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

Petitions: **03-011-20-1-5-00021-22 and 03-011-21-1-5-00022-22**
Petitioner: **Thomas & Nancy Crandall**
Respondent: **Bartholomew County Assessor**
Parcel: **03-84-01-330-002.300-011**
Assessment Years: **2020 and 2021**

The Indiana Board of Tax Review issues this determination, finding and concluding as follows:

Procedural History

1. Thomas & Nancy Crandall contested the 2020 and 2021 assessments of their property located at 10651 West Grandview Drive in Columbus. The Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") issued Form 115 determinations valuing the property as follows:

Year	Land	Improvements	Total
2020	$439,200	$1,449,600	$1,888,800
2021	$505,100	$1,434,700	$1,939,800

2. The Crandalls then filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On October 6, 2022, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on the Crandalls' petitions. Neither he nor the Board inspected the property.

3. Melissa Michie appeared as counsel for the Crandalls. Bartholomew County Assessor Ginny Whipple represented herself. Jonathan Scheidt, a certified residential appraiser, testified under oath.

Record

4. The official record for this matter includes the following:

Petitioners Exhibit 1:	"Original" 2020 subject property record card,
Petitioners Exhibit 2:	Form 113 for 2020
Petitioners Exhibit 3:	Text of Ind. Code § 6.1-1-9-1 and Ind. Code § 6.1-1-9-2,
Petitioners Exhibit 4:	"Revised" 2020 subject property record card,
Petitioners Exhibit 5:	2021 subject property record card,
Petitioners Exhibit 6:	Text of Ind. Code § 6.1-1-15-17.2,
Petitioners Exhibit 7:	*Southlake Ind, LLC v. Lake Cty. Ass'r*, 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021)
Petitioners Exhibit 8:	Text of Ind. Code § 6.1-1-15-20,

Petitioners Exhibit 9:	Actions for House Bill 1260,
Petitioners Exhibit 10:	*Mark S. & Stephanie L. Thompson v. Morgan Cty. Ass'r,* pet. no. 55-005-21-1-5-0071-21 (IBTR June 22, 2022).
Respondent Exhibit A:	Whipple's resume,
Respondent Exhibit B:	Whipple's Statement of Professionalism,
Respondent Exhibit C:	2019 subject property record card,
Respondent Exhibit D:	2020 subject property record card,
Respondent Exhibit E:	2021 subject property record card,
Respondent Exhibit F:	Aerial photograph of the subject property,
Respondent Exhibit G:	2020 appraisal of the subject property completed by Jonathan C. Scheidt, Indiana Certified Residential Appraiser,
Respondent Exhibit HH:	2021 appraisal of the subject property completed by Scheidt.

5. The record also includes: (1) all petitions and other documents filed in these appeals, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Findings of Fact

6. The subject property was assessed for $1,622,600 in 2019. In 2020, the Assessor originally assessed the property at $1,608,900. On January 8, 2021, however, the Assessor issued a Form 113 notice increasing the 2020 assessment to $1,888,800. The form described the property and notified the Crandalls of the increase and of their appeal rights. A box at the bottom of the form is labeled "To County Auditor" and calls for "[t]he reasons and facts supporting the above action." In that box, the Assessor wrote "MISCELLANEOUS." When assessing omitted or undervalued property, the Assessor follows a procedure where she sets out the value on the Form 113 notice and e-mails the Bartholomew County Auditor with a copy of the revised property record card and a more detailed description of the assessment change. *Exs. 1-2.*

7. The Assessor engaged Jonathan Scheidt to appraise the subject property for 2020 and 2021. Scheidt, who is a certified residential appraiser, prepared two reports estimating both an indicated market value and a range of values as of the respective assessment dates. He certified that he developed his appraisals in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Exs. G-HH.*

8. Scheidt relied on the sales-comparison approach for each appraisal. He identified three sales of comparable properties, which he used in both appraisals. He then considered adjusting those sale prices to account for relevant transactional differences between the comparable sales and the posited sale of the subject property, as well as for differences in the properties' physical characteristics. *Exs. G-HH*

