

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

Petition: 03-005-16-1-4-00132-20
03-005-17-1-4-00133-20
03-005-18-1-4-00134-20
Petitioner: Chevrolet of Columbus
Respondent: Bartholomew County Assessor
Parcel: 03-95-27-120-000.203-005
Assessment Year: 2016-2018

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

Procedural History

1. On June 14, 2019, Chevrolet of Columbus filed three Form 130 petitions contesting its 2016-18 assessments. It checked the box indicating that it was alleging a clerical, mathematical, or typographical mistake. Chevrolet claimed that the Assessor erred by using a \$13 base rate instead of a \$10 base rate for primary land, and a \$3.90 base rate instead of \$3 base rate for undeveloped land.
2. The Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued Form 115 determinations denying Chevrolet's appeals and determining the following values:

Year	Land	Improvements	Total
2016	\$1,734,500	\$100	\$1,734,600
2017	\$1,734,500	\$1,522,600	\$3,257,100
2018	\$2,001,400	\$1,415,900	\$3,417,300

3. Chevrolet filed three Form 131 petitions with the Board, electing to proceed under our small claims procedures. On March 25, 2021, Erik Jones, our designated Administrative Law Judge (ALJ) held a telephonic hearing on Chevrolet's petitions. Neither he nor the Board inspected the subject property. Milo Smith appeared as Chevrolet's certified tax representative. The Bartholomew County Assessor, Ginny Whipple, represented herself. Both were sworn as witnesses and testified.

Record

4. The parties offered the following exhibits:^{1, 2}
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|-------------------------|---|
| Petitioner's Exhibit 1 | Land Value Order 2012-2017, |
| Petitioner's Exhibit 2 | I.C. § 6-1.1-15-1.1, |
| Petitioner's Exhibit 3 | Excerpt from Real Property Guidelines, Ch. 2, |
| Petitioner's Exhibit 4 | 2016 Property Record Card, |
| Petitioner's Exhibit 5 | 2017 Property Record Card, |
| Petitioner's Exhibit 6 | 2018 Property Record Card, |
| Petitioner's Exhibit 7 | I.C. § 6-1.1-4-13.6, |
| Petitioner's Exhibit 10 | E-mail from Barry Wood, dated 12/19/18, |
| Petitioner's Exhibit 11 | E-mail from Barry Wood, dated 03/08/21, |
| Petitioner's Exhibit 12 | Land Values sent to DLGF. |

2016

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|----------------------|---|
| Respondent Exhibit A | Whipple resume, |
| Respondent Exhibit B | Statement of Professionalism, |
| Respondent Exhibit C | 2015 Property Record Card, |
| Respondent Exhibit D | 2016 Property Record Card, |
| Respondent Exhibit E | Aerial photo of parcel, |
| Respondent Exhibit F | Sales disclosure, |
| Respondent Exhibit G | 2012 screenshot of Incama computer program, |
| Respondent Exhibit H | 2013 screenshot of Incama computer program, |
| Respondent Exhibit I | 2014 screenshot of Incama computer program, |
| Respondent Exhibit J | 2015 screenshot of Incama computer program, |
| Respondent Exhibit K | 2016 screenshot of Incama computer program, |
| Respondent Exhibit N | 50 IAC 27-5-7, |
| Respondent Exhibit O | E-mail from Barry Wood, dated 02/23/21, |
| Respondent Exhibit P | Barry Wood memorandum, dated 04/29/20, |
| Respondent Exhibit Q | Subject property Form 11 for 2016, |
| Respondent Exhibit R | 2012-2016 Property record card for 2415 Johnathan Moore Pike, |
| Respondent Exhibit S | 2012-2016 Property record card for 2665 Johnathan Moore Pike, |
| Respondent Exhibit T | 2012-2016 Property record card for 2725 Johnathan Moore Pike, |
| Respondent Exhibit U | 2012-2016 Property Record Card for 2475 Johnathan Moore Pike, |

2017

- | | |
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| Respondent Exhibit V | 2017 Property Record Card, |
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¹ Though included in its Witness and Exhibit list, Chevrolet did not introduce exhibits 8, 9, or 13.

² The Assessor submitted exhibits for each individual tax year on appeal, labelled alphabetically. However, many of the exhibits had overlapping labels. To avoid any unnecessary confusion, the Board has eliminated references to duplicate documents and re-labeled the exhibits in alphabetical order, separated by year.

