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

Petition Nos.:	**43-031-09-1-5-00026**
	43-031-10-1-5-00023
Petitioners:	**Rodney H. & Darla J. Shelburne**
Respondent:	**Kosciusko County Assessor**
Parcel No.:	**43-10-23-200-051.000-031**
Assessment Years:	**2009 and 2010**

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

Procedural History

1. The Shelburnes appealed their March 1, 2009 and March 1, 2010 assessments to the Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA"). The PTABOA issued determinations denying the Shelburnes relief.

2. The Shelburnes timely filed Form 131 petitions with the Board. They elected to have their appeals heard under the Board's small claims procedures.

3. On January 24, 2012, the Board held a single hearing on both petitions through its designated Administrative Law Judge, Jennifer Bippus ("ALJ").

4. The following people were sworn in and testified:

    a) For the Petitioners: Darla J. Shelburne

    b) For the Respondent: Laurie Renier, Kosciusko County Assessor
    Jack C. Birch, Attorney for County Assessor[1]

Facts

5. The subject property contains a single-family home on 22.02 acres of land located at 3214 W 200 S in Warsaw.

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

[1] The Board has several times noted that it disfavors attorneys acting as both a witness and advocate at the Board's hearings. Nonetheless, Ms. Shelburne neither objected to Mr. Birch's testimony nor moved to disqualify him, and the Board ultimately does not rely on Mr. Birch's testimony in reaching its decision.

7. The PTABOA determined the following values for both March 1, 2009 and March 1, 2010:

   Land: $132,900 Improvements: $127,000 Total: $259,900

8. The Shelburnes requested the following values for both years:

   Land: $24,900 Improvements: $127,000 Total: $151,900

Contentions

9. Summary of the Shelburnes' evidence and contentions:

   a) According to the Shelburnes, the Assessor has the burden of proof. The Shelburnes' taxes increased by 186.95% between 2009 and 2010. And Ind. Code § 6-1.1-15-17 provides that the Assessor has the burden of proof where a property's assessment increases by more than 5% over its assessment for the preceding year. *D. Shelburne testimony; Pet'rs Exs. 1-3.*

   b) The Shelburnes are only appealing the subject property's land value. Most of the land previously was classified as agricultural, but the Assessor changed that classification to residential excess acreage. The Shelburnes, however, cannot build residential improvements on that part of their property. Instead, the property's characteristics are more consistent with agricultural woodlands. *See D. Shelburne testimony.*

   c) In that vein, the Department of Local Government Finance ("DLGF") issued a memorandum on classifying and valuing agricultural land. According to the DLGF's memo, the Indiana State Department of Agriculture views the growing of timber as a viable agricultural activity. The memo also provides several non-controlling factors to consider, one of which is whether land qualifies for one of the Department of Natural Resource's ("DNR") programs. *D. Shelburne testimony; Pet'rs Ex. 8.* The subject land qualifies for a DNR program. After the Shelburnes received the property tax bill showing that their land classification had been changed, they contacted the DNR. A DNR representative inspected the subject property and prepared a Stewardship Plan, enrolling the land in the Classified Forest and Wildlands Program. Although the plan was prepared on April 21, 2010, the property's characteristics were the same in 2008 and 2009. *D. Shelburne testimony; Pet'rs Ex. 4.*

   d) The DLGF's memo also instructs assessors to consider whether regular timber harvests have occurred over a long period. *Pet'rs Ex. 8*. According to Ms. Shelburne, the subject property has been in a timber-management program before. Ms. Shelburne offered photographs showing stumps and tree tops next to the stumps, which she contends show that trees have been harvested. According to Ms. Shelburne, the photographs also show that the existing trees are not mature enough for harvesting. Ms. Shelburne also claims that, when the Shelburnes bought the

property, they intended to have an active timber management program in place and to earn additional income once the trees were mature enough to harvest. *D. Shelburne testimony; Pet'rs Ex. 7.*

e) A United States Department of Agriculture ("USDA") Farm Services Agency record shows that the subject property has a farm number, contains wetlands, and floods. *D. Shelburne testimony; Pet'rs Ex. 5.* Similarly, aerial photographs and diagrams from Kosciusko County's Beacon system show wetlands, ditches, drains and flooding on the property. *D. Shelburne testimony; Pet'rs Exs. 6-7.*

f) The Shelburnes bought the subject property for the seller's asking price of $214,900 on August 28, 2007. *D. Shelburne testimony; Pet'rs Ex. 9.* The Shelburnes also have two appraisals for the subject property. In the first appraisal, Rudy Saldivar estimated the property's value at $214,900 as of August 16, 2007. Although Mr. Saldivar prepared an analysis using the cost approach, he relied solely on his conclusions under the sales-comparison approach in reaching his final value estimate. Nonetheless, in preparing his cost-approach analysis, Mr. Saldivar found that small acreage homesites ranged from $2,800 to $4,200 and found that the subject land fell within the "mid price range" of $3,200 per acre. *Pet'rs Ex. 10.*

