REPRESENTATIVE FOR PETITIONERS: Julie A. Paulson, Attorney

REPRESENTATIVE FOR RESPONDENT: Robert M. Schwerd, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

PETER E. and DALE U. PAULSON,	)	Petition Nos.: 64-023-20-1-5-00863-22
	)	64-023-21-1-5-00864-22
Petitioners,	)	
	)	Parcel No.: 64-07-06-100-004.000-023
v.	)	
	)	
PORTER COUNTY ASSESSOR,	)	County: Porter
	)	
Respondent.	)	Assessment Years: 2020 and 2021

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

FINAL DETERMINATION

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

Findings of Fact and Conclusions of Law

Introduction

1. Under a version of the statute commonly known as the "burden-shifting statute" (Ind Code § 6-1.1-15-17.2), which has been repealed but which we are constrained to find applies to Peter and Dale Paulson's assessment appeals, the Porter County Assessor had the burden of offering evidence that precisely concluded to the same value as the challenged assessments. The Assessor offered appraisals estimating the value of the Paulsons' property at levels that differed from those assessments. Under those circumstances, the burden-shifting statute requires the assessment for each year to revert to its 2019 level of $236,900.

Procedural History

2. The Paulsons electronically filed appeals with the Porter County Assessor contesting the 2020 and 2021 assessments of their property located at 1050 South State Road 49 in Chesterton. The Paulsons filed their 2021 appeal on June 15, 2021. It is unclear exactly when they filed their 2020 appeal. Although we require taxpayers to provide us with a copy of the written notice they filed to initiate their appeal at the local level, the Paulsons attached only an undated confirmation from the Assessor's office acknowledging receipt of the appeal.

3. The Porter County Property Tax Assessment Board of Appeals ("PTABOA") determined the following assessments for those years:

Year	Land	Improvements	Total
2020	$225,100	$207,000	$432,100
2021	$259,600	$206,500	$466,100

4. The Paulsons then filed Form 131 petitions for both years with us. On October 30, 2023, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on the Paulsons' petitions. Neither he nor the Board inspected the property. The following people testified under oath: Peter Paulson; appraisers Aaron Ingram and Ronald Boilini; and two of the Porter County Assessor's employees, Peggy Hendron and Jackie Harrigan.

5. The Paulsons submitted the following exhibits:

Exhibit 2: Review of Ronal L. Boilini's appraisal prepared by Aaron Ingram,
Exhibit 3: Aerial photograph of the Paulsons' property,
Exhibit 4: Two photographs.

6. The Assessor submitted the following exhibits:

Exhibit A: 2020 and 2021 property record cards for the Paulsons' property,
Exhibit B: Four (4) aerial photographs of the Paulsons' property,
Exhibit C: The Paulsons' warranty deed,

Exhibit D: Aerial photograph of easement,
Exhibit E: Electrical, occupancy, and building permits,
Exhibit F: The Paulson's site plans,
Exhibit G: Appraisal prepared by Ronald L. Boilini,[1]
Exhibit H: Estimate of cost to construct bridge from Boyd Asphalt, Inc.,
Exhibit I: Aerial photograph of Paulsons' property and cemetery,
Exhibit J: Slide from Department of Local Government Finance entitled "Frequently Asked Questions."

7. 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.

Objections

8. The parties made several objections that the ALJ took under advisement and that we now address.

A. The Assessor's Objection

9. The Assessor objected to Exhibit 4—two photographs of Coffee Creek that Peter Paulson testified depict what the Paulsons' property looks like at the point where an easement that runs over Abbey Lane terminates. The Assessor objected based on a lack of foundation, arguing that one cannot determine simply from looking at the photographs whether they actually show the easement.

10. We overrule the objection. While Paulson did not take the photographs, he testified that they show the termination point of the easement at Coffee Creek. It is reasonable to assume that Paulson has first-hand knowledge of his property, including where it joins with the access easement, and that he would be able to recognize photographs of that area.

[1] In advance of the telephonic hearing, the Assessor sent us both the original appraisal report that Boilini prepared and his amended or "substitute" appraisal. The Assessor offered only Boilini's substitute appraisal.

