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

Petitions: **45-004-13-1-5-00283-16**
45-004-15-1-5-01828-16
Petitioner: **James Nowacki**
Respondent: **Lake County Assessor**
Parcel: **45-08-10-309-017.000-004**
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 1740 Massachusetts Street in Gary.

7. For 2013 and 2015, the assessed value was $1,400.

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[1],
      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).

[1] The map is actually for 1744 Massachusetts Street (Lot 12), the parcel adjacent to the subject property. Petitioner circled the subject property (Lot 11) on the aerial map.

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 did not increase 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 the subject property is located just south of downtown Gary. Twenty years ago, this area was completely built up and was a half a block from what was the premier retail destination between Chicago and Indianapolis. Now the neighborhood is abandoned and blighted with very little potential for development. Because of the blighted condition and the lack of city services, not only have the improvements been abandoned by the owners, but the city now has the additional expense of removing the buildings. *Nowacki testimony.*

    b. Petitioner cannot over-emphasize the damage Respondent has caused to the city. When properties are assessed over their market values in an area with declining conditions, a high crime rate, and a lack of investment, a toxic environment is created that affects all properties in the neighborhood. *Nowacki testimony.*

    c. Petitioner contends the strategy of the city is to depopulate it because there is an interest in conveying these properties to outsiders who want to acquire all of the property, tear down the city, and start something new under their control and leadership. He claims the problem is that there are still people living in some of the neighborhoods and that there are also people like him who own property and try to defend their property rights. *Nowacki testimony.*

    d. Petitioner contends the improvements shown on the map are largely vacant buildings where nobody wants to live. He contends that they are not improvements, but rather liabilities. *Nowacki testimony; Pet'r Ex. 1.*

    e. Petitioner contends the property was available for decades and there was no interest in it. He purchased the property for $100 and Respondent has it valued at $1,400. Clearly, the value is not $1,400, but rather somewhere between $100 and $1,400. He estimates the value at $900. *Nowacki testimony.*

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*.

b. Respondent argues that the aerial map at Petitioner Exhibit 1 shows the wrong parcel. He contends the map also shows improvements on other lots, so the area is not as blighted as Petitioner contends. *Durousseau argument; Metz 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 probative 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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.