Respondent Exhibit W 2017 Screenshot of Incama,
Respondent Exhibit X Subject Property Form 11 for 2017,

2018

Respondent Exhibit Y 2018 Property Record Card,
Respondent Exhibit Z Definitions,
Respondent Exhibit AA Reassessment Cycle,
Respondent Exhibit AB Bartholomew County Reassessment Plan,
Respondent Exhibit AC Barry Wood e-mail dated 12/13/18,
Respondent Exhibit AD Barry Wood e-mail dated 2/25/19,
Respondent Exhibit AE David Marusarz e-mail dated 6/10/19,
Respondent Exhibit AF Duties of the Department,
Respondent Exhibit AG Commercial land application,
Respondent Exhibit AH 2018 screenshot of Incama,
Respondent Exhibit AJ Subject property Form 11 for 2018.

5. The record also includes the following: (1) all petitions and other documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

Objections

6. The Assessor objected on relevance grounds to Chevrolet's Exhibit 12—an attachment to an email from Whipple to Smith's office that Chevrolet described as the land values (base rates) submitted to the Department of Local Government Finance ("DLGF"). She argued that there was no supporting evidence to show that her predecessor submitted the document to the DLGF. Chevrolet responded that the Assessor had supplied the document in response to its request for land values predating the ones submitted to the PTABOA in 2018. The ALJ took the objection under advisement.
7. We overrule the objection. We ultimately find that Chevrolet's petitions were untimely and that, even if those petitions had been timely, the base rates applied in assessing the property have little or no bearing on proving its market value-in-use. Nonetheless, the document provides background to understanding the claims Chevrolet asserted.
8. The Assessor also objected to portions of Smith's testimony related to the historic implementation of Bartholomew County's cyclical reassessment plan, arguing that Smith's references to tax years outside of those on appeal was irrelevant. The ALJ took the objection under advisement. We overrule the objection for the same reason we outlined in discussing the Assessor's first objection.

Contentions

A. Chevrolet's Contentions.

9. Before 2018, the base rate for primary land in Chevrolet's assessment neighborhood was \$10/sq. ft., and the base rate for usable undeveloped land was \$3.00/sq. ft., which came from the 2012 land order. There is nothing in the record to show that any other land order was approved until 2018, when the Assessor submitted a new land order to the PTABOA. But the PTABOA did not approve the new land order until February 6, 2018—more than a month after the January 1, 2018, assessment date. According to Chevrolet, nothing in the applicable statute permits county officials to retroactively apply land order base rates. *Smith argument; Pet'r Exs. 1, 4-7, 10-12.*
10. Despite this, Chevrolet's property record cards show that for 2016 and 2017, the Assessor applied base rates of \$13/sq. ft. for primary land and \$3.90/sq. ft. for usable undeveloped land. And for 2018, she put the property in a different assessment neighborhood and used base rates of \$15 and \$4.50. Smith therefore recalculated the assessments using the base rates from the 2012 order and arrived at a total land value of \$1,334,300 (\$1,150,000 for primary land and \$184,300 for usable, undeveloped land) for each year. *Smith testimony; Pet'r Exs. 1, 4-6, 12.*
11. Chevrolet disagrees with the Assessor's argument that its appeals were untimely because it did not bring them within 45 days of when Form 11 notices or tax statements were mailed. Indiana Code § 6-1.1-15-1.1 allows a taxpayer to appeal mathematical errors up to three years after taxes on an assessment were first due. According to Chevrolet, the Assessor's use of the wrong base rates was a mathematical error, and any changes to the assessed value are simply a byproduct of correcting the calculations. For support, Chevrolet pointed to an excerpt from chapter 2 of the DLGF's 2011 Real Property Assessment Guidelines referring to pricing methods and base rates as "mathematical functions":

The most important issue to consider next is the assessing official's task of establishing the market value for residential, commercial, industrial, and agricultural homesite land as of March 1, 2011. The pricing method and base rate are mathematical functions to arrive at this desired value.

Smith argument; Pet'r Exs. 1-3.

B. The Assessor's Contentions

12. Despite Chevrolet's arguments to the contrary, it seeks to challenge the assessed value of its property. Chevrolet therefore had 45 days after the Assessor mailed Form 11 notices of assessment for the subject property to appeal the assessments. Because Chevrolet filed its Form 130 petitions well past those deadlines, we should deny its appeals.

