

REPRESENTATIVE FOR THE PETITIONER: Jeff Baker, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Eric Grossman, Tippecanoe County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lafayette Rentals,)	Petition Nos.: 79-004-18-1-4-01104-22
)	79-004-21-1-4-01106-22
Petitioner,)	
)	Parcel No.: 79-07-34-081-011.913-004
v.)	
)	County: Tippecanoe
Tippecanoe County Assessor,)	
)	Assessment Years: 2018 & 2021
Respondent.)	

August 1, 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. Lafayette Rentals appealed the 2018 and 2021 assessments of its general office units in Tippecanoe County. Because it failed to provide reliable, market-based evidence proving the market value-in-use of the property, the Board finds for the Assessor.

PROCEDURAL HISTORY

2. Lafayette Rentals appealed the 2018 assessment year on July 13, 2018. It also appealed the 2021 assessment year, but the exact date of filing is not in the record because the Form 130 does not have a file stamp and the date of signature box is blank. The appeals were for a property located at Professional Court in Lafayette.¹

3. On April 26, 2022, the Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) determined the following assessments:

2018: Land: \$0	Improvements: \$262,600	Total: \$262,600
2021: Land: \$0	Improvements: \$280,100	Total: \$280,100

4. On May 9, 2023, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

5. Jeff Baker, the property owner, and Eric Grossman, the Tippecanoe County Assessor, testified under oath.

6. The Petitioner offered the following exhibits:
 - Petitioner Exhibit 1: Interior photograph of unit #5,
 - Petitioner Exhibit 2: Interior photograph of unit #5,
 - Petitioner Exhibit 3: Interior photograph of unit #5,
 - Petitioner Exhibit 4: Beacon parcel information for 190 Professional Court,
 - Petitioner Exhibit 5: Sketch of subject property.

7. The Respondent offered the following exhibits:
 - Respondent Exhibit R1: Subject property narrative,
 - Respondent Exhibit R2: Subject property record card,
 - Respondent Exhibit R3: Subject property income approach reports for 2017 through 2022,
 - Respondent Exhibit R4: Parcel income approach models for 79-07-34-081-002.913-004 for 2017 through 2022.

¹ The address of the subject property does not include a street number.

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) the digital recording of the hearing.

FINDINGS OF FACT

9. The subject property consists of four units of a five-unit general multi-tenant office building in Lafayette. *Grossman testimony; Resp't Ex. R2.*

PETITIONER'S CONTENTIONS

10. Lafayette Rentals claimed the subject property is over-assessed. In particular, it argued that one unit is not desirable because of the location of the parking lot and entrance to the unit. Baker testified that he was unable to rent the unit and instead used it for storage. For this reason, Lafayette Rentals argued that this unit should have a lower value per square foot than the others. *Baker testimony; Pet'r Exs. 1-3 & 5.*
11. In addition, Lafayette Rentals argued that the vacancy rate should be increased because the subject property is older, is located on a cul-de-sac with limited traffic flow, and is in an undesirable neighborhood near government housing. *Baker testimony.*
12. Finally, Lafayette Rentals presented a purportedly comparable property in the subject neighborhood it alleged was similar in number of units and age. In 2021, the assessment of the comparable property was \$432,900, or \$45.50 per square foot, which was lower than the subject property's per square foot assessment. *Baker testimony; Pet'r Ex. 4.*

RESPONDENT'S CONTENTIONS

13. The Assessor argued that Lafayette Rentals should have the burden of proof because the subject property's assessments did not increase by more than 5% in 2018 or 2021. *Grossman testimony; Resp't Ex R1.*

