

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

Petition: 45-003-13-1-5-00145-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-452-017.000-003
Assessment Year: 2013

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 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 February 26, 2018. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Gordona Bauhan, Lake County Appeal Officers, were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant residential lot located at 3942 W. 28th Avenue (Approx.) in Gary.
6. For 2013, the assessed value was \$3,400.
7. Petitioner requested an assessed value of \$2,500.

Record

8. The official record contains the following:

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a. A digital recording of the hearing

b. Exhibits:

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

Respondent Exhibit 1: PRC,
Respondent Exhibit 2: GIS map,

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*, 694 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 did not change from 2012 to 2013. Petitioner, therefore, has the burden of proof.

Summary of Parties' Contentions

14. Petitioner's case:
- a. Petitioner acquired the property for \$50. He is requesting a value of \$2,500 which is 50 times more than the purchase price. *Nowacki testimony.*
 - b. Petitioner contends that when he filed the appeal, the assessed value was \$3,400. Respondent has since reduced the value to \$2,800 which, Petitioner contends, is close to the assessed value he proposed five years ago. He contends that if Respondent had been doing a professional job at that time, that value would have been applied to the property earlier and he would not have had to endure five years of appeals in an effort to have the value reduced. *Nowacki testimony.*
 - c. Petitioner contends that the address of the subject property is approximate. It is identified as such because it is very difficult to clearly identify the exact addresses of these properties in blighted neighborhoods. *Nowacki testimony.*
 - d. Petitioner contends the Market Model on the PRC is incorrect and doesn't reflect the external obsolescence that affects the property or the blighted neighborhood condition. He claims that other characteristics are also incorrect. For example, the subject property does not have a paved road. There is only a gravel and dirt trail. Furthermore, there is no evidence of utilities such as gas, electric, or sewer. For gas and electric to be available they would have to be somewhere adjacent to the property so that Petitioner could tie into it. Also, the neighborhood is labeled as "static" which means its condition is not going up and not going down. However, the fact that Respondent has reduced the assessed value shows the neighborhood is in fact declining. *Nowacki testimony; Pet'r Ex. 2.*
 - e. Petitioner contends that if the PRC was fair and accurate, Respondent would have applied a different land value. Petitioner contends that when Respondent establishes values for these properties, he sees the inaccuracies on the PRC and believes the property has value. If Respondent had seen that the property was in an area that needed an external obsolescence factor applied because of the blighted conditions and gross abandonment in adjacent communities, as well as the fact that there were no utilities, no paved roads, and only an approximate address, he would have considered a more reasonable value. *Nowacki testimony.*
 - f. Petitioner contends Respondent's PRC shows the assessed value increased from 2009 to 2010. He claims there was absolutely no factor that would have caused the value to increase but, he contends, there were numerous reasons for it to decrease. He contends Respondent just assigns whatever numbers he wants because he is

motivated by something other than rendering a fair and accurate assessment.
Nowacki testimony; Resp't Ex. 1.

15. Respondent's case:
- a. Respondent contends Petitioner did not present any evidence to show that the assessed value is incorrect. *Bauhan 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 the assessment date at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Petitioner contends the property should be assessed at \$2,500. Petitioner presented no 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 outside influence that has a negative impact on a 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 obsolescence, a property owner must identify the causes of such obsolescence and quantify the amount of obsolescence it believes

should be applied. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). While Petitioner identified some items that might be the cause of external obsolescence, he failed to quantify the amount of such obsolescence.

- e. Petitioner contends there are numerous errors on the PRC regarding the characteristics of the property. However, he did not show how any changes to those characteristics would affect the market value-in-use of the property. Simply contesting methodology is insufficient to make a prima facie case for an 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 contends the appeal process has been going on for five years. Pursuant to Ind. Code § 6-1.1-15-1(o), Petitioner had the right to appeal directly to the Board if his 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.
- g. 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 that the 2013 assessed value is 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 value 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>>.