Summary of Parties' Contentions

15. Petitioner's case:
- a. Petitioner contends that he acquired the subject property for \$25 at an auction attended by "eligible and able" buyers. However, he claims that he was the only person to bid on the property. *Nowacki testimony.*
 - b. Petitioner contends the PRC shows he purchased the property in 1970 for nothing. In fact, he claims he was in high school in 1970 and had never been to Gary. *Nowacki testimony; Pet'r Ex. 2.*
 - c. Petitioner contends the property is in the midtown section of Gary, which he claims at one time was one of the most densely populated areas of the city. The aerial map shows that much of the area is now abandoned and has been "given up for demolition." Petitioner believes the county's plan is to clear out the residents and destroy market value for purposes of redevelopment. He contends that residents in that section of town walked away from their investment or lost it because the cost of holding the property exceeded any market value. *Nowacki testimony; Pet'r Ex. 1.*
 - d. Petitioner contends the property is in a TIF district, which he claims contributes to abandonment and loss of market value in the area. *Nowacki testimony; Pet'r Ex. 2.*
 - e. Petitioner contends the property is an otherwise unbuildable lot with a vacant building on one side. In light of these considerations, he contends that the property should be assessed at \$900. *Nowacki testimony; Pet'r Ex. 1.*
16. Respondent's case:
- a. Respondent contends Petitioner did not present any probative evidence to support his requested value and recommends no change to the assessments. *Durousseau 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:
- 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 each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Petitioner contends the property should be assessed at \$900. 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 assessments. 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).

CONCLUSION

18. Petitioner failed to establish a prima facie case that the 2013 and 2015 assessed values are incorrect. 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 2015 values should not be changed.

ISSUED: August 22, 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>>.