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

Petition No.: **07-003-21-1-5-00874-21**
Petitioner: **Charles E. Hotka**
Respondent: **Brown County Assessor**
Parcel: **07-10-22-300-117.000-003**
Assessment Year: **2021**

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

Procedural History

1. The Petitioner appealed the 2021 assessment of his single-family home on 121.032 acres located at 3705 Orchard Road in Columbus, Indiana.

2. On November 12, 2021, the Brown County Property Tax Assessment Board of Appeals ("PTABOA") reduced the assessment to $27,600 for land and $222,400 for improvements for a total of $250,000.

3. The Petitioner timely appealed to the Board, electing to proceed under the small claims procedures. On April 20, 2022, Dalene McMillen, the Board's Administrative Law Judge ("ALJ"), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

4. Charles Hotka appeared *pro se* and was sworn. Brian Cusimano appeared as the Assessor's attorney.

Record

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

   a) Exhibits:

Petitioner Exhibit 13:	Email from Mari Miller, Brown County Assessor dated 6-28-21,
Petitioner Exhibit 16:	Form 134 for subject property,
Petitioner Exhibit 20:	2021 REAL PROPERTY ASSESSMENT MANUAL ("MANUAL"), pages 1-20,
Petitioner Exhibit 21:	2021 REAL PROPERTY ASSESSMENT GUIDELINES ("GUIDELINES"), chapter 3, pages 1-69,
Petitioner Exhibit 22:	2021 GUIDELINES, Appendix C, pages 1-26,

Petitioner Exhibit 23:	Eighteen pictures of the subject property,
Petitioner Exhibit 24:	Petitioner's building costs,
Petitioner Exhibit 25:	2021 subject property record card, pages 1-3,
Petitioner Exhibit 26:	Petitioner's proposed 2021 property record card,
Petitioner Exhibit 27:	Assessor's comments from Form 134 and four interior pictures of subject property,
Petitioner Exhibit 28:	2021 subject property record card, page 2 only,
Petitioner Exhibit 29:	Petitioner's sketch and measurements of loft area,
Petitioner Exhibit 32:	Four exterior pictures of subject property,
Petitioner Exhibit 37:	50 IAC 2.4-1-1, Applicability; provisions; procedures,
Petitioner Exhibit 38:	2020 lots sold in Brown County,
Petitioner Exhibit 45:	Petitioner's "Trending Property Values,"
Petitioner Exhibit 46:	Petitioner's "Problems Caused by Flaws in Trending"
Petitioner Exhibit 51:	Indiana Code § 6-1.1-6 "Assessment of Certain Forest Lands,"
Petitioner Exhibit 53:	Email from Mari Miller, Brown County Assessor dated 7-2-21,
Petitioner Exhibit 56:	Petitioner's "Application for the Classification of Land as Forest Land and Wildlands."
Respondent Exhibit 1:	2021 property record card for the subject property,
Respondent Exhibit 2:	2020 property record card for the subject property.[1]

b) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

Objection

6. The Assessor made hearsay objections to several statements from Hotka regarding conversations he had with the Assessor. Hotka did not argue that any exception to the hearsay rule applied. We admit the evidence pursuant to 52 IAC 2-7-3, which provides that we may admit hearsay that is objected to as long as it is not the sole basis for our determination.

Findings of Fact

7. The subject property is a house on approximately 121 acres in Brown County, Indiana. Almost 120 acres are in the Classified Forest program and assessed accordingly. Mr. Hotka and his son constructed the subject house, doing most of the work themselves. The project began in 2015 and continued into 2021. They used outside contractors for specific portions of the project. *Hotka testimony; Pet'r Ex 24; Resp't Ex. 1.*

[1] The Petitioner's coversheet listed Petitioner Exhibits 1-12, 14-15, 17-19, 30-31, 33-36, 39-44, 47-50, 52 and 54-55, but they were not submitted for the record. The Respondent's coversheet listed Respondent's Exhibits C and D, but they were not submitted for the record.

