

REPRESENTATIVE FOR THE PETITIONER:

Abraham M. Benson, Faegre Drinker Biddle & Reath LLP
David A. Suess, Faegre Drinker Biddle & Reath LLP

REPRESENTATIVE FOR THE RESPONDENT:

Eric Grossman, Tippecanoe County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Majestic Properties LLC)	Petition Nos.: 79-013-16-1-5-01451-17
)	79-013-17-1-5-02194-17
Petitioner,)	
)	Parcel No.: 79-12-05-434-002.000-013
)	
v.)	County: Tippecanoe
)	
Tippecanoe County Assessor,)	Township: Wabash
)	
Respondent.)	Assessment Years: 2016 & 2017

August 26, 2022

FINAL DETERMINATION

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

INTRODUCTION

1. The Assessor had the burden to prove the 2016 assessment was correct but did not provide evidence that the assessment of the residential property was exactly and precisely correct as required by *Southlake Ind. LLC v. Lake Cty. Ass'r*, 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). Majestic provided a minimally credible estimate of value. Thus, we find for Majestic and order the 2016 assessment reduced to \$76,000. Based on the agreed

appeal management plan we apply a trending factor to the 2016 determination to arrive at a value for 2017.

PROCEDURAL HISTORY

2. Majestic timely filed notices for review with the Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2016 and 2017 assessment years for a property located at 622 Horram Drive in Dayton, IN. For 2016, the PTABOA sustained the assessment at \$23,000 for land and \$86,000 for improvements for a total of \$109,000. For 2017, the PTABOA sustained the assessment at \$23,000 for land and \$87,100 for improvements for a total of \$110,100. Majestic timely appealed to the Board.
3. In total, Majestic appealed 52 different properties. The parties submitted an appeal management plan in which they agreed to try four individual properties, one from each of four specified groups. They agreed to stipulated trending factors for all the other properties in the four groups based on the results of these cases. This property was selected as a representative for one of those groups. Finally, the parties agreed to incorporate the record from the hearing on Parcel #79-06-01-100-008.000.023.
4. On July 28, 2021, Jennifer Thuma, the Board’s Administrative Law Judge (“ALJ”), held a video-conference hearing on Majestic’s petitions. Neither the Board nor the ALJ inspected the property.
5. Appraisers Dale Webster, Deborah Lewellen, and John Sprunger, as well as Tippecanoe County Assessor Eric Grossman testified under oath.
6. The parties offered the following exhibits:
 - Petitioner Exhibit P-1: Appraisal Report prepared by Dale Webster of Cornerstone Appraisal Group,
 - Petitioner Exhibit P-2: Subject property record card,
 - Petitioner Exhibit P-3: Appeal Management Plan,

- Petitioner Exhibit P-4: Special Message to Property Owner forms for the subject property and 1910 Abnaki Drive in West Lafayette.¹
- Respondent Exhibit 1: Subject property record card,
 Respondent Exhibit 2: Residential Appraisal Report prepared by John Sprunger of LightHouse Appraisals,
 Respondent Exhibit 3: Residential Appraisal Summary Report prepared by Deborah Lewellen of Appraisals by Deb Lewellen, Inc.
- Respondent Exhibit R-1: Numerous sales disclosure forms from sales used in Webster's appraisal,
 Respondent Exhibit R-2: Majestic GRM property review report,
 Respondent Exhibit R-3: Indiana Board of Tax Review cases: *Sherwin Friduss v. Dept. of Local Gov't Fin.* (IBTR January 23, 2006); *John Porter v. Tippecanoe County Assessor* (IBTR January 7, 2013); *Sayta Pal Singh v. Lake County Assessor* (IBTR January 26, 2011); and *Roger L. & Pamela K. Shoot v. Anderson Township Assessor (Madison County)* (September 11, 2007),
 Respondent Exhibit R-4: 2014-2015 Sales – LLC, Inc, Corp Buyer report,
 Respondent Exhibit R-5: 2014-2015 Sales – LLC, Inc, Corp Buyer Statistics report,
 Respondent Exhibit R-6: Other Appraisals prepared by Dale Webster of Cornerstone Appraisal.²

7. The record also includes the following: (1) all pleadings, briefs and documents filed in this appeal, (2) all orders and notices issued by the Board or ALJ; and (3) the two-volume hearing transcript.

