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

Petitions:	**03-024-21-1-5-00025-22**	**03-024-21-1-5-00026-22**
	03-024-21-1-5-00027-22	**03-024-21-1-5-00028-22**
Petitioner:	**Wendy H. Elwood Trust**	
Respondent:	**Bartholomew County Assessor**	
Parcels:	**03-95-32-140-000.129-024 (Lot 20)**	
	03-95-32-140-000.128-024 (Lot 19)	
	03-95-32-140-000.115-024 (Lot 8A)	
	03-95-32-140-000.116-024 (Lot 9A)	
Assessment Year:	**2021**	

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

Procedural History

1. On June 15, 2021, the Wendy H. Elwood Trust filed Form 130 petitions contesting the 2021 assessments of four vacant land parcels located at Tipton Pointe Court in Columbus: Lots 8A, 9A, 19, and 20. On each petition, the Trust alleged that the parcel's assessment "should be based on the developer's discount."

2. The Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") issued Form 115 determinations for all four parcels denying the Trust's requests, and valuing the lots as follows:

Lot	Assessed Value
8A	$321,300
9A	$416,100
19	$256,200
20	$219,000

3. Disagreeing with those determinations, the Trust filed Form 131 petitions with us and elected to proceed under our small claims procedures. On April 11, 2023, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on the Trust's petitions. Neither he nor the Board inspected the parcels.

4. Ginny Whipple, the Bartholomew County Assessor, represented herself and testified under oath. Melissa Michie appeared as counsel for the Trust. Jon Scheidt, an appraiser for Don R. Scheidt & Company, also testified under oath.

Record

5. The official record for this matter includes the following:

Petitioner Exhibit 1:	2021 property record card ("PRC") for Lot 8A,
Petitioner Exhibit 2:	2021 Form 130 for Lot 8A,
Petitioner Exhibit 3:	2021 Form 131 for Lot 8A,
Petitioner Exhibit 4:	2021 PRC for Lot 9A,
Petitioner Exhibit 5:	2021 Form 130 for Lot 9A,
Petitioner Exhibit 6:	2021 Form 131 for Lot 9A,
Petitioner Exhibit 7:	2021 PRC for Lot 19,
Petitioner Exhibit 8:	2021 Form 130 for Lot 19,
Petitioner Exhibit 9:	2021 Form 131 for Lot 19,
Petitioner Exhibit 10:	2021 PRC for Lot 20,
Petitioner Exhibit 11:	2021 Form 130 for Lot 20,
Petitioner Exhibit 12:	2021 Form 131 for Lot 20,
Petitioner Exhibit 13:	2020 Form 115 for Lot 8,
Petitioner Exhibit 14:	2020 Form 115 for Lot 9,
Petitioner Exhibit 15:	Indiana Code § 6-1.1-4-12 (2020),
Petitioner Exhibit 16:	Legislative Service Agency's Fiscal Impact Statement for House Bill 1065 (2020),
Petitioner Exhibit 17:	Affidavit of Mark and Wendy Elwood,
Petitioner Exhibit 18:	Affidavit of Jeffrey N. Bush,
Petitioner Exhibit 19:	Joint Motion for Continuance of hearing scheduled for December 7, 2022,
Petitioner Exhibit 20:[1]	*Bartholomew Cnty. Ass'r v. Wendy H. Elwood Trust*, Pet. Nos. 03-024-18-1-5-00673-21, et al. (IBTR Dec. 21, 2022).
Respondent Exhibit A:	Ginny Whipple's resume,
Respondent Exhibit B:	Statement of Professionalism,
Respondent Exhibit C:	2020 PRC for Lot 8A,
Respondent Exhibit D:	2021 PRC for Lot 8A,
Respondent Exhibit E:	2020 PRC for Lot 9A,
Respondent Exhibit F:	2021 PRC for Lot 9A,
Respondent Exhibit G:	2021 PRC for Lot 19,
Respondent Exhibit H:	2021 PRC for Lot 20,
Respondent Exhibit I:	2020 aerial photograph of the subject parcels,
Respondent Exhibit I-1:	2021 aerial photograph of the subject parcels,
Respondent Exhibit J:	Sales disclosure dated December 4, 2013,
Respondent Exhibit K:	Plat map of Tipton Lakes—Southwest Administrative Subdivision,
Respondent Exhibit L:	Plat map of Tipton Pointe Major Subdivision—Phase One,

[1] The Trust also briefly referenced a one-page document labeled "Appendix" while presenting its case-in-chief but did not offer that document as evidence.