B. The Paulsons' Objections

11. The Paulsons first made a hearsay objection to Peggy Hendron's testimony that there was an e-mail between the parties' attorneys indicating that the Paulsons did not take issue with the improvements' value, and that only an exterior appraisal was to be completed. The Assessor responded that Hendron's testimony was not offered to show the truth of the matter asserted but rather showed "what was said." *Schwerd argument.*

12. We agree with the Paulsons that Hendron's testimony about the e-mail is hearsay. The Assessor did not explain why "what was said" in the e-mail had independent significance. To the contrary, the Assessor appears to have offered Hendron's testimony to explain the truth of the matter asserted in the e-mail: that the Paulsons do not take issue with the value assigned to their improvements. Her testimony is therefore hearsay. *See* Ind. Evidence Rue 801(c) (defining "hearsay" as a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted).

13. We nonetheless overrule the Paulsons' objection. We may admit hearsay with the caveat that if such evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, we cannot base our determination of an appeal solely on that evidence. 50 IAC 4-6-9(d). We do not base any part of our determination in these appeals on Hendron's testimony.

14. The Paulsons next objected to Exhibit F—site plans for the Paulsons' property. According to the Paulsons, the Assessor did not lay a foundation to show where the plans came from or that they were kept in the ordinary course of business. The Paulsons also objected on grounds that the plans did not appear to be complete records. In response, the Assessor pointed to the testimony of her deputy, Jackie Harrington, that it was the office's normal practice to get such information from the building department, which keeps and updates its records in the normal course of business.

15. We overrule the objections. The Assessor laid a sufficient foundation through Harrington to identify the site plans. *See* Evid. R. 901(a)-(b)(1) (providing that testimony from a witness with knowledge that an item is what it claims to be as evidence suffices to meet the requirement to identify or authenticate evidence) and (b)(7) (providing that evidence showing that a purported public record is "from the office where items of this kind are kept" is sufficient).[2] We interpret the Paulsons' claim that the Assessor did not lay a foundation to show that the plans were kept in the regular course of business as an objection that the plans are hearsay, and that the Assessor did not lay a sufficient foundation for their admission under the business records or public records exceptions to the hearsay rule. *See* Evid. R. 806(6), (8). We overrule that objection. The question of whether the Assessor laid a sufficient foundation for the plans' admission under an exception to the hearsay rule is moot because we do not rely on them determining the Paulsons' appeals. Finally, the Paulsons did not explain why they believed the site plans were incomplete. In any case, the Paulsons were free to offer whatever portion of the plans they believed was missing.

16. The Paulsons next objected to Exhibit J—a document with the logo of the Department of Local Government Finance ("DLGF") entitled "Frequently Asked Questions—on grounds that the Assessor had not identified who prepared the document, where it came from, whether it represented a regulation or commentary, and whether it was current. In response, Harrigan testified that the document was a currently accessible screenshot from the DLGF's website. She further testified that she regularly uses the website for guidance from the DLGF, which supervises assessors. Because Harrington sufficiently identified the document's source, we overrule the Paulsons' objection.

[2] Our administrative law judges do not strictly apply the rules of evidence. *See* 52 IAC 2-6-9(a) ("The administrative law judge shall regulate the course of the proceedings without recourse to the rules of evidence."). But we still must base our final determinations on substantial reliable evidence. And the rules of evidence promote determining the truth and justly resolving proceedings. Ind. Evidence Rule 102. We therefore find the rules about identifying and authenticating evidence helpful.

17. The Paulsons also objected to Exhibit H—an estimate that the Assessor's appraiser, Ronald Boilini, got from Jack Boyd of Boyd Asphalt, Inc. for the cost to build a bridge on the Paulsons' property that would span Coffee Creek. The Paulsons argued that the written estimate is dated more than 1 ½ years before the date that Boilini and Boyd inspected the area. In response, Boilini explained that he had asked Boyd to put his estimate on letterhead in September 2023, and that the reference to the earlier date was wrong. We overrule the objection. The discrepancy involving the date simply goes to the weight we should give the exhibit.