g) In the second appraisal, Mr. Saldivar estimated the subject property's value at $213,500 as of November 11, 2011. Once again, Mr. Saldivar prepared a cost-approach analysis but ultimately relied solely on his conclusions under the sales-comparison approach. This time, he found a range of $2,500 to $5,000 per acre for small homesites and used the mean of $3,400 to estimate the subject land's value. By contrast, the Assessor valued the subject land at $5,400 per acre without applying any type of influence factor. *D. Shelburne testimony; Pet'rs Exs. 9-11.*

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

a) Indiana Code 6-1.1-15-17 does not apply to this case. That law became effective on July 1, 2011, so it does not apply to the Shelburnes' appeals of the subject property's 2009 and 2010 assessments. *Birch argument.*

b) In conjunction with a directive to re-evaluate property classifications, the Assessor determined that the Shelburnes' property should be classified as residential excess acreage. The Assessor did not have evidence that the subject property was enrolled in any DNR program or that the Shelburnes were harvesting any timber. The property appeared to be a residence built in a wooded area, which is how it was assessed. *Birch testimony; Resp't Ex. 2.* Indeed, both of the Shelburnes' appraisals compare the subject property solely to other residential properties. The appraiser does not mention timber harvesting or income from the property. Typically, an appraiser would factor in a property's income-producing nature. *Birch argument.*

c) Thus, the Shelburnes have not shown that the property was used for agriculture during the years under appeal. Granted, the Shelburnes have since taken steps that

reflect their intent to use the property as woodland or wildland property or for timber management going forward, and the Assessor will classify the property accordingly. But it would be wrong to retroactively classify the property as agricultural because the Shelburnes did not apply for the DNR program until April 2010. *Birch argument*.

d) Also, the subject property's assessment is in line with other properties in the neighborhood. An adjacent property sold for $255,000. And the Shelburnes bought the subject property for $214,000, which is fairly close to the value that the Assessor determined. *Birch argument; Resp't Ex. 1.* Indeed, farmland in the area sells for prices ranging from $2,500 to $3,000 per acre. *Birch testimony.*

Record

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

a) The Form 131 petition,

b) Digital recording of the hearing,

c) Exhibits:

Petitioners Exhibit 1:	State Form 53569 Special Notice to Property Owner,
Petitioners Exhibit 2:	Board Notice regarding HEA 1004, Sec. 32,
Petitioners Exhibit 3:	*Welbourne Williams v. Decatur County Assessor*, pet. no. 15-018-09-1-5-00869 (Ind. Bd. Tax Rev.),
Petitioners Exhibit 4:	DNR Stewardship plan describing the subject property,
Petitioners Exhibit 5:	Aerial photograph of USDA FSA Farm 5681 Tract 17513 with Abbreviated 156 Farm Record,
Petitioners Exhibit 6:	Beacon aerial photograph; Beacon map with "Wetlands" written at the top; Beacon map with "Ditches & Drains" written at the top; Beacon aerial photograph; four photographs of the subject property,
Petitioners Exhibit 7:	Twelve photographs of the subject property,
Petitioners Exhibit 8:	Memorandum from Department of Local Government Finance dated February 12, 2008,
Petitioners Exhibit 9:	MLS listing for subject property,
Petitioners Exhibit 10:	Appraisal dated August 16, 2007,
Petitioners Exhibit 11:	Appraisal dated November 11, 2011.

Respondent Exhibit 1:	Beacon GIS map of neighborhood with recent sale information regarding the subject property,
Respondent Exhibit 2:	Property record card for subject property with sales disclosure,
Respondent Exhibit 4:	Sales disclosure for 3426 W 200 S,
Respondent Exhibit 5:	Sales disclosure for 150 S (10 acres),
Respondent Exhibit 6:	Sales disclosure for 150 S,

Respondent Exhibit 7: Sales disclosure for SR 25 (11.73 acres),
Respondent Exhibit 8: Sales disclosure for 1943 SR 25 (3.8 acres),
Respondent Exhibit 9: Sales disclosure for 2794 W 200 S (8.85 acres),
Respondent Exhibit 10: Sales disclosure for 2691 W 200 S,
Respondent Exhibit 11: Sales disclosure for 2839 W 200 S (1.23 acres),
Respondent Exhibit 12: Sales disclosure for 2057 S. Julian Drive (.9 acre),
Respondent Exhibit 13: Sales disclosure for 2987 W 200 S (2.5 acres),
Respondent Exhibit 14: Sales disclosure for 2981 W 200 S.[2]

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice dated November 15, 2011,
Board Exhibit C: Notice of appearance for Jack C. Birch,
Board Exhibit D: Sign-in sheet.

d) These Findings and Conclusions.

