REPRESENTATIVE FOR PETITIONERS: John A. Shuey, *pro se*

REPRESENTATIVE FOR RESPONDENT: Ayn Engle, Attorney at Law
Brian Cusimano, Attorney at Law
Marilyn Meighen, Attorney at Law

BEFORE THE
INDIANA BOARD OF TAX REVIEW

John A. & Judith A. Shuey,	)	Petition No.: 73-002-20-1-5-00607-21
	)	
Petitioners,	)	Parcel No.: 73-11-06-200-432.000-002
	)	
v.	)	
	)	County: Shelby
Shelby County Assessor,	)	
	)	
Respondent.	)	Assessment Year: 2020

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

October 21, 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:

Findings of Fact and Conclusions of Law

Introduction

1. In this assessment appeal, neither side offered probative evidence to establish a market value-in-use that differed from the property's assessment. And while the petitioners, John and Judith Shuey, offered raw data tending to show some inconsistencies in assessments of rental properties, they did not make an actionable case for an equalization

adjustment based on a lack of uniformity and equality. We therefore order no change to the assessment.

Procedural History

2. The Shueys contested the 2020 assessment of their property located at 314 S. Miller Street in Shelbyville. The Shelby County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 determination denying the Shueys' request for relief and valuing the property at $59,500 ($5,200 for land and $54,300 for improvements). That represents an increase of 43.7% over the property's 2019 assessment of $41,400. *Pet'rs Ex. 1.*

3. The Shueys responded by filing a Form 131 petition with us. On April 27, 2022, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on the Shueys' petition. Neither he nor the Board inspected the property. John Shuey, Bradley Berkemeier of Nexus Group, and appraiser Mark Ratterman testified under oath.

4. The Shueys submitted the following exhibits:

Petitioners Exhibit 1:	First page of the subject property record card,
Petitioners Exhibit 2:	Photographs of bathroom, kitchen cabinet, and wood paneling,
Petitioners Exhibit 3:	Photographs of carpeting and kitchen floor,
Petitioners Exhibit 4:	Photographs of shed and exterior of property,
Petitioners Exhibit 5:	Photograph of siding, overhang, and back steps,
Petitioners Exhibit 7:	Photographs and data from the subject and five other properties,
Petitioners Exhibit 8(a-c):	List of 2019 sales in "the heart of Shelbyville,"
Petitioners Exhibit 9:	Trending calculations and alternative GRM calculations,
Petitioners Exhibit 10(a-b):	Photographs and data from 31 other properties,
Petitioners Exhibit 11:	Analysis comparing assessed values to sale prices.

5. The Assessor submitted the following exhibits:

Respondent Exhibit 1:	Subject property record card,
Respondent Exhibit 2:	Appraisal report by Mark Ratterman,

Respondent Exhibit 3:	Curriculum Vitae of Mark Ratterman,
Respondent Exhibit 4:	Property record card for 621 Colescott,
Respondent Exhibit 5:	Sales disclosures for 621 Colescott,
Respondent Exhibit 6:	Property record card for 455 West Hendricks,
Respondent Exhibit 7:	Sales disclosures for 455 West Hendricks,
Respondent Exhibit 8:	Property record card for 526 West Taylor,
Respondent Exhibit 9:	Sales disclosures for 526 West Taylor.

6. The record also includes the following: (1) the hearings on related appeals involving the same parties and addressing properties located at 722 Elm St. and 239 E. Franklin St,[1] (2) all petitions or other documents filed in this appeal, (3) all notices and orders issued by the Board or the ALJ in this appeal, and (4) an audio recording of the hearing.

Objection

7. The Shueys objected to Respondent's Exhibits 4-9—sales disclosure forms and property record cards for five properties identified in Petitioners' Exhibit 7 that John Shuey referred to as "pseudo comps"—on grounds that the Assessor failed to timely provide copies of those exhibits to the Shueys. The Assessor emailed the contested exhibits early in the morning on the day before the hearing, and the Shueys claimed that they had no time to review them. The Assessor argued that she was offering the exhibits to rebut the Shueys' evidence. Counsel for the Assessor represented that she obtained the documents in the afternoon two days before the hearing, and that she sent them to the Shueys as soon as she had finished compiling them. The ALJ took the objection under advisement.