OBJECTIONS

8. Majestic objected to Respondent's Exhibit R-6, an exhibit containing two other appraisals prepared by Majestic's appraiser, Dale Webster, arguing that they are irrelevant because they are different properties and do not relate to the subject property at issue. The Assessor argued that "the failure to utilize similar methodology across their bodies of

¹ The Petitioner submitted Petitioner Exhibits P-8, P-9, P-10, and P-11 but did not offer them into evidence. Petitioner Exhibits P-5, P-6 and P-7 were listed on Petitioner's Exhibit List, but no documents were submitted.

² The Respondent submitted Respondent Exhibits 4 and R-7 but did not offer them into evidence.

work for similar purposes is evidence of bias, and relevant to this case.” The ALJ took the objection under advisement. We agree with the Assessor that other work by an Appraiser can be relevant to his credibility, and his opinion of value. Thus, we overrule the objection and admit Respondent’s Ex. R-6 into evidence. *Resp’t Ex. R-6; Tr. at 69-71 & 38.*

9. Majestic objected on relevancy grounds to a number of questions the Assessor asked Webster regarding whether it was important to vet information obtained from an entity that may have a conflict of interest. The ALJ took the objection under advisement. We disagree with Majestic. The procedures an appraiser takes to vet the information they obtain is extremely relevant to their opinion of value. Thus, we overrule this objection and admit the testimony. *Tr. at 74-76.*
10. Majestic objected to several questions on the grounds that they were “putting words in the witness’s mouth” or an inaccurate characterization of the evidence. The ALJ took these objections under advisement. We overrule the objections but note that we do not consider the questions themselves to be evidence. *Tr. 141-142 & 164-165.*
11. Majestic made a number of objections to Respondent’s Exhibit R-1, numerous sales disclosure forms regarding sales used in the Webster appraisal. Majestic objected both to the exhibit in its entirety as well as to individual components. In particular, Majestic argued that the Assessor failed to lay sufficient foundation as to their authenticity and on the grounds that they were hearsay. The Assessor responded that the information was submitted to refute information used in Webster’s appraisal. We agree with Majestic that the Assessor did little to authenticate the exhibit. The Assessor also made no argument that the exhibit was not hearsay or fell within an exception to the hearsay rule. We also note that we do not strictly apply the rules of evidence. In this case we find the probative value of the exhibit outweighs any potential prejudicial effect and admit the exhibit pursuant to 52 IAC 4-6-9(d), which provides that we may admit hearsay that is objected to as long as it is not the sole basis for our determination. *Resp’t Ex. R-1; Tr. at 106-134; 376-78.*

12. Majestic objected to the admission of Respondent's Exhibits R-2, R-4, and R-5 on the grounds that they contained hearsay. We overrule the objections and admit the evidence pursuant to 52 IAC 4-6-9(d), which provides that we may admit hearsay that is objected to as long as it is not the sole basis for our determination. *Resp't Exs. R-2, R-4 & R-5; Tr. at 195-197 & 202-203.*
13. As the Assessor introduced Respondent's Exhibit R-3, Majestic objected "but I would say Mr. Grossman is not an attorney, and to the extent he's trying to draw legal conclusions, I would object to that." Mr. Grossman is representing himself in his official capacity as the County Assessor. Thus, he is entitled to make any arguments an attorney might make. To suggest otherwise runs counter to the principles of self-representation. For that reason, we overrule the objection. Majestic also objected to some of Mr. Grossman's testimony on the grounds that it was legal argument and not appropriate for direct examination. We note that we appropriately consider Mr. Grossman's arguments to be arguments, rather than testimony. *Resp't Ex. R-3; Tr. at 198-199 & 201.*
14. Majestic objected to testimony from the Assessor stating that corporate buyers of rental single-family homes were buying the properties for their income-generating potential on the grounds that the testimony assumed facts not in evidence. The ALJ took the objection under advisement. We find the objection goes more to weight rather than admissibility and overrule the objection. *Ex. R-4; Tr. at 204-205.*
15. Majestic objected to some of the Assessor's testimony on the grounds that he had not established that he was "any sort of statistician or expert with respect to statistics." The Assessor responded that he is not a statistical expert, but the math is independently verifiable, stands on its own and that it does not take special skills to understand "basic high school level math." We agree with the Assessor and overrule the objection. *Tr. at 206-208.*

