REPRESENTATIVE FOR PETITIONER:
Milo Smith, Certified Taxpayer Representative

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

South Central Leasing,	)	Petition No.: 53-012-06-1-3-00004
	)	
Petitioner,	)	Parcel No.: 008-00040-00
	)	
v.	)	
	)	
Monroe County Assessor,	)	County: Monroe
	)	
Respondent.	)	Assessment Year: 2006

Appeal from the Final Determination of the
Monroe County Property Tax Assessment Board of Appeals

August 17, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed value of the Petitioner's land is overstated for the 2006 assessment year.

PROCEDURAL HISTORY

2. The Petitioner, South Central Leasing, through its certified taxpayer representative, Milo Smith, initiated its assessment appeal by filing a Form 130 Petition with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) on December 15, 2006. The PTABOA issued its determination on May 29, 2007.

3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Smith filed a Form 131 Petition for Review of Assessment with the Board on June 27, 2007, petitioning the Board to conduct an administrative review of the Petitioner's appeal.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on June 11, 2012, in Bloomington, Indiana.

5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Milo Smith, Taxpayer Representative

For the Respondent:[1]

Judy Sharp, Monroe County Assessor
Ken Surface, Nexus Group

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Property record card for the subject property,
Petitioner Exhibit 2 – Indiana Board of Tax Review, Notice of Hearing on Petition, dated March 19, 2012,
Petitioner Exhibit 3 – Department of Local Government Finance (DLGF) "Annual Adjustment of Assessed Values Fact Sheet,"
Petitioner Exhibit 4 – Assessor's response to Petitioner's interrogatories and requests for production of documents.

7. The Respondent presented the following exhibits:

Respondent Exhibit A – Property record card for the subject property,
Respondent Exhibit B – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130, and Notification of Final Assessment Determination – Form 115,
Respondent Exhibit C – Petitioner's response to Assessor's interrogatories and requests for production of documents, property record card for 3910 West 3rd Street, Bloomington, Indiana Board of Tax Review, Notice of Hearing on Petition, dated March 19, 2012, and DLGF's "Annual Adjustment of Assessed Values Fact Sheet,"
Respondent Exhibit D – Indiana Fiscal Policy Institute – Statewide Property Tax Equalization Study, Appendix C, "Monroe County Property Tax Reassessment Equalization Analysis," pages 272 and 273, dated October 2005,
Respondent Exhibit E – Sales disclosure form for the subject property.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,

[1] Kay Schwade with Nexus Group was also in attendance but was not sworn as witness to give testimony.

Board Exhibit B – Notice of Hearing, dated March 19, 2012,
Board Exhibit C – Hearing sign-in sheet.

9. The subject property is 3.22 acres of vacant industrial land located at 303 North Curry Pike, Bloomington, in Monroe County.

10. The ALJ did not conduct an on-site inspection of the property.

11. For 2006, the PTABOA determined the assessed value of the Petitioner's land to be $289,800. There are no improvements on the property.

12. For 2006, the Petitioner's representative requested an assessed value of $100,600 for the land.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board of Tax Review is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

14. The Petitioner's representative admitted that the Petitioner purchased the property under appeal for $300,000 on March 31, 2005. *Smith testimony.* However, Mr. Smith argues, the assessor engaged in impermissible "sales chasing" because the assessor increased the value of the Petitioner's property based on its sale price. *Id.* According to Mr. Smith, he researched several properties in the subject property's neighborhood and only the Petitioner's property's assessed value increased by almost 200% between 2005 and 2006.

Id. Thus, Mr. Smith argues, the county treated the Petitioner's property differently than other properties in the same neighborhood causing an inequality in the Petitioner's property's assessment in 2006. *Id.*

15. In response to questioning, Mr. Smith admitted that he did not possess any sales information, any evidence on comparable properties in the neighborhood, or any other evidence of the subject property's market value-in-use. *Smith testimony.* Mr. Smith testified that he filed the Petitioner's appeal based on the fact that the property's "annual adjustment" increased by more than 5%. *Smith testimony; Respondent Exhibit C at 6.*