Contentions

8. Summary of the Petitioner's case:

a) The subject property's assessment went up in 2021 in part because it was assessed as 100% complete instead of partially complete. Even so, Hotka contends that the Assessor should still have the burden of proof because the overall assessed value went up 8% apart from that change. *Hotka testimony.*

b) In addition, Hotka estimated the cost to build the home was $168,273.75. He based this on the cost of materials, labor, and a 15% "contractor fee." For labor, he used the actual costs for the work he contracted out, but estimated costs for the work he and his son performed. *Hotka testimony; Pet'r Ex. 24.*

c) Hotka testified the Assessor made several errors in the assessment including using the wrong square footage for the upper floor, basement, and garage. Hotka also claimed that the assessment for the porch should be removed because it was just dirt. He stated that these corrections would reduce the improvement value from $254,000 to $226,753.13. *Hotka testimony; Pet'r Exs. 21-23, 25-27, 29 & 32.*

d) Hotka argues that the Assessor cannot use an appraisal or the price his property would sell for on the open market to determine its assessed value because most of his land is assessed as classified forest. For the same reason, Hotka argues that a trending factor cannot be applied to his land or improvements. He argued that by using a trending factor that was developed from non-classified forest sales the Assessor was "compensating" for the classified forest land. *Hotka testimony; Pet'r Exs. 13, 37, 45, 46, 51 & 56.*

e) Hotka also claims the county's 2021 sales ratio study is flawed because the properties it used were class 500 or residential property, while the subject property is class 120 agricultural land. In addition, Hotka claimed that all the properties were "heavily" depreciated except for three homes that were "monster houses." He claimed the Assessor's trending only "works" because of the three monster houses. Hotka also presented a list of 2020 Brown county land sales between 5 and 10 acres. He found they sold for an average of $10,813.72/acre. Hotka noted that smaller properties sold for much more per acre. *Hotka testimony; Pet'r Ex. 38.*

9. Summary of the Respondent's case:

a) The Assessor argues that Hotka should have the burden of proof because Indiana Code § 6-1.1-15-17.2, the burden of proof statute, was repealed as of March 21, 2022, and was no longer applicable.[2] *Cusimano argument.*

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[2] The Assessor also argued that even if the Board applied I.C. § 6-1.1-15-17.2, Hotka would still have the burden of proof because there were substantial renovations that were not considered in the prior year triggering one of the exceptions to the burden-shifting rule.

b) The Assessor argues that Hotka's attempts to attack the methodology used to develop the assessment were insufficient under *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). The Assessor acknowledged that Hotka did provide some evidence of cost but argued that it was not sufficient because it was not independent evidence of value. *Cusimano argument.*

c) Finally, the Assessor argues that no law prohibits the Assessor from trending the improvements and non-classified forest land just because a portion of a property is in the classified forest program. In addition, the Assessor argues that Hotka's classified forest was properly assessed. *Cusimano argument; Resp't Ex. 1.*

Analysis

10. The Petitioner failed to make a prima facie case that the 2021 assessment should be reduced.

a) Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r,* 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).

b) Hotka argues that the burden should be on the Assessor because of the increase in the assessment over the prior year. But as the Assessor points out, the Legislature repealed the burden-shifting statute on March 21, 2022. P.L. 174-2022 § 32 (repeal effective on passage). That statute created an exception to the general rule and required an assessor to prove that a challenged assessment was "correct" where the assessment represented an increase of more than 5% over the prior year's assessment or where it was above the level determined in a taxpayer's successful appeal of the prior year's assessment, regardless of the amount of the increase. I.C. § 6-1.1-15-17.2(a)-(b), (d) (repealed by P.L. 174-2022 § 32, effective on passage). Even where those circumstances existed, the burden remained with the taxpayer if the assessment that was the subject of the appeal was based on "substantial renovations or new improvements," zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-1.1-15-17.2(c). To meet the burden, an assessor's evidence had to "exactly and precisely conclude" to the assessment. *Southlake Ind. LLC v. Lake Cty. Ass'r* ("*Southlake II*"), 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). If the assessor had the initial burden and failed to meet it, the burden shifted to the taxpayer to prove the correct assessment value. If neither party met its burden, the assessment reverted