Respondent Exhibit M:	Sales disclosure dated December 11, 2017,
Respondent Exhibit M-17:	Parcels owned by Elwood in 2017,
Respondent Exhibit M-18:	Parcels owned by Elwood in 2018,
Respondent Exhibit M-20:	Parcels owned by Elwood in 2020,
Respondent Exhibit M-21:	Parcels owned by Elwood in 2021,
Respondent Exhibit N:	October 15, 2020 email from Milo Smith to Ginny Whipple,
Respondent Exhibit O:	July 7, 2022 email from Jeffrey Bush to Ginny Whipple,
Respondent Exhibit P:	Photograph of a water drain for Tipton Pointe Court,
Respondent Exhibit Q:	Photograph of stubbed piping for Tipton Pointe Court,
Respondent Exhibit R:	Photograph of two lots at Tipton Pointe,
Respondent Exhibit S:[2]	Photograph of Lot 8's water hookup,
Respondent Exhibit T:	Photograph of Lot 9's water hookup,
Respondent Exhibit U:	Photograph of Lot 8's electrical hookup,
Respondent Exhibit V:	Photograph of the public sidewalk in front of the subject parcels,
Respondent Exhibit W:	Photograph of the community mailbox for Tipton Pointe,
Respondent Exhibit X:	Photograph of a streetlight, the street, and curbs in front of the subject parcels,
Respondent Exhibit Y:	Photograph of the electrical hookup and fire hydrant in front of Lot 9,
Respondent Exhibit Z:	Appraisal of Lot 8A,
Respondent Exhibit AA:	Appraisal of Lot 9A,
Respondent Exhibit BB:	Appraisal of Lot 19,
Respondent Exhibit CC:	Appraisal of Lot 20.

6. The record also includes: (1) all petitions and 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.

Findings of Fact

A. The subject land and its history

7. In December 2013, Carr Road Development, LLC bought approximately 60 acres of land along Carr Hill Road. That tract consisted of Lots 2-5 of Tipton Lakes - Southwest Administrative Subdivision, including what are now the subject parcels. In August, 2017, Carr subdivided Lot 5 into 18 separate lots and two smaller common areas, which became known as the Tipton Pointe Major Subdivision Phase I, or "Tipton Pointe." Carr

[2] For Exhibits S-Y, the lot numbers referenced appear to be the lot numbers that existed at the time the photographs were taken.

then spent roughly another $1.5 million developing the subdivided lots for resale as single-family sites. *Whipple testimony; Exs. J-L, P-Y.*

8. Mark Elwood verbally agreed to buy the land comprising the subject parcels, which at the time consisted of four lakefront lots (Lots 8, 9, 10, and 11) in Tipton Pointe, from Carr for $1,550,000. He and Wendy Elwood intended to build a home on the lots. At the Elwoods' request, Carr re-platted the four lots into two: Lots 8 and 9. *Exs. M, O, 17.*

9. Before closing on the purchase, the Elwoods found an existing home to buy elsewhere. Because Carr had relied on the verbal agreement, however, the Elwoods decided to proceed with the purchase. The sale closed on December 11, 2017, and Carr transferred title to the Trust. The record is silent regarding the Trust's formation. But we infer that one or both the Elwoods are beneficiaries and that one of them is the trustee. *Whipple testimony; Exs. M-17 – M-21.*

