REPRESENTATIVE FOR PETITIONER: Christopher D. Oakes, Cox, Oakes & Associates, LTD.
REPRESENTATIVE FOR RESPONDENT: Beth Henkel, The Law Office of Beth Henkel

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BEFORE THE
INDIANA BOARD OF TAX REVIEW

Lexington Square, LLC,	)	Petition Nos.: See attached
	)	
Petitioner,	)	Parcel Nos.: See attached
	)	
v.	)	
	)	
Elkhart County Assessor,	)	Assessment Years: 2016, 2017, 2018
	)	
Respondent.	)	

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and after considering the issues, now finds and concludes as follows:

I. INTRODUCTION

1. Lexington Square, LLC makes two claims in these appeals: (1) it claims that its apartment complex was not assessed at the correct value, and (2) it requests an adjustment to make its assessments more uniform and equal to assessments of what it argues are similarly situated apartment complexes in Elkhart County that are assessed significantly below their market values-in-use.

2. Under what is commonly known as the burden-shifting statute (Ind. Code § 6-1.1-15-17.2), an assessor who has the burden of proving an assessment is correct must offer evidence that "*exactly* and *precisely* conclude[s]" to that value. *Southlake Ind., LLC v. Lake Cnty. Ass'r* ("*Southlake II*"), Case No. 19T-TA-00022, 2021 Ind. Tax LEXIS 48 *10 (Ind. Tax Ct. 2021) (emphasis in original). The Elkhart County Assessor admitted she had the burden of proving that Lexington Square's 2016 assessment was correct.

That admission is binding despite her later attempt to retract it. Because the Assessor offered an appraisal concluding to a value different than the assessed value for that year, she failed to meet her burden. And because Lexington likewise failed to prove the correct assessment, the burden-shifting statute requires that the assessment revert to its 2015 level. The same analysis requires reversion of the 2017 and 2018 assessments as well. The reversion eliminates any need for an equalization adjustment. Regardless, Lexington failed to make a case for such an adjustment.

II. Procedural History

3. Lexington filed petitions with the Assessor for the 2016-2018 assessment dates. The Elkhart County Property Tax Assessment Board of Appeals issued Form 115 determinations upholding the assessment for each year, and Lexington timely filed Form 131 petitions with us.

4. On May 18, 2021, our designated administrative law judge, David Pardo ("ALJ"), held a hearing on Lexington's petitions. Christopher Oakes represented Lexington and Beth Henkel represented the Assessor. The following people were sworn as witnesses:

> Elkhart County Assessor Cathy Searcy;
> Concord Township Assessor, Christopher Dickinson;
> Michelle Farrington, an Indiana certified general appraiser;
> Gavin Fisher, certified Level III assessor-appraiser and licensed residential appraiser; and
> Kevin Donohoe, executive vice president for Equity Property Management, LLC.

5. The parties offered the following exhibits:

Ex. P-1	I.C. § 6-1.1-13-5
Ex. P-2	I.C. § 6-1.1-13-6
Ex. P-3	I.C. § 6-1.1-13-8
Ex. P-4	I.C. § 6-1.1-13-18
Ex. P-5	I.C. § 6-1.1-4-39
Ex. P-6	I.C. § 6-1.1-4-41
Ex. P-7	I.C. § 6-1.1-5.5-3
Ex. P-8	I.C. § 6-1.1-15-17.2
Ex. P-9	I.C. § 6-1.1-15-18
Ex. P-10	I.C. § 6-1.1-35-4
Ex. P-11	I.C. § 6-1.1-35.7-3
Ex. P-12	I.C. § 6-1.1-35.7-4

Ex. P-13	I.C. § 36-2-15-4
Ex. P-14	2011 Real Property Assessment Manual
Ex. P-15	Sales Disclosure Form-Williamsburg on the Lake
Ex. P-16	Sales Disclosure Form-Deer Creeke[1]
Ex. P-17	Sales Disclosure Form—Carriage House
Ex. P-18	Sales Disclosure Form—La Casa Estates
Ex. P-19	Sales Disclosure Form—Walnut Trails Apartments
Ex. P-20	Sales Disclosure Form—Woodwind Apartments
Ex. P-21	Sales Disclosure Form—Greenleaf Hunters Pond
Ex. P-22	Elkhart County Assessor Office email
Ex. P-28	2015 Property record cards ("PRCs") for subject property
Ex. P-32-1 through 32-10	Analysis of 2016 Assessed Values, including Donahoe's income capitalization analysis, "Sales Comparables" matrix, and supporting data
Ex. P-33	2016 "Sales Comparables – Farrington Appraisal" matrix
Ex. P-37-1 through 37-10	Analysis of 2017 Assessed Values, including Donahoe's income capitalization analysis, "Sales Comparables" matrix, and supporting data
Ex. P-38-1 through 38-13	Supplemental Analysis of 2017 Assessed Values, including "Sales Comparables" matrix and supporting data
Ex. P-39	2017 "Sales-Comparables – Farrington Appraisal" matrix
Ex. P-43-1 through 43-27	Analysis of 2018 Assessed Values, including Donahoe's income capitalization analysis, 2018 "Sales Comparables matrix, and supporting data
Ex. P-44	2018 "Sales-Comparables – Farrington Appraisal" matrix
Ex. P-45-1 through P-45-3	Williamsburg on the Lake 2016-2018 PRCs
Ex. P-46-1 through P-46-3	Deer Creeke Apartments 2016-2018 PRCs
Ex. P-47-1 through P-47-3	Carriage House 2016-2018 PRCs
Ex. P-48-1 through P-48-3	La Casa Estates 2016-2018 PRCs
Ex. P-49-1 through P-49-3	Woodwind Apartments 2016-2018 PRCs
Ex. R-1	Farrington appraisal
Ex. R-2	Page 51 from Farrington appraisal
Ex. R-3	Map of apartment properties from Farrington appraisal
Ex. R-4	Excerpt from Farrington appraisal Commercial Sale – 3 and PRCs
Ex. R-5	Excerpt from Farrington appraisal Commercial Sale – 6 and PRCs
Ex. R-6	Excerpt from Farrington appraisal Commercial Sale – 8 and PRCs

[1] The record contains several different spellings for this complex, including "Deer Creeke," Deere Creek," and "Deere Creeke." We use "Deer Creeke" which is the spelling on the PRCs. *See Ex. P-46-1.*

Ex. R-7	Excerpt from Farrington appraisal Commercial Sale – 11 and PRCs
Ex. R-8	Excerpt from Farrington appraisal Commercial Sale – 14 and PRCs
Ex. R-9	Excerpt from Farrington appraisal Commercial Sale – 18 and PRCs
Ex. R-10	Excerpt from Farrington appraisal Commercial Sale – 21 and PRCs
Ex. R-12	Tax rates from certified budget orders by Department of Local Government Finance
Ex. R-13	March 29, 2019 Brief in Support of Valuation Appeal before Indiana Board of Tax Review
Ex. R-16	International Association of Assessing Officers, *Standard on Ratio Studies* (Approved April 2013)
Ex. R-17	Letters from Commissioner of the Department of Local Government Finance ("DLGF" to the Assessor approving ratio studies for 2016 to 2018 and attached letters from the Assessor to Barry Wood with the DLGF[2]

6. The record also includes the following: (1) all petitions, motions, and other documents filed in these appeals, including all pre- and post-hearing briefs; (2) all orders and notices issued by the Board or our ALJ; and (3) the hearing transcript.

III. Findings of Fact

A. The Subject Property

7. The subject property is a 176-unit multi-building apartment complex located on the west side of Elkhart, in Cleveland Township. The complex was formerly known as Lexington Square but is now called North River Landing. Lexington bought the property for $7,975,000 on September 29, 2016. According to the sales disclosure form, the sale did not include any personal property. *Ex. R-1 at 2, 8; Tr. at 63, 67-68, 71, 74, 80.*

[2] On their exhibit lists, the parties identified several exhibits that they did not end up offering. At the hearing's outset, the ALJ asked the parties whether they would stipulate as to the admissibility of any exhibits. They did so for the bulk of their exhibits. In some instances, however, the opposing party indicated that it might have an objection. The ALJ instructed the parties to offer those exhibits as they presented their cases. At that time, the offering party could lay an appropriate foundation and the other side could make its objections. That was the case for Exs. P-23 through P-27 and Exs. R-14 through R-15. *Tr. at 28, 47-48.* The parties ultimately did not offer those exhibits.

