

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 18-014-21-1-5-00355-22 and 18-014-22-1-5-00825-22  
**Petitioners:** John E. Mogush & Kay G. McNitt  
**Respondent:** Delaware County Assessor  
**Parcel:** 18-10-10-377-004.000-032  
**Assessment Years:** 2021 and 2022

The Indiana Board of Tax Review issues this determination, finding and concluding as follows:

**Procedural History**

1. John E. Mogush and Kay G. McNitt (“Petitioners”) contested the 2021 and 2022 assessments of their property. The Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) issued Form 115 determinations valuing the property as follows:

<b>Year</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2021	\$21,400	\$131,000	\$152,400
2022	\$22,200	\$149,200	\$171,400

*Pet’rs Exs. 2 (2022), 3 (2021).*

2. The Petitioners then filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On November 30, 2022, our designated administrative law judge, Joseph Stanford (“ALJ”), held a hearing on the petitions. Neither he nor the Board inspected the property.
3. The Petitioners and James Carmichael, the Delaware County Assessor, represented themselves. The Petitioners, Carmichael, and Jay Allardt, an appraiser, testified under oath.

**Record**

4. The official record for this matter includes:

For 2021

Petitioners Exhibit 1:

2021 Form 130 petition; Form 11 notice; population figures for Muncie, Yorktown, and Delaware County; U.S. Census map showing population change; home values in Yorktown from Realtor.com; Yorktown Home Values from Zillow; U.S. Census data dated May 24, 2020; Delaware County population data from Stats,

Petitioners Exhibit 2:	Population data for Blackford, Delaware, Henry, Jay, and Randolph counties from Stats,
Petitioners Exhibit 3:	2021 Form 115 determination,
Petitioners Exhibit 4:	“Lessons from Afghan refugees, Sept. 11,” from <i>The Star Press</i> (September 12, 2021),
Petitioners Exhibit 5:	Sales data and property record cards from Beacon,
Petitioners Exhibit 6:	Town of Yorktown Ordinance 704 regarding the residential tax abatement program,
Petitioners Exhibit 7:	List of properties in Westbrook subdivision and new properties in Muncie and Yorktown, with photographs,
Petitioners Exhibit 8:	Beacon property record cards for 9105 Lone Beech Drive and 405 North Dogwood Lane,
Petitioners Exhibit 9:	Email correspondence between Mogush and Carmichael,
Petitioners Exhibit 10:	“Feds: MSD administrator engaged in ‘established, systematic corruption,’” from <i>Muncie Star Press</i> (May 3, 2022); “Defendant in Muncie corruption case seeks new sentencing date,” from <i>Muncie Star Press</i> (October 10, 2021); “MRC member criticizes city land purchase transaction,” from <i>Muncie Star Press</i> (Letters to the editor, August 7, 2020); Beacon property record card for 316 West Washington Street; “Andrew Dale: Seeing disturbing patterns in mayor’s real estate transactions,” from <i>The Star Press</i> ; “Claim filed over flea market sale,” from <i>The Star Press</i> (March 25, 2016),
Petitioners Exhibit 11:	Email correspondence between Mogush, Kyle Wilson, and others,
Petitioners Exhibit 12:	“Mushrooming local construction during pandemic delivers much revenue for Delaware County,” from <i>Muncie Star Press</i> .
Respondent Exhibit A: <sup>1</sup>	2021 subject property record card (“PRC”),
Respondent Exhibit B:	2020 sales with the median calculated,
Respondent Exhibit C:	Letter from James Carmichael; May 31, 2021 email from John E. Mogush,
Respondent Exhibit D:	September 29, 2022 memorandum from the PTABOA to the Assessor,
Respondent Exhibit E:	Appraisal completed by Jay E. Allardt, as of January 1, 2021.

For 2022

<sup>1</sup> The Assessor’s exhibit coversheets identify his exhibits by number, but the individual exhibits are labeled with letters. We identify his exhibits by letters to match the exhibit labels.

