

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

**Petition No.:** 62-007-21-1-5-00185-22  
**Petitioner:** Ramona Leitner  
**Respondent:** Perry County Assessor  
**Parcel:** 62-18-04-100-103.007-007  
**Assessment Years:** 2021

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. Ramona Leitner appealed the 2021 assessment of her property located at 74 William Tell Boulevard in Tell City, Indiana.
2. On December 16, 2021, the Perry County Property Tax Assessment Board of Appeals (“PTABOA”) sustained the assessment at \$18,300 for land and \$137,400 for improvements for a total of \$155,700.
3. The Petitioner timely filed an appeal with the Board, electing to proceed under the small claims procedures.
4. On October 27, 2022, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Ramona Leitner appeared *pro se*. Austin Budell, appraisal supervisor for Tyler Technologies, appeared for the Assessor. Both testified under oath. Mendy Lassaline, the Perry County Assessor, also appeared but did not testify.

**Record**

6. The official record for this matter is made up of the following:
  - a) Exhibits:<sup>1</sup>

Respondent Exhibit 1: Sales comparison analysis,  
Respondent Exhibit 2: Notification of Final Assessment Determination – Form 115,

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<sup>1</sup> The Petitioner did not submit any exhibits into the record.

Respondent Exhibit 3: Subject property's 2021 property record card and exterior photograph.<sup>2</sup>

- b) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

### Findings of Fact

7. The subject property is a one-story brick, ranch-style home built in 1965 located on approximately half an acre of land in Tell City. *Resp't Ex. 3.*

### Contentions

8. Summary of the Petitioner's case:
- a) Leitner contends the subject property is over-assessed. In support of this, she testified that her property valuation has seen "extreme fluctuations" in the last several years. According to Leitner, her assessment increased \$17,000 between 2020 and 2021 without any improvements or changes to the property. Leitner argues that property values should remain "consistent" or "constant" unless there are changes made to the property. *Leitner testimony.*
9. Summary of the Respondent's case:
- a) Austin Budell, consultant for the Assessor, testified that the subject property's assessed value increased from \$138,700 in 2020 to \$155,700 in 2021 or 12.25%. For that reason, he believed the Assessor should have the burden because the assessment increased more than 5% over the previous year. *Budell testimony; Resp't Exs. 2 & 3.*
- b) Budell developed a sales-comparison analysis of the subject property. He searched for sales of comparable properties that sold in Tell City in 2020. He identified five sales of comparable one-story, ranch style homes with basements. He then adjusted the comparables for factors such as land size, above grade living area, plumbing fixtures, fireplaces, basement size, exterior features, garage size, yard items, and effective age. *Budell testimony; Resp't Ex. 1.*
- c) After adjustment, the sale prices ranged from \$98.84/sq. ft. to \$139.20/sq. ft., with a median value of \$122.34/sq. ft. and average value of \$120.04/sq. ft. He concluded to a value \$120/sq. ft. He applied this to the subject property's above grade living area to arrive at a "probable" market value of \$210,700. Budell testified that since the subject property's assessment of \$155,700 is lower than his calculated market value, the Assessor is requesting no change in the 2021 assessment. *Budell testimony; Resp't Ex. 1.*

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<sup>2</sup> At the hearing, Leitner claimed she had not received the Assessor's exhibits via email. On October 28, 2022, Leitner sent an unsolicited email clarifying that the Assessor had sent her exhibits via email to the Petitioner prior to the Board hearing.

## Analysis

10. The Petitioner failed to make a prima facie case for reducing the property's 2021 assessment.
  - a) Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
  - b) Despite the Assessor's claim that she should have the burden of proof, we cannot find the burden rests with the Assessor because the Legislature repealed the burden-shifting statute on March 21, 2022. P.L. 174-2022 § 32 (repeal effective on passage). In the same bill, a new statute created a substitute burden-shifting statute, I.C. 6-1.1-15-20, for new appeals filed after the effective date of March 21, 2022. P.L. 174-2022 § 34 (effective on passage). The new statute does not apply to this appeal because it was filed with the PTABOA before March 21, 2022. Both the burden-shifting statute and its repeal dealt with a procedural question: how the parties must go about making their respective cases. Under those circumstances, we must apply the law that was in effect at the time of the procedural event covered by the statute and its repeal. And that procedural event was our hearing. A hearing is the point at which the parties can tailor their evidentiary presentations to address the burden of proof. Because the hearing on this appeal occurred after the Legislature repealed the burden-shifting statute, the repeal governs who has the burden of proof if its terms otherwise apply. *See Love v. State*, 286 So.3d 177, 187-88, 190 (Fla. 2019) (explaining that the "commonsense" application of a new procedure generally 'depends on the posture of the particular case'" and holding that a statute changing the burden of proof at an immunity hearing applied to hearings held after the statute's effective date) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 275 n. 29, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994)). Accordingly, neither the new nor the repealed statute apply to this case. Thus, the burden rests with the Petitioner to show what the correct assessment should be.
  - c) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6 (c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2. The cost approach, the sales-comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
  - d) 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 (In.

Tax Ct. 2005). For the 2021 assessment, the valuation date was January 1, 2021. *See* Ind. Code § 6-1.1-2-1.5.


- e) Leitner argued that the subject property's assessment should not have increased because no improvements were made to the property. As discussed above, assessments are based on a property's market value-in-use. An important component of that is the local market. Thus, if values in the local market increase (as indicated by factors such as higher sale prices), a particular property's assessment may increase even if there are no physical changes to the property. To make a case, Leitner need to show that the current assessment does not accurately reflect the subject property's market value-in-use. *P/A Builders and Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). To do that, she needed to present "objectively verifiable, market-based evidence." *Piotrowski BK #5643, LLC v. Shelby Cnty Ass'r* 177 N.E.3d 127 (Ind. Tax Ct. 2021).
- f) In this case, Leitner failed to offer any such evidence. She only argued that the subject property's assessment increased \$17,000 without any changes to the property. But it is insufficient to simply attack the methodology used to develop the assessment. Instead, parties must use market-based evidence to "demonstrate that the suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). But Leitner failed to do so.
- g) Because the Petitioner has not supported her claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### Final Determination

- 11. In accordance with the above findings and conclusions, the Board orders no change to the 2021 assessment.

ISSUED: 1/24/2023

  
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Chairman, Indiana Board of Tax Review

  
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Commissioner, Indiana Board of Tax Review

  
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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>>