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

Petition No.:	**10-010-21-1-5-00187-22**
Petitioner:	**Phyllis A. Hilton & William Joseph Fetter**
Respondent:	**Clark County Assessor**
Parcel:	**10-20-00-200-975.000-010**
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 Petitioners appealed the 2021 assessment of their property located at 930 Howard Avenue in Jeffersonville, Indiana on June 8, 2021.

2. The Petitioners filed this appeal on February 8, 2022, after the Clark County Property Tax Assessment Board of Appeals ("PTABOA") failed to issue a determination within 180 days of the Petitioner's filing of their notice of appeal (Form 130). *See* Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed). While the PTABOA issued a Form 115 determination for the 2021 assessment on May 10, 2022, it did so after the Petitioners had already appealed that assessment to the Board. Thus, that decision is void.

3. For that reason, the value listed on the January 1, 2021, Form 11 is the assessment of record. That assessment is $15,200 for land and $86,100 for improvements for a total of $101,300.

4. The Petitioners elected to proceed under the small claims procedures. On September 27, 2022, Dalene McMillen, the Board's Administrative Law Judge ("ALJ"), held a telephonic hearing. Neither the Board nor the ALJ inspected the subject property.

5. Phyllis Hilton and Ken Surface, consultant for the Assessor's office, testified under oath. Ayn Engle appeared as the Assessor's attorney.

Record

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

a) Exhibits:

Petitioner Exhibit A:	Notice of Assessment of Land and Structures – Form 11,
Petitioner Exhibit B:	Department of Local Government Finance – Property Tax Assessment Appeals Fact Sheet, September 2018,
Petitioner Exhibit C:	Three exterior photographs of the subject property,
Petitioner Exhibit D:	Plat map,
Petitioner Exhibit E:	Summary of Petitioners' testimony,
Petitioner Exhibit F:	Petitioners' 2021 assessment comparison analysis.

Respondent Exhibit R1:	2021 property record card for the subject property,
Respondent Exhibit R2:	Aerial map of subject property,
Respondent Exhibit R3:	Photograph of subject property,
Respondent Exhibit R4:	Aerial map of subject area,
Respondent Exhibit R5:	Property record card for 801 Morningside Drive,
Respondent Exhibit R6:	Photograph of 801 Morningside Drive,
Respondent Exhibit R7:	Property record card for 805 Morningside Drive,
Respondent Exhibit R8:	Photograph of 805 Morningside Drive,
Respondent Exhibit R9:	Aerial map of Petitioner's comparable properties,
Respondent Exhibit R10:	Photographs of 928 Howard Avenue, 1110 East 10th Street and 1112 East 10th Street,
Respondent Exhibit R11:	Property record cards for 928 Howard Avenue, 1110 East 10th Street and 1112 East 10th Street.

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.

Findings of Fact

7. The subject property is a single-family, two-story home with a car shed and detached garage with approximately 0.14 acres of land. The Petitioners have lived at the property for 35 years. *Hilton testimony; Resp't Ex. R1.*

Contentions

8. Summary of the Petitioners' case:

   a) Hilton argued that the Assessor should have the burden of proof because the 2021 assessment increased 39.1% over the 2020 assessment. *Hilton testimony; Pet'r Exs. A & B.*

   b) Hilton also claimed that the subject parcel is assessed higher than its market value. In support of this, she testified that the property is located six inches off a busy alley. She stated that the alley is noisy, experiences high traffic and numerous people walk

through day and night. She also stated that her backyard floods "after a rain." *Hilton testimony; Pet'r Exs. C, D & E.*

c) Hilton also presented the assessments of three properties located near the subject that she believed were similar. She compared living area, basement size, construction type and whether their yards flood. She also noted that the three comparable properties were not located on an alley. Hilton found those properties had assessments of $70,000, $70,000, and $86,200, while the subject property is assessed at $101,300. She argued that the assessments of these properties demonstrated that the subject property was over-assessed. *Hilton testimony; Pet'r Ex. F.*

9. Summary of the Respondent's case:

a) The Assessor argued that the Petitioners should have the burden of proof because Indiana Code § 6-1.1-15-17.2, the burden of proof statute, was no longer applicable because it was repealed in March of 2022. *Engle argument.*

b) Ken Surface, consultant for the Assessor, testified the subject property was assessed in accordance with the Indiana Real Property Assessment Guidelines ("Guidelines"). The property was assessed as an owner-occupied single-family property with a four-car garage. He also presented two purportedly comparable properties that sold for $94/sq. ft. and $97/sq. ft. while the subject property was only assessed for $59/sq. ft. He noted that if the subject property was assessed at this rate (with a discount for the second floor), it would be assessed at $130,000. *Surface testimony; Resp't Exs. R1-R8.*

c) Surface also argued that Hilton's comparable assessment analysis was flawed because she failed to show how the comparable properties compare to the subject property. In particular, he noted that the comparable properties are one-story homes with unfinished basements while the subject property is a two-story home. He also noted that the comparables were rental properties and thus were assessed differently. *Surface testimony; Resp't Exs. R9-R11.*

10. The Petitioners 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) Hilton argues that the burden should be on the Assessor because the assessment increased by 39.1% 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 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).[1]

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'rs 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.").

---

[1] 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. But that new statute applies only to appeals filed after its March 21, 2022 effective date, and therefore does not apply to this appeal. I.C. § 6-1.1-15-20(f).

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 717m 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' 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 Petitioners.

f) Real property is assessed based on its market value-in-use. Ind. Code § 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) Here, Hilton failed to provide any probative, market-based evidence. While Hilton made claims as to the condition of the area and issues with the property, statements

that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

i) Hilton did present the assessments of three purportedly comparable properties. A party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable properties are comparable to the property under appeal. *See Long,* 821 N.E.2d at 470-71. Conclusory statements that properties are "similar" or "comparable" do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long,* 821 N.E.2d at 471. They must similarly explain how relevant differences affect values. *Id.*

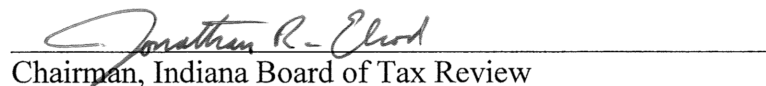
j) But Hilton did not offer the type of analysis contemplated by *Long.* While she identified the assessments and some differences and similarities of the three comparables, she did not offer any evidence or analysis that showed how those differences affected the properties' overall market value-in-use. Without such analysis, this evidence is insufficient to support any reduction in value. Thus, we find Hilton has failed to make a case for any reduction in the assessment.

k) Because the Petitioners have not supported their 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 2021 assessment.

ISSUED: DECEMBER 21, 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>.