8. There were four fires at the property in 2011 and another in 2012. There is no evidence showing the specific damage caused by the fires. The property flooded in 2014. There were also burst pipes and plumbing issues stemming from deferred maintenance. Again, the record is silent about the extent of any water damage or deferred maintenance. *Tr. at 241-43.*

B. Farrington Appraisal

9. The Assessor offered an appraisal from Michelle Farrington, an Indiana certified general appraiser. Farrington estimated a retrospective value of the "leased fee" interest in the property as of January 1 for each assessment year. Farrington certified that she performed her appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Ex. R-1 at 4; Tr. at 60-64.*

10. Farrington's valuation did not include personal property, such as office equipment, artwork, fitness equipment, or laundry equipment. But she explained that built-in kitchen appliances were inherently part of the income generated by the real estate and that apartment properties sell with those appliances in place. She therefore included those items in her valuation. According to Farrington, USPAP required her to identify any personal property included in her valuation and to calculate its contributory value. She therefore calculated the contributory value of the kitchen appliances at $156,645. But she did not deduct that contributory value from her conclusions. *Ex. R-1 at 10-11 28-36; Tr. at 68, 72-74, 80-82.*

11. Farrington developed all three generally accepted valuation approaches. Under the income approach, she examined rental and vacancy rates from various apartment complexes in Elkhart County to estimate market rent and vacancy for the subject property. Because Farrington's market rent estimate was higher than the subject property's historical rental income for 2016 and 2017, she subtracted the difference to arrive at effective gross income. *Ex. R-1 at 36-49; Tr. at 83-93, 96-97.*

12. She then subtracted operating expenses (excluding real estate taxes, and replacement reserves) to arrive at net operating income ("NOI"). She capitalized that NOI using a

loaded capitalization rate. Farrington estimated an overall rate after examining various sources, including national investor surveys, studies from local brokerage companies, and rates extracted from local sales. She loaded that overall rate with the property's effective tax rate. *Ex. R-1 at 34-37, 44-49; Tr. at 77-78, 83-86, 96-97.*

13. For her sales-comparison analysis, Farrington examined 23 sales (including the September 2016 sale of the subject property) from 2014 to 2019. All the sales involved apartment complexes that she viewed as generally comparable to the subject property. Farrington reconciled to the average unit price of $48,110 and multiplied that unit price by the subject property's 176 units to arrive at an overall value. For 2016 and 2017, she then subtracted the loss she attributed to the property charging below-market rent. *Ex. R-1 at 50-77; Ex. R-2; Tr. at 99-104.*

14. Turning to the cost approach, Farrington examined five sales of vacant apartment land from Elkhart County to estimate a land value of $370,000. She then used data from Marshall & Swift to estimate replacement costs for the improvements, and she depreciated those costs based on the improvements effective ages and useful lives. *Ex. R-1 at 77-91; Tr. at 105-08.*

15. Farrington concluded the following values under the three approaches:

Year	Income	Sales	Cost	Reconciled
2016	$7,580,000	$7,830,000	$8,040,000	$7,580,000
2017	$7,990,000	$8,380,000	$8,220,000	$7,990,000
2018	$7,900,000	$8,470,000	$8,310,000	$7,900,000

For each year, Farrington settled on the value indicated by the income approach for her final reconciled value conclusion. Because her conclusion under the income approach was the lowest of the three approaches for each year, she believed that Ind. Code § 6-1.1-4-39(a) required that conclusion. But she also explained that the income approach is the most relevant approach for valuing an income-producing property like the subject property. She felt that her conclusions under the other two approaches lent additional support. *Ex. R-1 at 91-92; Tr. at 66, 108.*

C. Donahoe's Valuation Opinions

16. Lexington did not offer an appraisal. Instead, it offered testimony from Kevin Donahoe. Donahoe is an executive vice president of Equity Property Management, which manages the subject property. He has 33 years of experience working with multi-family-housing properties. He is registered as an apartment manager by the National Association of Home Builders and is certified as a property manager by the Institute of Real Estate Management. But he is not an appraiser and is not familiar with USPAP. *Tr. at 171-73, 219.*

17. When the subject property was placed for sale, Donahoe analyzed its value and worked with a broker to acquire it. For these appeals, he estimated the property's value for the 2016 assessment date by capitalizing its historical NOI for 2015. For the 2017 assessment date, he used the property's average historical NOI for calendar years 2015 and 2016. And for 2018, he capitalized the average historical NOI for calendar years 2015-2017. When asked why he used averages for multiple years, Donahoe explained that there were a lot of things going on with the property: the seller had done "certain work," and it was uncooperative in providing expense data for three months in 2016. So Donahoe had to extrapolate those operating expenses. Also, the expenses in 2016 were lower because the seller had refused to "turn" vacant units toward the end. Donahoe therefore used an average over multiple years to get a stabilized NOI and to "get a trend for what was happening at the property, where the value was going." *Exs. P-32-1 through 32-3, P-37-1, P-37-3, P-43-1, P-43-4; Tr. at 173-79, 182, 190-91.*

18. Donahoe adjusted his NOI for each assessment date by subtracting an estimate for capital expenditures. For his 2016 analysis, he also adjusted his NOI by adding back property taxes he had subtracted as an operating expense, explaining that he accounted for those taxes by loading his capitalization rate with an effective tax rate. He did not subtract property taxes as an expense in later years, so he did not need to make that adjustment for 2017 and 2018. *Exs. P-32-1, P-37-1, P-43-1; Tr. at 178-79, 189-90.*

19. Donahoe then determined a capitalization rate based on sales of what he believed were comparable apartment complexes from Elkhart County. For 2016 and 2017, Donahoe

took the average rate (7.28%) from the sales of three apartment complexes: Williamsburg on the Lake, Carriage House Apartments, and Deer Creeke.[3] He chose those sales because he viewed the properties as being like the subject property in age, location, and number of units. For 2018, he added four additional sales: La Casa Estates, Walnut Trails Apartments, Greenleaf Hunter's Pond, and Woodwind Apartments. The average rate from the seven sales was 7.58%. Donahoe had seen financial information for six of the seven properties when they were offered for sale. Finally, he determined the effective tax rate for each year and loaded it into his capitalization rate. *Exs. P-32-1, 32-4 through 32-9, P-37-1 37-4 through 37-9; P-38-1 through 38-13; P- 43 passim; Ex. R-1 at Commercial Sale—18; Tr. at 179-85, 194-97, 199.*

20. Based on those analyses, Donahoe arrived at the following values:

Year	Value
2016	$6,776,466
2017	$7,535,545
2018	$7,277,349

D. Assessments for the subject property and other apartment complexes in Elkhart County.

21. Although Indiana Code § 6-1.1-4-39(a) provides that the true tax value for rental properties with four or more units is the lowest of the values determined by applying the cost, sales-comparison, and income-capitalization approaches, only one Elkhart County taxpayer has supplied income and expense information to local officials as part of the assessment process. According to the Assessor, if local officials were to use the sales-comparison approach to assess apartment complexes, the assessments would be even higher. So they use the cost approach. Taxpayers have the right to appeal if they believe their assessments are wrong. *Tr. at 158-59.*

22. In 2016, as part of Elkhart County's four-year reassessment plan, the Assessor reassessed all properties in Cleveland Township, including the subject property. The subject

[3] Although Donahoe also referred to a complex called The Retreat at Elkhart, that appears to be a successor name for Deer Creeke Apartments.

property's assessment increased dramatically between 2015 and 2016, and declined from that point forward:

Year	Assessment
2015	$3,490,500
2016	$7,683,000
2017	$7,028,200
2018	$7,059,800

See Form 131 petitions; Ex. P-28; Ex. R-1 at 22; Tr. at 259.

