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,	)	Petition Nos.: 17-010-21-1-4-00065-22
	)	17-010-21-1-4-00067-22
Petitioner,	)	
	)	Parcel Nos.: 17-10-05-102-003.000-010
v.	)	17-10-05-102-002.000-010
	)	
DeKalb County Assessor,	)	County: DeKalb
	)	
Respondent.	)	Assessment Year: 2021

Appeal from the Final Determination of the
DeKalb 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

I. 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 Mac's Convenience Stores LLC ("Mac's") argues that, under a repealed specialized burden-of-proof statute (Ind.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 DeKalb 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 We disagree and find that because the statute was repealed before we held our evidentiary hearing, we must apply the existing law under which Mac's, as the party challenging the assessment, has the burden of proving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 to show that the property was over-assessed, it failed to make a prima facie case for changing the assessment. Mac's similarly failed to show that the assessment should be invalidated on grounds that the Assessor engaged in sales chasing.

II. Procedural History

2. Mac's contested the 2021 assessment of the subject property, which comprises two adjacent parcels located on Wayne Street in Auburn. The DeKalb County Property Tax Assessment Board of Appeals ("PTABOA") issued Form 115 determinations denying Mac's any relief and valuing the parcels at a total of $583,800:

Parcel	Land	Improvements	Total
17-10-05-102-003.000-010	$88,000	$401,600	$489,600
17-10-05-102-002.000-010	$94,200	$0	$94,200
			$583,800

3. Mac's filed Form 131 petitions with us. On March 10, 2023, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on Mac's petitions. Neither he nor the Board inspected the property. Andrew Smethers, Vice President of Technology and Training with Nexus Group, and David Hall, an MAI appraiser, testified under oath.

4. Mac's submitted the following exhibits:

Petitioner Exhibit 1:	DeKalb County Land Order for Auburn-Jackson gas stations; email correspondence between Andrew Smethers and Melissa Michie,
Petitioner Exhibit 2:	2020 subject property record cards ("PRC"),
Petitioner Exhibit 3:	2021 subject PRCs,
Petitioner Exhibit 5:	Sales disclosure form for the subject property,
Petitioner Exhibit 6:	Relevant pages from Asset Purchase Agreement,
Petitioner Exhibit 7:	Instructions for IRS Form 8594.

5. The Assessor submitted the following exhibits:

Respondent Exhibit A:	Hall appraisal,
Respondent Exhibit B:	Addendum to Hall appraisal,
Respondent Exhibit C:	Sales disclosure form for the subject property,
Respondent Exhibit D:	2022 subject PRC for parcel 17-10-05-102-003.000-010,
Respondent Exhibit E:	2022 subject PRC for parcel 17-10-05-102-002.000-010,
Respondent Exhibit G:	Instructions for IRS Form 8594,
Respondent Exhibit H:	2020 Form 113 for parcel 17-10-05-102-003.000-010,
Respondent Exhibit I:	2020 Form 113 for parcel 17-10-05-102-002.000-010.

6. The record also includes the following: (1) all petitions or other documents filed in these appeals, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

III. Findings of Fact

A. The subject property and its assessment history

7. Mac's operates the property, which includes approximately 0.39 acres of land, as a "Circle-K" gas station and convenience store. It has a 2,275-square-foot building and a 2,448-square-foot canopy. *Hall testimony; Pet'r Ex. A at 2.*

8. Before November 10, 2020, Auburn Properties, LLC owned the property. The 2020 property record cards list Auburn Properties LLC's address as 3851 Etna Road in Columbia City. The property was originally assessed for $356,700 in 2020 ($293,100 for parcel 17-10-05-102-003.000-010 and $63,600 for parcel 17-10-05-102-002.000-010). *Pet'r Ex. 2.*

9. On November 10, 2020, Mac's bought the subject property and a third adjacent vacant parcel as part of a portfolio transaction involving seven convenience-store 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. It is not clear what relationship Pride C-Stores had to Auburn Properties. The overall sale price included both real property and non-realty interests. The parties to the sale executed a sales-disclosure form indicating that the sale price attributable to the three real estate parcels was $850,000. *Pet'r Exs. 5-7; Resp't Ex. A at 5-6; Resp't Ex. C.*