Analysis

A. Burden of Proof

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a 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.[3] That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% from its previous year's level:

> 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.

[2] The Assessor did not offer an Exhibit 3. On her exhibit list, she reserved that number for "Any Exhibit Offered by the Petitioner."
[3] 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.

I.C. § 6-1.1-15-17.2.

13. Here, the parties disagree about whether Ind. Code § 6-1.1-15-17.2 applies to these appeals. In the Shelburnes' view, the statute should apply because the hearing was held after the statute's original effective date. The Assessor, by contrast, argues that the statute should first apply to appeals of assessments made after July 1, 2011.

14. The Board recently answered that question in two cases. *See 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) and *Stout v. Orange County Assessor*, pet. no. 59-007-09-1-5-00001 (Ind. Bd. Tax Rev. Nov. 7, 2011). In each case, the Board held that Ind. Code § 6-1.1-15-17 applied to appeals where the Board conducted its hearing after July 1, 2011, even if the assessment under appeal was made before that date. *Id.* 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. The Board's decisions also point to *City of Indianapolis v. Wynn*, 157 N.E.2d 828, 834-835 (Ind. 1959), where the Indiana Supreme Court held that a statutory amendment specifying that evidence of certain factors constituted primary determinants 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.").

16. Indiana Code § 6-1.1-15-17.2 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. *See* 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. Thus, the "affected thing" under Ind. Code § 6-1.1-15-17.2 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.

17. Turning to the appeals at hand, the subject property's land assessment increased by more than 400% between March 1, 2008 and March 1, 2009. Thus the Assessor had the burden of proof for the March 1, 2009 assessment. By contrast, the subject property's assessment did not change from March 1, 2009 to March 1, 2010. The Shelburnes therefore had the burden of proving they were entitled to have the subject property's March 1, 2010 assessment reduced. Keeping those differing burdens in mind, the Board will address the Shelburnes' appeals of the March 1, 2009 and March 1, 2010 assessments separately.

B. Appeal of March 1, 2009 Assessment

18. The Assessor failed to meet her burden of proof concerning the subject land's March 1, 2009 assessment. The Shelburnes are therefore entitled to have the subject land's assessment revert to its March 1, 2008 level. The Board reaches this conclusion for the following reasons:

a) The Assessor focused mainly on her decision to reclassify 21.02 acres of the subject land from agricultural woodland to excess residential acreage. The Assessor, however, offered nothing to show that land's use had changed between 2008, when it was assessed as agricultural land, and 2009, when the Assessor re-classified it. Indeed the Assessor did little to show what the land was used for, other than to say that it appeared to be residential and to claim that the Shelburnes had not shown any agricultural use. Of course, the Assessor, not the Shelburnes, had the burden of proof. The Assessor did point to the fact that Mr. Saldivar treated the property as residential in his appraisal. But the most valuable part of the property was being used for residential purposes and Mr. Saldivar was appraising the subject property based on its highest and best use. The Board therefore places no weight on the fact that Mr. Salvidar appraised the property based on residential use.

b) The Assessor also offered some market-based evidence in an attempt to support the subject property's assessment. The Assessor's failure to show how the Shelburnes used the disputed part of the subject land, however, makes that evidence irrelevant. To understand why, some background may be helpful. The Indiana General Assembly has directed the Department of Local Government Finance to make rules for determining the true tax value of agricultural land using distinctive factors that do not apply to other types of land. *See* I.C. § 6-1.1-4-13.6; I.C. § 6-1.1-4-13(b). The DLGF, in turn, has set base rates for assessing agricultural land. In setting those

base rates, the DLGF uses a mass-appraisal version of the income approach rather than the mass-appraisal version of the sales-comparison approach that it prescribes for setting the base rate for other types of land. GUIDELINES, ch. 2 at 98-99. And the DLGF must update the agricultural base rate annually. *See* I.C. § 6-1.1-4-4.5(e). In some instances, the General Assembly has simply set the agricultural base rate for a given year. *See* 2005 Ind. Acts 228, § 34(b) (making the 2005 and 2006 base rate for agricultural land $880 per acre notwithstanding the $1,050 per acre provided in the Guidelines).

c) The Guidelines further direct assessors to adjust the agricultural base rate using soil productivity factors developed from soil maps that the United States Department of Agriculture publishes and to classify agricultural land into different use subtypes, some of which call for applying negative influence factors in pre-determined amounts. GUIDELINES, ch. 2 at 102-06. For example, land qualifying as agricultural woodlands is to be assessed by applying a negative 80% influence factor to the base rate. GUIDELINES, ch. 2 at 104.

d) Thus, unlike other property classes where market-based evidence may be needed to show a property's true tax value, the true tax value of agricultural land is determined by applying the statutorily or administratively determined base rate, as adjusted by soil productivity factors and influence factors listed in the Guidelines. Because the subject land's classification is at issue, the Assessor needed to show that the Shelburnes did not devote their land to agricultural use as a prerequisite to her market-based evidence having any relevance. Because the Assessor failed to do so, she did not make a prima facie case.