23. When the Assessor reassessed the property in 2016, she removed obsolescence adjustments that had been applied to earlier assessments. Through the "prior appeals process" going back to 2011, the Assessor had added obsolescence adjustments to account for the fire damage, flooding, and pipe and plumbing issues at the property. The previous owner had indicated that some units could not be rented because of fire damage or because they had standing water. Gavin Fisher, a consultant to the Assessor, testified that "those things were all taken into consideration" and that "some of these deferred maintenance issues and some of these shortcomings were addressed and management was changed." It is not clear how the obsolescence adjustments were determined; Fisher testified that the 2015 assessment would have used the "12 to 24 trailing," perhaps indicating that it was based on capitalizing the property's NOI. *Tr. at 194-95, 232-35, 241-44, 257-58.*

24. Nor is it clear how the previous owner or Lexington remedied the deferred maintenance issues and shortcomings to which Fisher referred. There is no evidence as to whether any specific renovations to the property or new improvements were involved. The closest anyone came to addressing those issues was when Fisher responded to a question from Lexington about why the size of the assessment increase between 2015 and 2016 far outstripped the reduction between 2014 and 2015, when the Assessor had adjusted the assessment to account for flooding issues. Fisher explained that an assessment might change for various reasons:

> [B]ecause you have additional loss of income, but now you also got, perhaps, some units that have been updated, some things that have gone into the remediation that would lower the economic life span, extend the longevity of the investment, things of that nature. So while on the surface

> I understand what you're saying that it should revert back to prior to the obsolescence, there's just too many factors that go into it to say specifically the only change should be attributable to "x."

Tr. at 258-59.

25. Lexington offered matrices from Donahoe for each assessment year showing how several other apartment complexes from Elkhart County were assessed compared to their recent sale prices. Donahoe's 2016 matrix included the same three properties that he had used to extract a capitalization rate for that year. His 2017 and 2018 matrices included all seven properties he had used to extract a capitalization rate for 2018. Five of the properties were from Concord Township, where properties are assessed by a township assessor rather than the Assessor. The other two properties were from Oslo Township. The seven properties ranged in size from 95 units to 250 units and sold between June 2015 and December 2017. The disclosure forms for Williamsburg, Carriage House, La Casa, and Walnut Trails all indicate that the sales included personal property, but none of the forms valued the personal property at more than $19,000. *Exs. P-15 through P-21, P-32-10, P-33, P-38-13, P-39, P-44; Tr. at 191-98.*

26. Although Farrington's appraisal identifies 22 apartment-complex sales from Elkhart County, including 16 sales from 2015 through 2018, Donahoe included only four of those sales in his matrices. When asked why he did not use additional sales identified by Farrington, Donahoe answered that they were not included in Lexington's initial appeal and that he did not know about Farrington's appraisal until roughly February 2020. *Exs. P-32-10, P-33, P-38-13, P-39, P-44; Ex. R-1 at 50-77; Ex. R-2; Tr. at 222.*

27. Donahoe's matrices concluded the following disparities between the comparable apartment complexes' assessments and their sale prices:

2016

Property	**Assessment**	**Sale Price**	**Sale Date**	**Under/Over Assessment**
Williamsburg	$5,524,400	$8,700,000	Feb.-16	-36.5%
Deer Creeke	$6,037,600	$7,800,000	June -15	-22.59%
Carriage House	$5,952,100	$9,050,000	Jan. - 16	-34.23%
				-31.11% Average

2017

Property	Assessment	Sale Price	Sale Date	Under/Over Assessment
Williamsburg	$5,496,900	$8,700,000	Feb.-16	-37.13%
Deer Creeke	$6,077,700	$7,800,000	June -15	-22.08%
Carriage House	$5,928,600	$9,050,000	Jan. - 16	-34.39%
La Casa	$1,674,000	$2,650,000	Aug. - 17	-36.83%
Walnut Trails	$6,523,900	$11,250,000	Aug. - 17	-42.01%
Greenleaf	$5,148,100	$5,275,000	Dec. 17	-2.41
Woodwind	$3,695,700	$4,325,000	Dec. - 17	-14.55%
				-27.07 Average[4]

2018

Property	Assessment	Sale Price	Sale Date	Under/Over Assessment
Williamsburg	$5,723,000	$8,700,000	Feb.-16	-34.22%
Deer Creeke	$6,368,900	$7,800,000	June -15	-18.35%
Carriage House	$6,116,900	$9,050,000	Jan. - 16	-32.41%
La Casa	$1,748,500	$2,650,000	Aug. - 17	-34.02%
Walnut Trails	$6,691,800	$11,250,000	Aug. - 17	-40.52%
Greenleaf	$5,053,300	$5,275,000	Dec. 17	-4.20%
Woodwind	$3,344,100	$4,325,000	Dec. - 17	-22.68%
				-26.63% Average

Donahoe compared those underassessments to ratios he computed for the subject property based on its assessment as a percentage of (1) Farrington's appraised values minus the contributory value of personal property, and (2) the value he determined by capitalizing the property's historical NOI. Donahoe did not subtract the contributory value of personal property from any of his comparable properties' sale prices. *Exs. P-32-10, P-33, P-38-13, P-39, P-44; Tr. at 182-87, 191-98.*

28. He used the assessments appearing on the property record card for each complex. In some instances, those numbers reflected adjustments that the Concord Township Assessor made as part of the appeal process. Those adjustments were then carried forward and, in some cases, were listed as obsolescence adjustments in later years. Unlike properties from Cleveland Township, it is unclear whether any of the Concord or Oslo Township properties were reassessed during 2016-2018. *Exs. P-15 through P-2, P-45 through P-46, P-48; Tr. at 160-71.*

[4] Donohoe also prepared separate matrices for 2017 that included only Williamsburg, Deer Creeke, and Carriage House. The average underassessment from those matrices was -31.23%. *Exs. P-37-10, P-39.*

29. Donahoe did not follow any document or standard, such as the International Association of Assessing Officers' *Standard on Ratio Studies* (April 2013) ("IAAO Standard"), to determine the purported underassessments. Nor did he apply the cost, sales-comparison, or income approaches to determine the true tax value for any of the apartment complexes. *Exs. P-32-10, P-33, P-38-13, P-39, P-44; Tr. at 221-22.*

30. Fisher, who has performed ratio studies for other counties, explained that the purpose of ratio studies is to test an assessment model's degree of accuracy. The IAAO Standard offers measures of accuracy and uniformity, such as the median ratio (accuracy) and the coefficient of dispersion (uniformity). Where the ratios in a study do not meet specified degrees of accuracy or uniformity, assessors may take various corrective actions, such as updating and correcting data, re-stratifying properties to make sure the properties in each stratum are subject to the same valuation statutes and feature similar utility, or applying adjustments. *Tr. 232-33, 236-37, 246-50.*

31. According to Fisher, Donahoe's analyses did not comply with the IAAO Standard. First, Fisher criticized Donahoe's inconsistent application of values: Donahoe compared the assessments of his comparable properties to their sale prices, but he compared the subject property's assessment to values he and Farrington had determined under the income approach. And Donahoe improperly based his valuation on the subject property's actual income and expenses instead of market income and expenses. He also subtracted personal property from Farrington's valuation but not from the sale prices for his comparable properties. *Tr. at 232-37, 240, 246-47.*

32. In any case, Fisher explained that sales ratio studies cannot be performed on apartment complexes because of the lack of consistency in data. True tax value for apartment complexes is determined under the provisions of Ind. Code § 6-1.1-4-39, not the general standard of market value-in-use. *Tr. at 237-39.*

IV. Conclusions of Law and Analysis

33. Lexington raises two basic claims: (1) that the subject property is assessed for more than its true tax value, and (2) that its assessment violates state statutory and constitutional requirements of uniformity and equality as well as the Fourteenth Amendment's Equal Protection Clause. We address each claim in turn.

A. The Assessor admitted that the burden-shifting statute applies to Lexington's 2016 valuation claim. Because neither party met its burden of proof under that statute, the assessment reverts to its 2015 level.

34. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and identifies two circumstances under which an assessor has the burden of proving the assessment is "correct": (1) where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or (2) where it is 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). Even where those circumstances exist, the burden remains with the taxpayer if the assessment that is 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 has the initial burden and fails to meet it, the burden shifts to the taxpayer to prove the correct assessment value. If neither party meets its burden, the assessment reverts to the prior year's level. I.C. § 6-1.1-15-17.2(b); *Southlake Ind., LLC v. Lake Cnty. Ass'r*, 174 N.E.3d 177, 179 (Ind. 2021).

