REPRESENTATIVE FOR PETITIONER:	Melissa Michie, Attorney
REPRESENTATIVES FOR RESPONDENT:	Zachary Price, Attorney Marilyn Meighen, Attorney Brian Cusimano, Attorney

BEFORE THE INDIANA BOARD OF TAX REVIEW

Mac's Convenience Stores LLC, Petitioner, v. Whitley County Assessor, Respondent.	)))))))))	Petition Nos.: 92-010-21-1-4-00795-21 92-010-21-1-4-00796-21 Parcel Nos.: 92-04-13-540-009.900-010 92-04-13-540-010.000-010 County: Whitley Assessment Year: 2021

Appeal from the Final Determination of the
Whitley County Property Tax Assessment Board of Appeals

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

Introduction

1. Mac's Convenience Stores, LLC ("Mac's) argues that, under a repealed specialized burden-of-proof statute (Ind. Code § 6-1.1-15-17.2), the Whitely County Assessor had the burden of proving that Mac's assessment was correct. We disagree and find that because the statute was repealed before we held our evidentiary hearing, we must apply the existing law under which Mac's, as the party challenging the assessment, has the burden of proving that the assessment is wrong and what the correct assessment should

be. Because Mac's offered no probative valuation evidence, and the valuation evidence offered by the Assessor shows that the property is not underassessed, we find for the Assessor and order no change.

Procedural History

2. Mac's contested the 2021 assessments of its parcels located at 108 South Main Street in Churubusco. The Whitley County Property Tax Assessment Board of Appeals issued Form 115 determinations denying Mac's relief and determining the following values:

Parcel	Land	Improvements	Total
92-04-13-540-009.900-010	$138,600	$383,300	$521,900
92-04-13-540-010.000-010	$23,100		$23,100
			$545,000

3. On August 17, 2022, our designated administrative law judge, Joseph Stanford ("ALJ"), held a hearing on Mac's' petitions. Neither he nor the Board inspected the property. Kimberly Erdly, the Whitley County Assessor, and David Hall, MAI appraiser, testified under oath.

4. Mac's submitted the following exhibits:

Petitioner Exhibit 1:	2021 subject property record cards ("PRCs"),
Petitioner Exhibit 2:	2020 subject PRCs,
Petitioner Exhibit 4:	Ind. Code § 6.1-1-15-17.2,
Petitioner Exhibit 5:	*Southlake Indiana, LLC v. Lake Cty. Ass'r*, 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021),
Petitioner Exhibit 6:	Ind. Code § 6.1-1-15-20,
Petitioner Exhibit 7:	Actions for House Bill 1260,
Petitioner Exhibit 8:	Form 131 petitions,
Petitioner Exhibit 9:	May 26, 2022 Email from James Hollis to Melissa Michie (Confidential information redacted),
Petitioner Exhibit 10:	Instructions for IRS Form 8594,
Petitioner Exhibit 11:	Allocation of purchase price (Confidential),
Petitioner Exhibit 12:	Page 94 from BLACK'S LAW DICTIONARY, 11th ed.,
Petitioner Exhibit 13:	Form 122 report,
Petitioner Exhibit 14:	Ind. Code § 6.1-1-4-22,

Petitioner Exhibit 15:	August 5, 2022 email correspondence between Melissa Michie and Kristy Andrews,

5. The Assessor submitted the following exhibits:

Respondent Exhibit A:	First part of appraisal report by David Hall and Michael Lady or Michael Lady of Integra Realty Resources ("Hall appraisal"),
Respondent Exhibit B:	Second part of Hall's appraisal,
Respondent Exhibit C:	Sales disclosure form for the subject property,
Respondent Exhibit D:	2021 PRC for parcel 92-04-13-540-010.000-010,
Respondent Exhibit E:	2021 PRC for parcel 92-04-13-540-009.900-010,
Respondent Exhibit F:	May 26, 2022 email from James Hollis to Melissa Michie (Confidential information redacted),
Respondent Exhibit G:	Instructions for IRS Form 8594,
Respondent Exhibit I:	Mac's Form 104 from 2021 personal property return,
Respondent Exhibit J:	Subject property's Form 104 from 2020 personal property return,[1]
Respondent Exhibit K:	Form 122 report,
Respondent Exhibit L:	Form TS-1A for 2021-pay-2022,
Respondent Exhibit M:	Certified mail receipt,
Respondent Exhibit N:	Tax payment ledger from treasurer's office.