C. Appeal of March 1, 2010 Assessment

19. The Shelburnes proved that they were entitled to have the subject property's March 1, 2010 assessment reduced. The Board reaches that conclusion for the following reasons:

a) The Shelburnes largely claim that they devote the subject land to agricultural use and that the Assessor therefore erred by reclassifying the land in the first place. As explained above, if the Shelburnes are right, that may be enough to carry their burden of proof, even without independent market value-in-use evidence.

b) The Board therefore turns to how the subject property was used as of March 1, 2010. Land "shall be assessed as agricultural *only* when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a) (emphasis added). Thus, in order to rely upon the base rate and negative influence factors for agricultural woodland set forth in the Guidelines, the Shelburnes needed to prove that they used the property for agricultural purposes.

c) The distinction between land devoted to agriculture and land used for residential purposes can be a fine one when the land in question is primarily wooded and surrounds a residence. Unlike other crops, timber can take a very long time to

mature between harvests and may not always require the same level of care. Thus, the outward signs distinguishing between agricultural and non-agricultural use are not as distinct on those properties.

d) In part because of that dilemma, The DLGF issued a memorandum addressing how to classify and value agricultural land, including agricultural woodland. The DLGF listed several factors to consider. Significantly for this appeal, the DLGF highlighted the significance of a property having received a "farm number" from the United States Department of Agriculture:

> Assessors are further directed that all acres enrolled in programs of the . . . USDA, Farm Services Agency, and Natural Resources Conservation Service and have received a "farm number" are eligible for classification as "agricultural." Those acres have been determined by those administering federal programs to be part of an "agricultural operation." This applies to non-homestead acreage.

Pet'rs Ex. 8. The DLGF also pointed to four other non-controlling factors:

> (1) the acreage is designated by the DNR as qualifying for one of their classified programs. The DNR has established a 10 acre minimum for its programs;
> (2) the owner can show an active timber management program in place which will improve the marketability of the forest for an eventual harvest;
> (3) the owner possesses a DNR management plan to further enhance the forest quality;
> (4) The owner can show that regular forest harvests have occurred over a long time period.

Id.

e) The Shelburnes offered a printout from the USDA Farm Services Agency showing that the subject property had been assigned a farm number (5681) for "crop year" 2010. *Pet'rs Ex. 5*. The rest of the factors are more ambiguous. The photographs of the subject property show several cut stumps and therefore support Ms. Shelburne's contention that the previous owner harvested timber from the property, but they do little to show the extent or frequency of those harvests. And while the Shelburnes have a Stewardship Plan from the DNR, that plan was not prepared until after the assessment dates at issue. Similarly, although the land computations portion of the most recent record card for the subject property that the parties submitted appears to show that the land is now part of a classified program and therefore valued at $1 per acre, that was not the case on March 1, 2010.

e) Nonetheless, based on the record as a whole, placing particular weight on the subject property's farm number, the Board finds that the Shelburnes devoted their property to

agricultural use as of the March 1, 2010 assessment date. The subject land should therefore be assessed as it was previously—one-acre as a homesite with the remainder as agricultural woodlands.

Conclusion

20. Because the subject property's March 1, 2009 assessment increased by more than 5% over its previous year's assessment, the Assessor had the burden of proving that the March 1, 2009 assessment was correct. The Assessor failed to meet her burden and the Shelburnes are therefore entitled to have the subject property's March 1, 2009 land assessment reduced to its 2008 level of $24,900, for a total March 1, 2009 assessment of $151,900.

21. By contrast, the subject property's assessment did not change between March 1, 2009 and March 1, 2010. The Shelburnes therefore had the burden of proof in their appeal of the property's March 1, 2010 assessment. The Shelburnes met their burden by showing that they devoted their property to agricultural use. Thus, for March 1, 2010, the subject land should be classified and assessed as follows: one acre as a homesite with the remainder as agricultural woodlands.

Final Determination

In accordance with the above findings and conclusions, the subject land's March 1, 2009 assessment must be reduced to $24,900 for a total assessment of $151,900 for the property as a whole. For March 1, 2010, the land must be assessed as follows: one acre as a homesite with the remainder as agricultural woodland. There is no change to the improvements.

ISSUED: June 5, 2012

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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>.