

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

Petitions: 45-003-13-1-5-00139-16
45-003-14-1-5-01195-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-428-028.000-003
Assessment Years: 2013 & 2014

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

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 30, 2015. On January 20, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2014 appeal with the PTABOA. The PTABOA issued notice of its final determination on April 12, 2016. On May 27, 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 February 26, 2018. Neither the ALJ nor the Board inspected the property.
5. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Gordona Bauhan, Lake County Appeal Officers, were sworn as witnesses for Respondent.

Facts

6. The subject property is a vacant residential lot located at 2540 Chase Street in Gary.
7. For 2013, the property was assessed at \$4,600. For 2014, the property was assessed at \$2,900.
8. Petitioner requested an assessed value of \$2,000 for both years.

Record

9. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1:	GIS map of the subject property,
Petitioner Exhibit 2:	Property record card (“PRC”),

Respondent Exhibit 1:	PRC,
Respondent Exhibit 2:	GIS map of the subject property,

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

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).

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 change from 2012 to 2013. Petitioner, therefore, has the burden of proof for 2013. The burden of proof for 2014 depends on the outcome for 2013.

Summary of Parties’ Contentions

15. Petitioner’s case:
 - a. Petitioner acquired the subject property for \$275. He contends the property is a remnant property, the front portion of which was taken to widen Chase Street. He further contends the remainder of the property is at the bottom of an embankment and is inaccessible. *Nowacki testimony; Pet’r Ex. 1.*
 - b. Petitioner contends that the property is in a blighted area with no development nearby and that it suffers from external obsolescence. *Nowacki testimony; Pet’r Ex. 1.*
 - c. Petitioner contends the correct valuation should be \$2,000. The current 2017 assessed value is \$2,300, which is close to the value he proposed four years ago. He claims this demonstrates that his numbers are logical and consistent. However, he would nonetheless argue that at \$2,300 the property is still over-assessed. *Nowacki testimony.*
 - d. Petitioner contends the PRC is inaccurate and contains significant errors. For example, it shows the topography as level, which it is not. It also incorrectly shows that there are utilities and paved roads on the property which there are not. The neighborhood life cycle is listed as “other” when it is clearly declining in nature. He contends that is supported by the assessor’s reduction in assessed value from \$4,600 to the current value of \$2,300. *Nowacki testimony; Pet’r Ex. 2.*
 - e. Petitioner contends the land computations on the PRC do not match.¹ The land computation column shows the value at \$2,700. The valuation record chart shows the value at \$2,300. Petitioner concedes the difference is in his favor but it shows the inaccurate and sloppy procedures used by Respondent’s office. *Nowacki testimony; Pet’r Ex. 2.*
 - f. Petitioner contends that at the PTABOA hearing, the township representative testified that the errors on the PRC do not matter. However, Petitioner argues that they do matter because users of the PRC assume the property is level and has utilities and a

¹ Petitioner referenced the 2017 PRC not the 2013 PRC.

paved road. They also have no idea the property is in a blighted area. Petitioner contends these characterizations lead to an inflated value. *Nowacki testimony*.

- g. Petitioner contends the value was wrong when he commenced this appeal and the numbers are still wrong. He claims Respondent has not corrected anything on the PRC and the items shown in the “Market Model” section are still incorrect as to topography, utilities, roads, and neighborhood life cycle. He claims Respondent has no interest in accuracy and the public suffers as a result. Petitioner contends it is part of a scheme to drive people from their homes so these properties can be acquired by politicians. *Nowacki testimony*.

16. Respondent’s case:

- a. Respondent contends that the land computation on the 2013 PRC totals \$4,600 and agrees with the final value for that year. For 2014, Respondent contends the PTABOA reduced the value to \$2,900. *Bauhan testimony; Resp’t Ex. 1*.
- b. Respondent contends that, on Petitioner’s PRC, the land computation totaled \$2,700 but the township over-rode that to get to the \$2,300 value for 2017 possibly because it found the property was in a declining market. *Metz testimony*.
- c. Respondent questions Petitioner’s claim that the topography is not level and that utilities are not available. *Metz testimony*.

ANALYSIS

17. Petitioner failed to make a prima facie case for a reduction in the assessed values for either 2013 or 2014. 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 purchased the property for \$275. However, Petitioner did not request the property be assessed for the purchase price. Petitioner contends the property should be assessed at \$2,000 for both years. However, Petitioner presented no substantial 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 contends the property suffers from external obsolescence. External obsolescence is caused by an influence outside of a property's boundaries that has a negative influence on the property's value. *Clark v. Dep't of Local Gov't Fin.*, 77 N.E.2d 1277 (Ind. Tax Ct. 2002). To receive an adjustment for such obsolescence, a property owner must identify the causes of the obsolescence present and quantify the amount it believes should be applied to the property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Petitioner identified some issues that might be the cause of obsolescence, but failed to quantify any amount.
 - e. Petitioner contends there are numerous errors on the PRC, specifically regarding the characteristics of the property and the land computation. Petitioner submitted the current 2017 PRC, but the land computation for that year is not relevant to the assessment years at issue. As to the characteristics of the property, Petitioner did not prove that the characteristics were incorrect. More importantly, he did not show how any changes to those characteristics would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of error in the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, Petitioner needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Id.* *See also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is).
 - f. Petitioner failed to make a prima facie case for reducing the 2013 assessment. Accordingly, the burden of proof remains with Petitioner for 2014. Petitioner offered the same evidence and arguments for 2014 and similarly failed to prove the assessment was incorrect for that year.
 - 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

18. Petitioner failed to establish a prima facie case that the 2013 or 2014 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 2014 assessed values should not be changed.

ISSUED: May 3, 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>>.