18. Finally, the Paulsons objected to the Assessor's statement in closing argument that the Paulsons could easily arrange for an access easement across land owned by a neighboring cemetery. According to the Paulsons, nobody testified to that fact, which they characterized as mere speculation. In response, the Assessor pointed to Peter Paulson's testimony that the Paulsons had never tried to negotiate an easement. We understand the Assessor's response as a clarification that she was asking us to draw an inference from Paulson's testimony. We therefore overrule the objection.

Findings of Fact

19. The Paulsons' property contains a 1,664-square-foot home, built in 1999. It encompasses 34.34 acres of land, which includes a pond and an area that witnesses described as wetlands. An easement that runs along Abbey Lane provides access at the property's southwest corner. But Coffee Creek bisects the property near that point, making it impossible for vehicles to access the developed portion of the property from there. Currently, the Paulsons can only access the property from the north via Chesterton Cemetery, relying on a "handshake agreement" with the cemetery board. *Paulson testimony; Exs. 3-4, A, G.*

20. The property was assessed for $236,900 in 2019. The assessment increased to $432,100 in 2020 and to $466,100 in 2021. *Ex. A.*

21. The Assessor hired Boilini, a certified general appraiser, to appraise the property. Boilini prepared an appraisal report estimating the property's value at $395,000 as of January 1, 2020, and $480,000 as of January 1, 2021. *Boilini testimony; Ex. G.*

22. The Paulsons hired Aaron Ingram, a certified general real estate appraiser with Valuation Services, LLC, to review Boilini's appraisal. Ingram also appraised the property himself, but the Assessor did not offer Ingram's appraisal report, and there is no evidence showing his value conclusions. Ingram identified 64 errors in Boilini's report. While Ingram characterized several of the errors as minor, he believed others demonstrated a lack of competency and likely affected Boilini's value conclusions, which Ingram found not to be credible. *Ingram testimony; Ex. 2.*

Conclusions of Law and Analysis

A. Because the Paulsons filed their appeals before the burden-shifting statute (Ind. Code § 6-l.1-15-l7.2) was repealed, that statute governs the appeals.

23. At the time the Paulsons filed their appeals, an assessment determined by an assessing official was generally presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. A taxpayer challenging the assessment had the burden of showing that the assessment was incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2021).

24. Indiana Code § 6-1.1-15-17.2 created an exception to that general rule, however. That statute identified two circumstances under which an assessor had the burden of proving the assessment was "correct": (1) where the assessment under appeal represented an increase of more than 5% over the prior year's assessment, as last determined or corrected by an assessing official, stipulated to between the taxpayer and assessing official, or determined by a reviewing authority, or (2) where it was above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-l7.2(a)-(b), (d). But 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). If the assessor had the burden and failed to meet it, the taxpayer could introduce evidence "to prove the correct assessment." If neither party met its burden, the assessment reverted to the prior year's level. I.C. § 6-1.1-15-17.2(b); *Southlake Ind., LLC, v. Lake Cty. Ass'r ("Southlake I")*,174 N.E.3d 177, 179 (Ind. 2021).

25. In light of the interpretation of the statute by the Indiana Supreme Court in *Southlake I*, the Tax Court held that the term "correct" mirrored the dictionary definition of the word, and that the term "correct assessment" referred to "an accurate, exact, precise assessment." *Southlake II,* 181 N.E.3d at 489. Thus, in *Southlake II*, the Court found that the Assessor failed to meet her burden of proof because the appraisals she offered, which valued a shopping mall at $258,990,000 and $241,690,000, respectively for the years under appeal, did not "exactly and precisely conclude to" the $242,890,500 assessment the Assessor had assigned to the mall for each year. *Id.*

26. Effective March 21, 2022, the Legislature passed an act that simultaneously repealed Ind. Code § 6-1.1-15-17.2 and enacted a new burden-of-proof statute—Ind. Code § 6-1.1-15-20. 2022 Ind. Acts 174, §§ 32, 34.[3] 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. 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 calls for us, as the trier of fact, to determine a value based on the totality of the evidence. Only where the totality of 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).

