

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

**Petitions:** 45-003-13-1-5-00140-16  
45-003-14-1-5-01198-16  
45-003-16-1-5-00513-17  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-428-032.000-003  
**Assessment Years:** 2013, 2014, & 2016

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

**Procedural History**

1. Petitioner initiated the 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 the 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 initiated the 2016 appeal with the PTABOA. The PTABOA issued notice of its final determination on March 24, 2017. On May 8, 2017, Petitioner filed a Form 131 petition with the Board.
4. 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.
5. 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.
6. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Gordona Bauhan, Lake County Appeal Officers, were sworn as witnesses for Respondent.

**Facts**

7. The subject property is a vacant residential lot located at 2562 Chase Street in Gary.

8. The PTABOA determined the following assessments for the parcel under appeal<sup>1</sup>:

Year	Land
2013	\$1,400
2014	\$1,100
2016	\$1,000

9. Petitioner requested an assessed value of \$700 for all years.

### **Record**

10. 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: 2016 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.

### **Objection**

11. Respondent objected to Petitioner Exhibit 2. He contends the PRC is not correct for 2013. The objection goes to the weight of the evidence rather than its admissibility. The Board overrules the objection but notes that its admission does not change the outcome of the determination.

### **Burden**

12. 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

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<sup>1</sup> The PRCs do not reflect the PTABOA values for 2014 and 2016.

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.

13. 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).
14. 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).
15. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
16. The assessed value did not change from 2012 and 2013. Petitioner, therefore, has the burden of proof for 2013. The burden of proof for 2014 depends on the outcome for 2013. The assessment decreased from 2015 to 2016. Petitioner therefore has the burden of proof for 2016.

### **Summary of Parties' Contentions**

17. Petitioner's case:
  - a. Petitioner contends this property is the remnant of a whole parcel. The PRC identifies the property's size as 32 feet by 180 feet but he claims it is actually closer to 32 feet by 80 feet and closer to .06 acres rather than .13 acres. *Nowacki testimony; Pet'r Exs. 1 & 2.*
  - b. Petitioner contends the PRC is inaccurate and contains various errors. The PRC shows the topography as level which he claims it is not. It shows that there are utilities while he claims there are none. The PRC also shows there are paved roads and streets. However, Petitioner contends there is no road and the property is unbuildable and inaccessible. *Nowacki testimony; Pet'r Ex. 2.*

- c. Petitioner contends this parcel is much smaller than the property at 2540 Chase. Petitioner valued that property at \$2,000. Because the subject property is about one-third the size of the other parcel, Petitioner contends the value should be \$700. This is fair and consistent with the other property and very generous as he only paid \$100 for it. *Nowacki testimony*.
- d. Petitioner contends his numbers are uniform because he looks at value and various factors involved and places a fair market value on the property. He contends Respondent's numbers are inconsistent and inaccurate because they are based on erroneous information. Further, he contends values are not supposed to jump around from year to year. *Nowacki testimony*.

18. Respondent's case:

- a. Respondent contends the PRC Petitioner submitted is incorrect for the assessment years. The size of the property is shown as 32 feet by 92 feet with the acreage calculated at .06 acres. *Metz testimony; Bauhan testimony; Resp't Ex. 1*.
- b. Respondent contends that property values are consistent. Properties are assessed based on a front foot value and both the properties on Chase Avenue were valued at \$79 per front foot. A 50% influence factor was applied to the subject property to account for size and shape. *Bauhan testimony; Resp't Ex. 1*.

**ANALYSIS**

19. Petitioner failed to make a prima facie case for a reduction in the assessed values for 2013, 2014, and 2016. 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 2013 and 2014 was March 1 of the assessment year. For 2016, the valuation date was January 1, 2016. Ind. Code § 6-1.1-2-1.5.

- c. Petitioner purchased the property for \$100. However, Petitioner did not request the property be assessed for the purchase price. Petitioner contends the property should be assessed at \$700 for all years at issue. However, he 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 assessed value is based on erroneous information. Petitioner submitted a PRC showing the property is assessed as 32 feet by 180 feet. Petitioner contends that after the state took a portion of the property, the property is approximately 32 feet by 80 feet. Respondent submitted a PRC showing the property is actually assessed at 32 feet by 92 feet. Respondent's GIS map supports the dimensions shown on Respondent's PRC.
- e. Petitioner contends the property is unbuildable and inaccessible. Further, he contends the characteristics of the property shown on the PRC are incorrect. To make a case, Petitioner was required to offer evidence indicating how these factors affect the property's market value-in-use. He failed to offer anything to quantify the effect of any errors or to establish more accurate values. Without more, Petitioner's evidence is not enough to make a prima facie case for changing the assessments.
- f. Petitioner focused on what he perceived as incorrect information on the PRC. 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).
- g. Petitioner failed to make a prima facie case for reducing the 2013 assessment. Accordingly, the burden of proof remains with Petitioner for 2014. For 2014, Petitioner offered the same evidence and arguments and again failed to prove the assessment was incorrect. Similarly, Petitioner had the burden of proof for 2016 and also failed to prove the assessment was incorrect for that year.
- h. 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

20. Petitioner failed to establish a prima facie case that the 2013, 2014 or 2016 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 assessed values should not be changed.

ISSUED: May 3, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>.