REPRESENTATIVE FOR THE PETITIONER: Robert Kovacich, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Ayn Engle, Attorney

BEFORE THE INDIANA BOARD OF TAX REVIEW

Robert Kovacich,	)	Petition No.: 45-047-20-1-5-00312-22
	)	
Petitioner,	)	Parcel No.: 45-17-04-104-019.000-047
	)	
v.	)	County: Lake
	)	
Lake County Assessor,	)	Township: Winfield
	)	
Respondent.	)	Assessment Year: 2020

April 5, 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. Kovacich appealed the 2020 assessment of his residential property in Lake County. Because he failed to provide reliable, market-based evidence proving the market value-in-use of the property to the Board he is not entitled to any reduction in the assessment.

PROCEDURAL HISTORY

2. Kovacich appealed the 2020 assessment of his single-family home located at 8341 Doubletree Drive North in Crown Point, IN with the Lake County Assessor. On March 10, 2022, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination sustaining the assessment at $62,400 for land and $197,200 for improvements for a total of $259,600. Kovacich timely appealed to the Board.

3. On January 12, 2023, Dalene McMillen, the Board's Administrative Law Judge ("ALJ"), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

4. Robert Kovacich appeared *pro se*. Jolie Covaciu, a consultant for the Lake County Assessor, appeared for the Respondent. Renee Kovacich also appeared as a witness for the Petitioner. They all testified under oath. LaTonya Spearman, the Lake County Assessor, was also on the call.

5. The Petitioner offered the following exhibits:

Petitioner Exhibits 1-21: Individually numbered interior photographs of the subject property.

6. The Respondent offered the following exhibits:

Respondent Exhibit R-1: 2019, 2020 and 2021 subject property record cards,
Respondent Exhibit R-2: Sales comparable analysis,
Respondent Exhibit R-3: Sales disclosure forms for 8353, 8369, 8425, 8671 & 8331 Doubletree Drive North and 9140 Doubletree Drive South,
Respondent Exhibit R-4: Property record cards for 8353, 8369, 8425, 8671 & 8331 Doubletree Drive North and 9140 Doubletree Drive South,
Respondent Exhibit R-5: Trended value analysis.

7. 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

8. The subject property is a one-story home built in 2001 located on approximately 0.18 acres of land in Crown Point. *Resp't Ex. R-1.*

PETITIONER'S CONTENTIONS

9. Kovacich argued the subject property is over-assessed. In particular, Kovacich argued that the average condition and grade of C+2 were incorrect. In support of this, he presented twenty-six photographs of the subject property showing several defects in the interior and exterior of the home. He also testified regarding damage his lot had sustained from a sewer line replacement. Based on this, he argued the subject property should have a lower condition rating and grade. *Robert Kovacich testimony; Pet'r Exs. 1- 21.*

10. In addition, Kovacich argued the comparable properties submitted by the Assessor should not be considered because the homes are larger with more land and amenities. *Robert & Renee Kovacich testimony.*

RESPONDENT'S CONTENTIONS

11. The Assessor argued that the Petitioner should have the burden of proof because Indiana Code § 6-1.1-15-17.2, the burden of proof statute, was no longer applicable because it was repealed on March 21, 2022. *Engle argument.*

12. Jolie Covaciu, consultant for the Assessor, testified the subject property was assessed as an owner-occupied single-family property with two bedrooms, two bathrooms, finished attic, and an unfinished basement with a walkout to a lake. Covaciu also noted that the

2020 property record card shows Kovacich purchased the property on June 28, 2012, for $245,000. *Covaciu testimony; Resp't Ex. R-1.*

13. Covaciu presented six purportedly comparable properties that sold from 2019 to 2021 for prices ranging from $197.35/sq. ft. to $233.09/sq. ft. She noted that the subject property was only assessed for $163.07/sq. ft., which is lower than the average of the comparables. *Covaciu testimony; Resp't Ex. R-2-R-4.*

14. Finally, Covaciu presented a paired sales analysis of three properties located close to the subject property. She testified that the sales demonstrated an average annual increase in value of 1.652%. She applied this to the subject property's 2012 sale price and concluded the value should be approximately $275,000 for the assessment date under appeal. Based on this, she concluded the subject property was underassessed. The Assessor did not ask to raise the assessment. *Covaciu testimony; Resp't Ex. R-5.*

ANALYSIS

15. Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.[1] 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).

16. 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).

[1] The Department of Local Government Finance has adopted a new assessment manual and guidelines that apply to assessments for 2021 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).

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).

17. 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.

18. Thus, we cannot find the Assessor has the burden of proof 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.").

19. 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.

20. 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).

21. 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.*

22. 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.

23. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials

primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

24. 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 2020 assessment, the valuation date was January 1, 2020. *See* Ind. Code § 6-1.1-2-1.5.

25. Here, Kovacich primarily argues that the condition rating and grade used to develop the assessment were incorrect. But he failed to show how this claim justified any change in the assessment. 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). Kovacich did not provide any such evidence supporting a different value. For that reason, he is not entitled to any reduction in the assessment.

26. Because Kovacich has not supported his 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).

SUMMARY OF FINAL DETERMINATION

27. The Board orders no change to the 2020 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>.