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

Petitioner:	**Robert K. Lehman**
Petition Nos.:	**76-010-08-1-5-00006**
	76-010-08-1-5-00007
	76-010-08-1-5-00008
	76-010-08-1-5-00009
Respondent:	**Steuben County Assessor**
Parcel Nos.:	**76-10-33-210-106.000-010 [Lot 4]**
	76-10-33-210-107.000-010 [Lot 3]
	76-10-33-210-108.000-010 [Lot 2]
	76-10-33-210-109.000-010 [Lot 1]
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. Robert K. Lehman filed Form 130 petitions contesting the March 1, 2008 assessments for his four parcels. On January 20, 2010, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations lowering two of the four parcels' assessments, but not to the amounts that Mr. Lehman had requested.

2. Mr. Lehman then timely filed four Form 131 petitions with the Board. He elected to have his appeals heard under the Board's small claims procedures.

3. On September 14, 2011, the Board held a single hearing on all four petitions through its administrative law judge, Patti Kindler ("ALJ"). Mr. Lehman and Phyl Olinger, the Steuben County Assessor's representative, were sworn in and testified.

Facts

4. The parcels at issue are contiguous lots located in Penn Park Addition on Hamilton Lake in Hamilton, Indiana. Lot 3 has a concrete patio. Lots 1, 2 and 3 contain a home, although that home is assessed only to Lot 1. Lot 3 also has a concrete patio. Lot 1's address is 80 Lane 221 BA, and Lot 3's address is 100 Lane 221B. Lot 4 contains a rental house, and its address is 100 Lane 221 BA.

5. Neither the Board nor the ALJ inspected the subject parcels.

6. The PTABOA determined the following values for the parcels:

Lot 1:	Land: $20,500	Improvements: $160,400	Total: $180,900
Lot 2:	Land: $41,300	Improvements: $ 0	Total: $ 41,300
Lot 3:	Land: $89,100	Improvements: $ 300	Total: $ 89,400
Lot 4:	Land: $91,000	Improvements: $ 41,200	Total: $132,200
Total assessment for all four parcels:			$443,800

7. Mr. Lehman requests that each parcel's land assessment be reduced to match its 2007 level, which would result in the following values:

Lot 1:	Land: $17,700	Improvements: $160,400	Total: $178,100
Lot 2:	Land: $34,800	Improvements: $ 0	Total: $ 34,800
Lot 3:	Land: $82,100	Improvements: $ 300	Total: $ 82,400
Lot 4:	Land: $84,300	Improvements: $ 41,200	Total: $125,500
Total assessment for all four parcels:			$420,800

Parties' Contentions

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

   a) Mr. Lehman is only contesting the land assessments for the subject parcels. In total, those assessments increased $23,000 over 2007 levels. And they continue to increase even though there are houses sitting on the land and the land itself cannot be sold or used for anything else. *Lehman testimony.*

   b) To justify those increases, the Assessor pointed to a nearby property owned by the Arrantses. That property sold in 2004 and again in 2006, with the second sale price being significantly higher than the first. But the first buyer completely renovated the property before the Arrantses bought it. And the Arrantses' property is not even comparable to the subject parcels: the Arrantses' property has a clear waterfront view while Lots 1, 2 and 3 look out over a cattail-filled swamp. Similarly, the Arrantses' property does not compare to Lot 4, because Lot 4's rental house is situated differently than the Arrantses' house and the two houses face different directions. *Lehman testimony and argument; Pet'r Exs. D-F.*

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

   a) The subject parcels' assessments are correct, and Mr. Lehman offered no market evidence to prove otherwise. *Olinger argument.* Nonetheless, the PTABOA acknowledged and addressed the parcels' less desirable swampy lake frontage by applying a 40% negative influence factor to Lots 1 and 2. The PTABOA similarly applied an additional 5% negative influence factor to Lots 3 and 4 due to their odd shapes. The PTABOA had previously applied negative influence factors and discounts to those parcels for excessive frontage and lack of utilities. *Olinger testimony; Resp't Exs. 4a-4c.*

b) The parcels' assessments are supported by the March 9, 2006 sale of the Arrantses' property. Ms. Olinger abstracted a land value of $197,400 by deducting the improvements' assessed value from the property's total sale price. When divided by the property's frontage (50 feet), the abstracted value translates to $3,948 per front foot, which is more than the $3,600 per front foot base rate used to assess the subject parcels. *Olinger testimony; Resp't Ex. 6.*

c) To refute Mr. Lehman's claim that the subject parcels' assessments should not have increased, Ms. Olinger again pointed to the Arrantses' property. That property had previously sold for $212,000 in 2004, or 23.7% less than its 2006 sale price. Ms. Olinger acknowledged that increase reflected by the two sales of the Arrantses' property did not necessarily mean that the subject parcels' value increased 23.7%. But she argued that the two sales of the Arrantses' property contradict Mr. Lehman's assertion in his Form 131 petitions that home values have decreased since 2005. *Olinger testimony; Resp't Ex. 6.*

Record

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

a) The Form 131 petitions,

b) A digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit A:	Form 130 petition and property record card ("PRC") for Lot 1
Petitioner Exhibit B:	Form 130 petition and PRC for Lot 2
Petitioner Exhibit C:	Form 130 petition and PRC for Lot 3
Petitioner Exhibit D:	Form 114 Notice of Hearing on Petition, Form 130 petition, and PRC for Lot 4
Petitioner Exhibit E:	Beacon aerial map, PRC for the Arrantses' property located at 140 Lane 221 BA, copy of photograph of the view from the Arrantses' dock
Petitioner Exhibit F:	Assessor's Evidence Request Form, Beacon aerial map showing the subject parcels, copy of photograph showing the view from Lot 1, Lot 2, and part of Lot 3

