

REPRESENTATIVE FOR PETITIONER: Edward Marek, *pro se*

REPRESENTATIVE FOR RESPONDENT: Ayn K. Engle, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

EDWARD MAREK,)	Petition No.: 45-035-20-1-5-00266-24
)	
Petitioner,)	
)	Parcel No.: 45-11-28-457-007.000-035
v.)	
)	
LAKE COUNTY ASSESSOR,)	County: Lake
)	
Respondent.)	Assessment Year: 2020

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. Indiana Code § 6-1.1-15-17.2 (repealed March 21, 2022) lays out shifting burdens of proof in appeals where the challenged assessment represents an increase of more than 5% over the prior year's assessment, including a requirement that an assessor's evidence "exactly and precisely conclude to" the challenged assessment. *Southlake Ind. LLC v. Lake Cty. Ass'r* ("Southlake IIF"), 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). If neither party meets its burden, the statute requires the assessment to revert to the previous year's level. Because Edward Marek filed his appeal of the subject property's 2020 assessment with the Lake County Property Tax Assessment Board of Appeals ("PTABOA") before I.C. § 6-1.1-15-17.2's repeal, it governs his appeal. And neither party met its burden of proof under that statute, meaning the assessment must revert to its 2019 level.

Procedural History

2. On May 17, 2021,¹ Edward Marek filed a Form 130 petition contesting the subject property's 2020 assessment. On March 26, 2024, the PTABOA issued a decision sustaining the Assessor's 2020 assessment of \$269,900 (\$57,300 for land and \$212,600 for improvements). Marek then timely filed a Form 131 petition with us.
3. On May 8, 2025, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on Marek's petition. Neither he nor the Board inspected the subject property. Marek represented himself. Ayn K. Engle appeared as counsel for the Assessor. Marek and John Yanek, a consultant with Nexus LTD, testified under oath.
4. Marek submitted the following exhibits:
 - Exhibit P-1-A: Page 1 of Form 130,
 - Exhibit P-1-B: Page 2 of Form 130,
 - Exhibit P-2-A: Indiana Code § 6-1.1-15-1.2,
 - Exhibit P-2-B: Indiana Code § 6-1.1-15-1.2, cont'd,
 - Exhibit P-3: Form 114,
 - Exhibit P-4-A: Page 1 of *Edward T. & Renita A. Marek II v. Lake Cty. Ass'r*, Pet. No. 45-032-02-1-5-00608 (IBTR June 30, 2005),
 - Exhibit P-4-B: 2011 Form 113,
 - Exhibit P-4-C: 2012 Form 113,
 - Exhibit P-4-D: Screenshot showing the subject property's 2013 assessment,
 - Exhibit P-4-E: Listing of the subject property's assessments from 2002-2022,
 - Exhibit P-4-D: Summary of House Bill 1166 (2021).
5. The Assessor submitted the following exhibits:
 - Exhibit R-1: Subject property record card ("PRC"),
 - Exhibit R-2: Sales analysis,
 - Exhibit R-3: PRCs for tri-level homes included in the sales analysis,
 - Exhibit R-4: PRCs for quad-level homes included in the sales analysis,
 - Exhibit R-5: House Enrolled Act 1166 (2021),
 - Exhibit R-6: Form 130,
 - Exhibit R-9:² Digest of Introduced House Bill 1166 (2021),

¹ The hand-written date in the signature box is May 22, 2021, but the form is stamped as received by the Saint John Township Assessor on May 17, 2021. See *Exs. P-1-A, R-6*.

² The Assessor did not offer Exhibits R-7 and R-8.

Exhibit R-10: Actions for House Bill 1166 (2021).

