

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

Petitions **45-003-09-1-5-00245-16**
 45-003-13-1-5-00241-16
Petitioner: **James Nowacki**
Respondent: **Lake County Assessor**
Parcel: **45-07-14-402-019.000-003**
Assessment Years: **2009 & 2013**

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

Procedural History

1. Petitioner initiated the appeals with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”).¹ The PTABOA issued notice of its final determinations for both 2009 and 2013 on December 11, 2015. Petitioner filed the Form 131 petitions with the Board on January 27, 2016.
2. 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.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on August 7, 2017. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn as a witness. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for Respondent.

Facts

5. The subject property is a residential lot located at 2630 Oakwood Drive in Gary.
6. For 2009, the assessment was \$18,200 for the land and \$25,900 for the improvements for a total of \$44,100. For 2013, assessment was \$18,500 for the land and \$3,500 for the improvements for a total of \$22,000.²

¹ The exact filing dates of the initial requests for the preliminary conferences are not clear. However, the fact that the PTABOA processed the requests indicates that they were properly initiated.

² The parties agreed on the record that the 2013 assessment for the improvements was \$1,000. However, the Form 115 for 2013 shows a value of \$3,500 for the improvements.

7. Petitioner requested an assessed value of \$4,500 for both 2009 and 2013.

Record

8. The official record contains the following:

- a. A digital recording of the hearing.
- b. Exhibits:

Petitioner presented no exhibits.

Respondent presented no exhibits.

Board Exhibit A:	Form 131 petitions and attachments,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheet.

- c. 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 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 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 parties agreed that the assessed value did not increase by more than 5% from 2008 to 2009 or from 2012 to 2013. Petitioner, therefore, has the burden of proof for both years.

Summary of Parties’ Contentions

14. Petitioner’s case:
 - a. Petitioner purchased the property for \$36 at a commissioners’ auction. According to Petitioner, hundreds of people who are familiar with market values in the area attended the auction. He contends the market value of the property could be considered to be \$36 because of all the willing buyers at the auction, no one bid more than that. He certainly does not believe anyone would purchase the property for anything near the assessed value. *Nowacki testimony.*
 - b. Petitioner contends that the improvements on the property have zero value, that township officials did not inspect the property, and that assessments in Calumet Township generally increase and decrease in an arbitrary manner. *Nowacki testimony.*
 - c. Although Petitioner purchased the property for \$36, he nonetheless believes he could sell it for \$4,500 and thinks that would be a fair assessed value. *Nowacki testimony.*
15. Respondent’s case:
 - a. Respondent contends that “according to the notes that were done by the Calumet Township Assessor” the property was physically inspected and the assessed value was reduced between 2009 and 2013 as a result. *Metz testimony.*

ANALYSIS

16. Petitioner failed to make a prima facie for a reduction in the assessed value for either year. 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 market value-in-use of a property for its current use, as reflected by utility received by owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2); see also 2011 REAL PROPERTY

- ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Parties to an assessment appeal may offer relevant evidence that is consistent with the true tax value standard. A market value-in-use appraisal prepared according to USPAP often will suffice. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *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 true tax value, a party must explain how its evidence relates to the 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2009 assessment was January 1, 2008. *See* 50 IAC 21-3-3 (2006) (making the valuation date for assessments after March 1 2005, January 1 of the year preceding the assessment date). The valuation date for the 2013 assessment 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 \$4,500 for both 2009 and 2013. Petitioner presented no evidence to support his requested 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 purchased the property at a commissioners' auction. Petitioner did not present any documentation to substantiate the purchase price or to show when he purchased the property. Further, Petitioner did not claim that the purchase price should be the assessed value.
 - e. Petitioner contends there is zero value in the improvements and that the assessed values have been arbitrarily derived. However, Petitioner presented no evidence to show what improvements existed on the property in either in 2009 or 2013. Again, Petitioner presented no probative evidence to support his statements.
 - f. 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

17. Petitioner failed to establish a prima facie case for a reduction in the assessed values. Consequently, the Board finds for Respondent.

James Nowacki
(2630 Oakwood Drive)
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FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2009 and 2013 assessed values should not be changed.

ISSUED: October 20, 2017

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>>.