9. Scheidt used a weighted average of the three adjusted sale prices to come up with the following indicated values for the subject property: $1,830,000 for January 1, 2020, and $1,940,000 for January 1, 2021. He settled on value ranges of $1,730,000 to $1,930,000 for 2020 and $1,840,000 to $2,040,000 for 2021. In determining value ranges, Scheidt tries "to keep it around 10%," but the smaller the range the better. The ranges in his appraisals of the subject property were roughly 5% on either side of his indicated value. *Scheidt testimony; Exs. G-HH.*

Conclusions of Law and Analysis

A. The Crandalls waived any claim for relief based on the Assessor's purported failure to comply with Ind. Code § 6-1.1-9-2.

10. The Crandalls complained that because the Assessor's Form 113 notice did not give specific facts or reasons for raising their 2020 assessment, she failed to comply with Ind. Code § 6-1.1-9-2. That statute provides that where an assessor or county PTABOA assesses omitted or undervalued property or increases a valuation, it "shall file with the county auditor a written statement which contains: (1) the reasons why the action was taken; and (2) the facts or evidence on which the reasons are based." I.C. § 6-1.1-9-2.

11. The Crandalls, however, do not dispute that they received all the notice of the assessment increase to which they were entitled. *See* I.C. § 6-1.1-9-1 (requiring a taxpayer to be given written notice under I.C. § 6-1.1-4-22 of the assessment or increase, which must contain a general description of the property and a statement describing the taxpayer's right to a review with the county PTABOA). Nor do they explain why the Assessor's purported failure to comply with Ind. Code § 6-1.1-9-2 would invalidate the assessment or otherwise entitle them to relief. We therefore find that they have waived any claims relating to the Assessor's alleged failure to comply with Ind. Code § 6-1.1-9-2.[1]

B. Because we held our hearing after the Legislature repealed Ind. Code § 6-1.1-15-17.2, the burden did not shift to the Assessor to offer evidence that "exactly and precisely" matched the challenged assessments.

12. We now turn to the second issue: the subject property's assessed value for 2020 and 2021. Before we address the evidence relating to that issue, however, we must first resolve the parties' dispute about whether a since-repealed statute (Ind. Code § 6-1.1-15-17.2) governing the burden of proof in certain cases applies to the Crandalls' appeals.

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

---

[1] The Crandalls also did not explain why the Assessor e-mailing the revised property record card together with a more detailed statement of her reasons for increasing the assessment—which she testified without dispute that it was her practice to do—would not substantially comply with Ind. Code § 6-1.1-9-2.

14. Until its repeal on March 21, 2022, Ind. Code § 6-1.1-15-17.2, commonly known as the "burden-shifting statute," created an exception to the general rule. That statute required an assessor to prove that a challenged assessment was "correct" where, among other things, the assessment represented an increase of more than 5% over the prior year's assessment. I.C. § 6-1.1-15- 17.2(a)-(b) (repealed by 2022 Ind. Acts 174, § 32 effective on passage). Where an assessor had the burden, her evidence needed to "exactly and precisely conclude" to the challenged assessment. *Southlake Ind. LLC v. Lake Cty. Ass'r* ("*Southlake II*"), 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). If the assessor failed to meet her burden, the taxpayer could prove that its proffered assessment value was correct. 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 Cty. Ass'r* ("*Southlake I*"), 174 N.E.3d 177, 179-80 (Ind. 2021).

15. At the same time the Legislature repealed the burden-shifting statute, it enacted Ind. Code § 6-1.1-15-20. 2022 Ind Acts 174, § 34. The new statute also assigns the burden of proof to assessors in appeals where the assessment represents an increase of more than 5% over the prior year. I.C. § 6-1.1-15-20(b). But it no longer requires the evidence to "exactly and precisely conclude" to the assessment, and it allows us to determine a value based on the totality of the evidence. Only where the evidence is insufficient to determine a property's true tax value does the assessment revert to the prior year's level. *See* I.C. § 6-1.1-15-20(f). The new statute, however, only applies to appeals filed after its March 21, 2022 effective date. I.C. § 6-1.1-15-20(h).

