REPRESENTATIVE FOR THE PETITIONER: *Pro Se*

REPRESENTATIVE FOR THE RESPONDENT: Cathy Searcy, Elkhart County Assessor

**BEFORE THE**
**INDIANA BOARD OF TAX REVIEW**

| | | |
|---|---|---|
| MERLE H. & MARY C. HOCHSTEDLER, | ) | Petition Nos.: 20-015-21-1-5-00781-22<br>20-015-22-1-5-00782-22 |
| Petitioners, | ) | Parcel No.: 20-11-10-278-010.000-015 |
| v. | ) | County: Elkhart |
| ELKHART COUNTY ASSESSOR, | ) | |
| Respondent. | ) | Assessment Years: 2021 & 2022 |

## 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:

## I. INTRODUCTION

1. As a result of the 2022 legislative session, the Hochstedlers 2021 and 2022 assessment appeals are controlled by different statutory regimes concerning the burden of proof and the consequences for failing to carry that burden. In both cases, however, the Elkhart County Assessor had the initial burden and failed to meet it. The controlling statute for the 2021 appeal (Ind Code § 6-1.1-15-17.2), which has been repealed but which we are nonetheless constrained to apply, required the Assessor to offer evidence that "exactly and precisely" concluded to the challenged assessment. And her evidence, even if we were to view it as otherwise probative, concluded to values different from that assessment. Under the new burden-of-proof statute that governed the 2022 appeal (Ind. Code § 6-1.1-15-20), the Assessor only needed to offer probative market-based evidence

to show the property's true tax value. But she failed to support key components of the various gross rent multiplier ("GRM") analyses on which she relied. Under both statutes, the failure of proof ultimately requires the challenged assessments to revert to the previous level of $100,800.

## II. Procedural History

2. On June 9, 2021, the Hochstedlers filed a petition with the Assessor challenging their rental property's 2021 assessment. They filed a petition challenging the 2022 assessment on June 15, 2022. The Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 determination for each year, lowering the assessments to $145,000 and $161,800, respectively.

3. On November 14, 2023, our designated administrative law judge Erik Jones ("ALJ"), held a telephonic hearing on the appeals. Neither he nor the Board inspected the property. The Hochstedlers, Elkhart County Assessor Cathy Searcy, and Searcy's deputy, Tylan Miller, were sworn as witnesses.[1]

4. The Hochstedlers offered the following exhibits:

| | |
|---|---|
| Petitioners' Exhibit 1 | 2021 Property Record Card ("PRC") for subject property, |
| Petitioners' Exhibit 2 | 2021 Form 115 for subject property, |
| Petitioners' Exhibit 3 | 2022 PRC for subject property, |
| Petitioners' Exhibit 4 | 2022 Form 115 for subject property, |
| Petitioners' Exhibit 5 | 2021 Multi-Family Valuation Model worksheet for 119 N. 23rd Street, |
| Petitioners' Exhibit 6 | 2022 Multi-Family Valuation Model worksheet for 119 N. 23rd Street, prepared by Elkhart County Assessor, |
| Petitioners' Exhibit 7 | Comparison spreadsheet with calculations, |
| Petitioners' Exhibit 8 | Hochstedlers 2021 comparison spreadsheet, |
| Petitioners' Exhibit 9 | Hochstedlers 2022 comparison spreadsheet, |
| Petitioners' Exhibit 10 | 2022 PRC for 114 Blackport Drive, |
| Petitioners' Exhibit 11 | 2023 PRC for 416 Westfield Avenue, |

[1] Beth Henkel originally appeared as counsel for the Assessor. Just 21 days before the hearing, Henkel moved for leave to withdraw her appearance. She did not appear at the hearing. We grant her motion to withdraw.