1. The Assessor made a binding judicial admission that she had the burden of proving the 2016 assessment was correct.

35. At the hearing's outset, the Assessor admitted that "the assessment did increase by more than 5 percent between 2015 and 2016. And on the issue of basically upholding the assessed value, the assessor has the burden of proof." *Tr. at 20.* The ALJ noted that it appeared the parties agreed on the issue. But he said that if they had any argument about the burden, they would need to lay out the relevant facts at the hearing and that they

could make any arguments based on those facts either at the hearing or in post-hearing briefs that they anticipated filing. *Id.*

36. A judicial admission is "an admission in a current pleading or made during the course of trial; it is conclusive upon the party making it and relieves the opposing party of the duty to present evidence on that issue." *Horizon Bank v. Huizar*, 178 N.E.3d 326, 336 (Ind. Ct. App. 2021) (quoting *Weinberger v. Boyer*, 956 N.E.2d 1095, 1105 (Ind. Ct. Ap. 2011). Where counsel "makes a clear and unequivocal admission of fact" it is "binding upon his or her client." *Id.* at 336-37 (holding that counsel made a binding judicial admission that his client was a "debt collector" within the meaning of the Fair Debt Collection Practices Act).

37. Assessor's counsel made a binding judicial admission that the Assessor had the burden of proof. Her statement was clear and unequivocal. She did not retract her admission at any point during the hearing. Indeed, she reiterated that admission in her initial post-hearing brief. *Ass'r Post-Hr'g Br. at 3* ("[T]he Assessor concedes that, pursuant to I.C. § 6-1.1-15-17.2, she has the initial burden to uphold the 2016 assessed value."). She also filed a reply brief that did not discuss the burden at all.

38. After the parties completed their briefing, the Indiana Supreme Court decided *Southlake Ind., LLC v. Lake Cnty. Ass'r*. The Court addressed whether the burden-shifting statute's reversionary clause applied where the Tax Court had not adopted either party's assessed value but had instead largely upheld the Board's determination of a different value. *Southlake,* 174 N.E.3d at 179. The ALJ issued an order asking the parties to brief the issue of how, if at all, the *Southlake* decision applies to these appeals. *Order Requesting Additional Briefing*. In her brief responding to that order, the Assessor for the first time asserted that the burden-shifting statute should not apply because (1) the increase in the assessment between 2015 and 2016 stemmed from the Assessor removing obsolescence adjustments she had previously applied to the property, and (2) Lexington admitted that the property's 2016 value exceeded its 2015 assessment by more than 94%. *Ass'r Supp. Br. at 5-6.*

39. Even if the ALJ's statement about making arguments on the burden of proof somehow opened the door for the Assessor to retract her admission either later in the hearing or in the post-hearing briefs the parties anticipated filing, she did not do so. Only after the ALJ requested additional briefing on the Supreme Court's *Southlake* decision did the Assessor attempt to retract her admission. But that request was not an invitation to revisit who has the burden of proof. *Southlake* addresses how the burden-shifting statute operates when its provisions apply, not how to determine whether those provisions apply in the first place.

2. Even if the Assessor could have retracted her admission, she failed to show that any exception to the burden-shifting statute applies.

40. In any case, allowing the Assessor to retract her admission would not change our determination that she has the burden of proof. The Assessor does not dispute that a circumstance triggering the burden-shifting statute occurred: the assessment increased by more than 5% between 2015 and 2016. She instead points to subsection (c) of the statute and argues that the burden does not shift because the 2016 assessment was based on "substantial repairs and renovations" that were not considered in the 2015 assessment. *Ass'r Supp. Br. at 5.*

41. The Assessor failed to establish a factual basis for her claim. She points to her removal of obsolescence adjustments as part of the property's reassessment. But it is unclear both how the obsolescence adjustments were determined or the extent to which the Assessor's decision to remove them stemmed from physical renovations or new improvements. No witness pointed to any specific renovation or new improvement. At most, Donahoe testified that the previous owner had done "certain work" and Fisher speculated that some remediation or updating could have lowered the property's economic age. That vague evidence falls short of the required showing that the 2016 assessment was based on "substantial renovations or new improvements" that were not considered in the 2015 assessment. *See* I.C. § 6-1.1-15-17.2(c).

42. The Assessor's other argument—that Lexington admitted the property's value was more than 94% above its 2015 assessment—is not a ground for preventing the burden from

shifting. At best, it is an argument for avoiding the statute's reversionary clause if the Assessor failed to meet her burden. The Assessor therefore had the burden of proving the 2016 assessment was correct.

3. Because neither party met its burden of proof under the burden-shifting statute, the assessment reverts to its 2015 level.

43. Indiana assesses real property based on its true tax value. I.C. § 6-1.1-1-3(a)(2) (providing that "assessed value" or "assessed valuation" means "the true tax value of property."). With certain caveats, such as clarifying that true tax value does not mean fair market value, the Legislature has delegated to the DLGF the authority to adopt rules for determining true tax value. I.C. § 6-1.1-31-1(a)(3) (requiring the DLGF to adopt rules "concerning the assessment of tangible property"); I.C. § 6-1.1-31-6(c); I.C. § 6-1.1-31-6(b)(f) (providing that "subject to this article, true tax value shall be determined under the rules of the [DLGF]"). The DLGF responded by defining true tax value as "market value-in-use," which it in turn defines as "the 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." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.[5]

44. The Legislature has also enacted several statutes addressing true tax value for specific types of real property, including casinos (I.C. § 6-1.1-4-39.5), golf courses (I.C. § 6-1.1-4-42), certain low-income rental properties (I.C. § 6-1.1-4-41), and other types of residential rental properties. (I.C. § 6-1.1-4-39). These statutes adopt specific approaches for valuing the covered properties. By enacting the statutes, we believe the Legislature has chosen to emphasize and simplify certain facets of the market value-in-use standard rather than to adopt an alternative or competing theoretical definition of true tax value.

45. With that in mind, we turn to Ind. Code § 6-1.1-4-39, which provides that the true tax value of rental properties with four or more units is the lowest of the values yielded by applying the cost, sales-comparison, and income approaches:

[5] The DLGF's latest assessment manual, which applies to assessment dates after December 31, 2020, uses the same definition. 2021 REAL PROPERTY ASSESSMENT MANUAL at 2; 52 IAC 2.4-1-1 (filed November 2, 2020); 50 IAC 2.4-1-2 (filed November 2, 2020).

(a) For assessment dates after February 28, 2005 . . . the true tax value of real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more and that has more than four (4) rental units is the lowest valuation determined by applying each of the following appraisal approaches:

(1) Cost approach that includes an estimated reproduction or replacement cost of buildings and land improvements as of the date of valuation together with estimates of the losses in value that have taken place due to wear and tear, design and plan, or neighborhood influences.

(2) Sales comparison approach, using data for generally comparable property.

(3) Income capitalization approach, using an applicable capitalization method and appropriate capitalization rates that are developed and used in computations that lead to an indication of value commensurate with the risks for the subject property use.

. . .

(c) A township assessor (if any) or the county assessor is not required to appraise real property referred to in subsection (a) using the three (3) appraisal approaches listed in subsection (a) if the assessor and the taxpayer agree before notice of the assessment is given to the taxpayer . . . to the determination of the true tax value of the property by the assessor using one (1) of those appraisal approaches.

(d) [I]f a taxpayer wishes to have the income capitalization method . . . used in the initial formulation of the assessment of the taxpayer's property, the taxpayer must submit the necessary information to the assessor not later than the assessment date. However, the taxpayer is not prejudiced in any way and is not restricted in pursuing an appeal, if the data is not submitted by the assessment date. All information related earnings, income, profits, losses, or expenditures that is provided to the assessor under this section is confidential . . . .

I.C. § 6-1.1-4-39(a), (c)-(d).

a. The Assessor failed to meet her burden because her valuation evidence did not exactly match the assessment under appeal.