6. The record also includes the following: (1) testimony and argument from Mac's appeal of the assessment of its property located at 606 Countryside Drive, Columbia City,[2] (2) all petitions or other documents filed in this appeal, (3) all notices and orders issued by the Board or the ALJ, and (4) an audio recording of the hearing.

Objection

7. The Assessor made a hearsay objection to Petitioner's Exhibit 15, an email string between Mac's counsel, Melissa Michie, and Kristy Andrews, who is identified in the emails as a staff accountant for Circle K, about whether Circle K had received Form 122

[1] The Assessor submitted the Form 104 returns on green paper.

[2] The parties agreed to incorporate testimony and argument from that hearing (*Mac's Convenience Stores, LLC v. Whitley Cty. Ass'r*, pet. no. 92-004-21-1-4-00794-21. Where applicable, we will reference the incorporated testimony by adding "*Countryside*" to the citation (for example: *Hall testimony (Countryside)*).

reports increasing the 2020 assessments for the subject property and another store in Whitley County. Our ALJ overruled the objection and admitted the exhibit.

8. We adopt his ruling. The exhibit is hearsay. *See* Ind. R. Evid. 801(c) (defining hearsay as including out-of-hearing statements offered to prove the truth of the matter asserted). Mac's did not argue that the email fits within any recognized exception to the hearsay rule. But our procedural rules allow us to admit such evidence provided we do not base our determination solely on that evidence. 52 IAC 4-6-9(d). Although we admit the email string, we do not base our determination on it.

Findings of Fact

A. The subject property and its assessment history

9. Mac's operates the property as a "Circle-K" gas station and convenience store. It has an approximately 2,420-square-foot store and an approximately 5,020-square-foot canopy on .267 acres of land. The store was built in 1967, while the canopy was built in 1985. The store has been remodeled several times, including very recently. It had a new roof installed in 2015. *Hall testimony; Pet'r Exs. 1-2; Resp't Ex. A at unpaginated photographs, 37-55.*

10. Before November 10, 2020, Churubusco Properties, LLC owned the property. The 2020 property record cards list Churubusco Properties' address as 3851 Etna Rd., Columbia City. The property was originally assessed (both parcels combined) at $211,800 for 2020. *Pet'r Exs. 1-2; Resp't Ex. C.*

11. On November 10, 2020, Mac's bought the subject property as part of a portfolio transaction involving seven properties. It is not clear who owned the other six properties. In his appraisal report, Hall pointed to a press release from Mac's indicating that all seven stores were owned by Pride C-Stores, Inc. Pride C-Stores filed a business personal property return for personal property located at the subject property. But there is no

evidence to show what, if any, relationship Pride C-Stores had to Churubusco Properties. *Resp't Ex. A at 4-5, 56; Resp't Ex. J; see also Pet'r Exs. 10-11.*

12. Hall also got information about the portfolio sale from Mac's counsel and from James Hollis, Jr., head of legal affairs, real estate for Circle K Stores, Inc. According to Hollis Jr., the overall sale price was allocated between the seven properties. The allocated price for each property was then further allocated between different asset classes in accordance with the instructions for completing Internal Revenue Service Form 8594. For the subject property, Michie and Hollis Jr. informed Hall that [redacted] was allocated to real property and that additional amounts were allocated to other interests, including furniture and equipment. *Pet'r Exs. 9-10; Resp't Ex. A at 4.*

13. The property's assessment increased to $545,000 for 2021. In February 2022, the Assessor engaged Hall and Michael Lady of Integra Realty Resources to appraise the property for 2020 and 2021. Hall began working on the assignment and inspected the property in March 2022. Shortly thereafter, he had a discussion with the Assessor about his conclusions and whether the Assessor wanted him to prepare a written report for each year. The Assessor asked him to prepare a report for 2021 but not for 2020. Based on Hall's conclusions, however, the Assessor increased the 2020 assessment to $552,600. On March 28, 2022, she issued a Form 122 report for the parcel containing the improvements. In that report, she listed the increased assessment and indicated, "it is the Assessor's belief this property was undervalued for the 20 pay 21 tax year, based off of an [*sic*] Commercial appraisal done for this location March 2022." *Hall testimony; see also, Hall testimony (Countryside); Pet'r Ex. 13; Resp't Ex. A at cover letter; Resp't Ex. B at addendum F.*

