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

Petition: **03-016-21-1-5-00016-22**
Petitioner: **Albert H. Schumaker II**
Respondent: **Bartholomew County Assessor**
Parcel: **03-84-11-130-001.200-016**
Assessment Year: **2021**

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

Procedural History

1. Albert H. Schumaker II contested the 2021 assessment of his property. The Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 determination valuing the property at $541,700 ($528,100 for land and $13,600 for improvements).

2. Schumaker then filed a Form 131 petition 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 Schumaker's petition. Neither he nor the Board inspected the property.

3. Melissa Michie appeared as counsel for Schumaker. 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:

Petitioner Exhibit 1:	Subject property record card,
Petitioner Exhibit 2:	2021 subject property record card,
Petitioner Exhibit 3:	Text of Ind. Code § 6.1-1-15-17.2,
Petitioner Exhibit 4:	*Southlake Ind, LLC v. Lake Cty. Ass'r*, 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021),
Petitioner Exhibit 5:	Text of Ind. Code § 6.1-1-15-20,
Petitioner Exhibit 6:	Actions for House Bill 1260,
Petitioner Exhibit 7:	*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:	2020 subject property record card,

Respondent Exhibit D:	2021 subject property record card,
Respondent Exhibit E:	Aerial photograph of the subject property,
Respondent Exhibit F:	Appraisal of the subject property completed by Jonathan C. Scheidt, Indiana Certified Residential Appraiser.

5. The record also includes: (1) all petitions and other documents filed in this appeal, (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 is an approximately 11,550-square-foot parcel of land with a boathouse and dock. It is situated on Grandview Lake in Columbus, Indiana. Its assessment increased roughly 14.6% between 2020 and 2021. *Scheidt testimony; Exs. C-F.*

7. The Assessor engaged Jonathan Scheidt, a certified residential appraiser with over 10 years of experience, to appraise the property. He appraised the market value of the property, which he explained was indistinguishable from its market value-in-use because the property's existing and highest-and-best uses were the same. Scheidt certified that he developed his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Scheidt testimony; Ex. F.*

8. He relied on the sales-comparison approach. There were few sales of vacant lots on Grandview Lake, so he had to look back over several years to find comparable sales. He identified three sales of comparable properties, all of which had a similar view of the lake as the subject property. The first two properties had old homes on them when they sold. The buyer razed the home on the first property. At the time Scheidt inspected the subject property, a new home was being built on that lot. The home on the second property was also going to be razed and a new home built. The third property was vacant when it sold. *Scheidt testimony; Ex. F.*

9. Scheidt then considered adjusting the 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. He made one adjustment for transactional differences: he adjusted the third sale price by approximately 16% ($75,000) to account for market differences between its December 12, 2010 sale date and the January 1, 2021 valuation date for his appraisal. *Scheidt testimony; Ex. F.*

10. Turning to physical characteristics, Scheidt did not adjust the sale prices for the two properties with homes to account for differences between their improvements and the boathouse and dock at the subject property. He explained that the homes were substantially depreciated and that buyers often raze older homes, although they sometimes choose to simply make minor updates. And he used a paired-sales analysis to estimate the contributory value of the subject property's improvements at $50,000. So he viewed the improvements on all three properties as having roughly equal value. But

Scheidt did adjust the vacant property's sale price upward by $50,000 to account for its lack of improvements. And he adjusted the second property's sale price downward by $50,000 to account for its greater size and lake frontage. *Scheidt testimony; Ex. F.*

11. The adjusted sale prices ranged from $590,000 to $649,000. The median price—$625,000—was from the first comparable sale. That was the most recent of the three sales and the property was located next door to the subject property. Scheidt therefore gave that sale the most weight and testified that his opinion of value for the subject property was $625,000. Scheidt's appraisal report, however, had boxes to indicate whether he was determining a "single point" value or a range of values. Scheidt checked the box for range of values, next to which he wrote $590,000 to $649,000. He neither checked the box for "single point" nor wrote a value next to it. *Scheidt testimony; Exs. F.*

Conclusions of Law and Analysis

A. 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 challenged assessment.

12. Before we analyze the valuation evidence, we 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 Schumaker's appeal.

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.,* 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022). 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).

14. 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).

15. Schumaker argues that the burden-shifting statute should apply because (1) it was in effect when he filed his appeal, 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 Schumaker's appeal.

16. 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 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.").

17. 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).

18. 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.*

19. 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 Schumaker's appeal 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 appraisal and valuation opinion are the only probative evidence of the property's market value-in-use, we find that the assessment should be changed to match Scheidt's opinion.

20. 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); MANUAL at 2. 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.

21. 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 2021 assessments, the valuation date was January 1, 2021. *See* I.C. § 6-1.1-2-1.5(a).

22. Schumaker offered no evidence whatsoever to show the subject property's market value-in-use. The only probative valuation evidence comes from (1) Scheidt's USPAP-certified appraisal report in which he applied a generally accepted methodology—the sales-comparison approach—to estimate a range of values as of January 1, 2021, and (2) his testimony, where he explained that his opinion of value was $625,000. Schumaker did nothing to impeach Scheidt's appraisal report or testimony.

23. We therefore find that Scheidt's opinion of $625,000 is the best evidence of the subject property's market value-in-use. While we recognize that Scheidt did not estimate a single-point value in his report, we are persuaded by his testimony as to how he arrived at his opinion. Not only was it the median of his three adjusted sale prices, but it was also the sale price for the property that was the most comparable to the subject property. We therefore find that the subject property's assessment must be changed to $625,000.

Conclusion

24. We order that the subject property's 2021 assessment be changed to $625,000

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>.