13. Even if Chevrolet's petitions were timely, the Assessor argues that she accurately and properly valued Chevrolet's property. Although Chevrolet claims that a document the Assessor e-mailed to Smith's office represents the approved base rates from 2012 to 2017, that is not the case. That is a spreadsheet she sent in response to an inquiry from Smith's office, and her e-mail notes that she was unsure of the document's accuracy. When the Assessor first arrived in the office in 2013, she could not find a land order. She instead used the base rates the previous vendor had entered in the computer system. Those rates correspond to the rates used to assess Chevrolet's property—and all other properties from the same assessment neighborhood—from 2013 through 2017. Even if Smith were right and the spreadsheet represented values approved in 2012, assessors can change land values each year without approval from the county PTABOA. *Whipple testimony; Resp't Exs. C-D, N, G-K, R-W.*
14. The Assessor also disagrees with Chevrolet's argument that she was prohibited from applying the new 2018 base rates in valuing the property for the January 1, 2018 assessment date. She could not have set base rates by January 1, 2018, because she had to use sales through the end of 2017 to set those rates. She submitted the rates to the PTABOA in February 2018. Although the PTABOA approved them, its approval was not statutorily required. After that, the Assessor worked on neighborhood analyses, ratio studies, and other tasks that needed to be completed before January 1, 2018 values for individual properties could be set and Form 11 notices could go out. According to e-mails from the DLGF, it appeared that she had met the statutory requirements. *Whipple testimony; Resp't Ex. AA-AC.*
15. Finally, the Assessor offered a sales disclosure form showing that Chevrolet bought the property for \$1,753,130 in July 2015, which is more than its 2016 assessment of \$1,734,600. Given that it was a valid sale within one year of the assessment date, she asks us to raise the 2016 assessment to match the sale price. *Whipple testimony and argument; Resp't Exs. C-D, G.*

Analysis

16. Chevrolet's appeals were untimely. Indiana Code § 6-1.1-15-1.1 sets different deadlines for different types of appeals. To appeal the assessed value of its property for assessment dates before January 1, 2019, a taxpayer had to file notice by the earlier of (1) 45 days after the date notice of assessment was mailed, or (2) 45 days after the date the tax statement was mailed. I.C. § 6-1.1-15-1.1(b)(1). By contrast, a taxpayer could file notice raising a claim of error due to a "clerical, mathematical, or typographical mistake" any time within three years after "the taxes were first due." I.C. § 6-1.1-15-1.1(b).
17. On each Form 130 petition, Chevrolet checked the box indicating that it was alleging a clerical, mathematical, or typographical mistake, and it filed each petition within three years of when taxes on the contested assessment were first due. But simply calling something a clerical, mathematical, or typographical mistake does not make it so.

Chevrolet's request for relief plainly shows that it was disputing the property's assessed value.

18. The 2017 changes to Indiana's appeal statutes make that clearer than ever. Under the old correction of error statute, and its Form 133, taxpayers were granted longer periods to raise certain challenges than under the Form 130. The Form 133 was dispatched with the repeal of Ind. Code § 6-1.1-15-12 and its bifurcated recodification is under Ind. Code § 6-1.1-15-1.1 and Ind. Code § 6-1.1-15-12.1. But the new statutory regime retained separate statutes of limitation for errors of assessed value and other claims of error. The disputes over the correct form have ended, but the arguments over timeliness continue.
19. Now that there is no Form 133, and the statute enabling it and the administrative rules interpreting it have been repealed, should we continue to look to the subjective/objective standard invented by the Tax Court in *Hatcher v. Indiana State Bd. of Tax Comm'rs*, 561 N.E.2d 852 (Ind. Tax Ct. 1990) to determine the timeliness of the new Form 130? For the following reasons, we find that we should not.
20. First, the *Hatcher* test was based on the New Jersey Tax Court's analysis of that state's correction of error statute. *Hatcher*, 561 N.E.2d at 855; *Red Bank Borough v. New Jersey Bell Telephone Co.*, 8 N.J. Tax 152 (N.J. Tax Ct. 1986). The Indiana Legislature has declined to expressly codify the *Hatcher* test or add language similar to the New Jersey statute in the new Ind. Code § 6-1.1-15-1.1. Moreover, the legislature chose new language that must be analyzed on its own terms.
21. Second, in analyzing the Forms 130 and 133, the Indiana Supreme Court reversed the Tax Court and expressly declined to apply the *Hatcher* test. *Lake County Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1234 n.5 (Ind. 2005); *Lake County Prop. Tax Assessment Bd. of Appeals v. U.S. Steel Corp.*, 820 N.E.2d 1237, 1240 n. 3 (Ind. 2005). The Supreme Court determined it was "unnecessary to apply the objective/subjective distinction to resolve this case." *U.S. Steel Corp.*, 820 N.E.2d at 1240 n. 3.
22. Third, *Hatcher* was adopted when evidence of methodological errors constituted probative evidence of an erroneous assessment. Since then, the Town of St. John cases resulted in the promulgation of a new valuation standard, and subsequent case law established that only "objectively verifiable" evidence is sufficient to establish that an assessment is incorrect. Because the taxpayer must present evidence of the property's market value in use, *Hatcher* has been largely rendered obsolete because merely identifying a methodological error is insufficient to challenge the assessed value.
23. Accordingly, we decline to apply *Hatcher* and instead follow our Supreme Court's direction in *BP Amoco* and *U.S. Steel*. If a claim is fundamentally a challenge to the "assessed value," the shorter statute of limitations will apply. Merely describing a challenge to assessed value as one of the other enumerated errors cannot suffice to trigger the longer statute of limitations. To allow that would ignore the legislative intent behind