10. After closing on the sale, the Elwoods decided that the two lots should be re-platted back into four smaller lots to make them easier to sell. On August 3, 2020, the Bartholomew County Auditor notified the Assessor that the lots had been re-platted into the four lots currently under appeal: Lots 8A, 9A, 19, and 20. Each lot was assigned a separate parcel number. Lots 8A and 9A kept the parcel numbers previously assigned to Lots 8 and 9, although they contained a smaller area than the original parcels, while Lots 19 and 20 were assigned new parcel numbers. As shown by the property record cards, there were no improvements on the parcels as of the 2021 assessment date. There is no evidence, however, to show whether any permits had been issued for the parcels as of that date. *Whipple testimony; Exs. C-H, O, 17.*

11. The record is silent as to the amount for which the land comprising Lots 8 and 9 was assessed in 2017 or 2018. In 2019, Lot 8 was assessed for $729,100 and Lot 9 was assessed for $705,600. In 2020, the Assessor reduced the values to $412,600 (Lot 8) and $416,100 (Lot 9). There is no evidence, however, to show how the land was classified at any point before 2020, when the Assessor classified Lots 8 and 9 as residential.[3] She continued that residential classification for the subject parcels in 2021. The property record cards, however, contain the following entry from December 11, 2017: "18 p 19 Developer's discount removed from land." *Exs. C-H, 20.*

B. The Trust's appeals of the 2018-2020 assessments

12. On May 27, 2020, the Trust filed Form 130 petitions with the Assessor challenging the 2018-2020 assessments for Lots 8 and 9 on grounds that the lots "should be priced using the developer's discount." The PTABOA agreed, unanimously passing "a motion to add the [developer's discount] to all parcels starting in 2018 and moving forward," and issuing determinations that valued the Lots 8 and 9 at $1,900, and $1,800, respectively for 2018 and 2019, and both lots at $5,200 for 2020. *Exs. 13-14, 20.*

[3] The 2020 property record cards for Lots 8 and 9 and the 2021 property record cards for the subject parcels all list "Property Class 500 Vacant – Platted Lot." *Exs. C-H.* Class 500 is a residential classification. 2021 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 20.

13. The Assessor appealed the PTABOA's determinations to us. On December 21, 2022, we issued our final determination. As for the 2018 and 2019 appeals, we found that the question of whether the parcels qualified for the developer's discount required subjective judgment and that the Trust did not file its Form 130 petitions within the statutory deadline for filing such appeals, but rather relied on the longer deadline for appealing objective errors. We therefore found that the Trust's appeals were untimely and ordered that the original assessments for those years be reinstated. *Ex. 20.*

14. We reached a different conclusion for 2020. The Trust timely appealed that year's assessment to the PTABOA. We found that the Assessor, as the petitioner before us, failed to meet her burden of negating that the parcels qualified for the developer's discount. We therefore upheld the PTABOA's determinations for 2020. *Ex. 20.*

C. Scheidt's appraisals of the subject parcels

15. Jon Scheidt, a certified appraiser and SRA, prepared four separate appraisals estimating the market value-in-use for each of the subject parcels as of the January 1, 2021 valuation date. He certified that he complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Scheidt testimony; Exs. Z-CC.*

16. Scheidt based his appraisals on the sales-comparison approach to value. He used the same sales data for each appraisal, which consisted of four comparable waterfront lots that sold between May 2017 and January 2021. He then adjusted the lots' sale prices to account for relevant ways in which they differed from the subject parcels. For example, the subject parcels all have a view of the lake itself, while two of the four comparables were "canal lots," and another was on a cove. Scheidt explained that lots without a view of the main body of water command less of a premium. After examining sales of lots with different water views, Scheidt determined that it was appropriate to adjust the sale prices of the canal and cove lots upward by $125,000. Because he determined water view was the driving factor in price differentials, he did not adjust for differences in site size. *Scheidt testimony; Exs. Z-CC.*

17. Similarly, while three of the four comparable sales occurred from 2017 through 2019, Scheidt found that the market was stable throughout the period leading up to the January 1, 2021 valuation date. Because most of the increase within the market occurred throughout 2021 and into 2022, Scheidt did not adjust any of the sales for market conditions. After adjustment, the sale prices ranged from $345,000, which was the price for the lot that had a similar view of the lake as the subject parcels and required no adjustment, to $375,000. He settled on a value of $350,000 for each of the subject parcels. *Scheidt testimony; Exs. Z-CC.*

Conclusions of Law

A. Indiana Code § 6-1.1-13-13 does not apply retroactively to prohibit the increases in the assessments for the land comprising the subject parcels.