14. The Form 122 report lists Churubusco Properties as the taxpayer and is addressed to the subject property rather than to the N. Etna Rd address for Churubusco Properties listed on the 2020 property record card. The Assessor also sent a copy of the Form 122 report to Mac's at its mailing address listed on the 2021 property record card (4080 Jonathan

Moore Pike, Columbus). It was signed as received on April 4, 2022. *Erdly testimony; Pet'r Ex. 13; Resp't Exs. K, M.*

B. Hall's Appraisal for 2021

15. David Hall prepared an appraisal report for the 2021 valuation date. He consulted with Lady, who, as Integra's senior managing director, reviewed the report. But Hall was primarily responsible for developing and writing the report, and we will refer to the report and conclusions as his. Hall is an MAI appraiser with 17 years of experience, including appraising properties with gas stations and convenience stores. He certified that he complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He considered developing all three generally accepted appraisal approaches but decided only to develop the cost and sales-comparison approaches. He decided against developing the income approach, explaining that it would be difficult to isolate real estate value from the value of personal and intangible property because gas stations and convenience stores are often leased as going concerns. *Hall testimony; Hall testimony (Countryside); Resp't Ex. A at 11-12.*

16. But Hall found the other two approaches helpful. Because the cost approach does not include any personal property, it can be useful in appraising properties like the subject property where the operation often includes non-realty interests, such as personal property and business value. Similarly, Hall found that he had sufficient data for a credible sales-comparison analysis, and he explained that a typical investor would consider that approach in making a purchase offer. *Hall testimony; Hall testimony (Countryside); Resp't Ex. A at 11-12.*

17. Hall began his analysis under the cost approach by determining a site value. He looked for sales of comparable vacant sites of less than 1.5 acres from Whitley County that occurred between 2013 and 2021. He identified five sales of sites that were between .66 and 1.49 acres and that sold for prices ranging from $4.17/sq, ft to $6.70/sq. ft. He then

considered adjusting the sale prices to account for material differences between those sales and the subject site that would affect land value, including differences in market conditions between the sale dates and the January 1, 2021 valuation date, as well as differences in things such as location, access and exposure, size, and physical characteristics. Hall's adjusted sale prices ranged from $4.98/sq. ft. to $6.51/sq. ft., with an average of $5.68/sq. ft. He settled on an indicated value of $6/sf. ft., or $70,000 (rounded) for the subject site. *Hall testimony; Resp't Ex. B at 71-79.*

18. Next, Hall used Marshall Valuation Service ("MVS") to determine the replacement cost new of the improvements and added 10% for indirect costs not accounted for by the MVS data. He used the economic age-life method to estimate depreciation from physical deterioration. Because the store was built in 1967, it far exceeded the typical 35-year lifespan for that type of building. But the store had been remodeled and well maintained, which significantly lowered its effective age, and in Hall's opinion, it had a minimum of 11 years of remaining life as of the valuation date. He reached a similar conclusion for the canopy. Hall did not find any obsolescence. He arrived at depreciated replacement costs of $445,000 (rounded) for the improvements. He then added his estimated site value to reach a conclusion of $520,000 (rounded) under the cost approach. *Hall testimony; Hall testimony (Countryside); Resp't Ex. B at 80-86.*

19. Turning to the sales-comparison approach, Hall looked for sales of properties with gas stations and convenience stores that met the following parameters:

- stores that were approximately 5,000 square feet or less
- stores that were at least 20 years old
- sale dates that fell between 2013 and 2021

He excluded sales of the leased-fee interest, which limited the amount of data available and required him to expand his search throughout the state. He identified four sales, one each from Columbia City, Muncie, Noblesville, and Terre Haute. He found that those markets were like the subject property's market in terms of population density, demand

characteristics, and growth trends, and that he could adequately adjust for relevant differences. *Hall testimony; Hall testimony (Countryside); Resp't Ex. B at 88.*

