

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

Petitions: 45-003-13-1-5-00133-16
45-003-14-1-5-01150-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-428-030.000-003
Assessment Years: 2013 & 2014

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 30, 2015. On January 20, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2014 appeal with the PTABOA. The PTABOA issued notice of its final determination on April 7, 2016. On May 25, 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 February 12, 2018. Neither the ALJ nor the Board inspected the property.
5. Petitioner James Nowacki was sworn and testified. Robert W. Metz and Gordana Bauhan, Lake County Appeal Officers, were sworn as witnesses for the Respondent.

Facts

6. The subject property is a vacant residential lot located at 2600 Chase Street in Gary.

7. For 2013, the property was assessed at \$2,500. For 2014, the property also was assessed at \$2,500.¹
8. Petitioner requested an assessed value of \$1,700.

Record

9. The official record contains the following:

- a. A digital recording of the hearing

- b. Exhibits:

Petitioner Exhibit 1:	GIS map of the subject parcel,
Petitioner Exhibit 2:	Property record card (“PRC”) for 2014-2017,
Petitioner Exhibit 3:	PRC for 2011-2015,

Respondent Exhibit 1:	PRC,
Respondent Exhibit 2:	Property Maintenance Report for 2012,
Respondent Exhibit 3:	Property Maintenance Report for 2013,
Respondent Exhibit 4:	Property Maintenance Report for 2014,
Respondent Exhibit 5:	GIS map of the subject property,

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

- c. 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 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.
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

¹ The Form 115 for 2014 shows an assessed value of \$4,500 determined by the PTABOA, but Respondent claims the 2014 value is \$2,500. Both parties submitted documentation generated after the date of the Form 115 showing the 2014 value is \$2,500. The record fails to establish how the value the PTABOA determined was changed; however, to the extent that point is unresolved, we regard the testimony offered by the Respondent as a concession that the 2014 assessment is only \$2,500.

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 remained the same for 2012 and 2013. Therefore, Petitioner has the burden of proof for 2013. The burden of proof for 2014 depends on the outcome for 2013.

Contentions

15. Summary of Petitioner’s case:
 - a. Petitioner acquired the property for \$252 at auction. *Nowacki testimony.*
 - b. The property is truncated because about half of it was taken to widen and raise Chase Street. Petitioner testified that this remnant property is inaccessible because Chase Street was raised 15 or 20 feet and it has no utilities—no water, no gas, and no electricity. According to Petitioner, the property is unusable. *Nowacki testimony; Pet’r Ex. 1.*
 - c. Petitioner claims the correct valuation should be \$1,700. He testified that the Assessor finally reduced the value to this amount for 2017, but it should have been reduced when he first appealed this property years ago. Petitioner complains that property owners should not have to fight for years to get the assessor to make a correction. According to Petitioner, some owners get frustrated and just walk away from their property. *Nowacki testimony.*
 - d. Petitioner contends the property record card shows wildly gyrating numbers. The values go up to \$4,600 for a parcel that has very little to no value. *Nowacki testimony; Pet’r Exs. 2 and 3.*

16. Summary of Respondent's case:
- a. According to Respondent, the PRC indicates that the depth size was changed from 180 feet to 118 feet. An influence factor was applied for shape and size. *Bauhan testimony; Resp't Ex. 1.*
 - b. Respondent offered testimony that the 2012 assessed value was reduced to \$2,500 and that value carried forward to 2013 and 2014. These are not "gyrating numbers." *Bauhan testimony; Resp't Exs. 1-4.*
 - c. Respondent contends the assessor's office hasn't been dragging out the appeal process. Petitioner did not file the Form 131 for 2013 until January 20, 2016. *Metz testimony.*

ANALYSIS

17. Petitioner failed to make a prima facie case for a reduction in the assessed values for either the 2013 or the 2014 assessment. 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 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). Here the relevant valuation dates were March 1, 2013 and March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Petitioner purchased the property at auction for \$252. He did not present any documentation to substantiate the purchase price or the date of the sale. He did not request the property be assessed for the purchase price. Petitioner contends the property should be assessed at \$1,700 for 2013 and 2014 because that is the

assessment for 2017. Petitioner presented no probative evidence to support that value or show how the 2017 value related to the 2013 or 2014 assessment dates. 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*, 70 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- d. Petitioner failed to make a prima facie for reducing the 2013 assessment. Accordingly, the burden of proof remains with the Petitioner for the 2014 assessment. Petitioner also offered the same evidence and arguments in an attempt to prove that assessment was incorrect.
- e. Petitioner feels the appeal process is frustrating and takes too long. But, Ind. Code § 6-1.1-15-1(o) allows an 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).
- f. 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

18. 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 2014 assessed values will not be changed.

ISSUED: April 27, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

James Nowacki
2600 Chase Street
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- 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>>.