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

Findings of Fact

7. The subject property is located at 10135 West 93rd Avenue in Saint John. It is a .53-acre parcel with a quad-level, single-family home. The home contains 2,016 square feet of above-ground finished living area and a 624-square-foot unfinished basement. It was built in 1986. The property also has a detached garage, and a utility shed. *Ex. R-1.*
8. The property was assessed for \$171,800 in 2019. In 2020, the assessment increased by 57% to \$269,900. The assessment has risen and fallen between 2002 and 2022, starting at \$213,100, dropping as low as \$168,900 in 2018, and increasing to \$291,100 in 2022. *Yanek testimony; Ex. P-4-E; Ex. R-1.*
9. Marek has successfully appealed the subject property's assessment in the past. Although he claimed to have won five appeals before the PTABOA and one or two before us, he offered scant information to support those claims. At most, Marek showed that he successfully appealed his 2002 and 2010 assessments, and that he and the Assessor settled his 2011 and 2012 appeals based on the result from his 2010 appeal. *Marek testimony; Yanek testimony; Exs. P-4-A – P-4-D.*
10. The Assessor's witness, John Yanek, prepared an analysis of eleven purportedly comparable properties that sold in 2019 and 2020. Nine of the homes are tri-level construction, and two are quad-level.³ The analysis lists each home's quality grade, condition, year built, parcel size, above-grade and basement square footage, and the sale

³ Yanek explained that quad-level and tri-level are similar split-level homes except that a quad-level has a basement underneath, while a tri-level has a crawl space or slab foundation.

price and date. The homes' above-grade area ranged from 1,782 to 2,442 square feet. They were built between 1975 and 2008. Two had basements, and all but one had a quality grade of C+1. *Yanek testimony; Exs. R-2 – R-3.*

11. The sale prices ranged from \$240,000 to \$330,000, with an average of \$290,209 and a median of \$294,900. The unit prices ranged from \$124.52 to \$150.00 per above-grade square foot, with an average of \$138.05/sq. ft. and a median of \$136.18/sq. ft. Yanek concluded that the subject property's assessment of \$269,900 (\$133.88/sq. ft.) was on the low end of the range from the comparable sales. *Yanek testimony and argument; Ex. R-2.*

Parties' Contentions

A. Marek's Contentions

12. Marek pointed to "rollercoaster increases" in his assessment over the past 20 years. He believes that the increase in his assessment between 2019 and 2020 stemmed at least partly from the fact that his neighbor spent \$85,000 installing multiple decks and a swimming pool before selling his home. Marek also argued that House Bill 1166, which enacted I.C. § 6-1.1-13-13, required his assessment to be frozen after he won his previous appeals. *Marek argument.*
13. As for Yanek's analysis, Marek argued that the properties on which that analysis was based are from quiet neighborhoods with sidewalks and playgrounds, while the subject property is on a busy street and lacks those amenities. Marek also claimed that the analysis contained errors regarding things like the number of bedrooms and bathrooms, and the size of the homes. *Marek argument.*
14. Finally, Marek complained that local officials took too long to decide his appeal. According to Marek, I.C. § 6-1.1-15-1.2 required the Assessor to contact him about his appeal within 180 days of filing, but he had to wait almost 2 ½ years. He claimed it was

impossible for him to know if he needed to appeal his 2021 or 2022 assessments because he did not hear anything regarding his 2020 appeal. *Marek argument.*

B. The Assessor's Contentions

15. The Assessor argued that I.C. § 6-1.1-13-13 does not apply to this appeal because the statute did not become effective until January 1, 2022, which was after the assessment date at issue, and after Marek filed his initial appeal. In addition, while Marek's Form 131 petition asked that we freeze his assessment for five years, the final version of HB 1166 did not contain a five-year freeze on assessments in the event of a successful appeal. Instead, the enacted statute only limits changes to an assessment until the first year of the next four-year assessment cycle. The previous appeals Marek pointed to all involved assessments from earlier assessment cycles. In any case, the statute does not apply where the assessment reduction from a previous appeal resulted from a settlement agreement. *Engle argument.*
16. To the extent Marek challenged the accuracy of the assessment, however, the Assessor acknowledged she had the burden of proof. But she argued that Yanek's analysis shows the property was fairly assessed. *Engle argument.*

Conclusions of Law and Analysis

A. Marek's remedy for local officials' lack of timeliness in addressing this appeal was to file directly with us.

17. Marek expressed frustration that local officials took 2 ½ years to address his appeal. While we do not condone such delays, we note that the statutory remedy in these circumstances is to bypass the PTABOA and file an appeal directly with us. I.C. § 6-1.1-15-1.2(k) (providing that if more than 180 days pass without a PTABOA issuing a determination, a taxpayer may initiate an appeal with the Board). We hear cases "de novo," meaning without regard to what occurred during the proceedings before the matter

was appealed to us. Based on this, a taxpayer is not entitled to prevail by default solely on the grounds of a lack of diligence by local officials before the matter reached us.