| | |
|---|---|
| Petitioners' Exhibit 12 | 2022 PRC for 216 Blackport Drive, |
| Petitioners' Exhibit 13 | 2023 PRC for 1124 S. 8th Street, |
| Petitioners' Exhibit 14 | 2023 PRC for 505 Dewey Avenue, |
| Petitioners' Exhibit 15 | 2022 PRC for 932 Galen Court, |
| Petitioners' Exhibit 16 | 2022 PRC for 1901 S. 15th Street, |
| Petitioners' Exhibit 17 | 2022 PRC for 704 Fair Oaks Drive, |
| Petitioners' Exhibit 18 | 2022 PRC for 913 Galen Court, |
| Petitioners' Exhibit 19 | Transcribed excerpts from August 22, 2022 PTABOA hearing, |
| Petitioners' Exhibit 20 | Photographs of subject property, |
| Petitioners' Exhibit 21 | Photographs of 1901 S. 15th Street property, |
| Petitioners' Exhibit 22 | Photograph of 932 Galen Court property, |
| Petitioners' Exhibit 23 | Document stating that Assessor's automated valuation model documents "Not Available" for 2021 valuation of 114 Blackport Drive, |
| Petitioners' Exhibit 24 | Document stating Assessor's automated valuation model documents "Not Available" for 2022 valuation of 114 Blackport Drive, |
| Petitioners' Exhibit 25 | 2020 Multi-Family Valuation Model worksheet for 932/934 Galen Court, |
| Petitioners' Exhibit 26 | Document stating Assessor automated valuation model documents "Not Available" for 2022 valuation of 932 Galen Court. |

The Assessor offered the following exhibits:

| | |
|---|---|
| Respondent's Exhibit 1 | 2021 PRC for subject property, |
| Respondent's Exhibit 2 | 2021 Form 115 for subject property, |
| Respondent's Exhibit 3 | 2022 PRC for subject property, |
| Respondent's Exhibit 4 | 2022 Form 115 for subject property, |
| Respondent's Exhibit 5 | Photographs and aerial maps of subject property, |
| Respondent's Exhibit 6 | 2022 Automated Valuation Model worksheet for subject property, |
| Respondent's Exhibit 7 | Comparison spread sheet with calculations and MLS listing sheets for properties from spreadsheet. |

5. The record also includes the following: (1) all pleadings, briefs, and documents filed in these appeals, (2) all orders and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

## III. OBJECTIONS

6. The Assessor objected to Petitioners' Exhibit 19, the Hochstedlers' transcription of excerpts from the PTABOA hearing. The Assessor argued that she could not confirm whether the transcription was a "fair and accurate" representation of the audio recording of the hearing and that Gavin Fisher, whose testimony was featured in the transcript, was not available at our hearing to be questioned about his opinions. The Hochstedlers responded that the Assessor provided them with the audio recording they used to prepare the transcript, and that she therefore could have verified its accuracy.

7. We overrule the objections. As to the first ground, the Assessor did not point to any inaccuracy in the Hochstedlers' transcription of the hearing recording. In any case, the Assessor was free to offer the recording as evidence. We construe the Assessor's second ground as a hearsay objection. We agree that the transcribed testimony contains various hearsay assertions by Gavin Fisher, and the Hochstedlers did not lay a sufficient foundation to show that those assertions qualify as non-hearsay statements by an opposing party[2] or fit within any recognized exceptions to the hearsay rule. Nonetheless, we may admit hearsay with the caveat that if such evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, we cannot base our determination of an appeal solely on that evidence. 52 IAC 4-6-9(d). Although we admit the transcript, we do not base our determination of the Hochstedlers' appeals solely on that hearsay evidence.

## IV. FINDINGS OF FACT

### A. The Subject Property

8. The subject property is located on North 23rd Street in Goshen. It contains a two-story house built in 1900. In the early 1980s the house was converted into three rental units:

[2] *See* Ind. Evidence Rule 801(c)-(d) (defining hearsay as a statement not made while the declarant is testifying at hearing or trial that is offered to prove the truth of the matter asserted and excluding certain statements made by parties or their representative from the definition). Hearsay is generally inadmissible unless the Rules of Evidence or other law provides otherwise. Evid. R. 802.

two 600-square-foot, single-bedroom units on the first floor, and a roughly 1,250-square-foot, two-bedroom unit on the second. The second-floor unit includes central air conditioning; the ground-floor units do not. Tenants do not have access to a usable basement, a garage, or on-site storage. In 2021, the Hochstedlers charged a total of $1,710/month in rent for the three units. Tenants are responsible for all utilities. *Hochstedler testimony*; *Pet'r Exs. 1-4*; *Resp't Exs. 1, 3, 5-6.*

