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

Petition No.:	**18-003-08-1-5-00001**
Petitioner:	**Kristi L. Ellis**
Respondent:	**Delaware County Assessor**
Parcel No.:	**18-07-33-352-011.000-003**
Assessment Year:	**2008**

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Ms. Ellis appealed her March 1, 2008 assessment to the Delaware County Property Tax Assessment Board of Appeals ("PTABOA"). On August 26, 2010, the PTABOA issued its determination denying Ms. Ellis relief.

2. Ms. Ellis then timely filed a Form 131 petition with the Board. She elected to have her appeal heard under the Board's small claims procedures.

3. On September 15, 2011, the Board held a hearing through its administrative law judge, Jennifer Bippus ("ALJ").

4. The following people were sworn in and testified:

    a) Kristi Ellis

    b) Kelly Hisle, Delaware County Deputy Assessor

Facts

5. The subject property contains a single-family home located at 3609 N. Glenwood Avenue in Muncie, Indiana.

6. Neither the Board nor the ALJ inspected the subject property.

7. The PTABOA determined the following assessment for March 1, 2008:

    Land: $17,400 Improvements: $98,900 Total: $116,300

8. On her Form 131 petition, Ms. Ellis requested an assessment of $89,000.

Parties' Contentions

9. Summary of Ms. Ellis's evidence and arguments:

   a) The subject property's assessment is too high in light of two appraisals. Both appraisers are certified, and they prepared their appraisals in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Ellis testimony; Pet'r Exs. 3-4.*

   b) The first appraisal was prepared by Lisa Thomas using only the sales-comparison approach. Ms. Thomas used four sales that occurred between April 1, 2009 and August 14, 2009. Based on those sales, Ms. Thomas valued the subject property at $88,000 as of October 19, 2009. *Pet'r Ex. 3.* Brian Jackson prepared the second appraisal using both the sales-comparison and cost approaches to value, although he gave the most weight to his conclusions under the sales-comparison approach. Mr. Jackson used three sales that occurred between April 21, 2009 and August 24, 2009, and he valued the property at $90,000 as of October 29, 2009. *Pet'r Ex. 4.*

   c) Ms. Ellis also pointed to changes in the subject property's assessment since 2001. Although she has made no major improvements to the property aside from a new roof, the property's assessment increased by $29,900 from 2005 to 2008. In fact, the assessment increased by $9,100 (from $107,200 to $116,300) between 2007 and 2008 alone. *Ellis testimony; Pet'r Exs. 1-2.*

   d) In response to the Assessor's case, Ms. Ellis noted that the purportedly comparable properties that Assessor's representative, Ms. Hisle, relied on all had three-bedroom homes. By contrast, the subject home only has two bedrooms. Ms. Ellis believes that three-bedroom homes are easier to sell. *Ellis testimony.*

10. Summary of the Assessor's evidence and arguments:

   a) Ms. Hisle pointed to 50 IAC 21-3-3, which directs assessors to value properties by using sales from the two calendar years preceding an assessment date. Thus, to compute March 1, 2008 assessments, assessors used sales from 2006-2007 and adjusted those sale prices to January 1, 2007 values. By contrast, both of Ms. Ellis's appraisals value the subject property as of October 2009 using sales from 2009. *Hisle testimony; Resp't Exs. 1, 3-6.*

   b) To support the subject property's assessment, Ms. Hisle pointed to the sales of four properties that she described as being similar to the subject property. The properties all sold between July 10, 2006, and April 19, 2007. Ms. Hisle provided a listing sheet for each property and offered a "CMA Summary Report." That report lists each home's size and sale price. It also considers the sales as a function of price per square foot of living area, both individually and on average. According to the report, the four properties sold for an average of $62.64 per square foot. Based on those sales, Ms. Hisle argued that the subject property's assessment of $59.46 per square foot was appropriate. *Hisle testimony; Resp't Exs. 7-12.*

Record

11. The official record for this matter is made up of the following:

a) The Form 131 petition,

b) A digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit 1:	Current Assessment Information (property record card ("PRC") for the subject property)
Petitioner Exhibit 2:	Past Assessment Information (PRC for the subject property showing 2001 – 2008)
Petitioner Exhibit 3:	Appraisal by Lisa Thomas valuing the subject property as of October 19, 2009
Petitioner Exhibit 4:	Appraisal by Brian Jackson valuing the subject property as of October 29, 2009
Petitioner Exhibit 5:	Copy of Form 134 from April 2011

