

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

Petitions **45-003-09-1-5-00257-16**
 45-003-11-1-5-00247-16
 45-003-13-1-5-00344-16
Petitioner: **James Nowacki**
Respondent: **Lake County Assessor**
Parcel: **45-08-18-354-019.000-003**
Assessment Years: **2009, 2011 & 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 2009 and 2011 on December 11, 2015. The PTABOA issued notice of its final determination for 2013 on December 10, 2015. Petitioner then filed the Form 131 petitions with the Board.
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 4514 W. 29th Place in Gary.

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

6. Respondent determined the following assessed values:

Year	Land	Improvements	Total
2009	\$4,100	\$56,800	\$60,900
2011	\$4,200	\$31,600	\$35,800
2013	\$4,100	\$ 4,700	\$ 8,800 ²

7. Petitioner requested an assessed value of \$3,200 for all years at issue.

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 exhibits,
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

² According to Mr. Metz, the property maintenance report from the auditor's office for 2013 shows values of \$4,100 and \$5,300 for the land and improvements respectively, for a total of \$9,400.

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 did not increase from 2008 to 2009, from 2010 to 2011, or from 2012 to 2013. Petitioner, therefore, has the burden of proof for all years at issue.

Summary of Parties’ Contentions

14. Petitioner’s case:
 - a. Petitioner contends that the appeal process is very slow, that this proceeding involves a petition that goes back “almost ten years,” and that nobody in Respondent’s office cares. *Nowacki testimony*
 - b. Petitioner acquired the property for approximately \$447 at an auction. According to Petitioner, hundreds of people who are familiar with market values in the subject area attended the auction. Petitioner contends it is irrational to think that ready, willing, and able buyers would pass up an opportunity to pay \$500 for a property if it were really worth \$61,000, as Respondent claims is the case for 2009. *Nowacki testimony.*
 - c. Petitioner contends the only improvement on the property is a structure that has been in a dilapidated state since long before 2009. He contends that the structure has no value and that a land assessment of \$3,200 is fair. *Nowacki testimony.*
 - d. Petitioner contends that the market value for the subject property and other similar properties is closer to the auction price rather than the “arbitrary” amounts assigned by Respondent for “whatever malevolent purpose” he and the Calumet Township Assessor have for “driving people out of their homes.” Furthermore, Petitioner contends that “what we’re seeing here is a social justice issue” and that “people should not be driven from their properties simply so that the assessor can live off the public dole.” *Nowacki testimony.*

- e. In light of these considerations, Petitioner is requesting an assessed value of \$3,200 for each year at issue. *Board Ex. 1; Nowacki testimony.*

15. Respondent's case:

- a. Respondent contends Petitioner purchased the property on May 5, 2010, and that he knew the property was in a "derelict" condition when he purchased it. *Metz testimony.*
- b. Respondent contends the local township assessor makes a full inspection of properties every four years. Based on the reduction of values over the years, he would assume that was the case because of the diminished value. *Metz testimony.*
- c. Finally, Respondent contends that, contrary to Petitioner's opinion, he receives no financial benefit from the assessments that Mr. Nowacki references. *Metz testimony.*

ANALYSIS

16. Petitioner failed to make a prima facie 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 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 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 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

dates for 2011 and 2013 were March 1, 2011, and March 1, 2013, respectively. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

- c. Petitioner purchased the property at a commissioners' auction for approximately \$447. Petitioner did not present any documentation to substantiate the purchase price. Further, Petitioner did not claim that the purchase price should be equal to the assessed value.
- d. According to Respondent, Petitioner purchased the property on May 5, 2010, and Petitioner did not dispute Respondent's testimony. Under the Board's regulations, a "[p]arty" includes the "(1) [t]he owner of the subject property [or] (2) [t]he taxpayer responsible for the property taxes payable on the subject property." 52 IAC 2-2-13. Petitioner apparently did not own the subject property prior to May 5, 2010, and did not offer any evidence to show that he paid the taxes for the 2009 payable 2010 tax year. Consequently, although the issue was not raised by Respondent, Petitioner did not prove that he had standing to appeal the property's assessed value for 2009.
- e. Nonetheless, Petitioner contends the improvements have no value and only the land should be assessed at \$3,200 for 2009, 2011 and 2013. Petitioner presented no evidence to support his contentions regarding the condition of the improvements or 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).
- f. Petitioner contends the appeal process is slow and, in an apparent reference to the 2009 appeal, contends that it has been ongoing for nearly ten years. But, pursuant to Ind. Code § 6-1.1-15-1(o), Petitioner had the right to 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). Therefore, the alleged lengthy appeal process was due, in part, to Petitioner's own inaction.
- g. 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 any of the years at issue. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2009, 2011, 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>>.