20. Hall first determined that three of the four sales included personal property. He was able to verify that one of the sales did not include personal property by examining the purchase agreement and talking to the parties. To determine the amount of the reported sale price that was attributable to personal property for the other three sales, he relied on the allocations that the parties to the sale reported on their sales disclosure forms, which ranged from $82,840 to $750,000. Hall has reviewed purchase agreements and interviewed parties in preparing appraisals of gas station and convenience store properties for lenders. And it is typical to find a wide range of allocated value for personal property. Based on his research, he found nothing unusual about the range of allocations for his comparable sales. *Hall testimony; Hall testimony (Countryside); Resp't Ex. B at 87-102.*

21. After deducting the amounts allocated to personal property from the reported sale prices, the unit prices for the four sales ranged from $188.89 to $307.29 per square foot of building area. Because two of his sales did not include a car wash, and another had a car wash that Hall determined did not contribute to the property's value, he derived his unit prices by dividing the overall price (minus the amount allocated to personal property) by the convenience store's area. The fourth property had a single building with an integrated car wash that was integral to the property's operation. For that property, he divided the overall sale price (minus the amount allocated to personal property) by the area for the entire building. *Hall testimony; Hall testimony (Countryside); Resp't Ex. B at 92-103.*

22. Hall then considered adjusting the sale prices to account for other transactional differences between those sales and the posited sale of the subject property as well as for differences in relevant physical characteristics between the properties. He explained the bases for his adjustments. For example, to adjust for differences in market conditions

between the sale dates of his comparable properties and his appraisal's January 1, 2021 valuation date, Hall examined general market trends within a three-mile radius of the subject property as well as trends for convenience store properties within the larger Fort Wayne-Huntington-Auburn combined statistical area and nationally. Similarly, for his location adjustments, Hall looked at data reflecting population density, population changes, and median household income within a three-mile radius of the subject property and of each comparable property. *Hall testimony; Hall testimony (Countryside); Resp't Ex. B at 91-102.*

23. The adjusted sale prices ranged from $217.68/sq. ft. to $262.56/sq. ft. with an average of $241.80/sq. ft. Hall reconciled those prices to a value of $245/sq. ft., which he multiplied by the subject store's area (2,420 square feet) to arrive at a value of $590,000 (rounded) under the sales-comparison approach. Hall also identified a fifth sale, which he used as a test of reasonableness for his conclusions. That sale involved a gas station and convenience store that was build in 1959. It had a lower unadjusted unit price than the range of his adjusted sale prices, but it was inferior to the subject property in many ways, including its location next to a competitor with more land, a bigger store, and an attached restaurant. *Hall testimony; Resp't Ex. B at 102, 106.*

24. Although appraisers often reconcile their conclusions to a single-point value, Hall did not do so in his appraisal. Instead, he gave his opinion that the subject property's market value-in-use fell within the range of values bracketed by his conclusions under the cost and sales-comparison approaches ($520,000 to $590,000). He explained that USPAP and the treatise, *The Appraisal of Real Estate*, both permit an appraiser to express a value conclusion as a range of numbers or in comparison to a benchmark. Hall thought it was appropriate to express his opinion as a value range for a few reasons. First, he believed that an Indiana Tax Court decision requiring assessors to prove that an assessment was "correct" in certain circumstances had muddied the waters for appraisers. Second, using a value range reflects the real world, where market participants have a range within which they will negotiate a sale price. Finally, the spectrum of potential buyers for the

subject property includes both owner-occupiers and investors who assign different weights to the three valuation approaches in making purchase decisions and who might pay different prices. *Hall testimony; Hall testimony (Countryside); Resp't Ex. 107-08.*

Conclusions of Law and Analysis

A. Because we held our hearing after the Legislature repealed Ind. Code § 6-1.1-15-17.2, the provisions of that specialized burden-of-proof statute do not apply to Mac's' appeal.

25. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. A petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cty. Ass'r,* 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).

26. 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). 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).

27. 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).