8. We overrule the objection. To promote settlement and avoid unfair surprise, our procedural rules require parties to exchange witness and exhibit lists at least 15 business days before a hearing and copies of exhibits at least five business days before the hearing. 52 IAC 4-8-1(a)-(b). The touchstone for enforcing those deadlines is whether the witness

[1] The ALJ agreed to let the parties incorporate things from the records of the 722 Elm St. (Pet. No. 73-002-20-1-5-00604-21) and 239 E. Franklin St. (Pet. No. 73-002-20-1-5-00601-21) appeals. The parties were not clear about exactly what they intended to incorporate from those hearings. But they extensively referenced testimony and arguments from those hearings. We therefore incorporate the entire audio recordings (and any official transcript from those recordings) of the 722 Elm St. and 239 E. Franklin St. hearings.

or exhibit at issue was known and anticipated. *See Evansville Courier*, 78 N.E.3d 745, 752 (Ind. Tax Ct. 2017) (explaining that the failure to disclose a known and anticipated exhibit within the deadlines laid out by our procedural rules constituted "precisely the type of 'gotcha' litigation that Indiana courts abhor."). That is true even where the evidence is offered for rebuttal purposes. *See McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 179 (Ind. 1993) ("[T]he nondisclosure of a rebuttal witness is excused only when that witness was unknown and unanticipated . . . .").

9. The Assessor offered the contested exhibits to address properties that John Shuey described as "pseudo comps." There is no evidence that the Assessor knew the Shueys intended to offer information about those properties before they gave her a copy of Petitioners Exhibit 7. Thus, the Assessor did not know of, or anticipate the need to use, the information contained in the contested exhibits before the exchange deadline, and counsel for the Assessor acted diligently in identifying, compiling, and exchanging those exhibits. We therefore admit Respondent's Exhibits 4-9. As explained below, however, the Shueys' "pseudo comps" lack probative weight for reasons other than the issues raised by the contested exhibits, and excluding those exhibits would not change our determination of the Shueys' appeal.

Findings of Fact

A. The subject property

10. The Shueys bought the subject property for $37,499 in March 2004, and they use it as a rental. It has a 1,412-square-foot, one-story single-family home with a 353-square-foot unfinished basement. The home was built in 1900 and has two bedrooms and 1 ½ bathrooms. The Shueys' rented the property out for $690/month under a July 2017 lease. *Shuey testimony; Ratterman testimony; Pet'rs Ex. 9; Resp't Ex. 1.*

11. The property is located on a busy street next to a commercial parking lot. The home is "clean" but "dated" and needs various repairs. For example, the tub in the full bathroom

is not properly caulked, which has led to water damage. The half bathroom also has water damage, and its pedestal sink is cracked. The kitchen cabinets are old and cracked. Carpeting throughout the home has snags and has been damaged by pet runs, and there are holes in linoleum floors. The home's exterior needs to be painted. In 2021, the Shueys paid to replace the home's roof as well as the roof of a little shed. And a large overhang is rotted. *Shuey testimony; Pet'rs Exs. 2-5.*

B. Ratterman's valuation opinion

12. The Assessor offered an appraisal prepared by Mark Ratterman, MAI, SRA. Ratterman has been an appraiser for 42 years. He has written 12 books and many seminars on appraising. He holds a position on Indiana's licensing board for appraisers, and he also volunteers as a Hendricks County PTABOA member. Ratterman certified that his appraisal conforms to the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Ratterman testimony; Resp't Exs. 2-3.*

13. He performed a market analysis and determined that the property's market was within the 46176 ZIP Code, which contains the older sections of Shelbyville. He found that the neighborhood was stable and that property values had increased by 133.33% between 2011 and 2020, which equals a 9.87% compound rate of appreciation. *Resp't Ex. 2.*

14. Ratterman did not inspect the home's interior, but he explained that through his extensive experience with repossessed and foreclosed homes, he has a good idea of what rentals look like. Based on his exterior visual inspection and information listed on the property record card, Ratterman assumed that the home was a standard rental for its age. He did not assume remodeling or an extraordinary number of defects. Instead, he rated the home as being in "average" condition, which he expressed as "2.5" on a 1-5 rating scale, with 1 being "new" and 5 being "poor." After seeing hearing testimony about the roof having been replaced and looking at photographs from before the assessment date, Ratterman

acknowledged that the roof was older than he had assumed. *Ratterman testimony; Resp't Ex. 2.*