Petitioners Exhibit 1:	2022 Form 130 petition; written contentions; messages between Mogush and Abigail McDaniel; May 9, 2022 Facebook post by Mogush; “Scott Alexander: Addressing the increase in property tax assessments,” from <i>The Star Press</i> with comments from Mogush,
Petitioners Exhibit 2:	2022 Form 115 determination,
Petitioners Exhibit 3:	Email correspondence between Mogush and Abigail McDaniel; listing of 2021 sales in Westbrook subdivision,
Petitioners Exhibit 4:	Beacon property PRCs for 2021 sales in Westbrook subdivision,
Petitioners Exhibit 5:	Delaware County population data from Stats,
Petitioners Exhibit 6:	“Surprise! Delaware County actually saw its population increase in 2021,” from <i>Muncie Star Press</i> .
Respondent Exhibit A:	2022 PRC,
Respondent Exhibit B:	2021 sales with the median calculated,
Respondent Exhibit C:	May 31, 2021 letter from James Carmichael; email from John E. Mogush,
Respondent Exhibit D:	September 29, 2022 memorandum from the PTABOA to the Assessor,
Respondent Exhibit E:	Appraisal completed by Jay E. Allardt, as of January 1, 2022.

- The record also includes: (1) all petitions and 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**

- The subject property is a residential property located at 9101 West Lone Beach Drive in Muncie. The home on the property was built in 1966. *Resp’t Exs. A (2021, 2022), E (2021, 2022)*.

### **Contentions**

#### **A. The Petitioners’ Contentions**

- The property’s assessment increased by more than 5% between 2020 and 2021, as well as between 2021 and 2022. The Petitioners therefore argue that the Assessor has the burden of proof for both years. *Mogush argument and testimony*.
- The Petitioners mainly question the Assessor’s trending methodology. More specifically, they argue that relying on relatively few sales should not lead to a tax increase for all the

properties in their neighborhood. The Petitioners asked for a list of all sales from their neighborhood, Westbrook, from 2020 and 2021. They computed a price per square foot for each sale. For 2020 those unit prices ranged from \$53.10/sq. ft. to \$101.13/sq. ft. For 2021, they ranged from \$51.66/sq. ft. to \$123.80/sq. ft. The Petitioners are seeking an assessment of \$59.20/sq. ft., while the Assessor appraiser valued their property at \$90.68/sq. ft. for 2022. *Mogush testimony and argument; Pet'rs Exs. 3-4 (2022), 7-8 (2021).*

9. But the Petitioners believe that those unit values are not apples-to-apples comparisons. Amenities vary widely between homes in the neighborhood. The subject home is more simple and smaller than some of the homes from the sales that the Assessor used in trending. The Petitioners claim that most people in their neighborhood hire contractors to repair and update their homes before putting them on the market, and that the Assessor does not account for those updates. Further, the Petitioners have not found or been given the definition of what constitutes a “trend” for purposes of adjusting assessments. They have spoken with their state representative regarding their complaints with Indiana’s property tax system. *Mogush testimony and argument.*
10. The Petitioners believe that older homes in poorer neighborhoods are generally overvalued because most people prefer to buy new homes. While the Petitioners have an older home, there are several surrounding neighborhoods with brand new homes, the construction of which has been supported by tax abatements. In addition, the population in Muncie, Yorktown, and Delaware County has generally been decreasing while assessments continue to increase. *Mogush testimony and argument; Pet'rs Exs. 1-2, 7, 12 (2021); Pet'rs Ex. 5 (2022).*
11. The Petitioners also believe that they have overpaid on their property taxes for years. The Assessor eventually corrected some of the issues. But their home is assessed as having two-stories when it only has 1½ stories. The Petitioners acknowledged that they did not let the Assessor’s appraiser, Jay Allardt, enter their home for an inspection. But they do not contest the comparable properties that Allardt used in his appraisals. *Mogush argument and testimony.*
12. Finally, the Petitioners allege that local officials have acted corruptly in several transactions where local governmental entities have bought real estate. *Mogush argument and testimony; Pet'rs Ex. 10 (2021).*

## **B. The Assessor’s Contentions**

13. The Assessor hired Allardt to appraise the subject property. Allardt, a certified appraiser and SRA who has been appraising since 1978, prepared two separate appraisals estimating the subject property’s value as of January 1, 2021, and January 1, 2022, respectively. He certified that he prepared both appraisals in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Carmichael testimony and argument; Allardt testimony; Resp’t Ex. E (2021, 2022).*