18. The Trust claims that Ind. Code § 6-1.1-13-13, which became effective January 1, 2022, prohibited the Assessor or the PTABOA from increasing the subject parcels' 2021 assessments over the amount that the PTABOA determined for Lots 8 and 9 for the 2020 assessment year. Broadly speaking, Ind. Code § 6-1.1-13-13 sets up a regime where once a taxpayer successfully appeals an assessment that meets certain defined criteria, assessing officials are prohibited from increasing the property's assessment in succeeding years for any reason other than applying an "annual adjustment factor." I.C. § 6-1.1-13-13(b). The prohibition lasts until the "first year of the next four (4) year cyclical assessment cycle." *Id.*[4] The statute identifies several factors limiting its application, which the Trust does not address. We find it unnecessary to address those factors, however, because the Trust has given no reason why we should apply the statute retroactively to these appeals.

19. Statutes apply prospectively only, unless the Legislature "unequivocally and unambiguously" intended retroactive application, or "strong and compelling" reasons dictate such an application. *State v. Pelley*, 828 N.E.2d 915, 919 (Ind. 2005). The Legislature did not clearly evince an intent for Ind. Code § 6-1.1-13-13 to be retroactive; to the contrary, it made the statute effective January 1, 2022. *See* 2021 Ind. Acts 178, § 2. And the Trust has not offered any reason, much less a compelling one, to apply the statute retroactively.

20. The question of whether a particular application of a newly enacted statute is prospective or retroactive hinges on whether the "'new provision"—in this case, the prohibition on increasing an assessment for any reason other than applying an annual adjustment factor—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. A statute 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).

21. 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

[4] The statute also restricts taxpayers' appeal rights. *See* I.C. § 6-1.1-13-13(b) ("During this period, the taxpayer may not appeal an increased assessment . . . unless the taxpayer believes that the increased assessment is arbitrary and capricious and not made consistent with the annual adjustment factor used by the assessing official to adjust the property values for a tax year.").

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. When 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.*

22. Indiana Code § 6-1.1-13-13's relevant operative event is an assessing official's act of assessing a property. The assessments to which the Trust seeks to apply the statute—the 2021 assessment of the subject parcels—was completed before the statute's January 1, 2022 effective date. The statute attaches new legal consequences to that event by limiting the factors on which that assessment could be based without being invalidated. Thus, the Trust asks us to apply Ind. Code § 6-1.1-13-13 retroactively, which we cannot do.

B. The Trust failed to meet its burden of showing that the subject parcels qualified for the developer's discount.

1. 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 Trust's appeals.

23. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. A petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cnty. Assessor,* 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2021).

24. 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, as last corrected by an assessing official, stipulated to or settled by the taxpayer and the assessing official, or determined by the reviewing authority. I.C. § 6-1.1-15- 17.2(a)-(b) (repealed 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 Cnty. 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 Cnty. Ass'r* ("*Southlake I*"), 174 N.E.3d 177, 179-80 (Ind. 2021).

25. At the same time the Legislature repealed Ind. Code § 6-1.1-15-17.2, 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's assessment. 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, expressly applies only to appeals filed after its March 21, 2022, effective date. I.C. § 6-1.1-15-20(h).

26. The Trust claims that the original burden-shifting statute (Ind. § 6-1.1-15-17.2) applies to these appeals. We find otherwise. The principle that statutes apply prospectively only absent the Legislature clearly and unequivocally indicating a contrary intent or the existence of compelling reasons dictating retroactive application, applies equally to legislative acts that repeal 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.").