28. Mac's claims that the original burden-shifting statute (Ind. § 6-1.1-15-17.2) applies. First, relying on the fact that the new burden-shifting statute applies only to appeals filed after its effective date, Mac's argues that the original burden-shifting statute should apply because it was the law that existed on the date Mac's filed its appeal. *Petitioner's Post-Hearing Brief* at 2-5. Second, Mac's claims that the assessment increased more than 5% over the original assessment for 2020, and that the Assessor's attempt to assess omitted or undervalued property, which increased the 2020 assessment to a level that was below the 2021 assessment, was invalid because (1) Mac's was not notified of that assessment increase, and (2) Mac's bought the property without knowledge of the increase, thereby preventing a lien from attaching to the property. *Id.* at 6-8. The Assessor disagrees, arguing that the burden-shifting statute does not govern this appeal because, among other things, it was repealed before we held our evidentiary hearing, and that even if it were still in effect, the burden would not shift because she properly increased the 2020 assessment. *Assessor's Combined Post-Hearing Brief* at 15-21.

29. We agree with the Assessor that the burden-shifting statute does not apply because it 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.").

30. 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, as Mac's suggests, 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.

31. 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).

32. 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.*

33. 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, as Mac's seems to believe, when an appeal is filed. The burden-shifting statute had already been repealed when the hearing on Mac's' appeal convened, and we must apply the law as it existed at that time. The Assessor therefore did not have the burden of proving the assessment was correct, and there was no provision for reverting the assessment to the prior year's level.

34. Because we find that Ind. Code § 6-1.1-15-17.2 does not govern this appeal, we need not address the Assessor's alternative argument against applying the statute: that her Form 122 report increasing the prior year's assessment prevented the statute's burden-shifting provisions from being triggered. We therefore need not decide the underlying factual and legal questions as to whether the Assessor issued notice to the proper party(ies) at the proper address(es) for her purported assessment of omitted or undervalued property to be valid.

B. Mac's failed to make a prima facie case for reducing the assessment.

35. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). Instead, it is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.

36. Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the property under appeal or for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

37. Mac's based its entire case on its belief that the Assessor had the burden of proving the assessment was correct. It did not offer any probative evidence to show a lower value.

Indeed, the valuation evidence offered in this appeal either supports the assessment or supports a higher value.

38. According to a representative of Circle K, the parties to the portfolio sale in which Mac's bought the subject property less than two months before the relevant valuation date allocated [redacted] of the overall purchase price to the subject real estate. Mac's argues that we should ignore the allocation because it is not a "valuation." We are unsure what Mac's means by that. Perhaps it is arguing that there is no evidence to show how the parties to the sale arrived at that allocation. Regardless of the weight to which the allocated sale price is entitled, it certainly does not support lowering the assessment.

39. We give more weight to Hall's USPAP-compliant appraisal in which he (1) applied two generally accepted valuation approaches, (2) explained the bases for various judgments he made in applying those approaches, such as his selection of comparable sales and the various adjustments he made to those sale prices, and (3) estimated a range of values bracketing the assessment. Mac's seeks to impeach Hall's opinion on grounds that (1) his comparable sales were from cities outside the Fort Wayne-Huntington-Auburn combined statistical area, and (2) he calculated potentially inflated sale prices for those properties because he used allocations between real and personal property from unvalidated sales disclosure forms that reported disparate values for personal property. *See Pet'r Post-Hr'g Br. at 10-12.*

40. We give little weight to Mac's criticisms. Hall credibly explained that he chose sales from market areas that were like the subject property in important market characteristics, and he adjusted for relevant differences. He likewise credibly explained that, based on his experience in appraising properties with gas stations and convenience stores, the contributory value of personal property varies widely. And he did not see anything unusual about the range of values from the sales disclosure forms for his comparable properties.

41. Of course, Hall estimated a range of values, the low end of which is $25,000 below the subject property's assessment. But that was based on Hall's conclusion under the cost approach. And we find Hall's conclusion under that approach less reliable, given the age of the improvements and the difficulty of estimating depreciation. Instead, we find it more likely that the subject property's market value-in-use lies closer to the middle or high end of the range that Hall estimated, both of which are higher than the property's assessment. The Assessor does not ask us to increase the assessment, and we therefore need not determine a specific value. Suffice it to say that Hall's appraisal supports a value at least equal to the assessment.

Conclusion

42. Because we held our hearing on Mac's' appeal after the Legislature repealed Ind. Code § 6-1.1-17.2, that statute's burden-shifting provisions did not apply, and Mac's had the burden of proof. Mac's failed to offer any probative evidence to support reducing the assessment. We therefore order no change.

Date: 2/20/2023

Jonathan A. Eley
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Timothy Schultz
Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at<http://www.in.gov/judiciary/rules/tax/index.html>.