14. Because the Petitioners did not allow Allardt into their home, he based his appraisals on an exterior inspection of the property. The property is a corner lot, so he viewed the back of the home from a side street. He assumed there were no major changes to the property from 2021 to 2022, and there is no evidence to indicate otherwise. He developed both the cost and the sales-comparison approaches to value. But he gave little weight to his conclusions under the cost approach, explaining that the cost approach becomes less relevant for homes that are more than 10 years old. *Allardt testimony; Resp't Ex. E (2021, 2022)*.
15. For his sales-comparison analyses, Allardt identified sales of five comparable properties for his 2021 appraisal and sales of six comparable properties for his 2022 appraisal. He then considered adjusting the sale prices to account for 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. For example, to adjust for differences in market conditions between the sale dates of his comparable properties and his appraisals' valuation dates, Allardt relied on annual changes in the median sale price for residential properties in Mt. Pleasant Township. The township has a mix of homes, ranging from brand new homes to older, dilapidated homes. Allardt also adjusted for various other differences, such as location, gross living area and room count, condition, garage size, and the presence or lack of amenities like porches. *Allardt testimony; Resp't Ex. E (2021 and 2022)*.
16. In each appraisal, Allardt gave the greatest weight to the adjusted sale prices for the three properties that he considered to be most like the subject property. Five of those six sales were from Westbrook. He settled on the following values for the subject property:

Year	Adjusted Price Range	Indicated Value
2021	\$166,200 - \$184,100	\$172,500
2022	\$174,800 - \$205,500	\$195,000

*Allardt testimony; Resp't Ex. E (2021 and 2022)*

### Analysis

**A. The Petitioners have the burden of proof in their 2021 appeal, while deciding the burden of proof for their 2022 appeal necessarily depends on our determination of the 2021 appeal.**

17. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. A party seeking a different value 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).
18. The Petitioners, however, argue that because their 2021 and 2022 assessments each represented an increase of more than 5% over the immediately preceding year's assessment, the Assessor has the burden of proof. The Petitioners apparently believe that

one or both of the following specialized burden-of-proof statutes apply: Ind. Code § 6-1.1-15-17.2, which was repealed on March 21, 2022, and Ind. Code § 6-1.1-15-20, which was enacted on the same date that Ind. Code § 6-1.1-15-17.2 was repealed, but which applies only to appeals filed after that date.

19. The first statute, also known as the “burden-shifting statute,” created an exception to the general rule regarding the burden of proof and 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). If an assessor failed to meet her burden, and the taxpayer failed to prove that its proffered assessment was correct, the appealed assessment reverted to the prior year’s level. *Id.*; *Southlake Ind., LLC v. Lake Cty. Ass’r*, 174 N.E.3d 177, 179-80 (Ind. 2021). Because the burden-shifting statute had already been repealed at the time we convened our hearing, it does not apply.<sup>2</sup> And because the Petitioners filed their 2021 appeal before the effective date of the new burden-shifting statute (Ind. Code § 6-1.1-15-20), that statute does not apply to the Petitioner’s 2021 appeal either. *See* I.C. § 6-1.1-15-20(h) (“This section applies only to appeals filed after the effective date of this section as added by HEA 1260-2022.”). So, for the Petitioners’ 2021 appeal, the general rule—that the party seeking to change an assessment has the burden of proof—applies.
20. The Petitioners’ 2022 appeal is a different story. They filed their Form 130 petitions with the local PTABOA after the effective date of the new burden-shifting statute. The new statute reiterates the general rule that an assessment is presumed to be correct until rebutted by evidence presented by the parties. But, like the repealed burden-shifting statute, it creates an exception to that rule and 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, 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. § 6-1.1-15-20(b)-(c).<sup>3</sup> Because the statute’s application depends on our determination of the Petitioners’ 2021 appeal, we must turn to the merits of that appeal before addressing the burden of proof in the Petitioners’ 2022 appeal.

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<sup>2</sup> New statutes (and acts amending or repealing existing statutes) generally apply prospectively only. *See Church v. State*, 189 N.E.3d 580, 587 (Ind. 2022); *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)). A statute or repealing act operates prospectively when it is applied to the operative event triggering the statute or repealing act, and that event occurs after the statute or repealing act took effect. *See Church*, 189 N.E.3d 587-88 (identifying defendant’s act in seeking to depose a child victim as the operative event triggering application of a newly enacted deposition statute). The operative event for our analysis of whether the burden-shifting statute was in effect was our evidentiary hearing. Because the hearing occurred after the repealing act’s effective date, applying the repeal to these proceedings is prospective.

<sup>3</sup> Unlike the repealed burden-shifting statute, however, the new burden-shifting statute does not require the Assessor to prove that the assessment is “correct.” The new statute allows us 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* LC. § 6-1.1-15-20(e)-(f).