16. The Crandalls argue that the burden-shifting statute should apply[2] because (1) it was in effect when they filed their appeals, and (2) the new statute does not apply to appeals filed before its effective date. The Assessor disagreed, arguing that the burden-shifting statute was repealed before we held our evidentiary hearing and that no specialized burden-of-proof statute applies to the Crandalls' appeals.

17. We agree with the Assessor. We start with the principle that 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 retroactive application, 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. Indeed, 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

[2] The Crandalls claim that the burden-shifting statute was triggered because the revised 2020 assessment from the Form 113 notice represented an increase of 17% over the original assessment for *that same year*. But they misread the statute. The statute provided for the burden to shift when the assessment under appeal represented an increase of more than 5% over the assessment for the "*prior tax year*." I.C. § 6-1.1-15-17.2(a) (emphasis added). Because the revised 2020 assessment also represented an increase of more than 5% over the property's 2019 assessment, however, we must still address whether the burden-shifting statute applies to these appeals.

> 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.").

18. 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*, 189 N.E.3d 580, 587 (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 587-88. 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.* at 588 (quoting *R.I. Insurers' Insolvency Fund v. Leviton Mfg. Co.*, 716 A.2d 730, 735 (R.I. 1998).

19. In *Church*, the defendant sought to depose the child victim of a sex offense. After the date of the offense and the defendant was charged, but before he sought to depose the child, the Legislature passed a statute requiring court approval to depose child victims if the prosecutor objects to the deposition. *Church*, 189 N.E.3d at 584-85; I.C. § 35-40-5-11.5. After the defendant was denied authorization to depose the child, he appealed, arguing that the trial court had impermissibly applied the new statute retroactively. The Court disagreed, holding that the triggering event of the statute was the defendant seeking to depose the child. *Id.* at 588. Because the deposition statute was already in effect when the defendant sought to depose the child, the statute was being applied prospectively. *Id.* Had the defendant sought the deposition in the eight days between being charged and the statute taking effect, applying it would have been retroactive. *Id.*

20. The burden-shifting statute addressed the burden of proof in assessment appeals. So does its repeal, the effect of which is to return cases that the statute had carved out for special treatment back to the default rule governing the burden of proof in assessment appeals generally, at least until the new burden-shifting statute (I.C. § 6-1.1-15-20) kicks in. The operative event is when a hearing on the merits convenes. The burden-shifting statute had already been repealed when the hearing on the Crandalls' appeals convened, and we

must apply the law as it existed at that time. The Assessor therefore did not have the burden of proving the assessment was correct, and there was no provision for reverting the assessment to the prior year's level.

B. Because Scheidt's appraisals are the only probative evidence of the property's market value-in-use, we find that the assessments should be changed to match the indicated values from those appraisals.

21. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). Instead, it is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.[3]

22. Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC 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 comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2020 and 2021 assessments, the valuation dates were January 1, 2020, and January 1, 2021, respectively. *See* I.C. § 6-1.1-2-1.5(a).

23. The Crandalls offered no evidence whatsoever to show the subject property's market value-in-use. The only probative valuation evidence comes from Scheidt's USPAP-certified appraisals in which he applied a generally accepted methodology—the sales-comparison approach—to estimate the subject property's market value as of each valuation date. The Crandalls did nothing to impeach Scheidt's appraisals. Scheidt estimated both an indicated value and a range of values for each year. We find that his indicated value is the most persuasive evidence of the subject property's market value-in-use for each year. Indeed, the ranges he estimated were based on those indicated values. We therefore find that the assessments must be changed to the following values: $1,830,000 for 2020 and $1,940,000 for 2021.

[3] The 2011 Real Property Assessment Manual, which applied to the Crandalls' 2020 assessment, used the same definition. 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.

Conclusion

24. We order that the subject property's 2020 assessment be changed to $1,830,000 and that its 2021 assessment be changed to $1,940,000.

Date: 1/4/2023

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>.