RESPONDENT'S CONTENTIONS

16. The Respondent's counsel argues that Indiana Code § 6-1.1-15-17.2, concerning shifting the burden of proof from the taxpayer to the assessor when an assessment increased more than five percent from the previous assessment, does not apply to this case. *Meighen argument.* According to Ms. Meighen, the statute should be applied prospectively. *Id.; citing Indiana Department of State Revenue v. Estate of Riggs*, 735 N.E.2d 340, 344 (Ind. Tax Ct. 2000). The triggering event is the assessment. *Meighen argument.* And because the assessment date following the effective date of the statute is March 1, 2012, the new statute should start applying with 2012 assessment appeals. *Id.* Thus, she argues, the Petitioner has the burden of proof to present a prima facie case that its 2006 assessment was incorrect. *Id.*

17. The Respondent's counsel further argues that the Petitioner's appeal should be dismissed in accordance with Indiana Trial Rule 41(B). *Meighen argument.* Ms. Meighen argues that the Petitioner's representative failed to show any basis for filing its appeal to the PTABOA or to the Board. *Id.* According to Ms. Meighen, under Trial Rule 41(B), a party may move for dismissal where the Petitioner had no valid appeal to begin with or where it is shown through the weight of the evidence that the Petitioner has no right to relief. *Id.* Because it is not sufficient for the Petitioner's representative to simply allege

that the assessor treated the Petitioner's property inequitably in 2006, the Petitioner did not have a valid appeal and the Petitioner's case should be dismissed. *Id.*

18. In support of the assessment, the Respondent's witness testified that in October of 2005, the Indiana Fiscal Policy Institute released its "Statewide Property Tax Equalization Study – Monroe County Equalization Analysis" (the Equalization Study) which measured the level of assessments for each class of property in the county. *Surface testimony; Respondent Exhibit D.* The Equalization Study showed that, after the 2002 general reassessment, commercial and industrial properties in Monroe County were being undervalued by, on average, 30%. *Id.* Mr. Surface testified that in 2006 annual adjustments were to be applied to property assessments to account for changes in property values and to assess property according to its market value-in-use. *Surface testimony.* Therefore, Monroe County reevaluated all of its land values and base rates and updated its cost tables. *Id.* As a result of this reevaluation, Mr. Surface testified, the Petitioner's property, as well as other commercial and industrial properties in the county experienced dramatic increases in their land base rate in 2006. *Id.*

19. Finally, Mr. Surface contends that the assessed value of the Petitioner's property was fair and equitable. *Surface testimony.* According to Mr. Surface, the subject property was assessed for $289,800 in 2006, which is less than its March 31, 2005, purchase price of $300,000. *Id.* In support of this contention, the Respondent submitted the property's sales disclosure form. *Respondent Exhibit E.* Mr. Surface testified that the sale of the subject property was one of several sales used to establish the land base rate for properties in the Petitioner's neighborhood. *Surface testimony.* According to Mr. Surface, all of the properties in the neighborhood were assessed with a land base rate of $90,000 per acre. *Id.; Respondent Exhibit A.*

BURDEN OF PROOF

20. 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 Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.[2] That statute shifts the 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.

Ind. Code § 6-1.1-15-17.2.

21. Here, the Respondent's counsel argues that Indiana Code § 6-1.1-15-17.2 should not be applied retroactively. According to Ms. Meighen, the burden-shifting law should only apply to assessments that occur after the law's effective date. The Board, however, is not convinced that applying the law in this case would be a retroactive application. "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

[2] HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

previously existing rights, or deny a remedy for their enforcement, but merely modifies procedure, while providing a substantially similar remedy." *Tarver v. Dix,* 421 N.E.2d 693, 696 (Ind. Ct. App. 1981). According to the U.S. District Court in 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).

22. In *City of Indianapolis v. Wynn,* 157 N.E.2d 828, 834-835 (Ind. 1959), the Indiana Supreme Court held that a statutory amendment, which specified that evidence of certain factors would constitute primary determinants of an annexation's merit, was a procedural amendment and therefore applied to a proceeding where the remonstrators has 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.").