16. Majestic objected to questions to Sprunger regarding the income approach to value on the grounds that it was “outside the scope of what the appraiser did.” Appraisers may testify about other possible methods of valuation that they considered in developing their opinion of value, and such testimony is extremely relevant to their conclusions and credibility. Majestic pointed to no authority, nor are we aware of any, that would limit an appraiser’s testimony to the confines of their appraisal report. Thus, we overrule this objection. *Tr. at 253-254.*
17. Majestic objected to several questions to Lewellen about why she developed a GRM for other similar properties but not the subject property on the grounds that it was not relevant. The Assessor responded that it is relevant for an appraiser to discuss similar scopes of work done for the same client and to compare the other appraisals to the subject property’s appraisal as it relates to the overall body of work. An appraiser’s decision regarding how to approach similarly situated properties is relevant to her credibility and overall opinion of value. Thus, we overrule the objection and admit the testimony. *Tr. at 296-297.*

FINDINGS OF FACT

I. The Subject Property

18. The subject property consists of a house and associated land located at 622 Horram Drive in Dayton, Indiana. The ranch-style tract house was built in 2003 and is used as a rental property. The house has 1,337 sq. ft. of finished living area on a slab foundation and a 483 sq. ft. attached garage. The roof is original asphalt shingles with aluminum gutters and downspouts. It has a covered concrete front porch and concrete rear patio. *Pet’r Exs. P-1 at 23 & P-2; Resp’t Ex. 1; Tr. at 335 & 362.*

II. Sprunger’s Appraisal

19. The Assessor hired John A. Sprunger, owner of LightHouse Appraisals, to appraise the market value of the fee simple interest of the subject property as of January 1, 2016. Sprunger is an Indiana certified residential appraiser with 17 years of experience.

Sprunger certified that he prepared his appraisal in compliance with USPAP. *Tr. at 245-252.*

20. Sprunger began by looking at MLS listings, reading descriptions, and looking at photographs. Next, he verified the sale price and transaction date with public records. Sprunger noted that he researched all available sales, but they do not always indicate whether the single-family home is vacant, owner-occupied or a rental. Especially when doing a retrospective appraisal, the occupancy is often hard to determine. *Tr. at 255-257, 271-272 & 345.*
21. Sprunger's appraisal indicates that while the property is currently rented, a typical buyer for the property would be an owner-occupied buyer. He noted there are very few single-family rental homes in the subject neighborhood. He conducted an external inspection of the property and determined the quality of construction to be average. He observed no locational obsolescence. *Resp't Ex. 2; Tr. at 340-345.*
22. Sprunger only prepared a sales-comparison approach. He selected six comparable properties of similar size and features that were located near the subject property. The sale dates ranged from September to November of 2015. He made adjustments for a number of factors including site, porch/patio/deck, fireplace, fence, concessions, and gross living area. After adjustment, the sale prices ranged from \$105,171 to \$124,500. Giving the most weight to the sales that required the least adjustment, he reconciled to a value of \$117,000 as of January 1, 2016. He noted that "the income approach and cost approach were not used because they do not reflect the thinking of the typical buyer for existing single family homes." Sprunger also testified he did not develop a GRM because it can vary a lot and it is not a good indication of the property's value. *Resp't Ex. 2; Tr. at 254, 261, 340-346.*
23. Sprunger testified that a residential income producing property's operating expenses do not always affect the property's value. For example, if a rental home is placed on the market for sale in a neighborhood where the typical buyer will occupy the property, the

buyer does not necessarily look at the rental property's tax liability, because the buyer can file for a homestead exemption³ and the property tax cap will be reduced from 2% to 1%. Sprunger posited that if a rental property and owner-occupied property with identical features were both available for sale, the "values" would not differ. *Tr. at 264-267, 280 & 344-345.*