46. The Assessor offered Farrington's appraisal to show that the 2016 assessment is correct. Farrington applied all three generally accepted appraisal approaches to estimate the property's value and settled on $7,580,000. That was the lowest of the values indicated by the three approaches. But it was less than the 2016 assessment of $7,683,000. Because Farrington's opinion of the property's value is not "exactly the same as the original assessment," it does not prove that the assessment was "correct." *Southlake II*, 2021 Ind. Tax LEXIS 48 at *9 (Ind. Tax Ct. 2021).

47. In *Southlake II*, the Tax Court addressed a question that the Indiana Supreme Court had not explicitly answered in *Southlake*: whether an assessor can meet her burden of proving an assessment is correct if her valuation evidence differs at all from the amount of the original assessment. The assessor in *South Lake II* had offered an appraisal valuing the taxpayer's shopping mall at $258,990,000 and $241,690,000, respectively for the 2015 and 2016 tax years. The mall's assessment was $242,890,500 for both years. *Id. at* *7. The Tax Court held that the statutory term "correct" mirrors the dictionary definition of the word, and that the term "correct assessment" refers to "an accurate, exact, precise assessment." *Id.* at 9. Because the assessor's evidence did not "*exactly* and *precisely* conclude to the assessments she originally assigned to the Mall," she failed to meet her burden under the statute. *Id.* at 10-11 (emphasis in original).

48. Our conclusion that the Assessor failed to meet her burden does not resolve the valuation issue, however. We must next determine whether Lexington proved the correct assessment. If so, we must order the assessment changed to that value. If not, the burden-shifting statute's reversionary clause applies and the assessment will revert to its 2015 level.

b. Lexington failed to prove the correct assessment because Donahoe's income capitalization analysis focused exclusively on the property's historical income, expenses, and occupancy rather than on the market.

49. Lexington offered Donahoe's income capitalization analysis, in which he determined a value of $6,776,466.[6] Donahoe's analysis does not prove the correct assessment because it departs from generally accepted appraisal principles and Indiana law.[7] As the Tax Court has explained, to provide a sound value indication under the income capitalization approach, "one must not only examine the historical and current income, expenses, and occupancy rates for the subject property, but the income, expenses and occupancy rates of comparable properties *in the market* as well." *Indiana MHC, LLC v. Scott Cnty. Ass'r*,

[6] Lexington, however, argues that if we accept that amount as the correct true tax value, we should adjust the assessment to account for what it claims is the average level of underassessment for comparable apartment complexes. *Post-Hr'g Br. in Supp. of Valuation Appeals at 6-7, 17.*

[7] For purposes of our discussion, we assume without deciding, that Lexington can rely on Farrington's conclusions under the cost and sales-comparison approaches to show that Donahoe's conclusion under the income approach was the lowest value indicated by the three approaches.

987 N.E.2d 1182, 1185-1186 (Ind. Tax Ct. 2013) (citing THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE (12th ed. 2001) 93, 501, 509, 511-12) (emphasis in original); *see also*, *Southlake Ind., LLC v. Lake Cnty. Ass'r* ("*Southlake Kohl's*), 135 N.E.3d 692, 696 (Ind. Tax Ct. 2019) ("[W]hen valuing a property under the income approach, the fee simple interest in the property must be valued based on an estimate of market rent, not contract rent."). Donahoe based his analysis solely on the subject property's historical income, expenses, and occupancy without comparing that data to the market.

50. We recognize that Farrington also ultimately relied on the property's historical below-market rent, albeit after first determining market rates. Neither witness explained their reasoning in that regard. Nor did the parties address the issue in their briefs. We can only speculate that they may have been relying on language in Ind. Code § 6-1.1-4-39(d) requiring a taxpayer to provide the "necessary information" to an assessor if it wants the assessor to use the income approach in formulating the taxpayer's initial assessment. We do not interpret that language as departing from the generally accepted appraisal principle that the fee-simple interest in a property must be valued using market data. Even if the term "necessary information" refers exclusively to the property's historical financial data, requiring taxpayers to provide that information is consistent with accepted appraisal practice. As the Tax Court recognized, a property's historical income, expenses, and occupancy rates are relevant. Indeed, they should normally be the starting point for determining market rates for that property.

c. Lexington did not stipulate or admit to a value above the reversionary level simply by offering Donahoe's valuation opinion.

51. Even if Lexington failed to prove the correct assessment, the Assessor argues that we must nonetheless hold Lexington to Donahoe's valuation. According to the Assessor, by offering Donahoe's analysis, Lexington made an admission that was "tantamount" to a stipulation. *Ass'r Supp. Br. at 6*. For support, she points to Ind. Code § 6.1-15-4(n), which gives us the authority to base our final determination "on a stipulation between the respondent and the petitioner."

52. The parties did not stipulate to the correct assessment. To the contrary, they offered competing valuation opinions. The Assessor's real claim appears to be that Lexington made a judicial admission that the property's correct assessment is the value laid out in Donahoe's analysis.

53. To make a binding judicial admission, "[a] party must testify clearly and unequivocally to a fact peculiarly within his knowledge." *Vigus v. Dinner Theater of Ind., L.P.*, 153 N.E.3d 1150, 1158 (Ind. Ct. App. 2020) (quoting *Stewart v. Alunday*, 53 N.E.3d 562, 568 (Ind. Ct. App. 2016). Neither Donahoe's testimony nor the exhibit containing his analysis refers to a concrete fact; they instead convey Donahoe's opinion as to the property's value. In any case, Donahoe is not a party: he is employed by a separate entity that manages the subject property for Lexington. Lexington therefore did not make a judicial admission simply by offering Donahoe's valuation opinion. Indeed, in *Southlake II,* the Tax Court did not treat the taxpayer's decision to offer an appraisal that estimated a value above the reversionary level as an admission. Instead, when the Court found that the assessor had failed to meet her burden of proof, it ordered the assessment to revert to a level that was more than $30 million lower than what the taxpayer's appraiser had estimated. *See Southlake II* at 2021 Ind. Tax LEXIS 48 at *23 n. 9.[8]

54. Nor did Lexington make an admission through counsel. Unlike the Assessor's counsel's clear admission that the Assessor had the burden of proof, none of the statements in Lexington's briefs or arguments clearly and unequivocally admits that the subject property's true tax value was $6,776,466. *See Vigus*, 153 N.E.3d at 1158 (quoting *Sans v. Monticello Ins. Co.*, 718 N.E.2d 814, 816 n. 3 (Ind. Ct. App. 1999) (explaining that where an attorney's statement contains "ambiguity or doubt . . . it is presumed that the attorney did not intend to make an admission."). To the contrary, those statements largely assert that Donahoe performed an analysis valuing the property at that amount:

> "The LLC submitted an income capitalization analysis and testimony of Kevin J. Donahoe . . . that showed the Property had an actual market value-

[8] In *Southlake*, the Indiana Supreme Court had reverted the mall's 2011-2014 assessments to the 2010 level of roughly $110 million. *Southlake*, 174 N.E.3d at 178. That 2010 level was therefore what the 2015 and 2016 assessments reverted to in *Southlake II*. *See Southlake II* at 2021 Ind. Tax LEXIS 48 at *23 n. 9. For 2015 and 2016, the taxpayer's appraiser valued the property at $142.3 million and $144.4 million, respectively. *Southlake II*, 2021 Ind. Tax LEXIS 48 at *3.

in-use . . . of $6,776,466." *Post-Hr'g Br. in Supp. of Valuation Appeals at 3.*

"The LLC further submitted an income capitalization analysis that showed that the Property only had an in-use value . . . of $6,776,466." *Br. in Supp. of Valuation Appeal at 2* (discussing evidence submitted to PTABOA).

"Conversely, the LLC submitted financial data and an income cost approach to value pursuant to IC 6-1.1-4-39(a)(3) that established the Property had a value-in-use . . . of $6,776,466." *Br. in Supp. of Valuation Appeal at 5* (attacking Assessor's valuation evidence before the PTABOA).