9. The property was assessed for $100,800 for 2018 through 2020. In 2021, its assessment jumped to $160,300, and it rose again to $184,300 in 2022, before the PTABO lowered those last two assessments to $145,000 and $161,800, respectively on appeal. *Hochstedler testimony; Pet'r Ex. 8.*

**B. The Assessor's GRM Analyses**

10. The Assessor's office analyzed the property's value using various rent assumptions and applying different GRMs.

11. First, after the Hochstedlers' filed their appeals, the Assessor's office had Equi-Val Tax Solutions, LLC prepare reports analyzing the subject property's value. Gavin Fisher prepared the report for the 2022 assessment year, while Jean Boyer prepared a report for 2020 that the Assessor used in conjunction with the Hochstedlers' 2021 appeal.

12. In the 2022 report, Fisher used a software program that the Assessor's witness, Tylan Miller, referred to as an automated value model ("AVM") to estimate market rent for the property. The program based its estimate on input from 19 sales of properties with between two and four rental units, which are listed in a spreadsheet in the report. The sales occurred between October 2019 and July 2022, and they involved homes built as early as 1860 and as late as 1988. Although some of the properties had been converted from single-family houses to multi-unit rental properties, it is unclear whether others were converted or were instead originally built as multi-unit rentals. *Miller testimony; Hochstedler testimony; Resp't Exs. 6-7; Pet'r Ex. 11.*

13. Based on the 19 sales, the software program determined what it considered to be market rent for the subject property. The report includes graphs with trend lines for price-per-unit, price-per-bedroom and rent-per-unit. Aside from saying that the program used multiple-regression analysis, however, Miller could not explain its methodology. Although Fisher testified about his report at the PTABOA hearing, he did not explain the program's methodology either. *Miller testimony; Resp't Ex. 6; Pet'r Ex. 19.*

14. Fisher then multiplied both the AVM-derived market rent and the subject property's actual rent by a GRM of 105, yielding values of $248,900 and $179,600, respectively. It appears that the GRM was derived not from the 19 sales used in determining the subject property's market rent, but rather from a larger set of sales that the Assessor used in her mass-appraisal of rental properties within the county. The Assessor's deputy, Tylan Miller, referred to it as the "county" GRM. And Fisher testified before the PTABOA that the GRM was determined using all the sales he pulled from the multiple listing service ("MLS") the previous fall. Fisher averaged the results from his market-rent and actual-rent analyses to reach a value of $214,300. *Miller testimony; Resp't Ex. 6; Pet'r Ex. 19.*

15. We have even less information about Boyer's report. While she followed the same basic steps as Fisher, there is nothing to indicate what sales data she used in arriving at market rent of $1,850/month. She likewise did not explain where she got her GRM of 86. Like Fisher, however, she applied her GRM both to the AVM-derived market rent and the property's actual rent ($1,610/month). Also like Fisher, she averaged the two results ($159,100 and $138,500) to reach a value of $148,800. *Pet'r Ex. 5.*

16. Next, Miller prepared his own analysis to, as he described it, make sure that the GRM and rent applied in previous analyses and in the values that the PTABOA adopted were "conservative." According to Miller, he did so for the Hochstedlers' benefit. He used sales of nine properties that he felt were likely to compete with the subject property for investors. They were all from Goshen and sold between August 2019 and December

2021, with five of the sales being from 2019 or 2020. There was significant overlap with the sales from Fisher's spreadsheet. *Miller testimony; Resp't Ex. 7.*

17. Eight of the sales involved houses that were converted to multiple rental units, while the ninth—910 Highland Drive—was purpose-built as a duplex. That property also had the second highest GRM (128.8). Miller nonetheless included it because it was similar to the subject property in overall size and rent per square foot. Another sale—704 South Main Street—was described as charging weekly rents, which Miller converted to monthly rates for his analysis. He called the buyer and seller to determine whether charging weekly rents was the nature of the market or was instead an outlier. He did not get any response, so he left the sale in his analysis. *Miller testimony; Resp't Ex. 7.*