III. Lewellen's Appraisal

24. The Assessor also hired Deborah Lewellen, owner of Appraisals by Deb Lewellen, Inc., to appraise the market value of the fee simple interest of the subject property as of January 1, 2016. Lewellen is an Indiana certified residential appraiser, who started her appraisal company in December of 2010. *Resp't Ex. 3; Tr. at 294, 301 & 347.*

a. Lewellen's Testimony

25. Lewellen certified that her appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). She developed her opinion of value using the sales-comparison approach and the cost approach. Lewellen testified that she did not develop the GRM or income approach because she did not have credible rental rate information from the relevant time period. *Resp't Ex. 3; Tr. at 294-297, 302, 348 & 353.*

26. In preparing her appraisal, Lewellen inspected the exterior of the subject property, but used MLS interior photographs from a previous listing for the interior. *Resp't Ex. 3; Tr. at 303 & 351-352.*

27. Lewellen testified from an appraisal perspective an income generating home and owner-occupied home both have the same use, as residential property. She further testified that the 1% & 2% tax caps do not lower the assessed value, but rather reduce the amount of taxes to be paid on the property. *Tr. at 304-306 & 351-352.*

³ Sprunger used the term "homestead exemption" during his presentation. There is no exemption that exempts homesteads from taxation. The Board infers that Sprunger is referring to the standard deduction for homesteads provided for under Ind. Code § 6-1.1-12-37, and we will use the term "homestead deduction" hereinafter.

28. For her sales-comparison approach, she looked for comparable sales located near the subject property. She looked for properties like the subject in terms of style, size, age, condition, quality, bedroom count, number of bathrooms and garage size in order to make minimal adjustments. She selected comparables that sold from September to November of 2015 for prices ranging from \$117,000-\$128,000. She adjusted the sales for factors such as gross living area, and terms of sale. She ultimately settled on a value of \$120,000 as of January 1, 2016, under the sales-comparison approach. *Resp't Ex. 3; Tr. at 298-299 & 349-351.*
29. Lewellen also developed the cost approach. She estimated a total cost new of \$129,731 and a site value of \$16,300. She then deducted physical depreciation of \$25,946 to arrive at a value of \$120,085 under the cost approach. She did not analyze whether the subject property suffered from functional or external obsolescence and she gave no weight to the cost approach. Instead, she used it as a check on her sales-comparison approach. *Resp't Ex. 3; Tr. at 315-320 & 354.*
30. Based on her sales-comparison approach, Lewellen estimated a value of \$120,000 for the subject property as of January 1, 2016. *Tr. at 354-355.*

IV. Grossman Testimony

31. The Assessor, Eric Grossman, also offered testimony based on his own research. First, he analyzed the 141 sales used in the Webster appraisal's gross rent multiplier calculation. He noted that Webster's report did not include the date of sale, or a buyer or seller. After examining the sales disclosure forms, he found that 47 of the properties were owned by Majestic,⁴ 42 properties were sheriff sales, and 38 sales were "bank sales or REO transactions." *Resp't Exs. R-2 & R-3; Tr at 197-202 & 386.*

⁴ Grossman stated in his Brief that 63 of the properties were purchased by Majestic. *Resp't Br. at 13.*

32. Grossman also developed a report analyzing the “difference in distress sales level of value versus undistressed sales.” To determine this, he looked at sales in the 24 month period prior to the January 1, 2016, assessment date. He found that distressed sales showed a different range of values than typical sales. Grossman admitted that he never verified the sales data with the buyers, sellers, brokers, or the sheriff. *Resp’t Ex. R-4 & R-5; Tr. at 203-210 & 230-239.*