27. Once again, the Legislature did not clearly evince an intent for the repeal of Ind. Code § 6-1.1-15-17.2 to be retroactive; to the contrary, it made the repealing act effective upon passage. Thus, we must determine whether, as the Trust apparently believes, applying the general rule on the burden of proof instead of the burden-shifting and reversion provisions of Ind. Code § 6-1.1-15-17.2 would be a retroactive (and therefore impermissible) application of the repealing act. We apply the same analysis as we did in our preceding discussion of Ind. Code § 6-1.1-13-13. But we reach the opposite conclusion: while applying Ind. Code § 6-1.1-13-13 to these appeals would be retroactive, applying the act that repealed the burden shifting statute is prospective.

28. 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, not, as the Trust seems to

believe, when an appeal is filed. The burden-shifting statute had already been repealed when the ALJ convened the hearing on the Trust's appeals, 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.

2. The Trust failed to make a prima facie case that the assessments violated the developer's discount.

29. As shown by Ind. Code § 6-1.1-4-12, the developer's discount is not a discount price. Instead, it prohibits certain land from being re-classified and assessed based on that new classification absent specified triggering events:

> (a) As used in this section, *"land developer" means a person that holds land for sale in the ordinary course of the person's trade or business*.... The determination of whether a person qualifies as a land developer shall be based upon whether such person satisfies the requirements contained in this subsection, and no consideration shall be given to either the person's industry classification, such as classification as a developer or builder, or any other activities undertaken by the person in addition to holding land for sale-in the ordinary course of the person's trade or business. . .
>
> (b) As used in this section, *"land in inventory"* means:
>
> (1) a lot; or
>
> (2) a tract that has not been subdivided into lots;
>
> *to which a land developer holds title in the ordinary course of the land developer's trade or business.*
>
> (c) As used in this section, "title" refers to legal or equitable title, including the interest of a contract purchaser.
>
> . . . .
>
> (e) Except as provided in subsections (i) and (j), if:
>
> (1) land assessed on an acreage basis is subdivided into lots; or
>
> (2) land is rezoned for, or put to, a different use;
>
> the land shall be reassessed on the basis of its new classification.
>
> (f) If improvements are added to real property, the improvements shall be assessed.
>
> (g) An assessment or reassessment made under this section is effective on the next assessment date.
>
> . . . .
>
> (i) Except as provided in subsection (k) and subject to subsection (j), land in inventory may not be reassessed until the next assessment date following the earliest of:
>
> (1) the date on which title to the land is transferred by:
>
> (A) the land developer; or
>
> (B) a successor land developer that acquires title to the land;
>
> to a person that is not a land developer;

(2) the date on which construction of a structure begins on the land; or

(3) the date on which a building permit is issued for construction of a building or structure on the land.

(j) Subsection (i) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.

I.C. § 6-1.1-4-12.

30. The statute "promotes commercial development by allowing a developer's land to be assessed on the basis of its original (i.e., its pre-purchase) classification until an objective event signaling the commencement of development occurs." *Hamilton Cnty. Ass'r v. Allisonville Rd. Dev.*, LLC, 988 N.E.2d 820, 823 (Ind. Tax Ct. 2013). Generally, where acreage is divided into lots or land is rezoned for, or put to, a different use, the land must be reclassified and assessed based on its new classification. Subsection (i), which is commonly referred to as the "developer's discount," creates an exception to that rule. The developer's discount prohibits "land in inventory," i.e., land that a "land developer" holds for sale in the ordinary course of its trade or business, from being reclassified and reassessed until one of three additional triggering events occurs: (1) the land developer transfers the property to someone who is not a land developer; (2) a structure is built on the land; or (3) a building permit is issued. Generally speaking, both the developer's discount and Ind. Code § 6-1.1-4-12 as a whole were "designed to encourage developers to buy farmland, subdivide it into lots, and resell the lots." *Allison Rd. Dev.*, 988 N.E.2d at 823 (*quoting Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001)).