the separate statutes of limitation. Because the errors Chevrolet has alleged challenge its property's assessed value, Chevrolet needed to file its appeals within the 45-day deadline established in Ind. Code § 6-1.1-15-1.1(b)(1).

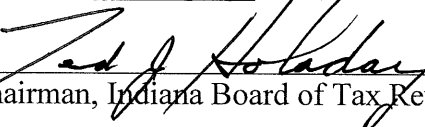
24. Nothing in the excerpt from the 2011 Real Property Assessment Guidelines cited by Chevrolet changes that fact. To the contrary, it emphasizes that assessors must try to determine market value for land. Under the Guidelines' mass-appraisal methodology, assessors examine sales to determine unit values, such as price per square foot, price per acre, or price per front foot—for lots within assessment neighborhoods. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 13. They then multiply those base rates by the parcel's size: if they determine a base rate of \$100 per acre for primary commercial land and a property has two acres of primary land, its assessment would be \$200 (assuming no adjustments, such as applying an influence factor, are needed). *See id.* at 75. In that sense, the base rate is an input to a mathematical equation. But the property's market value-in-use—and hence its correct assessed value—is not a mathematical function.
25. Chevrolet does not claim that it met that deadline for appealing its property's assessed value, relying instead on the three-year period for claiming a mathematical, clerical, or typographical mistake. Its appeals were therefore untimely.
26. Even if Chevrolet's claims were timely to challenge its property's assessed value addressing the merits would not entitle Chevrolet to any relief. To the contrary, it might lead to raising the 2016 assessment.
27. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Although the legislature has recognized exceptions to the general rule under certain circumstances (*see, e.g.*, I.C. § 6-1.1-15-17.2), Chevrolet does not claim that those exceptions apply here. Smith expressly said Chevrolet did not intend to argue that the Assessor had the burden of proof.
28. Chevrolet did not meet its burden. Its evidence focused solely on an irrelevant question: whether the Assessor correctly applied base rates to Chevrolet's land. But a taxpayer challenging the assessed value of its property does not meet its burden by simply contesting the methodology used to compute the assessment. Instead, it must offer evidence that complies with generally accepted appraisal principles to show the property's market value-in-use. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (explaining that strict application of assessment regulations is not enough to rebut the presumption that an assessment is correct and identifying the types of evidence that may be used). It therefore does not matter which base rates the Assessor used in computing Chevrolet's assessment; Chevrolet needed to offer individualized market-based evidence to show its property's actual market value-in-use. Because Chevrolet did not even try to do so, it failed to make a prima facie case for changing the assessment. Indeed, the only market-based evidence in the record—the price Chevrolet paid for the property in July 2015, suggests that the property was slightly underassessed

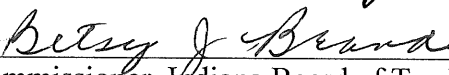
for 2016. Of course, our finding that the petitions were untimely to put the property's assessed value at issue precludes us from raising the assessment.


Final Determination

29. Chevrolet did not file timely appeals to contest the assessed value of its property. We find for the Assessor and order no change.

ISSUED: 6-23-21


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>.