"In this instance, the petitioner has submitted evidence of the fair market value of the property." *Tr. at 57.*

55. The alternative relief that Lexington requests further highlights that counsel did not intend his statements as admissions. Lexington requests either (1) reversion to the 2015 assessment, or (2) an assessment based on Donahoe's valuation conclusions with an equalization adjustment "if the Board determines that [Lexington's] evidence as to the assessment is correct[.]" *Post-Hr'g Br. in Supp. of Valuation Appeals at 7-8.*

56. Because neither party met its burden under Ind. Code § 6-1.1-15-17.2(b), Lexington's 2016 assessment reverts to the 2015 level of $3,490,500.

B. The burden-shifting statute's reversionary clause applies to Lexington's 2017 and 2018 appeals as well.

57. As was the case in the two *Southlake* decisions, our determination for 2016 triggers the burden to shift to the Assessor for Lexington's later appeals. The statute applies to 2017 because the assessment for that year is far greater than the $3,490,500 we have determined for 2016. The Assessor's valuation evidence again failed to match the assessed value as last determined, and Donahoe's income capitalization analysis for 2017 suffers from the same flaws as his 2016 analysis. Once again, neither Donahoe's testimony nor statements by counsel constitute a stipulation or judicial admission for that assessment year any more than they did for 2016. So neither party met its burden and the assessment reverts. All the same points apply to Lexington's 2018 appeal, and we find that the 2018 assessment must likewise revert.

58. We recognize this is a harsh result. The evidence offered at hearing arguably points to a value dwarfing the $3,490,500 reversion for each year. But the recent decisions from the Indiana Supreme Court and Tax Court interpreting the burden-shifting statute make clear that we lack discretion to weigh the evidence to reach a different value.

C. Lexington failed to show that it was entitled to an equalization adjustment under Indiana law

1. Taxpayers may seek an individualized equalization adjustment under Indiana law based on a lack of uniformity and equality in assessments.

59. Lexington raises claims under both the state and federal constitutions. It bases its state claims primarily on our constitution's Property Taxation Clause, which directs the Legislature to "provide, by law, for a uniform and equal rate of property assessment and taxation" and to "prescribe regulations to secure a just valuation for taxation of all property." Ind. Const. art. X § 1; *see also, Thorsness v. Porter Cnty. Ass'r*, 3 N.E.3d 49, 51 (Ind. Tax Ct. 2014). The Property Taxation Clause, however, does not require "absolute and precise exactitude as to the uniformity and equality of each *individual* assessment." *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998) (emphasis in original).

60. The Legislature and the DLGF have enacted various statutes and rules designed to comply with the constitutional mandate of uniformity and equality, including statutes that contemplate applying equalization adjustments. *See, e.g.*, I.C. § 6-1.1-13-5 and -6; I.C. § 6-1.1-14-5; 2011 MANUAL at 14-15. Those provisions generally provide class-wide relief and do not necessarily give taxpayers the right to seek an individual equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co. of Ind., Inc.*, 820 N.E.2d 1222, 1226 (Ind. 2005) (recognizing that the intent behind Ind. Code § 6-1.1-14-5(a) and related statutes does not appear to authorize an individual equalization adjustment). Nonetheless, the general appeal statute (Ind. Code § 6-1.1-15-1.1) allows an individual taxpayer to "contend that its property taxes were higher than they would have been had other property been properly assessed." *See id.* (referencing predecessor to Ind. Code § 6-1.1-15-1.1). Lexington agrees that it has the burden of proof on its equalization claims. *Tr. at 20-21* (counsel for Lexington indicating that he does not object to the

Assessor's summary of the burden of proof); *see also, Thorsness*, 3 N.E.3d at 53 (holding that predecessor to the burden-shifting statute did not apply to claims alleging a lack of uniformity and equality).

2. Lexington failed to show a lack of uniformity because it used an inappropriate benchmark to compare assessment levels and failed to follow the IAAO Standard and the DLGF's requirements for ratio studies.

61. With that background in mind, we turn to Lexington's claim. Like the taxpayers in *Commonwealth Edison and Thorsness*, Lexington seeks an individual equalization adjustment based on what it claims is the underassessment of other properties. To support its claim, Lexington offered Donahoe's matrices, which (1) compare the assessments for several other apartment complexes in Concord and Oslo Townships to their sale prices, and (2) compute the degree of underassessment for each property as well as the average underassessment for the set of properties.

62. As the Tax Court explained in *Thorsness*, uniformity and equality may be measured through an assessment ratio study, which "compare[s] the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Thorsness,* 3 N.E.3d at 51 (quoting *Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). The DLGF has incorporated the IAAO Standard into its rules. 50 IAC 27-1-4.

63. The Assessor challenges Donahoe's analysis on several grounds, including that: (1) he did not use properties from the same taxing district as the subject property or from within two miles of the taxing district's boundary; (2) he did not follow the IAAO Standard or any other professionally accepted standard in preparing his matrices; and (3) he did not use appropriate comparisons because he compared assessments to sale prices rather than to the relevant measure of true tax value for apartment complexes—the lowest value indicated by the three generally accepted appraisal approaches. *Ass'r Post-Hr'g Reply Br. at 8-13.*

64. We disagree with the Assessor's first criticism. She draws her asserted geographic limitation from Ind. Code § 6-1.1-15-18, a statute that addresses when parties may offer evidence of comparable properties' assessments "to accurately determine market value-in-use." I.C. § 6-1.1-15-18(c). Donahoe did not offer his matrices with sales and assessment information for other apartment complexes to prove the subject property's value; rather, he offered them to show that those other properties were assessed significantly below what Lexington claims is their true tax value.

a. Donahoe computed assessment ratios using sale prices instead of the correct benchmark for apartment complexes: the lowest value indicated by the three valuation approaches.

65. But we agree with the Assessor's other two criticisms. Lexington and Donahoe did not use the appropriate ratio for their comparisons. They compared each property's assessment to its sale price. That is the appropriate ratio for many types of real property under our current assessment system, where a property's market value-in-use is often the same as its market value, and evidence of a property's sale price can be compelling evidence of its market value. *See Thorsness*, 3 N.E.3d at 51 n.1 (citing *Millennium Real Estate Inv., LLC v. Benton Cnty. Ass'r*, 979 N.E.2d 192, 196 n.3 (Ind. Tax Ct. 2012)) ("A property's market value-in-use is, in many instances, its market value[.]").

66. The Legislature, however, has chosen a different measurement for the true tax value of rental properties with more than four units. It is the lowest value indicated by the cost, sales-comparison, and income approaches. The relevant ratio, therefore, is each property's assessment as a percentage of its true tax value, which can only be determined by analyzing the three valuation approaches. The DLGF implicitly recognizes this in its annual adjustment and equalization rules. *See* 50 IAC 27-5-10(d) (indicating that stratification and annual adjustment of apartment properties subject to Ind. Code § 6-1.1-4-39(a) "shall take into account" that the valuation of those properties is to be determined by applying the lowest value from the three approaches). Indeed, Donahoe himself ignored the subject property's sale price in computing its purported over or under assessment for each year and instead alternately used Farrington's appraisal (minus a deduction for personal property) and his own analysis under the income approach.

67. In that respect, the shortcomings of Donahoe's analyses echo those of the taxpayer's analysis in *Commonwealth Edison*. There, the taxpayer attempted to support its claim for an equalization adjustment by offering ratio studies comparing the assessments of residential (and some commercial) properties in Lake County to their fair market value, as measured by their sale prices. *Commonwealth Edison*, 820 N.E.2d at 1228. In rejecting the taxpayer's claim, the Court explained that during the years under appeal, Indiana did not base assessments on fair market value but rather on applying the State Board of Tax Commissioner's assessment regulations. *Id.* at 1229. An individual assessor might apply those regulations correctly or incorrectly. But if property in Lake County was systematically underassessed, it was because assessors systematically determined the true tax value of residential property to be less than it would have been had they properly applied the regulations. It did not mean that they systematically determined the true tax value of that property to be less than fair market value. *Id.* at 1230. Because the taxpayer used fair market value as the standard by which to measure uniformity, its evidence was irrelevant to determining whether it was entitled to an equalization adjustment. *Id.*

b. Donahoe's analysis did not comply with the requirements of the IAAO Standard or the DLGF's regulations.