18. The owner's obligation for utilities varied. The owner paid for no utilities in four instances and for only water or sewer (or both) in two instances. For one property—1124 S. 8th Street—it is unclear whether the tenant paid for all utilities, or the owner paid for water and sewer. The tenant paid all utilities for one property, which had an outlier GRM of only 37.1. Miller chose to leave that sale in his analysis because the property was physically similar to the subject property and because he wanted to be conservative in his value conclusions. For another property—813 S. 8th St.—the MLS listing indicates that the owner paid all utilities. But Miller used the sale because, in responding to the Assessor's rent survey, the owner had indicated that no utilities were included. *Miller testimony; Resp't Ex. 7.*

19. Miller calculated average gross rent of $1,666.68/month or $0.67/s.f. The average GRM was 103.4. He then made several calculations:

| | | |
|---|---|---|
| Actual rent ($1,710) x Av. GRM (103.4) | = | $176,814 |
| 2021 market rent ($1,850) x Av. GRM (103.4) | = | $191,290 |
| 2022 market rent ($2,370) x Av. GRM (103.4) | = | $245,058 |
| Av. Gross Rent ($1,666.68) x 2021 GRM (86) | = | $143,334 |
| Av. Gross Rent ($1666.68) x 2022 GRM (105) | = | $175,001 |

According to Miller, his calculations show that the PTABOA's values were reasonable, if conservative. For example, dividing the PTABOA's 2022 value by the subject property's actual rent yields a GRM of 94.62, and only three of Miller's sales, all of which were from 2019 or 2020, had lower GRM's. *Miller testimony; Resp't Ex. 7.*

20. The Hochstedlers compared the subject property's assessment from 2018 through 2022 to the assessments for four purpose-built duplexes from Goshen for the same period. Like the subject property, tenants were responsible for utilities. Unlike the subject property, however, those four properties had central air conditioning, usable basement space, and garage access. And the houses were decades newer than the subject house. While the subject property's assessment increased by 44% between 2018 and 2021 and by 61% between 2018 and 2022, the other properties' assessments changed at a much lower rate. *Hochstedler testimony*; *Pet'r Exs. 8-9.*

## V. Conclusions of Law

23. A different statute governs the burden of proof in the Hochstedlers' 2021 appeal than the statute that governs the burden in their 2022 appeal. While both statutes assign the initial burden to the Assessor, what the Assessor needed to prove in order to meet that burden differs under each statute. We therefore analyze the appeals separately, beginning with 2021.

### A. Because the Assessor failed to offer evidence that "exactly and precisely" concludes to the 2021 assessment, that assessment reverts to the prior year's level of $100,800.

1. When its burden-shifting provisions were triggered, Ind. Code § 6-1.1-15-17.2 required assessors to offer evidence that "exactly and precisely" concluded to a challenged assessment.

24. At the time the Hochstedlers filed their appeals, an assessment determined by an assessing official was generally presumed to be correct. 2021 Real Property Assessment Manual at 3. A taxpayer challenging the assessment had the burden of

showing that the assessment was incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2021).

25. Indiana Code § 6-1.1-15-17.2 created an exception to that general rule, however. That statute identified two circumstances under which an assessor had the burden of proving the assessment was "correct": (1) where the assessment under appeal represented an increase of more than 5% over the prior year's assessment, as last determined or corrected by an assessing official, stipulated to between the taxpayer and assessing official, or determined by a reviewing authority, or (2) where it was above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(a)-(b), (d). But 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). If the assessor had the burden and failed to meet it, the taxpayer could introduce evidence "to prove the correct assessment." 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 (Ind. 2021).

26. In light of the Indiana Supreme Court's interpretation of the statute in *Southlake I*, the Tax Court held that the term "correct" mirrored the dictionary definition of the word, and that the term "correct assessment" referred to "an accurate, exact, precise assessment." *Southlake II,* 181 N.E.3d at 489. Thus, in *Southlake II*, the Court found that the Assessor failed to meet her burden of proof because the appraisals she offered, which valued a shopping mall at $258,990,000 and $241,690,000, respectively for the years under appeal, did not "exactly and precisely conclude to" the $242,890,500 assessment the Assessor had assigned to the mall for each year. *Id.*

2. Because the Hochstedlers filed their 2021 appeal before the Legislature repealed Ind. Code § 6-1.1-15-17.2, *Elkhart Cty. Ass'r v. Lexington Square, LLC* constrains us to apply that statute to their appeal.