to the prior year's level. I.C. § 6-1.1-15-17.2(b); *Southlake Ind., LLC v. Lake Cnty. Ass'r* ("*Southlake I*"), 174 N.E.3d 177, 179 (Ind. 2021).[3]

c) Here, we must apply the law as it existed at the time of the evidentiary hearing. Statutes apply prospectively only, unless the Legislature "unequivocally and unambiguously" intended that a statute also apply retroactively, or "strong and compelling" reasons dictate retroactive application. *State v. Pelley*, 828 N.E.2d 915, 919 (Ind. 2005). The same is true for acts repealing existing statutes. The Legislature has codified that presumption in the context of repeals, whether explicit or implied:

> [T]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing statute shall so expressly provide; and such statute shall be treated as still remaining in force for the purposes of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

I.C. § 1-1-5-1; *see also Rouseff v. Dean Witter & Co.*, 453 F. Supp. 774, 779 (N.D. Ind. 1978) (citing *State ex. rel. Mental Health Comm'r v. Estate of Lotts*, 332 N.E.2d 234, 238 (Ind. Ct. App. 1975) (recognizing that I.C. § 1-1-5-1 codifies the principal that substantive amendatory acts, which by implication repeal prior law to the extent they conflict, are to be construed prospectively unless the Legislature specifically provides otherwise); *but cf., e.g., Ind. State Highway Comm'n v. Ziliak,* 428 N.E.2d 275, 279 (Ind. Ct. App. 1981) (quoting 26 I.L.E. Statutes § 195 at 380 (1960) ("[T]he repeal of a statute without a saving clause, where no vested right is impaired, completely obliterates it, and renders it as ineffective as if it never existed.").

d) Thus, we must determine what constitutes a prospective, as opposed to a retroactive, application. To answer that question, we must determine whether the "'new provision attaches new legal consequences to events completed before its enactment.'" *Church v. State*, 2022 Ind. Lexis 361 *9 (Ind. 2022) (quoting *Martin v. Hadix*, 527 U.S. 343, 357-58, 119 S.Ct. 1998, 144 L.E.2d 347 (1999). That, in turn, requires "'identifying the conduct or event that triggers the statute's application.'" *Id.* (quoting *State v. Beaudoin*, 137 A.3d 717, 722 (R.I. 2016)). Once identified, the triggering, or "operative" event "guides the analysis." *Id.* A statute "operates prospectively when it is applied to the operative event of the statute, and that event occurs after the statute took effect." *Id.* at 9-10. It follows that the repeal of an existing statute likewise operates prospectively when it is applied to the operative event governed by the repeal, and that event occurs after the repeal took effect. A statute (or repeal) operates retroactively only when its "adverse effects" are activated by events that occurred before its effective date. *Id.* (quoting *R.I. Insurers'*

[3] At the same time the Legislature repealed the burden-shifting statute, it enacted Ind. Code § 6-1.1-15-20, which also assigns an assessor the burden of proof where an appealed assessment represents an increase of more than 5% over the prior year's assessment. It no longer requires an assessor to prove that the assessment is "correct" and expressly allows the Board "to decide the true tax value of the property as compelled by the totality of the probative evidence before it," and to determine a value that is different than the appealed assessment or than any value proposed by the parties or their witnesses. I.C. § 6-1.1-15-20 (2022). But that new statute applies only to appeals filed after its March 21, 2022 effective date, and therefore does not apply to this appeals. I.C. § 6-1.1-15-20(f).