68. Even if Donahoe had computed the proper ratio for his comparable properties, Lexington's evidence would still fall short of what is needed for an equalization adjustment. In *Thorsness*, the taxpayer offered evidence showing that while his property was assessed at 99.9% of its sale price, six other properties from his subdivision were assessed at an average of 79.5% of their recent sale prices. *Thorsness*, 3 N.E.3d at 50. At the administrative level, we rejected the taxpayer's claim on grounds that its evidence neither conformed to professionally accepted standards, nor was based on a statistically reliable sample. *Id.*

69. In affirming our determination, the Tax Court discussed the 1999 version of the IAAO Standard, which the DLGF had incorporated into its rules for the assessment year at issue in that appeal. As is the case with the current standard, the 1999 version required valid

ratio studies to be based on data that was both appropriately stratified and statistically analyzed. *Id.* at 53; *IAAO Standard* at 24. Also like the current standard, the 1999 version required a statistical measure of assessment uniformity to be calculated for the entire taxing district and each stratum therein. *Id.* at 54; *See IAAO Standard* at 24 (discussing stratification), 27-29 (discussing statistical analysis). And the DLGF had declared the coefficient of dispersion as "the yardstick by which uniformity is measured in Indiana's townships." *Id.* (citing 50 IAC 14-7-1 (repealed April 8, 2010) and 2002 REAL PROPERTY ASSESSMENT MANUAL at 6).[9] The Court explained that while the taxpayer's evidence was relevant, it did not show that his property was assessed and taxed at a level exceeding the common level of assessment within his township overall. *Id.*

70. Like the taxpayer in *Thorsness*, Donahoe used limited data and failed to analyze that data in the way that the IAAO Standard and the DLGF's rules prescribe. Donahoe arguably stratified sales by using only multi-family apartment complexes. But he chose only a portion of such sales from Elkhart County that occurred within the timeframe he viewed as relevant, which based on his matrices, encompassed sales occurring as much as 2.5 years before and one year after the relevant valuation dates. That left Donahoe with very small samples: three sales for his 2016 matrix and seven sales for his 2017 and 2018 matrices. Nor did Donahoe determine the preferred statistical measures of accuracy (the median ratio for direct equalization[10]) or uniformity (the coefficient of dispersion) or perform any other statistical analysis required by the IAAO Standard and the DLGF's rules.

71. Finally, Donahoe was inconsistent in how he compared the subject property's assessment level to the assessment levels of his comparable properties. He used valuations derived from the income approach for the subject property but used sale prices for the others. Similarly, he did not subtract anything from the sale prices of his comparable properties to account for personal property, even though he subtracted $156,645 from Farrington's

[9] Those provisions have since been repealed and replaced. But analogous provisions may be found in the rules that apply to the assessment years at issue here. *See* 50 IAC 27-4-5(c); 50 IAC 27-10-1(a); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3, 14-15.
[10] *See* IAAO Standard at 28.

valuation. Granted, some of the disclosure forms for Donahoe's comparable properties indicate that the sales did not include any personal property. And none of the forms value any included personal property at more than $19,000. But the subject property's disclosure form also indicates that no personal property was included. And Farrington testified that apartment complexes sell with built-in appliances in place, to which she attributed a significant contributory value.

72. Lexington's reliance on *Indianapolis Historic Partners v. State Bd. of Tax Comm'rs* is misplaced. In that case, the Court addressed an appeal under our state's old system where true tax value was determined by applying a self-referential set of administrative regulations. Land was valued based on land orders that were established by county land valuation commissions and approved by the State Board of Tax Commissioners. *Indianapolis Historic Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1224, 1225 (Ind. Tax Ct. 1998). Those land orders were administrative rules and were subject to the same rules of construction as statutes. *Id.* at 1227. The Marion County Assessor had assessed land associated with the taxpayer's apartment building using the land order's rate for commercial land, which resulted in an assessment that was 11 times higher than the highest rate for apartment land. *Id.* at 1230. According to the Tax Court, if land around the taxpayer's apartments had commercial value aside from its value as apartment land, the State Board should have amended the land order. *Id.* Because the assessment violated the land order's terms, however, it violated statutory and constitutional requirements for uniformity and equality. *Id.*

73. Several years after the Tax Court decided *Historic Partners*, Indiana overhauled its assessment system. The current system "shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use. *Westfield Golf Practice Ctr. v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (citation omitted). Under our current system "the end result—a 'uniform and equal *rate*' of assessment—is required, but there is no requirement of uniform procedures to arrive at that rate." *Id.* (quoting *State ex. Rel. Att'y Gen. v. Lake Super. Ct.*, 820 N.E.2d 1240, 1250 (Ind. 2005) (emphasis in original).

74. The appropriate analysis under the current system is the ratio comparison described in *Westfield Golf* and *Thorsness*—not *Historic Partners'* focus on methodology. But even if we were concerned with methodology, there is no evidence that local officials used different methodologies to assess similarly situated properties in Elkhart County. To the contrary, it appears that they initially assessed all but one apartment complex in the county using a mass-appraisal cost approach from the DLGF's guidelines and applied obsolescence or other adjustments to some properties in resolving appeals.

D. Because Lexington did not show that similarly situated properties were intentionally and systematically underassessed, it failed to prove that it was denied equal protection under the Fourteenth Amendment.

75. Lexington also claims that the subject property's assessments violate the Equal Protection Clause of the Fourteenth Amendment.

1. The Equal Protection Clause prohibits "intentional systematic" undervaluation rather than mere judgement errors or honest mistakes by assessing officials.

76. The Equal Protection Clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. It prohibits the "intentional systematic" undervaluation of other taxable property in the same class. *Allegheny Pittsburg Coal Co. v. County Comm'n of Webster Cnty., W. Va.*, 488 U.S. 336, 345, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989) (quoting *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352-53 38 S. Ct. 495, 62 L. Ed. 1154 (1918)). Mere judgment errors by assessing officials do not violate the Equal Protection Clause; instead "there must be something more—something which in effect amounts to an intentional violation of the essential principle of practical uniformity." *Sunday Lake Iron,* 247 U.S. at 352. The good faith of officials and the validity of their actions are presumed; "when assailed, the burden of proof is on the complaining party." *Id.* Thus, Lexington needed to prove that the Assessor (1) intentionally treated it differently than other similarly situated taxpayers, and (2) had no rational basis for the differential treatment. *See Convention Hotels Headquarters, LLC v. Marion Cnty. Ass'r*, 175 N.E.3d 1212, 1218-19

(Ind. Tax. Ct. 2021) (quoting *LaBella Winnetka, Inc. v. Vill. of Winnetka*, 628 F.3d 937, 941-42 (7th Cir. 2010) (citation omitted)).

77. Lexington points to several grounds to support its equal protection claim:

(1) Assessing officials ignore market sales and simply use the DLGF's cost manuals to calculate assessed values;

(2) Assessing officials apply subjective obsolescence factors resulting in disparate assessments for similar properties that produce similar market rent, because older properties are presumably more likely to receive obsolescence adjustments; and

(3) The Assessor did not comply with what Lexington characterizes as her statutory and administrative duties under Ind. Code § 6-1.1-13-5 -6, Ind. Code § 6-1.1-35-4, and the 2011 Manual to equalize assessments between townships and promote intra-county uniformity in assessment procedures because she "apparently failed to supervise any of the activities of the Concord Township Assessor."

Post-Hr'g Br. in Support of Valuation Appeals at 9-14; *see also, Pet'r Post-Hr'g Reply Br. at 3.*

2. Lexington did not show that the subject property was undervalued compared to other apartment complexes, much less that any undervaluation was intentional and systematic.

78. All these arguments proceed from the same faulty premise underlying Lexington's state constitutional claims. As explained above, Lexington wrongly assumes that sale prices are the appropriate benchmark against which to measure the true tax value of apartment complexes with four or more rental units, and that Donahoe's analysis therefore shows that other properties are substantially underassessed compared to the subject property.