27. Effective March 21, 2022, the Legislature passed an act that simultaneously repealed Ind. Code § 6-1.1-15-17.2 and enacted a new burden-of-proof statute—Ind. Code § 6-1.1-15-20. 2022 Ind. Acts 174, §§ 32, 34.[3] 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 as discussed below, it no longer requires the evidence to "exactly and precisely conclude" to the assessment, and it calls for us, as the trier of fact, to determine a value based on the totality of the evidence. Only where the totality of 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).

28. Although the act repealing Ind. Code § 6-1.1-15-17.2 did not contain an express savings clause, the new burden-of-proof statue explicitly applies only to appeals filed after its March 21, 2022 effective date. I.C. § 6-1.1-15-20(h). Following the Legislature's action, we were faced with a series of appeals that were filed before the repealing act's effective date. In some of those cases, we had held our evidentiary hearing before the repeal's effective date but issued our determination after that date. In other cases we both held our hearing and issued our determination after the repeal. In the first set of cases, we found that Ind. Code § 6-1.1-15-17.2 applied. In the second set, we found that it did not. *Compare, e.g. Cabela's Wholesale, LLC v. Lake Cty. Ass'r,* pet. nos. 45-023-18-1-4-00230-20 etc., slip op. (IBTR Sep't 26, 2022) and *Hotka v. Brown Cty. Ass'r,* pet. no. 07-003-21-1-5-00874-21, slip op. (IBTR Sep't 19, 2022).

29. In reaching those conclusions, we started with two principles: (1) that we must apply the law as it existed at the time of the hearing, and (2) that both new statutes and acts repealing existing statutes apply only prospectively unless the Legislature "unequivocally

[3] Both sections were effective on passage. 2022 Ind. Acts 174, §§ 32, 34. They became law on March 21, 2022 when the Governor signed House Enrolled Act 1260. *Elkhart Cty. Ass'r v. Lexington Square, LLC,* 219 N.E.3d 236, 242 n. 4 (*citing* https://iga.in.gov/legislative/2022/bills/house/1260/actions (last visited Aug. 30, 2023)).

and unambiguously" intended retroactive application, or "strong and compelling" reasons dictate such application. *Cabela's*, slip op. at 39 (*quoting State v. Pelly*, 828 N.E.2d 915, 919 (Ind. 2005)). We also found that the Indiana Supreme Court's decision in *Church v. State* offered compelling direction for determining whether applying Ind. Code § 6-1.1-15-17.2's repeal in cases where we had not yet held a hearing would be a prospective or retroactive application. *Id.* (*citing Church v. State*, 189 N.E.3d 580, 587-88 (Ind. 2022)). As the Court explained, 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 39 (*quoting Church,* 189 N.E.2d at 587-88. By contrast, a statute operates retroactively only when "its adverse effects" are activated by events that occurred before its effective date. *Id.* at 39-40.[4]

30. We concluded that the operative event, both of Ind. Code § 6-1.1-15-17.2 and its repeal, was when a hearing on the merits is convened. *Id.* at 40. Where we had held our hearing before the repeal, we concluded that applying that repeal would have been an impermissible retroactive application. *Id.* at 40-42. By contrast, where we held our hearing after the repeal, we found that applying the repeal was prospective and had the effect of returning cases that Ind. Code § 6-1.1-15-17.2 had carved out for special treatment back to the default rule governing the burden of proof, at least until the new burden-of-proof statute kicked in. *Hotka*, slip op. at 6.

31. Following those determinations, however, the Indiana Tax Court decided *Elkhart Cty. Ass'r v. Lexington Square, LLC*. In that case, we had held our evidentiary hearing well before the Legislature repealed Ind. Code § 6-1.1-15-17.2, but we issued our determination just three days after the repeal's effective date. *Elkhart Cty. Ass'r v. Lexington Square, LLC*, 219 N.E.3d 236, 238-40 (Ind. Tax Ct. 2023). We applied the statute, although we did not discuss the fact that it had been repealed. We similarly did not discuss *Church*, which had not yet been decided. The Elkhart County Assessor

[4] In *Church*, the operative event for a statute applicable to depositions in a criminal case was the time of the deposition, not the date of the crime or the filing of charges, which both occurred before the statute's effective date.