B. I.C. § 6-1.1-13-13 does not apply to this appeal.

18. Marek primarily argued that I.C. § 6-1.1-13-13 prohibited the Assessor from raising the subject property's assessment following his earlier successful appeals. Broadly speaking, I.C. § 6-1.1-13-13, which became effective January 1, 2022, sets up a regime where once a taxpayer successfully appeals an assessment that meets certain defined criteria, assessing officials are prohibited from increasing the property's assessment in succeeding years for any reason other than applying an "annual adjustment factor." I.C. § 6-1.1-13-13(b); 2021 Ind. Acts 178 § 2. The prohibition lasts until the "first year of the next four (4) year cyclical assessment cycle." *Id.* During that period, the taxpayer cannot appeal an increased assessment unless he "believes that the increased assessment is arbitrary and capricious and not made consistent with the annual adjustment factor used by the assessing official to adjust property values for a tax year." *Id.* And the taxpayer has the burden of proof in such an appeal. *Id.* (providing that the burden-shifting provisions of I.C. § 6-1.1-15-17.2 or I.C. § 6-1.1-15-20 do not apply). The statute, however, does not apply if "the reduction in assessed value is the result of a settlement agreement between the taxpayer and the assessing official." I.C. § 6-1.1-13-13(c)(1).
19. Indiana Code § 6-1.1-13-13 does not apply to this appeal for myriad reasons. First, the statute did not become effective until after the assessment at issue. Statutes apply prospectively only unless the Legislature "unequivocally and unambiguously" intended retroactive application, or "strong and compelling" reasons dictate such an application. *State v. Pelley*, 828 N.E.2d 915, 919 (Ind. 2005). The Legislature did not clearly evince an intent for I.C. § 6-1.1-13-13 to be retroactive; to the contrary, it made the statute effective January 1, 2022. *See* 2021 Ind. Acts 178, § 2. Marek did not offer any reason, much less a compelling one, to apply the statute retroactively.

20. Even if we were to apply I.C. § 6-1.1-13-13 retroactively, it would not affect Marek's appeal. The statute's prohibitions extend only until the first year of the next four-year assessment cycle. And the statute is not triggered by appeals where the assessment is reduced by agreement between the taxpayer and assessing official. Based on the evidence before us, the last appeal in which Marek successfully obtained a reduction other than through a settlement agreement was for the 2010 assessment date. There have been general reassessments or four-year cyclical reassessments since then. And it would have been Marek's burden to show that the increase in the subject property's assessment was not made consistent with the annual adjustment factor the Assessor used to adjust property values. But Marek offered no probative evidence to show that was the case.

C. Because neither party met its burden of proof under I.C. § 6-1.1-15-17.2, the assessment must revert to its 2019 level.

21. Generally, a taxpayer has the burden of proof when challenging a property's tax assessment. Over the years, various statutes, including I.C. § 6-1.1-15-17.2, have created an exception to that rule. Although the Legislature repealed I.C. § 6-1.1-15-17.2, the Tax Court has held the statute applies to appeals that were filed before its effective repeal date of March 21, 2022, and that remained pending. *Elkhart Cty. Assessor v. Lexington Square, LLC*, 219 N.E.3d 236, 244 (Ind. Tax Ct. 2023)⁴ Because Marek filed his Form 130 petition with the PTABOA before I.C. § 6-1.1-15-17.2's repeal, it applies to his appeal.
22. Indiana Code § 6-1.1-15-17.2 requires an assessor to prove that a challenged assessment is "correct" where, among other things, the assessment represents an increase of more than 5% over the prior year's assessment, as last corrected by an assessing official,

⁴ On the same day it repealed I.C. § 6-1.1-15-17.2, the Legislature enacted a replacement burden-shifting statute, I.C. § 6-1.1-15-20, which applies to appeals filed after March 21, 2022. In *Crandall v. Bartholomew Cty. Ass'n*, 246 N.E.3d 350 (Ind. Tax Ct. 2024) the Tax Court seems to have assumed, but did not explicitly hold, that the filing date with the Board, rather than the initial filing with the PTABOA, determines which of the two statutes applies. In contrast, *Orange Cty. Assessor v. Stout*, 996 N.E.2d 871, 873 (Ind. Tax Ct. 2013) held that a prior burden-shifting statute was intended to apply the same burden of proof throughout the entire appeal process. Based on *Stout* and the plain language of I.C. § 6-1.1-15-20, we apply I.C. § 6-1.1-15-17.2 to appeals that were initially filed with the PTABOA prior to March 21, 2022, and I.C. § 6-1.1-15-20 to appeals filed with the PTABOA after that date.