Insolvency Fund v. Leviton Mfg. Co., 716 A.2d 730, 735 (R.I. 1998). *Church* involved a statute governing depositions in criminal cases that was passed after the crime, but before the deposition was scheduled. The Court applied the legislative change to the deposition as the triggering event. *Id.*

e) The burden-shifting statute addresses the burden of proof in assessment appeals. So does its repeal, the effect of which is to return cases back to the default rule governing the burden of proof in assessment appeals generally. The operative event is when a hearing on the merits convenes. The burden-shifting statute had already been repealed at the time of the hearing. For these reasons, we apply the law as it existed at the time of the evidentiary hearing and find the burden of proof is on the Petitioner.

f) Real property is assessed based on its market value-in-use. I.C. § 6-1.1-31-6(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

g) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (In. Tax Ct. 2005). For the 2021 assessment, the valuation date was January 1, 2021. *See* Ind. Code § 6-1.1-2-1.5.

h) A portion of the subject property is in the classified forest program under I.C. § 6-1.1-6-5.5. That land must be assessed at the rates established under I.C. § 6-1.1-6-14. There is no dispute that the classified forest portion of the subject property is properly assessed. Rather, Hotka claims that the remaining portion of the subject property cannot be "trended" simply because part of the subject property is classified forest. Hotka has pointed to no authority for this conclusion and we find none. The laws governing the assessment for classified forest apply only to the land in the classified forest program. They do not change how other land or improvements that are not classified forest are assessed, even for other property on the same parcel.

i) Nor do we find any proof that the Assessor has "compensated" for the classified forest land by increasing other parts of the assessment. Hotka asserts that the Assessor could not use non-classified forest data to value the non-classified forest land because a portion of the property was in the classified forest program. Again, we find no authority for this conclusion. Thus, we must determine whether Hotka provided any other justification for a change in the assessment.

j) Hotka made several criticisms of the original assessment. These included allegations that the Assessor used incorrect square footage in various places as well as incorrectly included a porch. But, as the Assessor points out, it is insufficient to simply attack the methodology used to develop the assessment. Instead, parties must use market-based evidence to "demonstrate that the suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). We also note that Hotka primarily criticized the subject property's original assessment, but because the PTABOA reduced the assessment, that is not the assessment of record. As the party challenging the PTABOA's decision, Hotka bore the burden of showing that decision was incorrect and what the correct assessment should be. We now examine whether he submitted reliable, market-based evidence showing what the correct assessment should be.

k) We first note that Hotka is incorrect in his assertion that the subject property cannot be valued with an appraisal simply because it contains classified forest. While it is true that the classified forest portion of the property must be assessed at the classified forest rate, that does not prohibit a typical valuation for the rest of the property. An appraiser could be instructed to value only the home and non-classified forest land, or to value the entire property and extract out the value attributable to the classified forest. Thus, contrary to his claim, Hotka could have provided an appraisal of the subject property, but he did not.

l) Instead, Hotka submitted some evidence of value in the form of construction costs. But this evidence suffers from a number of deficiencies. First, Hotka made estimates for much of the labor costs as well as the "contractor fee", but he did not show how he developed those estimates or that they were typical of the local market. Second, some of the costs were from several years before the assessment date. He failed to show how those costs related to the value of the property on the valuation date of January 1, 2021 as required by *Long*. For these reasons, we find his cost data to be insufficient to prove the value of the subject property.

m) We also note that Hotka made several criticisms of the Assessor's ratio study. He also presented his own set of sales. We take this as an attempt to challenge the uniformity and equality of the assessment that is required by I.C § 6-1.1-2-2 and Article 10 of the Indiana Constitution. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Assessor,* 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm'rs,* 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs,* 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham,* 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)). We first note that

while the sales Hotka submitted did sell for less per acre than his non-classified forest land was assessed for, Hotka admitted that he excluded sales of smaller parcels because they sold for more per acre. In addition, Hotka did not demonstrate that he submitted a statistically reliable set of samples as required by *Bishop*. For these reasons, we find that Hotka has not demonstrated that he is entitled to any reduction in his assessment on these grounds.

n) Although Hotka made a number of claims about why his assessment should be reduced, none of them were sufficient. Hotka needed to provide reliable, market-based evidence of the value of the subject property, but he failed to do that. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the subject property's 2021 assessment.

ISSUED: 9/19/2022

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.