REPRESENTATIVE FOR PETITIONER:
Renee Kaehr, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Phyl Olinger

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Renee Kaehr,	)	Petition No.: 76-011-07-1-5-00235
	)	
Petitioner,	)	Parcel No.: 76-06-04-410.320-011
	)	
v.	)	County: Steuben
	)	
Steuben County Assessor,	)	Township: Pleasant
	)	
Respondent.	)	Assessment Year: 2007

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

March 13, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review ("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

Introduction

1. The subject parcel's land assessment, which is all that Renee Kaehr has challenged in this appeal, went up by more than 5% between 2006 and 2007. The Assessor therefore bore the burden of showing that the parcel's March 1, 2007 assessment was correct. Because the Assessor offered only raw sales data for two properties without meaningfully

comparing those properties to the subject parcel, the Assessor failed to meet her burden, and Ms. Kaehr is entitled to have the parcel's assessment reduced to its 2006 level.

Procedural History

2. Renee Kaehr appealed the subject parcel's March 1, 2007 assessment. On January 20, 2010, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the parcel's assessment, but not to the amount Ms. Kaehr had requested. Ms. Kaehr then timely filed a Form 131 petition with the Board. The Board has jurisdiction over Ms. Kaehr's appeal pursuant to Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.

3. On November 30, 2011, the Board's administrative law judge, Patti Kindler ("ALJ"), held a hearing on Ms. Kaehr's petition. Neither the Board nor the ALJ inspected the subject parcel.

Hearing Facts and Other Matters of Record

4. The following people were sworn in and testified:

For the Petitioner:	Renee Kaehr Mark Kaehr
For the Assessor:	Phyl Olinger, Steuben County representative

5. Ms. Kaehr submitted the following exhibits:

Petitioner Exhibit 1:	Undated letter from Renee Kaehr to the Assessor summarizing Ms. Kaehr's contentions
Petitioner Exhibit 2:	November 22, 2011 letter from Phyl Olinger to Mr. and Mrs. Kaehr
Petitioner Exhibit 3:	November 14, 2011 letter from Phyl Olinger to Mr. and Mrs. Kaehr

6. The Assessor submitted the following exhibits:

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 the subject parcel

Respondent Exhibit 5: Copy of Form 115 determination
Respondent Exhibit 6: Sales disclosure form and two PRCs for 100 Lane 375 Lake James (Harmon property)
Respondent Exhibit 7: Assessment data for three parcels owned by Randy and Diane Furrow
Respondent Exhibit 8: PRC for property owned by James and Kim Groseclose
Respondent Exhibit 9: Lake James aerial map showing location of the subject parcel and the Homan, Groseclose, and Furrow parcels
Respondent Exhibit 10: Respondent Signature and Attestation Sheet

7. The Board recognizes the following additional items as part of the record of proceedings:

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

8. The subject property contains a detached garage on a 40' wide by 100' deep lot located at 45 LN 375B Lake James in Angola, Indiana.

9. The PTABOA determined the following assessment for March 1, 2007:

Land: $40,000 Improvements: $24,100 Total: $64,100

10. On the Form 131 petition, Ms. Kaehr requested the following assessment:

Land: $7,600 Improvements: $24,100 Total: $31,700

Assessor's Objection to Ms. Kaehr's Exhibits

11. The Assessor objected to all of Ms. Kaehr's exhibits because Ms. Kaehr did not provide those exhibits to the Assessor before the hearing. *Olinger objection*.

12. In a non-small-claims appeal, the Board's procedural rules require each party, among other things, to give all other parties copies of its documentary evidence five business days before the hearing. 52 IAC 2-7-1(b)(1). The Board may exclude evidence based on a party's failure to comply with that deadline, but is not required to do so. *See* 52 IAC 2-7-1(f) ("Failure to comply with subsection (b) may serve as grounds to exclude the

evidence . . . at issue.") (emphasis added). The Board may waive that deadline for any evidence that was submitted below at the PTABOA's hearing. 52 IAC 2-7-1(d).