23. The Respondent's counsel argues that amendments are only to apply prospectively "absent clear and expressed language to the contrary." *Meighen argument, citing Indiana Dep't of Revenue v. Estate of Riggs*, 735 N.E.2d 340 (Ind. Tax Ct. 2000). But the Tax Court in *Estate of Riggs* recognized that "exceptions to the general rule exist" noting that "retroactive application may be permitted where the new legislation only changes a mode of procedure… or where a statute is remedial." 735 N.E.2d at 344. Because the amendment at issue in the *Estate of Riggs* case changed the amount of an exemption, the

Court held that, unlike the burden shifting law at issue in this case, the amendment did not "change a mode of procedure"; nor was there any indication the amendment was "designed or intended to cure a defect or mischief existing in a prior statute." *Id.* at 345. Thus, the Court concluded in that case there was no evidence to suggest that the General Assembly intended to make the amendment retroactive. *Id.*

24. The Respondent's counsel also argues that the assessment is the "thing affected." However, Indiana Code § 6-1.1-15-17.2 does not change the rules or standards for determining whether an assessment is correct. Nor does the statute make any change to the assessor's duties in making assessments. Assessors are tasked with assessing 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). This definition "sets the standard upon which assessments may be judged." *Id.* Moreover, under the trending rules, property values are to be adjusted each year to reflect the change in a property's market value between general reassessment years. Ind. Code § 6-1.1-4-4.5. Whether the assessor will have the burden of proof at trial based on how much that property's value changes year over year should have no impact on the assessor's obligation to value property according to its market value-in-use. In fact, the Respondent made no claim that it would have assessed the Petitioner's property differently if the burden shifting provision had been promulgated prior to the time that the assessment was made.

25. Indiana Code § 6-1.1-15-17.2 places the burden of proof on an assessor when the assessed value of a property increases by more than five percent between assessment years. Thus, the "affected thing" would be the evidentiary hearing wherein the Board evaluates the proof offered by the parties. If the General Assembly had not intended the law to apply to pending appeals, it could have inserted language to that effect, stating that the law only applied to future assessments. This the legislature did not do.

26. Because the law applies to all pending appeals and because the property's assessed value for 2006 increased by more than 5% over the property's assessed value in 2005, the Board finds that the Respondent has the burden of proof in this proceeding.

MOTION FOR INVOLUNTARY DISMISSAL

27. The Respondent's counsel also argues that the Petitioner's representative failed to show a "legitimate" reason for filing the Petitioner's appeal with the PTABOA and with the Board. *Meighen argument.* Because the Petitioner had no valid basis for filing an appeal, Ms. Meighen argues, the Board should dismiss his Petition pursuant to Trial Rule 41(B). *Id.*

28. Pursuant to Trial Rule 41(B) of the Indiana Rules of Trial Procedure: "After the plaintiff or party with the burden of proof upon an issue, in an action tried by the court without a jury, has completed the presentation of his evidence thereon, the opposing party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the weight of the evidence and the law there has been shown no right to relief."

29. By the clear language of the rule, Trial Rule 41(B) applies to dismiss the case of a "plaintiff or *party with the burden of proof* upon an issue." T.R. 41(B) (emphasis added). Here, however, the Respondent has the burden of proof. Thus, while the taxpayer may have been able to move for involuntary dismissal of the assessor's case after the Respondent had presented its evidence, the Respondent cannot move to involuntarily dismiss the Petitioner's appeal in this case. Moreover, Trial Rule 41(B) allows a party to move for involuntary dismissal after the presentation of evidence. T.R. 41(B) (applies after a party "has completed the presentation of his evidence…") At the time Ms. Meighen moved for dismissal, the Petitioner had presented no evidence.

30. There is little question that, had the Petitioner had the burden of proof in this appeal, the case presented by his representative would have fallen far short of the burden to prove the Petitioner's property's assessment was in error. As discussed above, Indiana Code § 6-1.1-15-17.2 places the burden of proof on an assessor when the assessed value of a property increases by more than five percent between assessment years. The Respondent cannot sidestep the requirements of the burden shifting law by seeking to dismiss a petition it deems insufficient to make a case. The Board therefore denies the Respondent's counsel's motion for involuntary dismissal under Indiana Trial Rule 41(B).

ANALYSIS

31. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id*. A market-value-in-use appraisal prepared according to USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r,* 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

32. 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. Department of Local Government Finance,* 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). For the March 1, 2006, assessment date, the valuation date was January 1, 2005. 50 IAC 21-3-3.

