

**Small Claims
Final Determination
Findings and Conclusions**

Petitions: 45-004-13-1-5-00191-16
45-004-15-1-5-01835-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-05-33-278-010.000-004
Assessment Years: 2013 & 2015

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 June 13, 2016. On July 21, 2016, Petitioner filed a Form 131 with the Board.
2. Petitioner initiated a 2015 appeal with the PTABOA. The PTABOA issued notice of its final determination on August 17, 2016. On October 3, 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 July 10, 2017. Neither the ALJ nor the Board inspected the property.
5. 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

6. The subject property is a vacant residential lot located at 9243-47 Pottowattomi Trail in Gary.
7. The parties agreed that the assessed value for both 2013 and 2015 is \$19,000.
8. Petitioner requested an assessed value of \$4,000 for each year.

Record

9. The official record contains the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit A:	Plat map of subject property neighborhood,
Petitioner Exhibit B:	GIS map of subject property neighborhood,
Respondent Exhibit 1:	Property record card (“PRC”) for the subject property,
Respondent Exhibit 2:	GIS map of the subject property,
Respondent Exhibit 3:	List of comparable sales,
Board Exhibit A:	Form 131 petitions and attachments,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheets,

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 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.
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. Petitioner did not appeal the 2012 assessed value and the assessed value did not change from 2012 to 2013. Petitioner, therefore, has the burden of proof for 2013. Petitioner did not appeal the 2014 assessed value and the assessed value did not change from 2014 to 2015. Petitioner, therefore, has the burden of proof for 2015.

Summary of Parties’ Contentions

15. Petitioner’s case:
 - a. Petitioner contends the property is over-assessed compared to other properties in the neighborhood. For example, Mr. Nowacki notes that a larger corner lot is assessed at \$13,300. Another property consisting of three lots is assessed at a total of \$27,000, while yet another three-lot property is assessed at a total of \$9,800. He contends that the subject property’s assessment is the highest in the subdivision when size is considered. *Nowacki testimony; Pet’r Ex. A.*
 - b. Petitioner contends there is a wide variance in land values. He claims that these lots are difficult to develop, there is no rational consistency among the assessments, and the assessments bear no relevance to market values. *Nowacki testimony.*
16. Respondent’s case:
 - a. Respondent contends that Petitioner has presented no evidence showing that the properties he has referenced are comparable to the subject property. *Metz testimony.*
 - b. Respondent concedes the assessment may be overstated but does not agree with Petitioner’s value of \$4,000. Respondent contends the assessed value should be \$6,300 for both 2013 and 2015. *Metz testimony; Resp’t Ex. 3.*

ANALYSIS

17. Petitioner failed to make a prima facie case for a reduction in the assessed values. Respondent, however, conceded the property was over-assessed for both years at issue. 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 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 offered a plat map showing the assessments of other properties in the subject neighborhood. If done properly, this type of comparison may be used to show true tax value. *See* MANUAL at 2 (explaining that the sales comparison approach, a generally accepted appraisal methodology, "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."); *see also* IC 6-1.1-15-18(c) (allowing parties to offer evidence of comparable properties' assessments to prove the market value-in-use of a property under appeal). But the party offering the assessment data must show the properties are comparable. *Long*, 821 N.E.2d at 470-71. Conclusory statements do not suffice. Instead, the party must explain how the properties compare to each other in terms of relevant characteristics that affect market value-in-use. *Id.* At 471. The party must similarly explain how relevant differences affect values. *Id.*
- d. Petitioner's assessment comparison evidence falls short of the type of analysis contemplated by *Long*. While Petitioner generally attempted to compare some of the properties in terms of size, he did not explain how relevant differences affected their values. He did not attempt to adjust any of the assessments, either quantitatively or qualitatively, nor did he attempt to extract a value, or range of values, in arriving at his proposed amounts. As the Tax Court has explained "it is the taxpayer's duty to walk the [Indiana Board and this] Court through every element of [its] analysis." *Long*, 821 N.E.2d at 471 (*quoting Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002)). Without more, Petitioner's comparative assessment data fails to make a prima facie case that the assessments under appeal are incorrect or what the correct assessments should be.

- e. Petitioner failed to make a prima facie case for changing the assessments. Nonetheless, Respondent conceded that the property was over-assessed and that a more appropriate value would be \$6,300 for each year at issue. Based on these considerations, we find the assessment should be reduced.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 and 2015 assessed values should each be changed to \$6,300.

ISSUED: September 27, 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>>.