13. The parties dispute whether Ms. Kaehr actually provided the Assessor with copies of her exhibits within 52 IAC 2-7-1(b)(1)'s deadline. The Board, however, need not resolve that dispute because the Assessor suffered no prejudice even if Ms. Kaehr failed to exchange her exhibits. Petitioner's Exhibit 1 is an undated letter to the Assessor laying out Ms. Kaehr's contentions. According to Mr. Kaehr, he gave "them" the letter when the Kaehrs did the "original board" and "went to the original appeal." *M. Kaehr testimony*. The Board interprets that as a statement that the Kaehrs gave the letter to the PTABOA at the hearing below and the Board therefore waives 52 IAC 2-7-1(b)(1)'s exchange deadline for that exhibit. Regardless, the letter was attached to Ms. Kaehr's Form 131 petition, which in turn was served on the Assessor. And Mr. Kaehr testified without objection to much of what was in the exhibit. Similarly, Petitioner's Exhibits 2 and 3 are letters from the Assessor's representative, Phyl Olinger, relating to the Assessor's anticipated witnesses and exhibits at the hearing. Ms. Kaehr did not offer those exhibits as substantive evidence, but instead offered them in response to the Assessor's claim that she had not received a copy of Petitioner's Exhibit 1 before the Board's hearing. Under those circumstances, the Board sees no reason to exclude Ms. Kaehr's exhibits and it therefore overrules the Assessor's objection.

Analysis

Parties' Contentions

A. Summary of Ms. Kaehr's Contentions

14. Ms. Kaehr's witness, Mark Kaehr, argued the subject parcel's land was assessed too high. He based his argument on the September 9, 2006 sale price for two vacant 80'x 346' parcels owned by the Homans. Those parcels, which are only about 200 yards away from the subject parcel, sold for $1.15 per square foot, while the subject parcel was assessed at $10.88 per square foot. The Assessor's argument that the Homan parcels are not

comparable to the subject parcel simply because they were assessed as excess acreage based on their total area while the subject parcel was assessed as a platted lot based on its effective frontage makes no sense—land used for the same purpose in the same area should be assessed the same. *M. Kaehr testimony; Pet'r Ex. 1.*

15. Mr. Kaehr also attacked the Assessor's reliance on the sales of three parcels owned by the Furrows and another parcel owned by the Grosecloses to support the subject parcel's assessment. Unlike the subject parcel, the Assessor applied discounts to the Furrow and Groseclose parcels' assessments. The Assessor reduced the Furrow parcels' assessments through the use of a 30% negative influence factor. She similarly lowered the Groseclose parcel's assessment by reducing its base rate from $1,000 per front foot to $580 per front foot. Plus, the Furrow parcels sold in 2004 when lake property was at its peak and the Groseclose parcel borders the lakefront, which gives it a higher value. And unlike the Furrow and Groseclose parcels, the subject parcel is too small to build a house on without first getting a zoning variance. *See M. Kaehr testimony.*

16. The Assessor also applied influence factors unfairly. Most of the parcels around the subject parcel have negative influence factors, but the subject parcel does not. *M. Kaehr testimony.*

B. Summary of the Assessor's Contentions

17. The Homan parcels that Mr. Kaehr pointed to are not comparable to the subject parcel. They are not even in the same class—the Homan parcels were assessed as acreage while the subject parcel is platted and therefore was assessed based on its frontage. *Olinger testimony; Resp't Exs. 4, 6, 9.*

18. A positive or negative influence factor can be applied to a parcel's assessment based on the parcel's peculiar attributes. A negative influence factor means that unique characteristics detract from the parcel's value. Negative influence factors can be applied for restrictions on a parcel's use, topography issues, and other reasons. In any event, the

Assessor applies influence factors on a parcel-by-parcel basis. Ms. Olinger could not speak about the Furrow parcels, but there were apparently unique circumstances that caused the Assessor or PTABOA to apply a negative influence factor to those parcels. *Olinger testimony; Resp't Ex. 7.*

19. Ms. Olinger also pointed to sale prices for the Furrow and Groseclose parcels to support the $1,000 per front foot base rate used to assess the subject parcel. The Furrows bought their three parcels for $185,000 in 2004. After subtracting the assessed value of the improvements, Ms. Olinger determined that the land sold for $1,158 per front foot. The Grosecloses bought their platted lot for $60,000 in 2006. That equates to an abstracted land value of $750 per front foot. *Olinger testimony; Pet'r Exs. 2, 7-8.*

Discussion

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 Ind. Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2[1] 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

[1] 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.

> 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. § 6-1.1-15-17.2. The Board has now issued several decisions explaining that Ind. Code § 6-1.1-15-17.2 applies to all appeals that had not yet been heard as of the July 1, 2011. *E.g.*, *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).

21. Turning to the case at hand, the township or county assessor assessed the subject land for $17,900 in 2006. In 2007, the PTABOA determined the land's assessment at $40,000, which reflects an increase of far more than 5%. The Assessor therefore had the burden of proving that the parcel's March 1, 2007 assessment was correct. To the extent that Ms. Kaehr sought an assessment below the previous year's level, however, Ms. Kaehr had the burden of proof.