27. Although the act repealing Ind. Code § 6-1.1-15-17.2 did not contain an express savings clause, the new burden-of-proof statue explicitly applies only to appeals filed after its

[3] Both sections were effective on passage. 2022 Ind. Acts 174, §§ 32, 34. They became law on March 21, 2022 when the Governor signed House Enrolled Act 1260. *Elkhart Cty. Ass'r v. Lexington Square, LLC,* 219 N.E.3d 236, 242 n. 4 (*citing* https://iga.in.gov/legislative/2022/bills/house/1260/actions (last visited Aug. 30, 2023)).

March 21, 2022 effective date. I.C. § 6-1.1-15-20(h). Following the Legislature's action, we were faced with a series of appeals that were filed before the repealing act's effective date. In some of those cases, we had held our evidentiary hearing before the repeal's effective date but issued our determination after that date. In other cases we both held our hearing and issued our determination after the repeal. In the first set of cases, we found that Ind. Code § 6-1.1-15-17.2 applied. In the second set, we found that it did not. *Compare, e.g. Cabela's Wholesale, LLC v. Lake Cty. Ass'r,* pet. nos. 45-023-18-1-4-00230-20 etc., slip op. (IBTR Sep't 26, 2022) and *Hotka v. Brown Cty. Ass'r,* pet. no. 07-003-21-1-5-00874-21, slip op. (IBTR Sep't 19, 2022).

28. In reaching those conclusions, we started with two principles: (1) that we must apply the law as it existed at the time of the hearing, and (2) that both new statutes and acts repealing existing statutes apply only prospectively unless the Legislature "unequivocally and unambiguously" intended retroactive application, or "strong and compelling" reasons dictate such application. *Cabela's*, slip op. at 39 (*quoting State v. Pelly*, 828 N.E.2d 915, 919 (Ind. 2005)). We also found that the Indiana Supreme Court's decision in *Church v. State* offered compelling direction for determining whether applying Ind. Code § 6-1.1-15-17.2's repeal in cases where we had not yet held a hearing would be a prospective or retroactive application. *Id.* (*citing Church v. State*, 189 N.E.3d 580, 587-88 (Ind. 2022)). As the Court explained, 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 39 (*quoting Church,* 189 N.E.2d at 587-88. By contrast, a statute operates retroactively only when "its adverse effects" are activated by events that occurred before its effective date. *Id.* at 39-40.[4]

29. We concluded that the operative event, both of Ind. Code § 6-1.1-15-17.2 and its repeal, was when a hearing on the merits is convened. *Id.* at 40. Where we had held our hearing before the repeal, we concluded that applying that repeal would have been an

[4] In *Church*, the operative event for a statute applicable to depositions in a criminal case was the time of the deposition, not the date of the crime or the filing of charges, which both occurred before the statute's effective date.

impermissible retroactive application. *Id.* at 40-42. By contrast, where we held our hearing after the repeal, we found that applying the repeal was prospective and had the effect of returning cases that Ind. Code § 6-1.1-15-17.2 had carved out for special treatment back to the default rule governing the burden of proof, at least until the new burden-of-proof statute kicked in. *Hotka*, slip op. at 6.

30. Following those determinations, however, the Indiana Tax Court decided *Elkhart Cty. Ass'r v. Lexington Square, LLC*. In that case, we had held our evidentiary hearing well before the Legislature repealed Ind. Code § 6-1.1-15-17.2, but we issued our determination just three days after the repeal's effective date. *Elkhart Cty. Ass'r v. Lexington Square, LLC*, 219 N.E.3d 236, 238-40 (Ind. Tax Ct. 2023). We applied the statute, although we did not discuss the fact that it had been repealed. We similarly did not discuss *Church*, which had not yet been decided. The Elkhart County Assessor sought judicial review, arguing that because the new burden-of-proof statute applied only to cases filed after March 21, 2022, and did not have a savings clause authorizing Ind. Code § 6-1.1-15-17.2 to remain in effect, the repeal eliminated Ind. Code § 6-1.1-15-17.2 "as though it never existed." *Id.* at 243. According to the Assessor, no statutory burden-shifting provisions applied to appeals pending before us or county boards as of March 21, 2022. *Id.*