15. Ratterman developed two valuation approaches: the income approach using a monthly gross rent multiplier ("GRM") and the sales-comparison approach. Under the income approach, Ratterman first had to estimate a market rental rate for the property. He looked at the property's contract rent. He also looked at data from the Broker's Listing Cooperative, which he testified "is the name for our MLS," to identify comparable rental properties. He settled on seven older bungalow-style homes from Shelbyville that were located "fairly proximate" to the subject property. Some had garages, driveways, or basements, and some did not. They all had between one and two bathrooms and between two and three bedrooms. He assigned quality and condition ratings of "4" to all the homes. They rented for between $660/month and $750/month under leases signed in 2019. Based on all his data, Ratterman settled on market rent of $725/month for the subject property. *Ratterman testimony; Resp't Ex. 2.*

16. Next, Ratterman developed a GRM, which he explained can be extracted from sales by dividing properties' sale prices by their monthly gross rent. He explained that when extracting a GRM, it is more difficult to find properties that are as closely comparable to the property being appraised than it is when applying the sales-comparison approach. That is partly due to the difficulty in finding rental data for properties that sell in the market. But Ratterman explained that the GRM is designed to reflect what buyers of income-producing properties will pay when they are motivated by a property's income stream rather than by its amenities. So comparability in terms of those amenities is not as important. Not every market segment will reflect the same GRMs, however. Things like a home's age, which generally relates to maintenance costs, affects the GRM for which it will sell.

17. Ratterman therefore used six sales of older[2] bungalow-style homes from Shelbyville to determine a monthly GRM for the subject property. He did not include the properties' addresses because the rent data was confidential. The properties rented for rates ranging from $650/month to $950/month, and they ranged in size from 696 to 1,090 square feet. They sold for GRMs ranging from 77.78 to 90.91, with a rounded average of 85. When Ratterman applied that GRM to the subject property's market rent, it yielded a value of $61,625, which he rounded down to $61,500. *Ratterman testimony; Resp't Ex. 2.*

18. For his sales-comparison analysis, Ratterman used what he viewed as the six most comparable properties to the subject property in terms of size, age, location, and other factors. The record is unclear as to whether some of Ratterman's comparable properties were sold to owner-occupiers as opposed to investors who planned to rent the properties out. John Shuey alternately asserted in argument and in questions to Ratterman that either five of six or all six of the properties sold to owner-occupiers. While those assertions are not evidence, Ratterman's response suggests that at least some of the properties were sold to owner-occupiers. He explained that the market previously was bifurcated, and owner-occupiers did not compete with investors for the same properties. But the market has changed, and investors now compete with owner-occupiers, which has driven up rents and GRMs for investment properties. *Ratterman testimony; Resp't Ex. 2.*

19. Ratterman adjusted the sale prices to account for differences between his comparable properties and the subject property that he believed the market would react to. First, he adjusted for concessions where the seller paid the buyer's financing or closing costs. He also adjusted for differences in market conditions, site size, condition, gross living area, basement area, garage area, and porch area. In keeping with the trends for the subject property's ZIP Code, Ratterman used 9% annual appreciation for his market-conditions adjustment. While his graph went back 10 years, he explained that a window of two

[2] In his opening argument for the hearing on 722 Elm St., John Shuey asserted that he drove by the homes and looked up their information and that three of the homes were built in 1950, 1958, and 1960, respectively. But he neither testified to, nor offered any other evidence to establish, those facts.

years is preferred for trending purposes. Ratterman acknowledged that he made an error concerning his condition rating for his first comparable property. In his report, he rated the property as "3.5," when he meant to rate it as "3.25" as he had done in other appraisals. Based on the adjusted sale prices, Ratterman concluded a value under the sales-comparison approach of $66,500. *Ratterman testimony; Resp't Ex. 2.*

20. At the hearing, however, Ratterman lowered his estimate to $61,500 to account for two things: (1) a change to the mean adjusted price from correcting the error on the comparable property's condition rating, and (2) the discrepancy between the condition he assumed for the subject home and the actual condition of its roof on the assessment date. *Ratterman testimony; Resp't Ex. 2.*

21. In his report, Ratterman reconciled his conclusions under the two approaches and settled on a value of $63,000. But he lowered that reconciled value to $61,500 to account for his revised conclusion under the sales-comparison approach. He did not change his conclusion under the GRM method, saying "rent is what it is" and "GRM is what it is." *Ratterman testimony; Resp't Exs. 1-2.*

