

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

Petition **45-003-09-1-5-00333-16**
Petitioner: **James Nowacki**
Respondent: **Lake County Assessor**
Parcel: **45-08-17-477-015.000-003**
Assessment Year: **2009**

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated this 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 the Form 131 petition with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on January 8, 2018. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn and testified for Respondent.¹

Facts

5. The subject property is a vacant residential lot located at 2742 Garfield (approx.) Street in Gary.
6. For 2009, the property was assessed at \$4,500.
7. Petitioner requested an assessed value of \$400.

Record

8. The official record contains the following:

¹ Gordona Bauhan, Lake County Hearing Officer, was present but did not testify.

a. A digital recording of the hearing.

b. Exhibits:

Petitioner presented no exhibits.

Respondent Exhibit 1: Property record card (“PRC”) for the subject property,

Respondent Exhibit 2: Real Property maintenance report,

Respondent Exhibit 3: Comparable sales spreadsheet,

Board Exhibit A: Form 131 petition and attachments,

Board Exhibit B: Notice 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 475, 478 (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 by \$100 from 2008 to 2009. Therefore, Petitioner has the burden of proof.

Summary of Contentions

14. Petitioner's case:
 - a. Petitioner acquired the property for \$25 at auction. Petitioner contends that the only market for this type of property is at a tax sale or commissioners' sale. *Nowacki testimony.*
 - b. Petitioner contends that even Respondent acknowledges that values in the area have decreased and that the assessed value of the subject has gone down approximately 50% from the year at issue until the present. The property may be worth \$400 but it was never worth the 2009 assessed value of \$4,600, and it is not worth the \$2,400 that it is assessed at today. *Nowacki testimony.*
 - c. Petitioner contends that the sales presented by the assessor are located all over the city. He says sales should be in the same neighborhood as the subject property and that there are no arm's length transactions in the neighborhood. Every sale in this neighborhood is based on auctions where people have been "run off" of their property. Then, he claims, people buy the properties at auction and when they get a tax bill based on the over-assessed value, they walk away. The result of this is the abandonment of properties in the city and the erosion of confidence in the local market. *Nowacki testimony.*
 - d. Petitioner notes that this appeal is several years old and that taxpayers are expected to still pay their taxes while waiting almost a decade, which is excessive, for some resolution to their appeals. *Nowacki testimony.*

15. Respondent's case:

Respondent submitted evidence regarding sales of vacant land. Based on those sales, he claims a change in the assessed value is not warranted. *James testimony.*

ANALYSIS

16. Petitioner failed to make a prima facie case for a reduction in the assessed value. 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 a 2009 assessment was January 1, 2008. 50 IAC 21-3-3.
 - c. Petitioner purchased the property at auction for \$25. Petitioner did not present any documentation to substantiate the purchase price or the date of the sale. Further, Petitioner did not claim that the purchase price should be equal to the assessed value. Petitioner contends that the property should be assessed at \$400. 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 that the appeal process is a slow one and that the petition is almost ten years old. However, 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 lengthy appeal process was due, in part, to Petitioner's own inaction.
 - e. 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

17. Petitioner failed to establish a prima facie case. 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 assessed value should not be changed.

ISSUED: March 21, 2018

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>>.