V. Webster’s Appraisal

33. Majestic hired Dale Webster of Cornerstone Appraisal Group to appraise the market value-in-use of the fee simple interest in the property. Webster holds MAI, SRA, and CCIM designations and is an Indiana certified general appraiser. In his 45 years of appraisal experience, he has appraised a wide variety of properties, including single-family homes, multi-unit apartments, commercial offices, and retail buildings. He certified that his appraisal complied with USPAP. *Pet’r Ex. P-1 at 9; Tr. at 16-18, 358 & 361-362.*

a. Webster’s Research and Overview

34. Webster valued the property as of the January 1, 2016, assessment date. He noted the homes in the subject property’s subdivision ranged from 9 years to 18 years old. He also found the subject property backs up to a drainage ditch. He found 51 sales in the neighborhood between 2011 to 2016, but he did not research the details of the sales. *Pet’r Ex. P-1 at 21; Tr. at 358-359 & 373.*

35. Webster considered all three generally recognized approaches to value—the cost, sales-comparison and income approaches. He ultimately developed only the income approach. Webster did not develop the cost approach because of the age, condition and obsolescence he observed. He did not develop the sales-comparison approach because the majority of the data was for owner-occupied single-family homes and there was little reliable data for single-family rental properties. He also believed that the sales

comparison approach did not reflect the market participants motivation for rental property. *Pet'r Ex. P-1 at 27-30; Tr. at 32-33, 359-364.*

b. Webster's Direct Capitalization Approach⁵

36. For his first income approach, Webster began by estimating market rent. He looked to a variety of sources including data from Majestic, his own files, and national and regional databases. He concluded to a monthly rental rate of \$1,095. He also noted this reflected the actual rent of the subject property. He found no miscellaneous income, and calculated the annual income at \$13,140. *Pet'r Ex. P-1 at 28- 34; Tr. at 33-40 & 365.*
37. Webster estimated the vacancy and rent loss at 7%. His appraisal report states that he used the vacancy rate from the "subject's own history." He testified that he used an average rate from Majestic's portfolio of 60 properties. He thought Majestic was a good representation of the market. He also examined the local, regional and national markets. He estimated insurance, maintenance, office and miscellaneous expenses, management fees and reserves at 45.46%. He used insurance, maintenance, management, and miscellaneous expenses that were reported by the subject property's owner, but did not verify the information. He also noted that some of the expenses were averages for all Majestic properties, and were not specific to the subject property. After applying the vacancy and rent loss, and deducting expenses, he arrived at a net operating income of \$6,665. *Pet'r Ex. P-1 at 31-32 & 34-35; Tr. at 42-47, 74-75, 137-138, 170, & 366-369.*
38. Webster used a mortgage equity analysis to develop a capitalization rate. He also looked at Realty Rates for apartments – townhouses and sales of multifamily properties throughout Indiana to support his capitalization rate. Based on this information, he chose an overall rate of 6.912%. Next, he loaded the county's property tax rate of 1.8871% for a total capitalization rate of 8.7991%. After applying the loaded rate to his net operating

⁵ Webster sometimes referred to this as a "Mortgage Equity Analysis." *Pet'r Ex. P-1 at 44.*

income, he arrived at a rounded value of \$76,000. *Pet'r Ex. P-1 at 31-33 & 35-38; Tr. at 368-369 & 383.*

c. Webster's GRM Approach

39. Webster also developed an income approach using the gross rent multiplier ("GRM") method. The GRM is a common method to value properties with less than four units. Webster described the GRM as the factual relationship between the rent and sale price because it relates to the potential income a property could yield. He used this as a check on his other income approach. *Pet'r Ex. P-1 at 39; Tr. at 55-58 & 369.*
40. He began developing his GRM by identifying competing single-family homes that were similar in location, age, style, and similarity of generating tenants. He collected data from Zillow, MLS, and sales disclosure forms filed in the Assessor's office. He selected 140 properties that sold between 2003 and 2016. *Pet'r Ex. P-1 at 40-41; Tr. at 56-59, 113-135 & 369.*
41. Webster calculated the GRM mean at 6.95 (rounded). The GRMs ranged from a minimum of 4.34 to a maximum of 10.30. He testified that when the GRM is at a 4 or 10, it suggests that the properties are not similar enough to compare. He ultimately settled on a GRM of 6.25 for the subject property. *Pet'r Ex. P-1 at 42; Tr. at 59-61, 181 & 369.*
42. Webster then multiplied the subject property's annual rent by the GRM to arrive at a value of \$82,000 (rounded) for the subject property. *Pet'r Ex. P-1 at 42; Tr. at 370.*