**B. Allardt's appraisal is the only probative evidence of the property's value for 2021, and we order the assessment to be increased to match his valuation opinion.**

21. 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 rules promulgated by 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 markets 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.
22. Evidence in an assessment appeal should be consistent with that standard. For example, a USPAP-compliant market-value-in-use appraisal 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 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). Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation dates for the 2021 and 2022 assessments were January 1, 2021, and January 1, 2022, respectively. *See* I.C. § 6-1.1-2-1.5(a).
23. As discussed above, the Petitioners have the burden of proof for 2021. They mainly disagree with the Assessor's trending methodology, and they argue that the Assessor's analysis of relatively few sales should not result in an increase in assessments and taxes. They also argue that the Assessor should have valued their home as having 1½ stories instead of two stories. But the Tax Court has repeatedly held that taxpayers cannot make a prima facie case merely by pointing to an assessor's incorrect application of assessment regulations. Instead, they must offer market-based evidence to show that the assessment does not reflect their property's market value-in-use. *E.g., Piotrowski*, 177 N.E.3d at 132.
24. Although the Petitioners offered some sales information, including unit prices for calendar year 2021 sales from their neighborhood, they did not meaningfully compare their property to any of the properties that sold or adjust the sale prices to account for relevant differences that affect value. Indeed, they admitted that the comparison was not apples-to-apples precisely because of differences between properties throughout the neighborhood. Their raw sales data therefore is not probative of the subject property's market value-in-use. *See Long v. Wayne Twp. Ass'r*, 821 N.E. 2d 466, 470-71 (Ind. Tax Ct. 2005) (holding that taxpayers' sales data lacked probative value where they did not explain how purportedly comparable properties compared to the property under appeal or how relevant differences affected value). The same is true for the Petitioners'

generalized data about population declines and their conclusory assertion about older properties generally being overvalued.

25. Finally, the Petitioners' newspaper articles alleging corruption among local officials does nothing to prove that the subject property's assessment was wrong or what the correct assessment should be. The Petitioners therefore failed to make a prima facie case for reducing their assessment.
26. The Assessor, however, seeks to raise the assessment based on Allardt's appraisal. Allardt prepared his appraisal in compliance with USPAP, and he relied on a generally accepted valuation methodology—the sales-comparison approach—to estimate the property's market value-in-use as of the relevant valuation date. He explained why the properties from his sales-comparison analysis were reasonable substitutes for the subject property, and he adjusted their sale prices to account for relevant ways in which they differed from the subject property. The Petitioners did nothing to impeach the reliability of Allardt's valuation opinion. We therefore find Allardt's appraisal probative and determine that the subject property's market value-in-use was \$172,500 as of January 1, 2021. We order that the assessment be increased accordingly.

**B. Allardt's appraisal is the only probative evidence of the property's value for 2022, and we order the assessment to be increased to match his valuation opinion.**

27. We reach a similar conclusion for 2022. Although the new burden-shifting statute applies to the Petitioners' 2022 appeal, its specialized burden-of-proof provisions have not been triggered. As explained above, those provisions apply where an assessment has increased by more than 5% over the prior year's assessment, as, among other things "determined by a reviewing authority." I.C. § 6-1.1-15-20(b)-(c). As the reviewing authority, we determined an assessment for 2021 (\$172,500) that is higher than the 2022 assessment the Petitioners are appealing (\$171,400).
28. The Petitioners relied on the same types of evidence and the same arguments as they relied on for their 2021 appeal. For the reasons we have already explained, none of that evidence is probative of the subject property's market value-in-use.
29. As with the Petitioners' 2021 appeals, the Assessor seeks to raise the assessment based on Allardt's appraisal. We find Allardt's 2022 appraisal probative for the reasons we have already explained in addressing his 2021 appraisal. Once again, the Petitioners did nothing to impeach Allardt's valuation opinion. We therefore find Allardt's appraisal probative and determine that the subject property's market value-in-use was \$195,000 as of January 1, 2022. We order that the assessment be increased accordingly.

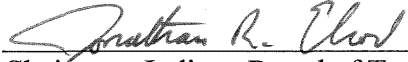
**Conclusion**

30. Allardt's appraisals are the only probative evidence of the subject property's market value-in-use for the two assessment dates under appeal. We therefore find for the

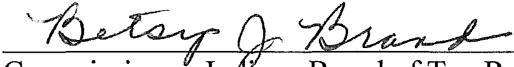


Assessor and order that the 2021 and 2022 assessments be increased to \$172,500, and \$195,000, respectively.

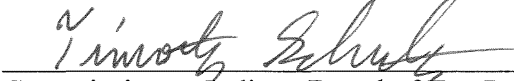
Date: FEBRUARY 24, 2023



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 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>>.