

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

Petitions **45-003-09-1-5-00285-16**
 45-003-13-1-5-00343-16
Petitioner: **James Nowacki**
Respondent: **Lake County Assessor**
Parcel: **45-08-19-103-008.000-003**
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 2009 and 2013 on December 9, 2015. Petitioner filed the Form 131 petitions with the Board on January 26, 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 4141 West 30th Place in Gary.

¹ The exact date of filing the request for a preliminary conference for 2009 is not clear but the fact that the PTABOA processed the request indicates that it was properly initiated. Petitioner filed its 2013 request on February 19, 2013.

6. Respondent determined the following assessed values:

Year	Land	Improvements	Total
2009	\$4,100	\$26,700	\$30,800
2013	\$3,300	\$ 0	\$3,300

7. On his Forms 131, Petitioner requested an assessed value of \$2,800 for each year.

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 assessed value decreased from 2008 to 2009 and remained the same from 2012 to 2013. Petitioner, therefore, has the burden of proof for both years.

Summary of Parties’ Contentions

14. Petitioner’s case:
 - a. Petitioner contends he acquired the property for a “couple hundred” dollars. He argues that the 2009 assessed value is “ridiculous” and bears no relation to the property’s market value. He contends the property should be assessed at \$2,800 for both years. *Nowacki testimony.*
 - b. Petitioner contends the property is overgrown and located on an “unnavigable paper” street. When he purchased the property, the building had collapsed and was “beyond use.” He contends nothing changed between the time of the purchase and the time that Respondent made any corrections. *Nowacki testimony.*
 - c. Petitioner contends that sometimes taxpayers make mistakes or miss deadlines. He argues that just because a taxpayer makes a mistake or misses a deadline for a particular year, the taxpayer does not necessarily agree with the value as determined for that year. *Nowacki testimony*
15. Respondent did not present any testimony or documentary evidence.

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 on the basis of 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 often will 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 acceptable 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 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 claims to have purchased the property for a "couple hundred" dollars. Petitioner did not present any documentation to substantiate the purchase price or the date of the sale.
 - d. Petitioner contends the improvements had no value and the land should be assessed at \$2,800 for 2009 and 2013. He presented no evidence to show the condition of the property or 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).
 - e. 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.

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>>.