d. Webster's Reconciliation

43. Webster reconciled these analyses, giving the most weight to his direct capitalization approach. He concluded to a market value-in-use for the subject property of \$76,000 as of January 1, 2016. *Pet'r Ex. P-1 at 44; Tr. at 62 & 370.*

BURDEN OF PROOF

44. Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.⁶ The petitioner has the burden of proving the assessment is incorrect and what the assessment should be. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022). Until its repeal on March 21, 2022, however, the burden-shifting statute created an exception to the general rule and required an assessor to prove that a challenged assessment was “correct” where the assessment represented an increase of more than 5% over the prior year’s assessment or where it was above the level determined in a taxpayer’s successful appeal of the prior year’s assessment, regardless of the amount of the increase. I.C. § 6-1.1-15-17.2(a)-(b), (d) (repealed by P.L. 174-2022 § 32, effective on passage). Even where those circumstances existed, the burden remained with the taxpayer if the assessment that was the subject of the appeal was based on “substantial renovations or new improvements,” zoning, or uses that were not considered in the prior year’s assessment. I.C. § 6-1.1-15-17.2(c). To meet the burden, an assessor’s evidence had to “exactly and precisely conclude” to the assessment. *Southlake Ind. LLC v. Lake Cty. Ass'r* (“*Southlake IP*”), 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). If the assessor had the initial burden and failed to meet it, the burden shifted to the taxpayer to prove the correct assessment value. 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 P*”), 174 N.E.3d 177, 179 (Ind. 2021).⁷
45. Here, 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 that a statute also apply retroactively, or “strong and compelling” reasons dictate

⁶ The Department of Local Government Finance adopted a new assessment manual for assessments from 2021 forward. 52 IAC 2.4-1-2.

⁷ At the same time the Legislature repealed the burden-shifting statute, it enacted Ind. Code § 6-1.1-15-20, which also assigns an assessor the burden of proof where an appealed assessment represents an increase of more than 5% over the prior year’s assessment. It no longer requires an assessor to prove that the assessment is “correct” and expressly allows the Board “to decide the true tax value of the property as compelled by the totality of the probative evidence before it,” and to determine a value that is different than the appealed assessment or than any value proposed by the parties or their witnesses. I.C. § 6-1.1-15-20 (2022). But that new statute applies only to appeals filed after its March 21, 2022 effective date, and therefore does not apply to these appeals. I.C. § 6-1.1-15-20(f).

retroactive application. *State v. Pelley*, 828 N.E.2d 915, 919 (Ind. 2005). The same is true for acts repealing existing statutes. 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.”)).

46. Thus, we must determine what constitutes a prospective, as opposed to a retroactive, application. To answer that question, we must determine whether the “new provision attaches new legal consequences to events completed before its enactment.” *Church v. State*, 2022 Ind. Lexis 361 *9 (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 9-10. 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.* (quoting *R.I.*

Insurers' Insolvency Fund v. Leviton Mfg. Co., 716 A.2d 730, 735 (R.I. 1998). *Church* involved a statute governing depositions in criminal cases that was passed after the crime, but before the deposition was scheduled. The Court applied the legislative change to the deposition as the triggering event. *Id.*

47. The burden-shifting statute addresses the burden of proof in assessment appeals. So does its repeal, the effect of which is to return cases back to the default rule governing the burden of proof in assessment appeals generally. The operative event is when a hearing on the merits convenes. The burden-shifting statute had not yet been repealed at the time of the hearing. For these reasons, we apply the law as it existed at the time of the evidentiary hearing.
48. Here, the parties agreed the assessed value of the subject property increased by more than 5% from 2015 to 2016. The property record card shows the assessment increased from \$58,600 in 2015 to \$109,000 in 2016. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the Assessor has the burden to prove the 2016 assessment is exactly and precisely correct.