10. The sale prompted the Assessor's office to look at the property in comparison to other gas station properties within Auburn's city limits. The Assessor determined that the grade assigned to the subject building and the effective age assigned to a canopy differed greatly from those other properties. In order to equalize the assessments between the properties, she changed those factors, equalized the land values between townships, and raised the neighborhood factor. As a result, the subject property's assessment increased to $583,800 for 2021. *Smethers testimony; Pet'r Exs.2-3.*

11. Then, in December 2022, the Assessor issued Form 113 notices retroactively increasing the subject property's 2020 assessment to $583,800, the same amount as the 2021 assessment. The Form 113 notices name Mac's as the property owner and are addressed to Mac's' mailing address: 4080 Jonathan Moore Pike, Columbus. *Smethers testimony; Resp't Exs. H-I.*

B. Hall's appraisal for 2021

12. David Hall, an MAI appraiser with Integra Realty Resources, prepared an appraisal report valuing the property as of the January 1, 2021 valuation date. He consulted with Michael 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 certified that he complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"), and he developed two generally accepted valuation approaches: the cost and sales-comparison approaches. *Hall testimony; Resp't Ex. A at 13-14, 71-72; Resp't Ex. B.*

13. Hall began his analysis under the cost approach by determining a site value. He identified four sales of comparable vacant sites and adjusted their sale prices to account for material differences between those sales and the subject site that would affect value. He reconciled those adjusted sale prices to a value of $13.50/square foot, or $229,000 (rounded) for the subject site. Hall then used Marshall Valuation Service to determine the replacement cost new of the improvements. He used the economic age-life method to estimate depreciation from physical deterioration and arrived at a depreciated replacement cost of $340,000 (rounded) for the improvements. He then added his estimated site value to reach a conclusion of $570,000 (rounded) under the cost approach. *Hall testimony; Resp't Ex. A at 73-91.*

14. Turning to the sales-comparison approach, Hall identified four sales of comparable gas station/convenience stores, 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; Resp't Ex. A at 92-95.*

15. Hall first determined that three of the four sales included personal property, which he excluded from their sale prices. He 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. The adjusted sale prices ranged from $237.69/sq. ft. to $295.28/sq. ft. with an average of $261.67/sq. ft. Hall reconciled those prices to a value of $260/sq. ft., which he multiplied by the primary building's area (2,275 square feet) to arrive at a value of $590,000 (rounded) under the sales-comparison approach. *Hall testimony; Resp't Ex. A at 96-112.*

16. 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 ($570,000 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. Based on the valuation premise and the "purpose and intended use" of his report, Hall thought it was appropriate to express his opinion as a value range. *Hall testimony; Resp't Ex. A at 113.*

IV. Conclusions of Law and Analysis

17. Mac's raises two claims. First, it claims that because the 2021 assessment increased by more than 5% over the original 2020 assessment, the Assessor bore the burden of proving the assessment was correct. And according to Mac's, neither the allocated sale price nor Hall's appraisal, which was not prepared until after the assessment, sufficed to meet that burden. Second, Mac's argues that the subject property's sale improperly triggered the assessment increase between 2020 and 2021. *Michie argument.*

A. Because Mac's, offered no probative evidence showing that the subject property was assessed for more than its market value-in-use, it failed to meet its burden of proof.

18. We begin with Mac's first claim, which starts with the faulty premise that a repealed specialized burden-of-proof statute required the Assessor to prove that the challenged assessment was correct, rather than Mac's having the burden to prove that the property was assessed for more than its market value-in-use. Having erred as to who had the burden of proof, Mac's failed to offer any probative valuation evidence to support a lower assessment.

1. <u>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</u>.

19. 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 Cnty. Ass'r,* 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).

20. 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 a 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 Cnty. 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 Cnty. Ass'r* ("*Southlake I*"), 174 N.E.3d 177, 179-80 (Ind. 2021).