14. The Assessor also argued the subject property's 2018 and 2021 assessments are correct. In support of this, the Assessor presented an income approach analysis. For 2018, he estimated an operating income of \$28,465.58 after accounting for expenses and vacancy. He applied a 10.84% capitalization rate to arrive at an estimated value of \$262,600 or \$38.57 per square foot. *Grossman testimony; Resp't Ex. R3.*
15. For 2021, the Assessor estimated a net operating income of \$31,907.81 after accounting for expenses and vacancy. He applied an 11.39% capitalization rate to arrive at an estimated of \$280,100 or \$51.57 per square foot. *Grossman testimony; Resp't Ex. R3.*
16. The Assessor testified that Lafayette Rentals' comparable analysis is flawed because the square footage of an office unit in the comparable property was excluded from the total square footage, causing the calculation to be inaccurate. In addition, he noted that for the 2018 assessment year the county's records show the comparable was assessed at \$43.00 per square foot, while the subject property was assessed at \$38.57 per square foot. *Grossman testimony; Resp's Ex. R3*

ANALYSIS

17. Generally, an assessment determined by an assessing official is presumed to be correct. 2011 and 2021 REAL PROPERTY ASSESSMENT MANUAL at 3.² The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax. Ct. 2006).
18. 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,

² For the Petitioner's 2018 appeal, the 2011 Real Property Assessment Manual applied. The Department of Local Government Finance has adopted a new assessment manual and guidelines for 2021 assessments forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

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 IP*”), 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 P*”), 174 N.E.3d 177, 179-80 (Ind. 2021).

19. In response, the Legislature repealed Ind. Code § 6-1.1-15-17.2 and 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). The 2018 Form 130 was filed in 2018, thus the new statute does not apply to the appeal for that assessment year. For 2021, the Form 130 in the record is not file-stamped, and the date of signature box is blank. For that reason, we are unable to determine whether it was filed before or after March 21, 2022. As the party seeking to take advantage of the burden-shifting statute, Lafayette Rentals needed to provide evidence demonstrating that it applied. Because it failed to do so, we cannot apply I.C. § 6-1.1-15-20.
20. In addition, we cannot find the Assessor has the burden of proof under the prior burden shifting statute because that 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.”)).

21. 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.
22. 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)).

23. 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.*
24. 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.

25. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 and 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.
26. 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 2018 assessment, the valuation date was January 1, 2018. For the 2021 assessment, the valuation date was January 1, 2021. *See* Ind. Code § 6-1.1-2-1.5.
27. Here, Lafayette Rentals argued the vacancy rates used to develop the assessments using the income approach were incorrect. But it failed to provide any market-based evidence showing what the correct vacancy rate should be. In addition, even if the Assessor made errors, simply attacking the methodology the Assessor used is insufficient to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To make a case, a taxpayer must show the current assessment does not accurately reflect the subject property's market value-in-use. *Id.*; *see also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value is). The Tax Court has recently reaffirmed this principal, holding that a taxpayer must present "objectively

verifiable, market-based evidence to show that the property's assessed value does not reflect its market value-in-use." *Piotrowski BK #5643, LLC v. Shelby County Ass'r*, 177 N.E.3d 127 (Ind. Tax Ct. 2021). Lafayette Rentals did not provide any market-based evidence supporting a different value. For that reason, it is not entitled to any reduction in its assessments on these grounds.

28. Lafayette Rentals also presented evidence of several deficiencies in the subject property, but it failed to present reliable evidence quantifying the effect those deficiencies had on the overall value of the subject property as of the valuation dates. 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). For this reason, Lafayette Rentals is not entitled to any relief on these grounds.
29. Finally, Lafayette Rentals presented a comparable assessment. 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.*
30. Lafayette Rentals did not offer the type of analysis contemplated by *Long*. While Baker identified a few differences between the comparable and the subject, Baker did not offer any evidence or analysis showing how the differences affected the property's overall market values-in-use. Without such analysis, this evidence is insufficient to support any reduction in the assessments.
31. Thus, we find Lafayette Rentals has failed to make a case for any reductions in its assessments. Because Lafayette Rentals has not supported its claim with probative evidence, the Respondent's duty to support the assessments 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).

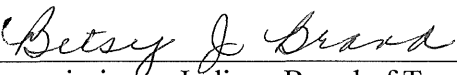
SUMMARY OF FINAL DETERMINATION

32. Because Lafayette Rentals failed to make a case for any change to the assessments we order no change for either year under appeal.

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>>.