C. The Shueys' data

22. The Shueys offered some data as well. Five properties that John Shuey referred to as "pseudo-comps" were from the same neighborhood as the subject property and sold "as is" for prices ranging from $19,000 to $41,000. The Shueys provided some information about their "pseudo comps," including the age of each home, the home's total area, and the number of bedrooms and bathrooms. But they did not compare those properties to the subject property along other lines that affect market value, nor did they adjust the sale prices to account for any relevant differences. The Shueys similarly offered a list of single-family homes from the inner part of Shelbyville that sold in 2019. Although John Shuey claimed that 30% of those properties sold for less than $50,000, the Shueys did not otherwise analyze the sales. *Shuey testimony; Berkemeier testimony; Pet'rs Exs. 7-8.*

23. The Shueys also used two methods to trend their March 2004 purchase price forward to a value as of January 1, 2020: the Housing Price Index ("HPI") and an overall inflation calculator. They arrived at values of $56,000 using the HPI and $50,751 using the inflation calculator. In addition, the Shueys calculated several different values using GRMs of 60 and 70 (as opposed to Ratterman's GRM of 85) and applying those GRMs to the property's actual rent (as opposed to Ratterman's market-rent estimate). They did not explain whether they had any data to support using those alternate GRMs. Instead, John Shuey simply asserted that investors in low-end properties "by-and-large" looked for a GRM of 65 to 70. *Shuey testimony; Pet'rs Ex. 9.*

24. Finally, the Shueys compared sale prices from 2019 to assessments for 2020 for 31 properties that the Assessor had used in computing a GRM for 2020. According to the Shueys' calculations, 87.5% of properties that sold for less than $60,000 were assessed above their sale prices, while 75% of properties that sold for more than $60,000 were assessed below their sale prices. The Shueys used incorrect assessments for several of the properties, including instances where they used an assessment from 2021 instead of 2020. The errors were all for properties that sold for more than $60,000. In all but two instances, correcting the errors would have increased the amount by which the properties were underassessed. *Shuey testimony; Berkemeier testimony; Pet'rs Exs. 10-11.*

Analysis

A. Because we held our hearing after the Legislature repealed Ind. Code § 6-1.1-15-17.2, the provisions of that specialized burden-of-proof statute do not apply to the Shueys' appeal.

25. Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.[3] A petitioner has the burden of

[3] The Department of Local Government Finance has adopted a new assessment manual and guidelines that apply to assessments for 2021 forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

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).

26. Until its repeal on March 21, 2022, however, Ind. Code § 6-1.1-15-17.2, commonly known as the "burden-shifting statute," created an exception to the general rule. That statute 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. I.C. § 6-1.1-15- 17.2(a)-(b) (repealed by 2022 Ind. Acts 174, § 32 effective on passage). Where an assessor had the burden, her evidence needed to "exactly and precisely conclude" to the challenged assessment. *Southlake Ind. LLC v. Lake Cty. Ass'r* ("*Southlake II*"), 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). If the assessor failed to meet her burden, the taxpayer could prove that its proffered assessment value was correct. 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, 179-80 (Ind. 2021).

27. At the same time the Legislature repealed the burden-shifting statute, it enacted Ind. Code § 6-1.1-15-20. 2022 Ind Acts 174, § 34. 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 allows the Board 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* I.C. § 6-1.1-15-20(f). The new statute, however, only applies to appeals filed after its March 21, 2022 effective date. I.C. § 6-1.1-15-20(h).

28. The Shueys pointed to the fact that their assessment increased by more than 5% between 2019 and 2020 and argued that the burden-shifting statute should apply because it was in effect when they filed their appeal. The Assessor disagreed, arguing that the burden-shifting statute was repealed before we held our evidentiary hearing. Because the new

statute does not apply to appeals filed before March 21, 2020, the Assessor argued that no specialized burden-of-proof statute applies to the Shueys' appeals.

29. We agree with the Assessor. We start with the principle that 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 retroactive application, or "strong and compelling" reasons dictate retroactive application. *State v. Pelley*, 828 N.E.2d 915, 919 (Ind. 2005). The same is true for acts repealing existing statutes. Indeed, 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.").