sought judicial review, arguing that because the new burden-of-proof statute applied only to cases filed after March 21, 2022, and did not have a savings clause authorizing Ind. Code § 6-1.1-15-17.2 to remain in effect, the repeal eliminated Ind. Code § 6-1.1-15-17.2 "as though it never existed." *Id.* at 243. According to the Assessor, no statutory burden-shifting provisions applied to appeals pending before us or county boards as of March 21, 2022. *Id.*

32. The Tax Court disagreed and held that Ind. Code § 6-1.1-15-17.2 applied to the taxpayer's appeals. The Court noted a line of cases explaining that an express savings clause "is not required to prevent the destruction of rights existing under a repealed statute if the Legislature's intention to preserve and continue those rights is otherwise clearly apparent." *Id.* at 243-44 (emphasis in original). And the Court found it "clearly apparent" that the Legislature "simply intended that Indiana Code § 6-1.1-15-17.2 would not apply to appeals filed after its repeal date of March 21, 2022," or stated differently, that the statute was "terminated only for all future cases, i.e., cases filed after" its repeal. *Id.* (emphasis in original). The statute's provisions therefore continued to apply to appeals, like the one before the Court, that had been filed before the repeal and that were still pending. *Id.*

33. The Court also rejected the assessor's argument that the repeal was remedial. Even if the repeal were remedial, the Court found no compelling reason to justify applying it retroactively to pending appeals. *Id.* at 244-45. Finally, the Court reasoned that the Legislature could not reasonably have intended the repeal to apply retroactively. According to the Court, doing so would unfairly change the "rules of play" midstream and require a "re-do" in all pending appeals to allow taxpayers to develop and implement new litigation strategies aligned with the new burden of proof. *Id.* at 246. The Court, however, did not explain why a "re-do" would be necessary if the repeal were applied to

appeals where the *de novo* hearing before us had not yet occurred.[5] The Court did not discuss *Church* in its analysis.

34. We find that *Lexington Square* controls these appeals. The Court squarely indicated that Ind. Code § 6-1.1-15-17.2 applies to all appeals that were filed before the effective date of the statute's repeal and that remain pending after that date. The Hochstedlers filed their 2021 appeal with the Assessor in June 2021, well before the repeal's effective date.

35. We recognize that we are dealing with different facts: in *Lexington Square* we had already held our hearing before the statute was repealed, whereas here, we held our hearing after the parties were on notice that the statute had been repealed. Indeed, that was a key distinction in our determinations predating the Tax Court's decision. But the Tax Court's language brooks no such distinction. Whether characterized as dictum or holding, we must follow the Court's directive. We therefore find that Ind. Code § 6-1.1-15-17.2 applies to the Hochstedlers' 2021 appeal.

36. The parties, however, dispute whether Ind. Code § 6-1.1-15-17.2's burden-shifting provisions were triggered. They agree that the 2021 assessment, as determined by the PTABOA, represents an increase of more than 5% over the 2020 assessment. The Assessor, however, argues that she used a different method to assess the property in 2021 than she used in 2020. Because the Hochstedlers had not reported the property's income by the 2021 assessment date, she determined the original 2021 assessment based on the cost approach, "trended like a normal residential property." But she had valued the property as a rental in 2020. *Miller testimony and argument.*

37. Although the Assessor does not point to any legal authority for her argument, she presumably relies on subdivision (c)(3) of the statute, which provides that the burden-shifting provisions do not apply to assessments that are based on uses that were not

[5] In fact, the interpretation in *Lexington Square* would require a "re-do" for cases we decided under *Church* that are still pending or that are on appeal to the Tax Court.

considered in the prior year's assessment. Ind. Code § 6-1.1-15-17.2. That is not the case here, however. The subject property's use did not change.[6] It was both configured and used as a rental property the whole time. The Assessor merely chose to apply a different methodology to assess it in 2021 than she had used in 2020. In any case, the PTABOA's determination is the assessment under appeal, and the Assessor does not contend that the PTABOA considered the property as anything other than a rental.

3. Because the Assessor failed to offer evidence that exactly concludes to the challenged assessment and the Hochstedlers did not offer probative market-based evidence to establish another value, the assessment reverts to the prior year's level.