31. The Tax Court disagreed and held that Ind. Code § 6-1.1-15-17.2 applied to the taxpayer's appeals. The Court noted a line of cases explaining that an express savings clause "is not required to prevent the destruction of rights existing under a repealed statute if the Legislature's intention to preserve and continue those rights is otherwise clearly apparent." *Id.* at 243-44 (emphasis in original). And the Court found it "clearly apparent" that the Legislature "simply intended that Indiana Code § 6-1.1-15-17.2 would not apply to appeals filed after its repeal date of March 21, 2022," or stated differently, that the statute was "terminated only for all future cases, i.e., cases filed after" its repeal. *Id.* (emphasis in original). The statute's provisions therefore continued to apply to

appeals, like the one before the Court, that had been filed before the repeal and that were still pending. *Id.*

32. The Court also rejected the assessor's argument that the repeal was remedial. Even if the repeal were remedial, the Court found no compelling reason to justify applying it retroactively to pending appeals. *Id.* at 244-45. Finally, the Court reasoned that the Legislature could not reasonably have intended the repeal to apply retroactively. According to the Court, doing so would unfairly change the "rules of play" midstream and require a "re-do" in all pending appeals to allow taxpayers to develop and implement new litigation strategies aligned with the new burden of proof. *Id.* at 246. The Court, however, did not explain why a "re-do" would be necessary if the repeal were applied to appeals where the *de novo* hearing before us had not yet occurred.[5] The Court did not discuss *Church* in its analysis.

33. We find that *Lexington Square* controls these appeals. The Court squarely indicated that Ind. Code § 6-1.1-15-17.2 applies to all appeals that were filed before the effective date of the statute's repeal and that remain pending after that date. The Paulsons filed their 2021 appeal with the Assessor in June 2021, well before the repeal's effective date. While we do not know the precise date that they filed their 2020 appeal, nobody contends that it was after the date of the repeal.

34. We recognize that we are dealing with different facts: in *Lexington Square* we had already held our hearing before the statute was repealed, whereas here, we held our hearing after the parties were on notice that the statute had been repealed. Indeed, that was a key distinction in our determinations predating the Tax Court's decision. But the Tax Court's language brooks no such distinction. Whether characterized as dictum or holding, we must follow the Court's directive. We therefore find that Ind. Code § 6-1.1-15-17.2 applies to these appeals.

---

[5] In fact, the interpretation in *Lexington Square* would require a "re-do" for cases we decided under *Church* that are still pending or that are on appeal to the Tax Court.

B. Because the Assessor had the burden of proof for each year and failed to offer evidence that exactly concluded to the challenged assessments, each assessment must revert to the previous year's level.

35. The Paulsons' assessment jumped from $236,900 in 2019 to $432,100 in 2020, an increase of 82%. And there is nothing to suggest that any of the exceptions to Ind. Code § 6-1.1-15-17.2's burden-shifting provisions apply. To the contrary, the Assessor conceded that she had the burden of proof. The Assessor therefore had the burden of offering evidence that precisely and exactly concludes to the 2020 assessment. She failed to meet that burden. The only market-based evidence that the Assessor offered was Boilini's appraisal in which he estimated the property's value at $395,000. And the Paulsons did not offer any evidence to show a different value. Under those circumstances, the 2020 assessment must revert to its 2019 level.

36. The result is the same for 2021. The assessment for that year—$466,100—is almost double the amount we, as the reviewing authority, determined for 2020. So, as with the Paulsons' 2020 appeal, the Assessor had the burden of offering evidence that precisely and exactly concluded to her assessment. Once again, she offered Boilini's appraisal, and once again, he estimated a value ($480,000) that did not exactly match the assessment. And the Paulsons failed to offer any evidence to show a different value. The 2021 assessment therefore must revert to $236,900—the amount we determined for 2021.

Conclusion

37. We find for the Paulsons. The Assessor had the burden of proof, and she failed to offer evidence that exactly and precisely concluded to the appealed assessments. The 2020 and 2021 assessments therefore both revert to the 2019 level of $236,900.

Date: APRIL 26, 2024

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>.