Respondent Exhibit 1:	50 IAC 21-3-3
Respondent Exhibit 2:	PRC for the subject property
Respondent Exhibit 3:	October 26, 2009 letter from Lisa Thomas to Donald McClellan (cover letter from appraisal)
Respondent Exhibit 4:	Page 2 of 6 from Lisa Thomas's appraisal
Respondent Exhibit 5:	October 29, 2009 letter to Lesley Volk from Brian Jackson (cover letter from appraisal)
Respondent Exhibit 6:	Page 2 of 6 from Brian Jackson's appraisal
Respondent Exhibit 7:	CMA Summary Report
Respondent Exhibit 8:	MLS Listing for 4500 N. Rosewood
Respondent Exhibit 9:	MLS Listing for 3705 N. Janney
Respondent Exhibit 10:	MLS Listing for 3809 N. Lanewood
Respondent Exhibit 11:	MLS Listing for 3400 N. New York
Respondent Exhibit 12:	GIS map of subject property and comparable sales

Board Exhibit A:	Form 131 petition
Board Exhibit B:	Hearing notice
Board Exhibit H:	Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17, which shifts that burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

> This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

I.C. § 6-1.1-15-17.

13. Unambiguous statutory language must be given its plain meaning. And this new burden-shifting provision states a basic rule about reviewing certain assessments in clear and unambiguous terms. The provision, however, does not address various details about how it should be applied. Most significantly, the provision does not directly address the meaning of its July 1, 2011 effective date. For example, one might ask whether the provision applies to all appeals that had not yet been heard as of July 1, 2011, or instead applies only to appeals of assessments that were made after that effective date.

14. The Board answered that question in two recent cases in which it held that Ind. Code § 6-1.1-15-17 applies to appeals where the Board conducts its hearing after July 1, 2011, even if the assessment under appeal was made before that date. *Echo Lake, LLC v. Morgan County Assessor*, pet. nos. 55-016-09-1-4-00001 -02 and -03 (Ind. Bd. of Tax Rev. Nov. 4, 2011); *Stout v. Orange County Assessor*, pet. no. 59-007-09-1-5-00001 (Ind. Bd. Tax Rev. Nov. 7, 2011). As explained in those decisions, "'While statutes are generally given prospective effect absent a contrary legislative intent, it is also true that the jurisdiction in pending proceedings continues under the procedure directed by new legislation where the new legislation does not impair or take away previously existing rights, or deny a remedy for their enforcement, but merely modifies procedure, while providing a substantially similar remedy.'" *Echo Lake*, slip op. at 8-9 (quoting *Tarver v. Dix*, 421 N.E.2d 693, 696 (Ind. Ct. App. 1981)). According to the U.S. District Court for the Northern District of Indiana, "applying newly enacted procedure to a case awaiting trial in district court is not, strictly speaking, a retroactive application of the law" because the court has not yet "done the affected thing" when the new law is applied. *Brown v. Amoco Oil Co.*, 793 F. Supp. 846, 851 (N.D. Ind. 1992).

15. In *City of Indianapolis v. Wynn*, 157 N.E.2d 828, 834-835 (Ind. 1959), the Indiana Supreme Court held that a statutory amendment specifying that evidence of certain factors would constitute primary determinants of an annexation's merit was a procedural amendment. Because it was about a procedural matter, the amendment applied to a

proceeding where the remonstrators had filed their challenge, but where no hearing had yet occurred. The Court reasoned that because the amendment "changes the method of procedure and elements of proof necessary to sustain an annexation ordinance, and does not change the tribunal or the basis of any right, it must be presumed that the Legislature intended that the proceedings instituted under the [prior version of the statute] should be continued to completion under the method of procedure prescribed by the [amendment]." *Id.; see also Tarver,* 421 N.E.2d at 696 (A statutory presumption of legitimacy applied to a case filed prior to its enactment but heard after the legislation was passed because "the new legislation … provided a substantially similar remedy while delineating more clearly the procedure to be followed in determining and enforcing this right.").