B. The Assessor's Case

22. The Assessor did not meet her burden of proving that the subject parcel's land assessment was correct. The Board reaches this conclusion for the following reasons:

a) Indiana assesses real property based on its true tax value, which the 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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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 ("USPAP") often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) *reh'g den. sub nom*. A party 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 parcel's land assessment. She primarily relied on the 2006 sale prices of nearby parcels owned by the Furrows and the Groseclosses. 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 data's proponent 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. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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.* Aside from showing their proximity to the subject parcel, however, the Assessor did nothing to meaningfully compare the Furrow or Groseclose parcels to the subject parcel in terms of characteristics that would tend to affect the parcels' market values-in-use. The Assessor's sales data therefore lacks probative value.

c) Because the Assessor did not offer any probative evidence of the subject parcel's market value-in-use, she failed to meet her burden of proof. The subject parcel's land value for March 1, 2007 therefore must be reduced to $17,900—the assessed value determined by the county or township assessor for the immediately preceding assessment date. Ms. Kaehr, however, asked for a land assessment of $17,600. She therefore had the burden of showing that she was entitled to an additional reduction. With that in mind, the Board turns to Ms. Kaehr's evidence.

C. Ms. Kaehr's Case

23. Ms. Kaehr did not meet her burden of proving that the subject parcel's land assessment should be reduced below $17,900. The Board reaches this conclusion for the following reasons:

a) Ms. Kaehr, through her witness Mr. Kaehr, made two claims: (1) that the subject parcel was assessed too high in light of the sale price and assessments for two nearby parcels, and (2) that neighboring parcels got the benefit of negative influence factors while the subject parcel did not.

b) Mr. Kaehr's claims about the Homan parcels fail for the same reason that the Assessor's reliance on the Furrow and Groseclose sales fail—the lack of any attempt to meaningfully compare the parcels in terms of characteristics that would affect their relative market values-in-use. Mr. Kaehr described the parcels' sizes and offered information about their proximity to each other. But Mr. Kaehr's analysis stopped there. He did not explain how the parcels compared to each other in terms of other factors that tend to affect market value-in-use. And Mr. Kaehr did not explain how any relevant differences between the parcels affected their relative values. For example, the two Homan parcels are 27,680 square feet each, while the subject parcel is 3,950 square feet; yet Mr. Kaehr made no attempt to account for that difference aside from using price per square foot as his unit of comparison.

c) Mr. Kaehr's reliance on the influence factors applied to neighboring parcels similarly lacks probative value. Land values in a given neighborhood are generally determined by collecting and analyzing sales data for the neighborhood and surrounding area. Assessors then establish base rates for a neighborhood that are premised on a typical lot. *See* GUIDELINES, ch. 2 at 56. But a given property sometimes has peculiar attributes not found in the typical lot. *Id.* The term "influence factor" therefore refers to a multiplier "that is applied to the value of land to account for characteristics of a

particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10; *see also*, GUIDELINES, ch. 2 at 56. Even under Indiana's previous regulations-based true tax value system, taxpayers could quantify influence factors with "market data in order to effectively reflect the actual deviation from the market value assigned a piece of property through the Land Order." *Talesnick v. State Bd. of Tax Comm'rs,* 693 N.E. 2d 657, 659 n.5 (Ind. Tax Ct. 1998) (quoting *Phelps Dodge* at 1106). Under our current market value-in-use system, the need for market data to quantify an influence factor is even greater.

d) Mr. Kaehr merely pointed out influence factors that had been applied to other parcels. But he did not explain what characteristics those influence factors addressed or whether the subject parcel has similar characteristics. Indeed, Mr. Kaehr failed to offer any evidence (1) to show that the subject parcel has any peculiar attributes that would justify applying a negative influence factor, or (2) to quantify an appropriate influence factor.

e) Thus, because she failed to offer any probative evidence to show that the market value-in-use of the subject parcel's land was less than $17,900, Ms. Kaehr is not entitled to have the parcel's land assessment reduced below that amount.

SUMMARY OF FINAL DETERMINATION

24. Because the subject parcel's land assessment increased more than 5% between 2006 and 2007, the Assessor bore the burden of proving that the parcel's March 1, 2007 assessment was correct. Her failure to do so means that the subject parcel's land assessment must be reduced to the previous year's level of $17,900. Ms. Kaehr, however, bore the burden of proving that she was entitled to any further reduction, and she failed to meet that burden. The subject parcel's March 1, 2007 land assessment must therefore be reduced to $17,900.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first 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>.