21. 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." 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

22. To prove true tax value, parties "must present objectively verifiable, market-based evidence" of the property's value. *Piotrowski* 177 N.E.3d at 132 (*citing Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal "methodology" of the "assessment regulations." *P/A Builders & Developers, LLC v. Jennings Cty. Ass'r*, 842 N.E.2d 899, 900, (Ind. Tax Ct. 2006). This is because the "formalistic application" of the procedures and schedules from the DLGF's assessment guidelines lacks the market-based evidence necessary to establish a specific property's market value-in-use. *Piotrowski*, 177 N.E.3d at 133.

[6] The Assessor does not claim that she considered the property as something other than residential for either year. For purposes of this decision, we assume, without deciding, that Ind. Code § 6-1.1-15-17.2(c)(3) contemplates a distinction between different types of residential use.

23. Market-based evidence may include "sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles." *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that "another property is 'similar' or 'comparable' simply because it is on the same street are nothing more than conclusions . . . [and] do not constitute probative evidence." *Marinov v. Tippecanoe Cty. Ass'r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). The "gross rent multiplier method" is the "preferred method" for valuing properties, like the subject property, that have four or fewer rental units. I.C. § 6-1.1-4-39(b). In any case, the evidence must reliably indicate the property's value as of the valuation date. *O'Donnell v. Dep't of Local Gov't. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For property tax purposes, the valuation date is the same as the assessment date: January 1 of each year. *See* I.C. § 6- 1.1-2-1.5(a)(2) (establishing assessment date).

24. The Assessor failed to offer probative evidence that "exactly and precisely" concludes to the challenged 2021 assessment as required by Ind. Code § 6-1.1-15-17.2(b). Instead, she offered a variety of calculations using different rent levels and GRMs that arrived at values of $143,334, $176,814, and $191,334, none of which matches the challenged assessment of $145,000.

25. And the Hochstedlers did not offer any probative market-based evidence to show the property's true tax value, relying instead on their claim that the subject property's assessment increased at a higher rate between 2020 and 2021 than did the assessments for four other rental properties during the same period. By itself, however, a property's assessment in one year says little about its value in later years. Instead, each assessment and each tax year stands alone. *Marinov*, 119 N.E.3d at 1155-56; *see also*, *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n.14 (Ind. Tax Ct. 1998) ("[w]here a taxpayer challenges an assessment, the resolution of that challenge does not depend on how the property was previously assessed"). Regardless, the Hochstedlers offered no

market-based evidence to show that the assessments for either year accurately reflected the market value-in-use for any of the properties.

26. Thus, because neither side met its burden under Ind. Code § 6-1.1-15-17.2, the 2021 assessment reverts to its 2020 level of $100,800.

**B. Because the totality of the evidence did not suffice to show the subject property's true tax value for 2022, we must presume that it equals the value we determined for 2021.**

1. Under Ind. Code § 6-1.1-15-20, where the Assessor has the initial burden and the totality of the evidence does not suffice to show a property's true tax value, we must presume its value equals the prior year's assessment.

27. The Hochstedlers filed their 2022 appeal after the Legislature repealed Ind. Code § 6-1.1-15-17.2 and enacted the new burden-of-proof statute (Ind. Code § 6-1.1-15-20). The new statute therefore applies.

28. Under that statute, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." I.C. § 6-1.1-15-20(a) (effective March 21, 2022). But the burden of proof shifts to the Assessor under the same circumstances outlined in the repealed burden-shifting statute, including where the challenged assessment represents more than a 5% increase over the prior year's assessment as last determined by a reviewing authority. I.C. § 6-1.1-15-20(b). If the burden has shifted, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).

29. The subject property's 2022 assessment represents an increase of far more than 5% over the amount that we, as the last reviewing authority, determined for 2021. The Assessor therefore has the burden of proof. Unlike under the repealed burden-shifting statute, however, the Assessor no longer must offer evidence that "exactly and precisely

concludes" to the challenged assessment. Instead, our charge under the current statute is to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence" before us. I.C. § 6-1.1-15-20(f). Our conclusion of a property's true tax value "may be higher or lower than the assessment or the value proposed by a party or witness." *Id.* Regardless of which party has the initial burden of proof, either party "may present evidence of the true tax value of the property, seeking to decrease or increase the assessment." I.C. § 6-1.1-15-20(e).