31. As the party bringing the appeal, the Trust had the burden of proving that the assessments violated the developer's discount and establishing the relief to which it was entitled. Because the developer's discount only operates to prohibit reclassification of land until certain triggering events signaling development have occurred, the Trust needed to show both that the land was reclassified and what its original classification was. The record contains no evidence that directly addresses reclassification. At most, the property record cards indicate that the Assessor removed the developer's discount for the 2018 assessment. And the Trust offered no evidence to show how the land was classified before 2020.

32. Even if we were to assume that the Assessor reclassified the land, the developer's discount does not bar reclassification forever; it instead delays the reclassification until one of the three triggering events listed in subsection (i) occurs. The Trust therefore needed to show that none of those triggering events had occurred before the 2021 assessment date. While there is some evidence that the Trust had not begun building any structures on the parcels as of the 2021 assessment date (the 2021 property record cards show no buildings), the Trust offered nothing to show whether building permits had been issued. In other words, the Trust failed to present a prima facie case that the property was reclassified in contravention of the developer's discount statute.

33. The Trust therefore failed to meet its burden. We recognize that in the 2020 appeals of the subject parcels' predecessor lots, we upheld the PTABOA's assessment determination, which it purported to base on the developer's discount. In these appeals, by contrast, we reject the Trust's claim that the subject parcels were entitled to the discount. But the different outcomes stem partly from the difference in who had the burden of proof. In the prior year, the Assessor also failed to make a prima facie case (that the developer's discount should *not* apply). In any case, as the Tax Court has explained, "each tax year-and each appeal process-stands alone." *Fisher v. Carroll Cnty. Ass'r*, 74 N.E.3d 582, 588 (Ind. Tax Ct. 2017). The fact that land qualifies for the developer's discount in one year does not necessarily mean it qualifies in later years: intervening events may trigger reclassification.

C. The parcels' assessments should be increased to reflect their market values-in-use, as shown by Scheidt's USPAP-compliant appraisals.

34. While the Assessor agrees that the developer's discount does not apply, she also claims that the subject parcels were assessed for less than their market values-in-use and asks us to raise the assessments. The Trust, however, argues that we cannot increase the assessments because it did not raise the parcels' valuation as an issue in its appeals but instead only claimed that the parcels were improperly denied the benefit of the developer's discount. We disagree. As explained above, the developer's discount is a rule that governs how vacant land is classified and assessed. The Trust's claim therefore necessarily implicates the property's assessed value. The Assessor was free to ask us to raise the assessment. Indeed, the Trust did not object to any of the valuation evidence that the Assessor offered to support her request. And we may "correct *any* errors *related to* a claim under [Ind. Code § 6-1.1-15-1.1]" that is within our jurisdiction under Ind. Code § 6-1.5-4-1. I.C. § 6-1.1-15-4(a) (emphasis added).

35. We therefore turn to the Assessor's valuation evidence. 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 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." MANUAL at 2. 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).

36. The Assessor offered Scheidt's USPAP-compliant appraisals of the subject parcels. Scheidt used a generally accepted methodology—the sales-comparison approach—to estimate the parcels' market values-in-use. And he supported both his choice of comparable properties and the adjustments he made to their sale prices. The Trust did nothing to impeach or rebut Scheidt's appraisals. We therefore find those appraisals

probative of the subject parcels' values and order that each parcel's 2021 assessment be increased to $350,000, the amount estimated in the appraisals.

Conclusion

37. The Trust, which had the burden of proof, claims that the subject parcels' assessments were incorrect because they were denied the developer's discount, i.e., that the Assessor improperly reclassified the parcels and assessed them based on their new classification. But the Trust failed to show that the Assessor had reclassified the parcels, much less prove that no permit had been issued for construction on the parcels, an essential element to maintaining the developer's discount. The Trust therefore failed to make a prima facie case for reducing the assessments. The Assessor, however, offered probative USPAP-compliant appraisals showing that the parcels were assessed for less than their market values-in-use. We therefore order each parcel's assessment increased to $350,000.

Date: JULY 7, 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>.