REPRESENTATIVE FOR THE PETITIONERS: Zachary T. Harding, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Austin Budell, Tyler Technologies

BEFORE THE INDIANA BOARD OF TAX REVIEW

Zachary T. & Kelli J. Harding	)	Petition No.: 62-007-21-1-5-00104-22
Petitioners,	)	Parcel No.: 62-13-32-140-378.004-007
v.	)	County: Perry
Perry County Assessor,	)	Township: Troy
Respondent.	)	Assessment Year: 2021

March 27, 2023

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:

INTRODUCTION

1. The Petitioners appealed the 2021 assessment of their residential property in Perry County. Because they failed to provide reliable, market-based evidence supporting a lower value, we order no change to the assessment.

PROCEDURAL HISTORY

2. The Petitioners appealed the 2021 assessment of their property located at 120 – 12th Street in Tell City, Indiana.

3. On December 16, 2021, the Perry County Property Tax Assessment Board of Appeals ("PTABOA") reduced the assessment to $8,700 for land and $193,700 for improvements for a total of $202,400. The Petitioners timely appealed to the Board.

4. On October 27, 2022, Dalene McMillen, the Board's Administrative Law Judge ("ALJ"), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

5. Zachary Harding, Kelli Harding, and Austin Budell, consultant for the Assessor, testified under oath. Mendy Lassaline, the Perry County Assessor, also appeared but did not testify.

6. The Petitioner offered the following exhibits:

Petitioner Exhibit A:	Indiana code § 6-1.1-28-1 Version b,
Petitioner Exhibit B:	Department of Local Government Finance ("DLFG") – Property Tax Assessment Appeals Fact Sheet,
Petitioner Exhibit C:	Notice of Assessment of Land and Structures / Improvements – Form 11,
Petitioner Exhibit D:	Email exchange between Kelli Harding and Kelly Brown, Perry County Deputy Assessor,
Petitioner Exhibit E:	Adjoining property card comparison analysis, subject property's Form 11 and 2020 property record card, property record cards for 126 – 12th Street, and 104 – 12th Street,
Petitioner Exhibit F:	Letter from Sam Monroe of Tyler Technologies and email between Mendy Lassaline and the Hardings,
Petitioner Exhibit G:	Appeal recommendation from Assessor dated July 23, 2021,
Petitioner Exhibit H:	Twenty-four photographs of 104 – 12th Street,
Petitioner Exhibit I:	Thirteen photographs of 120 – 12th Street,
Petitioner Exhibit J:	Nineteen photographs of 1 – 12th Street,
Petitioner Exhibit K:	50 IAC 27-11-2 – Sales Chasing,
Petitioner Exhibit L:	Office of the Public Access Counselor – Formal Complaint,
Petitioner Exhibit M:	Letter from Christopher Goffinet, Perry County attorney regarding Public Access Counselor complaint dated January 24, 2022,
Petitioner Exhibit N:	Opinion of the Public Access Counselor in *Kelli Harding, Lee Chestnut v. Perry County Prop. Tax Bd. of Appeals,* Formal Complaint No. 22-FC-1,

Petitioner Exhibit O: Assessor's duties list,
Petitioner Exhibit P: Spreadsheet of homes on 10th and 100th blocks of 12th Street,
Petitioner Exhibit Q: 2019-2022 and 2013-2020 property record cards for 126 – 12th Street,
Petitioner Exhibit R: Taxpayer's Notice to Initiate an Appeal – Form 130,
Petitioner Exhibit S: Petition for Review of Assessment Before the Indiana Board of Tax Review – Form 131,
Petitioner Exhibit T: Notification of Final Assessment Determination – Form 115,
Petitioner Exhibit U: Letter from Mendy Lassaline to the Hardings dated February 25, 2022,
Petitioner Exhibit V: Petitioners' opening and closing statements.

7. The Respondent offered the following exhibit:

Respondent Exhibit 1: Residential appraisal report of the subject property prepared by Valery Kessens with an effective date of January 1, 2021,
Respondent Exhibit 2: Sales disclosure form for the subject property dated February 11, 2020,
Respondent Exhibit 3: DLGF letter approving Perry County's 2021 ratio study dated March 23, 2021,
Respondent Exhibit 4: Notification of Final Assessment Determination – Form 115,
Respondent Exhibit 5: 2021 subject property record card.

8. 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

9. The subject property is a 1.5 story partial brick, partial frame home located on 0.26 acres of land in Tell City. *Resp't Ex. 5.*

10. The Petitioners purchased the subject property from an acquaintance on February 11, 2020, for $252,000. *Z. Harding testimony; Resp't Ex. 2.*

11. The Assessor engaged Valery Kessens of Valery M. Kessens Appraisals to appraise the retrospective market value of the subject property as of January 1, 2021. She certified that her appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). To arrive at her opinion of value, Kessens developed both the cost approach and the sales-comparison approach. She ultimately concluded to a reconciled value of $252,000. *Resp't Ex. 1.*

PETITIONERS' CONTENTIONS

12. The Petitioners claimed that the Assessor engaged in sales chasing by increasing the assessment after their purchase of the subject property. They also alleged several deficiencies in the hearing process before the PTABOA. *Z. Harding testimony; Pet'r Exs. K, L, M, N, O & V.*