33. Here, the Respondent argues that the Petitioner's property's assessment was correct for 2006 based on the property's purchase price. *Surface testimony; Meighen argument.* According to the Respondent's witness, the Petitioner purchased the property under appeal on March 31, 2005, for $300,000. *Id.; Respondent Exhibit E.* There was no evidence that the purchase of the property was anything other than a market transaction. The Petitioner's representative likewise admitted that the property was purchased in 2005 for $300,000. *Smith testimony.* The purchase price of a property is often the best evidence of a property's value. *See Hubler Realty Co. v. Hendricks County Assessor,* 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). While generally the 2006 assessment is to reflect the value of the property as of January 1, 2005, pursuant to 50 IAC 21-3-3(a), local assessing officials "shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date." Thus, the purchase of the property on March 31, 2005, was sufficiently timely to be probative of the property's market value-in-use for the 2006 assessment year.

34. In *Joyce Sportswear Co. v. State Board of Tax Commissioners,* 684 N.E.2d 1189 (Ind. Tax Ct. 1997), the Tax Court held that "when a taxpayer petitions the State Board for review, the State Board is given the power 'to assess the property in question, correcting any errors which may have been made.'" According to the Court, "[t]his power gives the State Board the plenary authority to reassess the property at a value higher than the one appealed by correcting errors in the original assessment." 684 N.E.2d at 1194. *See also Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 661 (Ind. Tax Ct. 1998) (The State Board has the authority to raise the assessed value of property on a taxpayer-initiated petition for review). While the Board no longer "assesses" properties, its power to weigh the evidence presented and to "correct any errors that may have been made and adjust the assessment… in accordance with the correction" likewise provides the Board the authority to increase the assessed value of property where the evidence shows the assessment is in error and the value of the property is in excess of its assessed value. *See*

Hubler Realty Co. v. Hendricks County Assessor, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) ("When a taxpayer elects to challenge its assessment, it assumes a certain degree of risk, as resolution of a property tax appeal may lead to an increase in assessment.") The Board therefore finds that the Respondent raised a prima facie case the value of the Petitioner's property for the 2006 assessment year was $300,000.

35. Once the Respondent raises a prima facie case, the burden shifts to the Petitioner to rebut the Respondent's evidence. *See American United Life Insurance Co. v. Maley,* 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Petitioner's representative argues that the Petitioner's property's assessment should be lowered because the assessor's actions amounted to "sales chasing," which Mr. Smith claims is prohibited by Indiana's assessing guidelines. *Smith testimony.* Mr. Smith, however, failed to cite to any specific law or regulation in support of this contention.

36. In *Big Foot Stores, LLC v. Franklin Township Assessor,* 919 N.E.2d 621 (Ind. Tax Ct. 2009), Judge Fisher found that "sales chasing" or "selective reappraisal" is the "practice of selectively changing values for properties that have been sold, while leaving other values alone." 919 N.E.2d at 623 fn. 5 (citing *County of Douglas v. Nebraska Tax Equalization and Review Comm'n,* 635 N.W.2d 413, 419 (Neb. 2001)). Here, however, the Petitioner's representative only showed that the Petitioner's property's 2006 assessed value increased to a value close to the property's 2005 purchase price. The Petitioner presented no evidence of the assessed values of other similar properties. The Respondent's witness, on the other hand, testified that the assessor changed the land value of all properties in the Petitioner's property's neighborhood. Therefore there is no evidence that the Petitioner's property was increased in value to its purchase price while other properties' values remained unchanged. Nor did the Petitioner's representative present any evidence that other properties were not similarly assessed close to their market values. Instead, he focused on the degree to which the property's assessment increased between 2005 and 2006. Absent a showing that the Petitioner's property was

somehow assessed differently than other similar properties, the Petitioner has failed to raise any cognizable claim.

37. The Board notes that assessing properties at or near their actual market values is the goal of Indiana's market value-in-use system. *See P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*"). The harm only comes when other properties are treated differently. And there is no evidence in the record that that is the case here.

SUMMARY OF FINAL DETERMINATION

38. The Petitioner's property's March 1, 2006, assessment increased by more than 5% over the property's 2005 value and therefore the assessor bore the burden of proving the property's March 1, 2006, assessment was correct. The Respondent raised a prima facie case that the property's value for the March 1, 2006, assessment date was $300,000. The Petitioner failed to rebut or impeach this evidence. Therefore the Board finds in favor of the Respondent, and holds that the assessed value of the Petitioner's property is $300,000 for 2006.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

_____

Chairman, Indiana Board of Tax Review

_____

Commissioner, Indiana Board of Tax Review

_____

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.