Respondent Exhibit 1:	Respondent's Exhibit Coversheet
Respondent Exhibit 2:	Summary of Respondent Testimony
Respondent Exhibit 3:	Power of Attorney Certification and Power of Attorney
Respondent Exhibit 4:	PRC for Lot 4
Respondent Exhibit 4a:	PRC for Lot 3
Respondent Exhibit 4b:	PRC for Lot 2

Respondent Exhibit 4c: PRC for Lot 1
Respondent Exhibit 5: Form 115 determination for Lot 4
Respondent Exhibit 5a: Form 115 determination for Lot 3
Respondent Exhibit 5b: Form 115 determination for Lot 2
Respondent Exhibit 5c: Form 115 determination for Lot 1
Respondent Exhibit 6: Beacon aerial map showing the subject parcels and the Arrantses' property, PRC for the Arrantses' property
Respondent Exhibit 7: Respondent signature and Attestation Sheet

Board Exhibit A: Form 131 petitions
Board Exhibit B: Hearing notices
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. The Board notified the parties of this new statute on July 11, 2011, when it first sent notice scheduling a hearing.

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, it does not directly address the meaning of its July 1, 2011 effective date. For example, does the provision apply to pending appeals

that had not yet been heard as of July 1, 2011, or does it instead apply 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 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 v. Dix*, 421 N.E.2d 693, 696 (Ind. Ct. App. 1981) (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 the 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 land assessments for all four of Mr. Lehman's parcels increased by more than 5%:

Lot	2007 Assessment	2008 Assessment (PTABOA determination)	Percent Change
Lot 1	$17,700	$20,500	15.82%
Lot 2	$34,800	$41,300	18.68%
Lot 3	$82,100	$89,100	8.53%
Lot 4	$84,300	$91,000	7.95%

Resp't Exs. 4-4c. Thus, the Assessor had the burden of proving that the parcels' March 1, 2008 assessments were correct.

Discussion of Merits

18. The Assessor did not meet her burden of proving that the subject parcels' March 1, 2008 assessments were correct. 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. *See Id.; 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 did little to support the subject parcels' assessments. She primarily relied on the September 2006 sale price for a nearby property owned by the Arrantses. Aside from that property's proximity to the subject parcels, however, the Assessor did nothing to meaningfully compare the Arrantses' property to the subject parcels in terms of characteristics that would tend to affect their respective market values-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005)(holding that sales data lacked probative value where taxpayers failed to explain how the characteristics of their property compared to the characteristics of purportedly comparable properties or how any differences between the properties

affected their relative market values-in-use). Thus, the September 2006 sale of the Arrantses' property lacks probative value.

c) The Assessor also pointed to the 23.7% increase in sale price between the first sale of the Arrantses' property in November 2004 and its second sale in September 2006. Of course, even if one assumes that the two sales of the Arrantses' property show that the increase in the subject parcels' assessments between 2007 and 2008 mirrored increases in the local real estate market, that fact would not necessarily show that the subject parcels were assessed at or near their respective market values-in-use. Instead, one would need to know whether the parcels' March 1, 2007 assessments were accurate in the first place. And that raises the question of exactly what an assessor must prove to meet her burden under Ind. Code § 6-1.1-15-17.

d) But the Board need not decide that question here. The Assessor's witness, Ms. Olinger, acknowledged that the increase in sale price between the two sales of the Arrantses' property did not necessarily mean that the subject parcels' values increased by the same amount. And the Assessor gave no details about the two sales of the Arrantses' property, even after Mr. Lehman testified that the first buyer had remodeled the house before selling it to the Arrrantses. The Assessor's evidence therefore does little to show the extent to which the real estate market increased. Indeed, the period between the two sales of the Arrantses' property (November 2004 to September 2006) does not very closely relate to the period that is relevant to this appeal—January 1, 2006 (the valuation date for March 1, 2007 assessments) to January 1, 2007 (the valuation date for March 1, 2008 assessments).[1]

e) Finally, the Assessor pointed to the fact that both she and the PTABOA applied negative influence factors to the subject parcels to account for various things that affect the parcels' values. But she offered nothing to show how those influence factors were quantified much less to show that, once applied, those influence factors brought the parcels' assessments into line with their market values-in-use.

f) Because the Assessor did not offer probative evidence to support the subject parcels' assessments, she failed to meet her burden of proof.

Conclusion

19. Because the subject parcels' assessments increased more than 5% between 2007 and 2008, the Assessor had the burden of proving that the parcels' March 1, 2008 assessments were correct. The Assessor failed to meet her burden and the Board therefore finds for Mr. Lehman.

[1] Under the administrative rules in effect for the March 1, 2007 and March 1, 2008 assessment dates, real property was assessed based in its market value-in-use as of January 1 of the calendar year preceding the assessment date. 50 IAC 21-3-3(b) (2009). So the valuation date for March 1, 2007 assessments was January 1, 2006, and the valuation date for March 1, 2008 assessments was January 1, 2007.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now finds that the subject parcels' March 1, 2008 land assessments must be reduced as follows:

Lot 1: $17,700
Lot 2: $34,800
Lot 3: $82,100
Lot 4: $84,300

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>.