30. 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*, 189 N.E.3d 580, 587 (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 587-88. 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.* at 588 (quoting *R.I. Insurers' Insolvency Fund v. Leviton Mfg. Co.*, 716 A.2d 730, 735 (R.I. 1998).

31. In *Church*, the defendant sought to depose the child victim of a sex offense. After the date of the offense and the defendant was charged, but before he sought to depose the child, the Legislature passed a statute requiring court approval to depose child victims if the prosecutor objects to the deposition. *Church*, 189 N.E.3d at 584-85; I.C. § 35-40-5-11.5. After the defendant was denied authorization to depose the child, he appealed, arguing that the trial court had impermissibly applied the new statute retroactively. The Court disagreed, holding that the triggering event of the statute was the defendant seeking to depose the child. *Id.* at 588. Because the deposition statute was already in effect when the defendant sought to depose the child, the statute was being applied prospectively. *Id.* Had the defendant sought the deposition in the eight days between being charged and the statute taking effect, applying it would have been retroactive. *Id.*

32. The burden-shifting statute addresses the burden of proof in assessment appeals. So does its repeal, the effect of which is to return cases that the statute had carved out for special treatment back to the default rule governing the burden of proof in assessment appeals generally, at least until the new burden-shifting statute (I.C. § 6-1.1-15-20) kicks in. The operative event is when a hearing on the merits convenes. The burden-shifting statute had already been repealed when the hearing on the Shueys' appeals convened, and we must apply the law as it existed at that time. The Assessor therefore did not have the burden of proving the assessment was correct and there was no provision for reverting the assessment to the prior year's level.

B. Neither the Shueys nor the Assessor offered probative evidence establishing a market value-in-use for the property that differs from the assessment.

33. 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); 2011 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 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). 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 MANUAL at 2.

34. Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with USPAP 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, sales information for 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). The "gross rent multiplier method" is the preferred method for valuing properties with between one and four rental units. I.C. 6-1.1-4-39(b).

35. 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). For 2020 assessments, the valuation date was January 1, 2020. *See* I.C. § 6-1.1-2-1.5(a).

36. The Shueys failed to make a prima facie case for changing the assessment. They offered no probative market-based evidence to show the subject property's true tax value. They

did offer photographs and testimony about the home's design, construction quality, and physical deterioration. They also offered evidence about the area immediately surrounding the property. While all those things might affect the property's market value-in-use, they do not, by themselves, show what that value is.

37. The Shueys' "pseudo-comps" and list of sale prices from 2019 fare no better. The Shueys offered nothing to show how the properties on their sales list compared to the subject property. While they offered a little more information for their "pseudo comps," they did not sufficiently compare the characteristics of any of their "pseudo comps" to those of the subject property for the raw sales data to have probative value. And they did not even attempt to explain how relevant differences affected the properties' relative values. *See Long*, 821 N.E.2d at 470-471 (holding that taxpayers' sales data for other properties lacked probative value where they failed to compare how the characteristics of those properties compared to their property and to explain how any differences affected market value-in-use).

38. The Shueys also attempted to use the HPI and an overall inflation calculator to trend the price they paid to buy the subject property in 2004 forward to a value as of the January 1, 2020 valuation date. But the Shueys failed to show that using those methods, or any other method, to trend the sale price of a residential property to a value as of a date more than 15 years removed from the sale complies with generally accepted appraisal principles. To the contrary, Ratterman testified that he would prefer not to go back more than two years for trending purposes.

39. The Shueys' computations of alternative values using different GRMs and the property's contract rent similarly lack probative weight. They did not offer any market support for how they determined those GRMs beyond John Shuey's bald assertion that investors in low-end properties look for GRMs of 65 to 70. Nor did they show that the contract rent they charged was at market rate as of the valuation date. *See Indiana MCH, LLC. v. Scott Cty. Ass'r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (Explaining that under the

income approach, "one must not only examine the historical and current income, expenses, and occupancy rates for the subject property, but the income, expenses, and occupancy rates of comparable properties in the market as well.") (citing THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 493, 501, 509, 511-12 (12th ed. 2001).