2. The totality of the evidence does not suffice to show the property's true tax value: the Assessor failed to support key elements of the various GRM analyses she offered and the Hochstedlers failed to offer any probative market-based evidence.

30. With those things in mind, we turn to the parties' evidence. We begin with the Assessor's evidence, which relies on the GRM method. The GRM method is a direct-capitalization technique for converting gross rent into a valuation opinion by applying the relevant multiplier (the GRM). *See* APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE, 473-74 (15th ed.)[7] (discussing the gross-income and gross-rent multipliers).

31. The Assessor offered two different valuation opinions developed using the GRM method. First, she offered Fisher's report in which he applied the county's GRM of 105 to the subject property's actual rent and to market rent that the AVM software derived from the 19 rental properties in Fisher's spreadsheet. We find that Fisher's valuation is insufficiently reliable to prove the property's market value-in-use. The Assessor offered nothing to show how the GRM was developed. And while Fisher's report included a spreadsheet with the raw data for 19 properties that the AVM software used to determine market rent, neither Fisher nor Miller explained the methodology the software used to arrive at its determination. Also, the sales were from as early as October 2019, and Fisher did not explain how the sale prices, rents, or other data related to the January 1, 2022 valuation date. *See O'Donnell*, 854 N.E.2d at 95 (finding that taxpayers were

[7] We take official notice of this publication. 52 IAC 4-6-11 (allowing the Board to take official notice of publications, including any relevant addition of The Appraisal of Real Estate).

required to trend 1997 construction costs and a 2003 appraisal to the then-applicable January 1, 1999 valuation date).

32. Second, Miller performed his own analysis in which he used nine sales of duplexes and triplexes from Goshen to determine an average GRM of 103.4. He then applied that GRM separately to the computer-derived market rent from Fisher's analysis, the average gross rent from his own analysis, and the subject property's actual rent.

33. Unlike the GRM Fisher used in his report, we know the underlying sales data from which Miller derived his GRM. But there are significant issues with that data and with Miller's analysis that make the GRM too unreliable to yield a credible value for the subject property.

34. To derive and apply a reliable GRM for valuation purposes, the analyzed properties must be comparable to the subject property and to one another in terms of physical, geographic, and investment characteristics. APPRAISAL OF REAL ESTATE at 473-74. And similar income data must be used to derive the multiplier from each transaction. *Id.* at 473. For example, a GRM extracted from full-service rental properties should not be applied to a property leased on a net basis. *See id.*

35. Miller violated both those principles. For example, he used one sale—910 Highland Drive—involving a duplex that was 80 years newer than the subject triplex. Without more information, we cannot assume that the two properties would have similar investment characteristics. To the contrary, they may well have different types of expense ratios. Similarly, Miller did not apply the GRM to the subject property on the same basis that he used to determine that multiplier. Unlike the subject property, where the tenants paid for all utilities, the owner paid some or all utilities in four of the nine properties Miller used to derive his GRM, and there was conflicting evidence as to who paid the utilities for another property.

36. Miller's calculation of his GRM suffers from an additional problem: five of his sales were from more than a year before the relevant valuation date of January 1, 2022. And like Fisher, he did not explain how the data he extracted from the sales related to the valuation date.

37. Turning to the other part of the equation, Miller had no support for two of the three rent levels to which he applied his GRM: the market rent from Fisher's report and the $1,666/month average from the nine sales in his own analysis. As already explained, we have no information about how the AVM software derived the market rent from Fisher's report. And Miller did nothing to show that $1,666/month, which was the average rent from the mix of duplexes and triplexes of differing sizes and bedroom counts, represented market rent for the subject property.

38. The Assessor therefore failed to offer evidence that was sufficiently reliable to show the subject property's true tax value for 2022. And for the reasons we have already explained in our discussion of the Hochstedlers 2021 appeal, the Hochstedlers likewise failed to offer probative evidence of the property's value. Because the totality of the evidence does not suffice to show the property's true tax value, we must presume that its value equals the 2021 assessment of $100,800.

## VI. Conclusion

39. The evidentiary burdens for the Hochstedlers' 2021 and 2022 appeals are governed by different statutes, but the result is the same: in each case there is a lack of probative evidence to support the assessment or any other value. Both assessments therefore revert to the previous year's level of $100,800.

DATE: MAY 13, 2024

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 of 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>.