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). As already explained, the subject property's assessment increased by 57% between 2019 and 2020, and the Assessor acknowledged she had the burden of proof.

23. To meet her burden under I.C. § 6-1.1-15-17.2, an assessor must offer probative evidence that “exactly and precisely” concludes to the challenged assessment. *Southlake III*, 181 N.E.3d at 489. If the assessor fails to meet her burden, the taxpayer can prove that his proffered assessed value is correct. If neither party meets their burden, the assessment reverts to the prior year's level. I.C. § 6-1.1-15-17.2(b); *Southlake Ind., LLC v. Lake Cty. Ass'r* (“*Southlake II*”), 174 N.E.3d 177, 179-80 (Ind. 2021).
24. Property in Indiana is assessed based on its “true tax value,” which 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). 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). 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 2.⁵
25. To show a property's true tax value, parties “must present objectively verifiable, market-based evidence” of the property's value. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal “methodology” of the “assessment regulations.” *PIA Builders & Developers, LLC v. Jennings Cty. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). This is because the “formalistic application” of the procedures and schedules

⁵ The 2011 Manual, which was in effect on the assessment date at issue here, has since been repealed and replaced by the 2021 Manual, which uses the same definition. 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

from the DLGF's assessment guidelines lacks the market-based evidence necessary to establish a specific property's market value-in-use. *Piotrowski*, 177 N.E.3d at 133.

26. Market-based evidence may include "sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles." *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that "another property is 'similar' or 'comparable' simply because it is on the same street are nothing more than conclusions ... [and] do not constitute probative evidence." *Marinov v. Tippecanoe Cty. Ass'r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property's value as of the valuation date. *O'Donnell v. Dep't of Local Gov't. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2020 assessments, the valuation date was January 1, 2020. I.C. § 6-1.1-2-1.5(a).
27. The Assessor relied on Yanek's analysis. Yanek examined 11 sales of tri- and quad-level homes and concluded that the subject property's assessment was within the range of those sale prices. But he did not determine an indicated value for the subject property, much less determine a value that "exactly and precisely" concluded to the challenged assessment. *Southlake III* at 489. We therefore find that the Assessor failed to meet her burden.
28. Even if the Assessor were not required to offer evidence that exactly and precisely concludes to the challenged assessment and could instead meet her burden simply by showing the property's true tax value, Yanek's sales analysis still would not suffice. Although he offered some raw sales data for other properties, he did not even attempt to explain how relevant differences between those properties and the subject property affected their relative values. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005) (holding that taxpayers' sales data for other properties lacked probative value where they failed to explain how the characteristics of those properties compared to their property or how any differences affected market value-in-use).

29. Marek likewise failed to offer any probative valuation evidence to show the property's true tax value (and therefore its correct assessment). He instead mainly pointed to (1) his belief that the sale of his neighbor's home after the neighbor had added multiple decks and a swimming pool led to the subject property's assessment being increased, and (2) what he described as "rollercoaster" increases in the property's assessment over 20 years. Marek did not provide the neighboring property's sale price, much less explain how that might show the subject property's value. His citation to the property's assessment history similarly lacks probative weight. "[E]ach tax year—and each appeal process—stands alone." *Fisher v. Carroll Cty. Ass'r*, 74 N.E. 3d 582, 588 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year therefore has little bearing on its true tax value in another. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).
30. Because neither party met their burden, the assessment must revert to its 2019 level of \$171,800.

Conclusion

31. Because neither party met their burden under I.C. § 6-1.1-15-17.2., the subject property's 2020 assessment must revert to its 2019 level of \$171,800. We therefore order that the assessment be changed to \$171,800.

Date: AUGUST 4, 2025

Jonathan R. Elrod
Chairman, Indiana Board of Tax Review

Trinity Salas
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>>.