79. But even if we were to assume that sale prices provide an appropriate benchmark and that the properties Lexington identified were undervalued compared to the subject property, Lexington did nothing to show that the disparity was intentional and systematic. There is no evidence that the Assessor or the Concord Township Assessor intentionally singled out any properties for differential treatment. All but one apartment complex in Elkhart

County was initially assessed using the DLGF's cost tables because the owners did not provide information about their income and expenses. Even if assessing officials should have also applied the sales-comparison approach, their failure to do so was uniform. The Concord Township Assessor adjusted assessments for some properties to account for obsolescence or other factors. But Lexington offered nothing to show what the underlying grounds for the adjustments were, much less that they were unwarranted or that the officials ignored similar obsolescence in other properties.

80. Instead, Lexington argues, without proof, that by applying what it views as the inherently subjective concept of obsolescence, older properties are "presumably" undervalued compared to newer properties that are less likely to suffer from wear and tear. Even if the Concord Township Assessor applied too much obsolescence to the properties Donahoe identified in his matrices, Lexington offered no evidence that she did so intentionally or that the purported underassessments were anything other than honest mistakes. Indeed, some of the adjustments were in response to taxpayers' appeals. The subject property similarly received obsolescence adjustments as part of resolving previous assessment appeals.

81. Lexington cites several cases to support its equal-protection claim: *Allegheny, supra; Rams Head Partners v. Town of Cape Elizabeth*, 834 A.2d 916 (Me. 2003*); Twp. of Milford v. Van Decker*, 576 A.2d 881 (N.J. 1990); and *State ex. Rel. Levine v. Bd. of Review*, 528 N.W.2d 424 (Wisc. 1995). But none of those cases support its claim; instead, they involve actions by taxpayers for intentional and systematic undervaluation of similar properties.

82. In *Allegheny*, over the course of 11 years, the Webster County Assessor used sale prices to assess properties that had recently sold. But the assessor only occasionally adjusted the value of properties that had not recently sold. Even then, the adjustments were minor. *Allegheny*, 109 S.Ct. at 635-37.

83. The county argued that its assessment scheme was rationally related to its purpose of assessing properties at their true current value: when available, it used sale prices, which

it claimed were exceedingly accurate measures of market value. As the data grew stale, the assessor periodically adjusted assessments based on some perception of the general change in property values. *Id.* at 637. The Court had no qualms with the theoretical basis of that scheme and found that the use of a general adjustment as a transitional substitute for individual reappraisal did not violate the Constitution. The Court explained that just as the Equal Protection Clause "tolerates occasional errors of state law or mistakes in judgment when valuing property for tax purposes, it does not require immediate general adjustment based on the latest market developments. *Id.* at 638 (citing, *e.g.*, *Sunday Lake Iron* 247 U.S. at 353. In each instance, "the constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners." *Id.* (citations omitted). But the facts before the Court were not a case of transitional delay in adjustment. The disparity in assessment was roughly 8- to 35-fold and the discrepancies continued for more than a decade without change. *Id.*

84. The Court further explained that states may divide different kinds of property into different classes and assign to each a different tax burden without running afoul of the Equal Protection Clause so long as the classification "is neither capricious nor arbitrary [] and rests upon some reasonable consideration of difference or policy." *Id.* But West Virginia had not drawn any such distinction. To the contrary, its state constitution provided for taxation at a uniform rate and the Court was unaware of any state statute or practice authorizing counties to fashion their own substantive assessment policies. *Id.* at 638-39. Instead, the taxpayer had suffered from "intentional systematic undervaluation by state officials" of comparable property in the same county, which violated its rights under the Equal Protection Clause. *Id.* at 639.

85. The New Jersey Supreme Court reached a similar conclusion in *Van Decker*. There, a township went 15 years without conducting a uniform reassessment and mostly increased assessments only in response to recent sales or new construction. *Van Decker*, 576 A.2d at 882-83. To support its holding, the court cited to *Allegheny* for the proposition that intentionally assessing property at a higher percentage of value than similarly situated properties violates the Equal Protection Clause. *Id.* at 886.

86. In *Rams Head Partners* and *Levine*, the courts upheld the principle that taxpayers could prove violations of their respective state constitutions, and in the case of *Rams Head*, the Equal Protection Clause, by showing disparate treatment between a taxpayer's property and a group of similarly situated properties without showing broader discrimination. In *Ram's Head*, the court rejected an argument that the taxpayer needed to prove discrimination relative to all comparable properties throughout the town. *Ram's Head*, 834 A.2d at 918-22. Similarly, the *Levine* court rejected the assessor's argument that the group of more favorably assessed properties had to comprise at least 2% of properties within the assessment district. *Levine*, 528 N.W.2d at 428-30.

87. But neither court absolved the taxpayer from having to show intentional and systematic discrimination. To the contrary, the *Ram's Head* court remanded to the town's review board for specific findings on, among other questions, whether any undervaluation was intentional and systematic or instead resulted from mere errors in judgment by the assessor. *Rams Head*, 834 A.2d at 922. And the *Levine* court found that the assessor had violated state assessment statutes and the state constitutional requirement of uniformity where he admitted both that he disregarded recent sale prices to assess older properties (but relied on sale prices to assess newer properties) and that his assessment methodology was arbitrary. *Levine*, 528 N.W.2d at 428-31.

88. In each case cited by Lexington, the court either found intentional and systematic undervaluation of properties that were similarly situated to the taxpayer's property or remanded for the trier of fact to make that determination. As we have already explained, however, Lexington failed to prove that the Concord Township properties were undervalued compared to the subject property, much less that the undervaluation was intentional and systematic, rather than the result of honest mistakes. Even if we were to accept that the subject property was comparatively overvalued, that disparity was far less stark and has persisted for a far shorter time than the disparity in *Allegheny*. The Assessor re-examined the subject property's assessment in 2016 when it reassessed properties in Cleveland Township. The evidence does not show when the Concord Township properties were scheduled for reassessment. *See Tr. at 139, 259*; I.C. § 6-1.1-4-4.2 (allowing counties to submit reassessment plans where they reassess roughly 25%

of parcels each year). But Lexington has not ruled out the possibility that "rough equality" will "seasonably" be obtained.

89. Finally, even if, as Lexington alleges, the Assessor failed to adequately supervise the Concord Township Assessor, that failure does not violate the state or federal constitutions. Two of the statutes Lexington cites—Ind. Code § 6-1.1-13-5 and -6—require an assessor to equalize assessments between the county's taxpayers generally (section 5) and between groups of properties within the same part of a county's reassessment plan (section 6). The third, Ind. Code § 6-1.1-35-4, requires county assessors to call meetings to advise and instruct township assessors on their duties and to "promote intra-county uniformity in assessment procedures." And the 2011 Manual directs assessors to apply a "percentage increase or decrease" to individual assessments when deemed necessary either (1) to equalize assessments between or within townships or classes of property, or (2) "to raise or lower assessments within a county or any part thereof to the level prescribed by law." 2011 MANUAL at 3.

90. To the extent any of those statutes or rules might offer a taxpayer individual relief, it would do so only in the context of the taxpayer first showing an actionable lack of uniformity and equality entitling it to an equalization adjustment. And we have already explained why Lexington failed to make that showing.

CONCLUSION

91. Neither party met its burden of proof under Indiana Code § 6-1.1-15-17.2 for any of the years under appeal. The statute's reversionary clause therefore applies, and we order the assessment reduced to $3,490,500 for each year.

ISSUED: MARCH 24, 2022

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>

Petition Number	Parcel Number
20-006-16-1-4-00397-18	20-05-01-480-001.000-006
20-006-17-1-4-00913-18	20-05-01-480-001.000-006
20-006-18-1-4-00367-19	20-05-01-480-001.000-006
20-006-16-1-4-00398-18	20-05-01-480-004.000-006
20-006-17-1-4-00912-18	20-05-01-480-004.000-006
20-006-18-1-4-00369-19	20-05-01-480-004.000-006
20-006-16-1-4-00396-18	20-05-01-480-013.000-006
20-006-17-1-4-00915-18	20-05-01-480-013.000-006
20-006-18-1-4-00370-19	20-05-01-480-013.000-006
20-006-16-1-4-00395-18	20-05-12-226-014.000-006
20-006-17-1-4-00914-18	20-05-12-226-014.000-006
20-006-18-1-4-00368-19	20-05-12-226-014.000-006