21. 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).

22. 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. *Michie argument.* Second, Mac's notes that the assessment increased more than 5% over the *original*

assessment for 2020. And while Mac's does not dispute the Assessor's authority to retroactively assess omitted or undervalued property, Mac's argues that there was no change to the property to prompt the Assessor to retroactively increase the 2020 assessment. *Id.* The Assessor disagrees, arguing (1) that the burden-shifting statute does not govern this appeal because, among other things, it was repealed before we held our evidentiary hearing, and (2) that even if the statute were still in effect, the burden would not shift because she properly increased the 2020 assessment to the same level as the 2021 assessment, which prevented the statute's burden-shifting provisions from being triggered. *Price argument.*

23. 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.").

24. 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.

25. 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).

26. 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.*

27. 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.

28. Because we find that Ind. Code § 6-1.1-15-17.2 does not govern these appeals, we need not address the Assessor's alternative argument against applying the statute: that her Form 113 increasing the prior year's assessment to match the assessment under appeal prevented the statute's burden-shifting provisions from being triggered. We therefore do not decide the underlying factual and legal questions surrounding whether the Assessor issued notice to the proper entity(ies) at the proper address(es) for her retroactive assessment to be effective.

2. <u>Mac's failed to make a prima facie case for reducing the assessment</u>.

29. 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.

30. 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).

31. 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. The parties to the portfolio sale in which Mac's bought the subject property less than two months before the relevant valuation date allocated $850,000 of the overall purchase price to the three real estate parcels that included the subject property. But that price is not further allocated between the two parcels that compose the subject property and the adjacent third parcel that is not part of these appeals. In any case, the sale certainly does not support lowering the assessment.

32. 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 closely bracketing the assessment. While the low-end of Hall's range is slightly less than the appealed assessment, the high end is slightly above the assessment. Hall did not reconcile to any specific value within the range, and Mac's does not argue that the

appraisal supports lowering the assessment.[1] We therefore do not find that the appraisal supports a value below the assessment. If anything, it generally supports the assessment.

B. Mac's failed to offer any authority to support its claim that the Assessor engaged in sales chasing or was otherwise prohibited from raising the assessment.

33. Mac's also argues that the subject property's sale impermissibly triggered the assessment increase between 2020 and 2021. Mac's cited no authority and did not develop the legal contours underpinning its argument, but we construe it as a claim that the Assessor engaged in sales-chasing. Sales chasing is "the practice of using the sale price of a property to trigger a reappraisal of that property at or near the selling price." 50 IAC 27-2-11. Courts in several jurisdictions have held that sales chasing and related practices of selective reappraisal and spot assessments violate the Fourteenth Amendment to the United States Constitution and uniformity-and-equality provisions of state constitutions. *Big Foot Stores, LLC v. Franklin Twp. Ass'r*, 919 N.E.2d 621, 625 n.9 (Ind. Tax Ct. 2009) (*citing*, e.g., *Allegheny Pittsburgh Coal Co. v. Webster Cnty. Comm'n* 488 U.S. 366, 340-46, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989); *Township. of W. Milford v. Van Decker*, 120 N.J. 354, 576 A.2d 881, 884-86 (1990)).

34. We find that Mac's failed to make a prima facie case that the Assessor engaged in sales chasing. Although the subject property's sale caused the Assessor's office to examine whether its assessment was equitable compared to other properties within the same sub-classification, i.e., gas stations in Auburn, the Assessor did not reappraise the subject property at or near its allocated sale price. Instead, her office examined various elements of the properties' assessments and adjusted some of those elements for the subject property in order to make the assessments more uniform. Although Mac's argues that, absent physical changes to a property, an assessor cannot adjust a property's characteristics in the years between general reassessments, it offers no authority for that proposition.

[1] To the contrary, Mac's argues that we should disregard Hall's appraisal. *Michie argument.*

V. Conclusion

35. 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. Mac's similarly failed to show that the Assessor engaged in sales-chasing. We therefore order no change to the assessment.

Date: JUNE 6, 2023

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days 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>.