16. Indiana Code § 6-1.1-15-17 does not change the rules or standards for determining whether an assessment is correct. Nor does it change an assessor's duties in making assessments. Assessors must assess real property based on its "true tax value," which is defined as "the market-value-in use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)). This definition "sets the standard upon which assessments may be judged." *Id.* Moreover, the Department of Local Government Finance has adopted rules for adjusting assessments to account for changes in value between general reassessment years. Ind. Code § 6-1.1-4-4.5; 50 IAC 27; *see also*, 50 IAC 21.5 (repealed April 8, 2010). The question of whether an assessor will have the burden of proof at hearing based on how much a property's value changes year over year should not affect the assessor's obligation to assess the property according to its market value-in-use.

17. Thus, the "affected thing" under Ind. Code § 6-1.1-15-17 is the evidentiary hearing wherein the Board evaluates the proof offered by the parties—not the assessor's act of valuing the taxpayer's property in the first place. If the Indiana General Assembly had not intended the law to apply to pending appeals, it could have said that the law only applies to future assessments. But the General Assembly did not do so.

18. Turning to the case at hand, the subject property's assessment went from $107,200 in 2007 to $116,300 in 2008. That is an increase of 8.5% (rounded). The Assessor therefore had the burden of proving that the assessment was correct. To the extent that Ms. Ellis seeks an assessment below the previous year's level, however, Ms. Ellis had the burden of proof.

Discussion

19. The Assessor failed to meet her burden of proof. The Board reaches that conclusion for the following reasons:

    a) As explained above, Indiana assesses real property based on its market value-in-use. MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See id* at 5. For example, a market-value-in-use appraisal prepared according to USPAP often will often be probative. *Kooshtard Property VI,* 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales

information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

b) The Assessor offered little evidence to show the subject property's market value-in-use. Ms. Hisle pointed to listing sheets for four sales from 2006-2007. Granted, one can show a property's value through sales information for comparable properties. Indeed, that is what the sales-comparison approach contemplates. *See* MANUAL at 3 (explaining that the sales-comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."). For sales data to be probative, however, the proponent of the data must show that the sold properties are comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the sold properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the sold properties and the property under appeal affect the properties' relative market values-in-use. *Id.*

c) Ms. Hisle did not offer the type of analysis contemplated by the Tax Court in *Long*. Instead, she compared the subject property to her four sales almost solely in terms of relative house size. She did not address any relevant differences between the properties, much less try to explain how those differences affected the properties' relative values. Thus, Ms. Hisle's raw sales data lacks probative value.

d) Because the Assessor did not offer any probative evidence of the subject property's market value-in-use, she failed to meet her burden of proof. The property's March 1, 2008 assessment must therefore be reduced to the previous year's level of $107,200. That, however, does not end the Board's inquiry, because Ms. Ellis asked for an assessment of $89,000. As explained above, Ms. Ellis had the burden of proving that she was entitled to that additional reduction. The Board therefore turns to Ms. Ellis's evidence.

20. Ms. Ellis did not meet her burden of proving that the subject property's assessment should be reduced below its March 1, 2007 level. The Board reaches that conclusion for the following reasons:

a) As explained above, a party can prove her case through evidence that is consistent with the Manual's definition true tax value. But she must explain how that evidence relates to the 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). Otherwise, the evidence lacks probative value. *See id.* ("[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999, value.") (emphasis added). For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3 (2009).

b) Ms. Ellis offered two appraisal reports in which the appraisers used generally accepted appraisal approaches to estimate the subject property's market value. And both appraisers certified that they prepared their reports in accordance with USPAP. Thus, the appraisers' valuation opinions are probative of the subject property's market value-in-use as of their reports' effective dates—October 19, 2009, and October 29, 2009, respectively. But those effective dates are more than 2 ½ years after the January 1, 2007 valuation date for the March 1, 2008 assessment under appeal. Neither the appraisers in their respective reports, nor Ms. Ellis in her testimony, attempted to explain how the appraisals related to the subject property's market value-in-use as of January 1, 2007. The appraisals therefore lack probative value. *See Long* 821 N.E.2d at 471 (holding that an appraisal that estimated a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

Conclusion

21. Because the subject property's assessment increased by more than 5%, the Assessor bore the burden of proving that the property's March 1, 2008 assessment was correct. Her failure to do so means that the property's assessment must be reduced to the previous year's level of $107,200. Ms. Ellis, however, bore the burden of proving that she was entitled to any further reduction. Because she did not explain how her evidence related to the subject property's value as of the relevant valuation date, she failed to meet that burden.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that the subject property's March 1, 2008 assessment be changed to $107,200.

ISSUED:_____

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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

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.