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

Petition No.: **76-017-09-1-5-00001A**[1]
Petitioner: **Patrick S. Hale**
Respondent: **Steuben County Assessor**
Parcel No.: **76-11-06-140-130.000-017**
Assessment Year: **2009**

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

Procedural History

1. Patrick S. Hale filed a Form 130 petition challenging the March 1, 2007 assessment for parcel 76-11-06-140-125.000-017 ("Lot 25"), which adjoins the subject property. As a result of Mr. Hale filing that appeal, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") increased the subject property's March 1, 2009 assessment from $6,900 to $43,600. *See Bd. Ex. A, Form 115 at 2, Resp't Ex. 5.* There is no evidence that the PTABOA notified Mr. Hale of that increase other than referring to it on the second page of the Form 115 determination for Lot 25. *See id*.

2. Mr. Hale timely filed a Form 131 petition with the Board contesting the PTABOA's action with regard to the subject property. In that Form 131 petition, Mr. Hale inadvertently listed the assessment date under appeal as March 1, 2007, probably because that was the assessment date at issue in his appeal of Lot 25. At the Board's hearing, Mr. Hale corrected the year of appeal to reflect March 1, 2009. The Assessor did not object.

3. Mr. Hale elected to have his appeal heard under the Board's small claims procedures. On July 26, 2011, the Board held a hearing through its administrative law judge, Patti Kindler ("ALJ").

4. The following people were sworn in and testified:

    a) Patrick Hale

    b) Marcia Seevers, Steuben County Assessor
    Phyl Olinger

[1] The petition number has been changed from 76-017-07-1-5-00001A to 76-017-09-1-5-00001A to reflect the correct assessment year under appeal.

Facts

5. The subject property is a platted, unimproved 0.40-acre lot located at 2345 South Fanning Road in Angola, Indiana. Neither the Board nor the ALJ inspected the property.

6. The PTABOA assessed the property as follows:

   Land: $43,600 Improvements: $0 Total: $43,600

7. Mr. Hale requested an assessment of $7,000.

Parties' Contentions

8. Summary of Mr. Hale's evidence and arguments:

   a) Thomas F. Mack, a certified appraiser with Good Valuation, Inc., estimated the subject property's market value at $7,000 as of March 1, 2008. Thus, based on Mr. Mack's appraisal, the subject property is assessed for significantly more than its market value. *Hale testimony; Pet'r Ex. 7.*

   b) Mr. Hale bought the subject property for around $3,000. *Hale testimony.* In 2005, he successfully appealed the property's assessment, and its assessment was lowered to $6,400. *See id.; Pet'r Ex. 8.* The assessment should not have jumped to $43,600 in one year. *Hale argument.*

   c) Because the subject property floods at least twice a year, there is no suitable use that would make it worth anywhere near the $43,600 for which the PTABOA assessed it. Flood waters come within 15 feet of the road, where the lake has basically taken over the property. And trees on the property have "witness lines" from the flooding. Finally, "soil perk" testing established that the site was, and still is, unsuitable for construction. *Hale testimony; Pet'r Exs. 1, 3, 5, 6.*

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

   a) Mr. Mack's appraisal is unpersuasive. He used the same purportedly comparable sales in an appraisal that he prepared for Lot 25, another property that Mr. Hale appealed. And as the Assessor argued at that appeal hearing, Mr. Mack's comparables are located too far away to be representative of the subject property's neighborhood. *Olinger testimony.*

   b) The PTABOA changed the subject property's assessment when Mr. Hale filed an appeal for an adjoining parcel. The adjoining parcel is smaller than the subject property but was assessed for more than the subject property. The PTABOA therefore believed that it should increase the subject property's assessment. At the same time, the PTABOA applied a 40% negative influence factor to the subject property for excessive frontage and a 25% negative influence factor for flooding. *Olinger testimony.*

Record

10. 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:	Nine photographs of the subject property depicting flooding, taken in the spring of 2010
Petitioner Exhibit 2:	Evidence Request Form for hearing number 76-017-02-0-5-00092; Evidence Request Form for hearing numbers 76-017-02-0-5-00038 through 00043
Petitioner Exhibit 3:	Copies of two photographs with September 8, 2004 received stamp from Steuben County Assessor
Petitioner Exhibit 4:	September 16, 2000 valuation opinion by Duane Oberline for six parcels
Petitioner Exhibit 5:	A residential sewage disposal systems report for the subject property dated September 22, 2004
Petitioner Exhibit 6:	September 16, 2004 report from Eickholtz Soil & Environmental Consulting
Petitioner Exhibit 7:	Certified Land Appraisal Report prepared by Thomas Mack of Good Valuation, Inc. effective March 1, 2008
Petitioner Exhibit 8:	Form 115 determination from an appeal of the subject property's 2002 assessment

