

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

Petitions **45-003-09-1-5-00270-16**
 45-003-13-1-5-00266-16
 45-003-14-1-5-01220-16
Petitioner: **James Nowacki**
Respondent: **Lake County Assessor**
Parcel: **45-07-14-403-032.000-003**
Assessment Years: **2009, 2013 & 2014**

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 determination for 2009 on December 11, 2015. The PTABOA issued notice of its final determination for 2013 on November 20, 2015. The PTABOA issued notice of its final determination for 2014 on April 12, 2016. 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 2548 Fairbanks in Gary.

¹ The exact date of filing the initial request for a preliminary conference for 2009 is not clear but the fact that the PTABOA processed the appeal indicates the petition was properly initiated. Petitioner filed the 2013 request on February 19, 2013, and the 2014 request on June 1, 2015.

6. Respondent determined the following assessed values:

Year	Land	Improvements	Total
2009	\$18,200	\$41,700	\$59,900
2013	\$18,500	\$ 0	\$18,500
2014	\$ 7,500	\$ 0	\$ 7,500 ²

7. During the hearing, Petitioner requested an assessed value of \$4,500.³

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

² The ALJ incorrectly stated on the record that the 2014 assessed value was the same as 2013, or \$18,500. The PTABOA determination, however, was \$7,500.

³ Petitioner requested a value of \$4,500 during his testimony and on the Forms 131 for 2013 and 2014, but requested a value of \$4,200 on the Form 131 for 2009.

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 decreased from 2008 to 2009. The assessed value remained the same from 2012 to 2013. Petitioner, therefore, has the burden for 2009 and 2013. The burden for 2014 depends on the outcome for 2013 and will be addressed in turn.

Summary of Parties’ Contentions

14. Petitioner’s case:
 - a. Petitioner acquired the property for \$400 at a commissioners’ sale or auction. He contends that the properties in this minority community are assessed at such a rate that it makes it impossible for owners to retain properties or to convey them in arm’s-length transactions to willing buyers. These circumstances drive people from their homes and allow the city to acquire the properties and pass them on to their “political buddies.” *Nowacki testimony.*
 - b. Petitioner contends the property should be assessed at \$4,500. He contends that value is consistent with what a willing buyer would pay in an arm’s length transaction, and that no buyer would pay \$18,000 or more for the property. *Nowacki testimony.*
 - c. Petitioner contends that this property is located on a “paper street” and would only have value when combined with other parcels. He argues that no one would buy the property with the notion of constructing improvements on it alone. *Nowacki testimony.*
 - d. According to Petitioner, the appeal process is so tedious, stressful, and complicated that sometimes petitioners make mistakes or miss deadlines and are consequently denied relief. He does not agree with Respondent’s position that because Petitioner did not file appeals for 2010 and 2011, he therefore agrees with the assessed values for those years. *Nowacki testimony.*

- e. Petitioner contends that these particular appeals have been going on for years. He contends that similarly situated taxpayers would have to pay taxes on the over-assessed values for eight years before potentially obtaining relief. He contends that the assessment could have been corrected by the township or Respondent at any time based on “market evidence.” *Nowacki testimony*.

15. Respondent’s case:

- a. In response to Petitioner’s contention that the appeal process is tedious, Respondent claims that all a taxpayer needs to do in order to initiate an appeal is to provide an address and parcel number for the property as well as an address and telephone number for the taxpayer. He further contends that Petitioner has not been required to wait several years to file these appeals. *Metz testimony*.
- b. Respondent contends Petitioner must have believed the values for 2010 and 2011 were correct because he did not file appeals for those years. *Metz testimony*.

ANALYSIS

16. Petitioner failed to make a prima facie for a reduction in the assessed value for any of the years at issue. 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 2013 and 2014 were March 1, 2013, and March 1, 2014, respectively. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

- c. Petitioner claims to have purchased the property at a commissioners' sale or auction for \$400. However, Petitioner did not present any documentation to substantiate the purchase price or the date of the sale. Petitioner contends the property should be assessed at \$4,500 for all years at issue. Similarly, Petitioner presented no evidence to support the 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 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.
- e. As discussed, Petitioner had the burden for 2009 and failed to make a prima facie case for changing the assessment. Petitioner also had the burden for 2013 and failed to make a prima facie case for that year as well. Because the Board orders no change for 2013, and because the assessed value did not increase by more than 5% between 2013 and 2014, Petitioner also had the burden for 2014. Petitioner relied on the same evidence and arguments, or lack thereof, for 2014 as he did for 2013. The Board reaches the same conclusion. 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, 2013, and 2014 assessed values 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>>.