

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

Petition: 45-004-13-1-5-00304-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-07-376-023.000-004
Assessment Year: 2013

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 elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. 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.
4. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Terrance Durosseau, Lake County Hearing Officers, were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant residential lot located at 4226 W. 19th Place in Gary.
6. For 2013, the assessed value was \$6,400.
7. Petitioner requested an assessed value of \$1,300.¹

Record

8. The official record contains the following:

¹ Petitioner indicated a value of \$1,700 on the Form 131 but requested a value of \$1,300 at the hearing.

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

9. 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.
10. 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).
11. 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).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value was \$6,400 for 2012 and 2013. Petitioner therefore has the burden of proof.

Summary of Parties’ Contentions

14. Petitioner's case:
- a. Petitioner contends the parcel is located in the Tarrytown subdivision. When the subdivision was originally developed, every lot had an improvement on it with the exception of the subject parcel. Petitioner believes this indicates that there must have been a reason for the developer to leave it vacant. *Nowacki testimony; Pet'r Ex. 1.*
 - b. Petitioner contends the required setbacks for building render the parcel unbuildable without a variance. But he contends that even if one could build on the lot, there is little or no market for new construction in that neighborhood. *Nowacki testimony; Pet'r Ex. 1.*
 - c. Petitioner contends the property might have value to an adjacent property owner as a side lot. When he purchased the property at auction seven years ago for \$25, there were four adjacent property owners who he thought might have had an interest in the property, but none of them did. *Nowacki testimony; Pet'r Ex. 2.*
 - d. Petitioner contends the property should be assessed at \$1,300. The current assessed value has decreased to \$5,100 in 2017 but, in his opinion, it is still four times the fair market value. *Nowacki testimony; Pet'r Ex. 2.*
15. Respondent's case:
- a. Respondent contends Petitioner did not present any probative evidence to support his requested value. Respondent also contends Petitioner has not presented any documentation to support the setbacks presented on Petitioner Exhibit 1. In light of these considerations, Respondent recommends no change to the assessment. *Durousseau testimony.*

ANALYSIS

16. Petitioner failed to make a prima facie case for a reduction in the assessed value. 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 assessment date at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Petitioner contends the property should be assessed at \$1,300. 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 contends the property is unbuildable because of building setbacks. However, Petitioner did not present any evidence to support that claim. Petitioner's unsupported contentions are not enough to make a prima facie case for changing the assessment.
 - e. Petitioner failed to make a prima facie case for changing the 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).

CONCLUSION

- 17. Petitioner failed to establish a prima facie case that the 2013 assessed value is 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 value should not be changed.

ISSUED: _____

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>>.