Respondent Exhibit 1:	Respondent Exhibit Coversheet
Respondent Exhibit 2:	Summary of Respondent Testimony
Respondent Exhibit 3:	Power of Attorney Certification and Power of Attorney
Respondent Exhibit 4:	Property record card ("PRC") for parcel 76-11-06-140-125.000-017
Respondent Exhibit 5:	Subject property PRC
Respondent Exhibit 6:	Form 115 determination, issued January 19, 2010
Respondent Exhibit 7:	PRC for parcel 76-11-06-140-126-000.017
Respondent Exhibit 8:	Beacon aerial map showing the location of the subject property and other parcels owned by Mr. Hale.
Respondent Exhibit 9:	Respondent Signature and Attestation Sheet

Board Exhibit A:	Form 131 petition
Board Exhibit B:	Hearing notice
Board Exhibit C:	Hearing sign-in sheet

d) These Findings and Conclusions.

Analysis

Burden of Proof

11. 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.

12. 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.

13. 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).

14. 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.").

15. 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, property values are to be adjusted each year to reflect the change in a property's value between general reassessment years. Ind. Code § 6-1.1-4-4.5. 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.

16. 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 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.

17. Turning to the case at hand, the subject property's assessment went from $6,900 in 2008 to $43,600 in 2009 following the PTABOA's action. That is an increase of far more than 5%. The Assessor therefore had the burden of proving that the assessment was correct.

The Assessor's Case

18. The Assessor failed to meet her burden of proof. The Board reaches this 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*. For example, a market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice 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) Here, the Assessor offered nothing to show that the subject property's assessment of $43,600 accurately reflected its market value-in-use. At most, she attacked Mr. Mack's appraisal. Even then, she did so only in vague terms. The Assessor therefore failed to meet her burden of proof.

c) Even if the Assessor had offered evidence to support the property's assessment, it appears that the PTABOA failed to follow statutory procedures in making that assessment. A PTABOA can act in two different capacities: (1) as a quasi-judicial body that reviews challenges to assessments, and (2) as a primary assessing official. *Compare* I.C. § 6-1.1-15-1 (laying out procedures for assessment appeals at the county level) *with* I.C. § 6-1.1-9-1 (giving assessors and PTABOAs the authority to assess omitted or undervalued property) and I.C. § 6-1.1-13-1 and -3 (giving a PTABOA the authority to change an undervalued property's assessment for the immediately preceding assessment date). When acting as a primary assessor, however, the PTABOA must give the taxpayer notice of his right to appear before the PTABOA. Thus, under Ind. Code § 6-1.1-9-1, a PTABOA or other official who assesses omitted or undervalued property "shall give written notice under … I.C. 6-1.1-4-22 of the . . . increase in assessment." I.C. § 6-1.1-9-1. That notice "shall contain a general description of the property and a statement describing the taxpayer's right to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1." *Id*. Similarly, under Ind. Code § 6-1.1-13-1, a PTABOA must give "prior notice" to the taxpayer stating a time and place where the taxpayer can appear before the board. I.C. § 6-1.1-13-1.

d) There is nothing in the record to show that the PTABOA gave Mr. Hale notice of its action increasing the property's 2009 assessment aside from a reference on the second page of a Form 115 determination for an entirely different property. That method, however, was not reasonably calculated to inform Mr. Hale of the PTABOA's action as to the subject property. And it did not purport to inform Mr. Hale of his right to appear before the PTABOA to contest the assessment.

e) In any event, because the Assessor failed to meet her burden to support the PTABOA's assessment, the Board need not decide whether shortcomings in the

notice given to Mr. Hale invalidated the PTABOA's action in the first place. The net result would be the same in either case—the property's March 1, 2009 assessment would be returned to the previous year's level of $6,900.

Conclusion

19. Given the problems with the notice that the PTABOA gave, its action increasing the subject property's March 1, 2009 assessment is suspect. In any case, the Assessor failed to meet her burden of showing that the increased assessment was correct. The property's assessment must therefore be changed to $6,900—the same amount that the property was assessed for in 2008.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review orders that the subject property's March 1, 2009 assessment be changed to $6,900.

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>.