13. In addition, the Petitioners presented a comparable assessment analysis of seventeen properties in the subject neighborhood. They compared square footage, bathrooms, bedrooms, and percent of increase. They noted that while the 2021 assessments of the comparable properties increased by an average of $4.60/sq. ft., the subject property's assessment increased by $8.24/sq. ft. They also pointed to several specific properties they claimed were larger and more updated than the subject property but received a lower percentage increase. They claimed this fact demonstrated that the subject property was over assessed. *Z. Harding testimony; Pet'r Ex. E, H, I, J, P, Q & V.*

14. Finally, the Petitioners claimed the subject property's assessment was calculated using an incorrect effective age. *Z. Harding testimony; Pet'r Exs. T & V.*

RESPONDENT'S CONTENTIONS

15. Austin Budell, consultant for the Assessor, testified that the subject property's assessed value increased from $182,600 in 2020 to $202,400 in 2021 or 10.84%. For that reason, he believed the Assessor should have the burden because the assessment increased more than 5% over the previous year. *Budell testimony; Resp't Ex. 5.*

16. The Assessor argued that the subject property's assessment is correct. In support of this, Budell testified that the values from the Kessens appraisal and the Petitioners' sales disclosure form both in the amount of $252,000 support the PTABOA's assessment of $202,400. In addition, Budell testified that the approval of the County's ratio study indicated that the Assessor did not engage in sales-chasing. *Budell testimony; Resp't Exs. 1- 4.*

17. Budell also testified that the Petitioners' comparable assessment analysis was flawed because they failed to show how the comparable properties compare to the subject property. In particular, Budell testified the Petitioners failed to show how differences in physical characteristics of the comparable properties compared to the subject property. *Budell testimony.*

ANALYSIS

18. 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).

19. Until its repeal on March 21, 2022, however, 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, as last corrected by an assessing official, stipulated to or settled by the taxpayer and the assessing official, or determined by the reviewing authority. 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).

20. At the same time the Legislature repealed Ind. Code § 6-1.1-15-17.2, 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's assessment. 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 the Board 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). Thus, it does not apply to this appeal.

21. Despite the Assessor's claim that she should have the burden of proof, we cannot find that she does because the burden shifting statute was repealed before we held our evidentiary hearing. 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 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.").

22. The Legislature did not clearly evince an intent for the repeal of Ind. Code § 6-1.1-15-17.2 to be retroactive; to the contrary, it made the repealing act effective upon passage. Thus, we must determine whether applying the general rule on the burden of proof instead of the burden-shifting and reversion provisions of Ind. Code § 6-1.1-15-17.2 would be a retroactive (and therefore impermissible) application of the repealing act.

23. To answer the question, we must determine whether the "'new provision," i.e. the repeal of Ind. Code § 6-1.1-15-17.2, "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).

24. 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.*

25. The burden-shifting statute addresses 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, not when an appeal is filed. The burden-shifting statute had already been repealed when this case was heard, 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. Thus, we apply the general rule that the burden rests with the petitioner.

26. 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. 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.

27. 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 (Ind. Tax Ct. 2005). For the 2021 assessment, the valuation date was January 1, 2021. *See* Ind. Code § 6-1.1-2-1.5.

28. We first note that the Petitioners claimed the Assessor and PTABOA failed to follow the proper procedures in conducting the PTABOA hearing. While the Assessor and PTABOA should follow all the requirements of Ind. Code § 6-1.1-15-1.2, we do not find that this entitles the Petitioners to any relief. The Board's hearings are *de novo*, thus, the Petitioners had the opportunity to present all their evidence to the Board and were not prejudiced.

29. Next, we turn to the Petitioners' claims of sales-chasing. "Sales chasing" or "selective reappraisal" is the "practice of using the sale of a property to trigger a reappraisal of that property at or near the selling price." 50 IAC 27-2-11. Here, neither the original assessment nor the PTABOA's determination are at or near the selling price. For that reason, we find the Petitioners have not shown the Assessor engaged in sales-chasing.

30. The Petitioners also alleged specific errors in how the subject property is assessed, including that it had an incorrect effective age. But 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). For that reason, the Petitioners are not entitled to any relief on these grounds.

31. The Petitioners did present some evidence in the form of the comparable assessments. But 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. *Id.* at 471. They must similarly explain how relevant differences affect values. *Id.*

32. But the Petitioners did not offer the type of analysis contemplated by *Long.* While they identified some differences between the comparables and the subject, they did not offer any evidence or analysis that show how the differences affected the properties' overall market values-in-use. Without such analysis, this evidence is insufficient to support any reduction in value.

33. Finally, the Petitioners claimed that their assessment increased disproportionately compared to other similar properties. This appears to be a challenge to uniformity and equality of the assessment. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment on 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 Cty. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham,* 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

34. When a ratio study shows that a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.,* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its

property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness v. Porter County Assessor,* 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs,* 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John,* 702 N.E.2d 1034, 1040 (Ind. 1998).

35. As discussed above, one of the requirements for a reliable ratio study is a comparison between the assessments used and objectively verifiable market data such as sale prices or appraisals. The Petitioners did not provide any such data. In addition, they failed to show that the properties they presented were a statistically reliable sample of the properties in the neighborhood. Simply comparing a few factors as the Petitioners did is not a recognized approach for applying an equalization adjustment. For these reasons, they failed to make a prima facie case showing a lack of uniformity and equality in the assessment.

36. Thus, we find the Petitioners have failed to make a case for any reduction in the assessment. 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). For these reasons, we order no change to the subject property's assessment.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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>.