40. Although the Assessor sought to raise the assessment, she too failed to offer probative evidence establishing a different value. She relied on Ratterman's appraisal. Ratterman is an experienced appraiser who certified that he complied with USPAP in appraising the property. But he acknowledged that his original assumption about the home's condition was partly incorrect, which caused him to adjust his estimate under the sales-comparison approach downward by $4,000, leaving it only $1,000 above the property's assessment. Although Ratterman testified that the change in condition would not affect his estimate under the GRM method, he did not sufficiently explain why. If the change in assumed condition would alter how buyers perceive the property under the sales-comparison approach to the extent Ratterman acknowledged, it stands to reason that it might also affect the return investors would require on the property's market rent. Without more explanation, we will not simply assume otherwise. And even a small change in the GRM might bridge the modest gap between Ratterman's unrevised estimate of $61,500 and the property's assessment. Accordingly, we reject Ratterman's conclusion of value.

C. The Shueys did not make an actionable claim for an equalization adjustment.

41. Finally, the Shueys claimed that the Assessor's GRM model discriminates against lower-value properties by assessing them at a higher proportion of their sale prices than it does for higher-value properties. The Shueys did not identify the underlying legal theory on which they based their claim or the relief to which they were entitled under that claim, and we will not make those arguments for them. Nonetheless, the Assessor addressed the Shueys' claim as one based on an alleged lack of uniformity and equality.

42. As the Tax Court has explained, "[o]ne way to measure uniformity and equality in property assessment is through an assessment ratio study." *See Thorsness v. Porter Cty. Ass'r*, 3 N.E.3d 49, 51 (Ind. Tax Ct. 2014). Such a study "compare[s] the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Id.* at 51 (citation omitted). Where a ratio study shows an actionable lack of uniformity, a taxpayer may be entitled to an equalization adjustment to bring its assessment to the common level shown by the study. *Id.*

43. In providing guidance about how to compile and evaluate the data necessary for a ratio study, the DLGF has incorporated the International Association of Assessing Officers' ("IAAO") Standard on Ratio Studies (July 2007) ("2007 Standard"). *See* 50 IAC 27-1-4 (2010); 50 IAC 27-4-5(a) (2010);[4] *see also*, *Thorsness*, 3 N.E.2d at 53-54 (citing predecessor to 50 IAC 27-1-4). For example, the 2007 Standard requires all properties within the scope of the study to be stratified into two or more populations. 2007 STANDARD at 10; *see also, Thorsness*, 3 N.E.2d at 54 (citing IAAO STANDARD ON RATIO STUDIES (July 1999)). It also calls for statistical analyses that measure things like assessment level, uniformity, and variability. *See* 2007 STANDARD (passim); *see also, Thorsness*, 3 N.E.2d at 54.

44. In *Thorsness*, the taxpayer offered evidence showing that while his property was assessed at 99.9% of its sale price, six other properties in his subdivision were assessed at an average of only 79.5% of their recent sale prices. *Thorsness*, 3 N.E.3d at 50. At the administrative level, we rejected the taxpayer's claim on grounds that it neither conformed to professionally accepted standards, nor was based on a statistically reliable sample of properties. *Id.* Although the Tax Court recognized that the taxpayer's

[4] As of the January 1, 2020 assessment date, the DLGF incorporated the 2007 Standard. On November 2, 2020, the DLGF promulgated new rules on annual adjustments and equalization standards. *See* 50 IAC 27. Those rules incorporate an updated version of the IAAO Standard: the IAAO Standard on Ratio Studies (April 2013). 50 IAC 27-1-4(1) (filed Nov 2, 2020, 9:34 a.m.).

evidence was relevant, it affirmed our conclusion that the evidence lacked probative value to show that his assessment exceeded the common level of assessment for the township. *Id.* at 54.

45. Like the taxpayer in *Thorsness,* the Shueys offered evidence that is relevant to a claim for an equalization adjustment based on a lack of uniformity and equality. Although they did not separately compute ratios for the 31 properties they identified, they at least provided the raw data—sale prices and assessed values—from which those ratios could be computed, even if some of that raw data contained errors. But they did not statistically analyze the data in the manner that the DLGF's regulations and the 2007 Standard contemplate. Thus, like the taxpayer in *Thorsness*, the Shueys failed to make an actionable claim for an equalization adjustment. Indeed, they did not quantify the amount of the adjustment they sought if they even sought such an adjustment at all.

Conclusion

49. Neither party offered probative evidence to establish a market value-in-use for the subject property that differed from its assessment. We therefore order no change to the assessment.

We issue this Final Determination on the date first 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 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>.