ANALYSIS

49. Indiana assesses real property based on its “true tax value” which is determined under the rules of the Department of Local Government Finance (“DLGF”). Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). “True tax value” does not mean either “fair market value” or “the value of the property to the user.” Ind. Code § 6-1.1-31-6(c) and (e). In accordance with these statutory directives, 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.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.
50. The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. MANUAL at 2. In an assessment appeal, parties may offer any

evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally accepted appraisal principles. *Id.* at 3; *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting an assessment's presumed accuracy).

51. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2016 assessments, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5. In addition, Ind. Code § 6-1.1-4-39 provides that the GRM "is the preferred method of valuing...real property that has at least one (1) and not more than four (4) rental units...."
52. Here, the Assessor had the burden to prove that the 2016 assessment of \$109,000 was exactly and precisely correct. As discussed above, the Assessor presented two appraisals. Sprunger estimated a value of \$117,000, while Lewellen estimated a value of \$120,000. Neither of these estimates "exactly and precisely" supports the current assessment of \$109,000. Nor did the Assessor offer any other reliable, market-based evidence to support the current assessment. Thus, the Assessor failed to meet his burden of proof. We now turn to whether Majestic proved a different value.
53. Majestic presented USPAP compliant appraisal prepared by Dale Webster that valued the subject property at \$76,000. As the Assessor points out, there are significant problems with Webster's opinion. The most significant of these are (1) his reliance on historical data from the subject property and Majestic, (2) his lack of explanation for some of the most important components of his valuation, and (3) the use of distressed sales in his GRM analysis. We address each issue in turn.
54. As discussed above, many of Webster's conclusions were based on "historical data." This included data from the subject property, such as the actual rental rate, or the average

of data from Majestic's "portfolio", such as for his vacancy and expense estimates. While the use of historical data can be useful, it should always be coupled with an examination of the relevant market. *Indiana MHC, LLC v. Scott County Ass'r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013). Webster did offer some explanation for how he considered the local market in certain aspects of his appraisal, while in other cases we are left to speculate. We find this failure detracts from the reliability of his opinion.

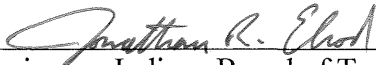
55. We also note that Webster provided scant explanation for some of his opinions. Although he listed a litany of sources from which he developed his rental estimates, he did little to show how those sources supported his conclusions. He provided similarly vague explanations for a number of his other decisions. We find this failure seriously detracts from the reliability of his opinion.
56. Finally, we note that the Assessor demonstrated that many of the properties Webster used in his GRM analysis were distressed sales. Webster provided little explanation for how he verified his sales, or why it was acceptable to use such sales in a GRM analysis. We find this concerning, but note that Webster did not primarily rely on his GRM approach.
57. Taken together, we find these concerns seriously undercut the reliability of Webster's opinion. But we also recognize that Webster is a licensed appraiser with a great deal of experience. Overall, we find Webster's appraisal to be a minimally reliable opinion of value.

CONCLUSION

58. As discussed above, the Assessor failed to meet the burden of proof because he did not present reliable evidence that exactly and precisely supported the current assessment. Majestic presented a USPAP compliant appraisal that, despite its flaws, was minimally reliable evidence of value. Thus, we order the 2016 assessment be changed to the value from the Webster appraisal, \$76,000. In accordance with the agreed appeal management

plan, we apply a trending factor of 1.01 rounded to the nearest \$100 to arrive at the value for 2017. Thus, we order the 2017 assessment changed to \$76,800.⁸


The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.



Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

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

⁸ \$76000*1.01 = \$76,760 rounded to \$76,800.