

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

Petition: 03-005-20-1-4-00820-20
Petitioner: GSJ Properties
Respondent: Bartholomew County Assessor
Parcel: 03-95-11-140-001.300-005
Assessment Year: 2020

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

Procedural History

1. On June 15, 2020, GSJ Properties, LLC filed a Form 130 petition contesting its 2020 assessment. GSJ filled out section II of that form, which asks for the taxpayer's reasons for appealing the current year's assessment, alleging that "The land only has improvement on 76,8000 (sic) sq. ft., therefore changing the land type from last year was in error."
2. The parties had an informal meeting and Assessor prepared a Form 134 report regarding that meeting. Neither party signed the report. The portion reserved for the taxpayer to explain the reasons for any "disagreement or changes made" was left blank. The portion reserved for the Assessor indicates only "Property Class: 425." On the first page, a box is checked indicating that the assessor and taxpayer did not agree on the resolution of all issues. A separate box is checked indicating that the parties agreed on the resolution of some issues, and in the space provided for listing "the areas agreed and/or not agreed upon," the following notation appears: "Corrected land size; removed obsolescence and corrected market factor as we believe our 2020 value is correct." *Pet'r Ex. 5.*
3. The Form 134 report also lists the following changes to assessed value proposed by the Assessor:

	Land	Improvements	Total
Current	\$480,100	\$529,100	\$1,009,200
Proposed	\$411,200	\$597,700	\$1,008,900

Pet'r Ex. 5.

4. Apparently based on that report, the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") cancelled the scheduled hearing on GSJ's Form 130 petition and issued a Form 115 determination. The PTABOA checked the box indicating that its determination was the result of a hearing rather than a preliminary informal meeting, although the Assessor completed the portion reserved for providing additional

information about that meeting. The information mirrored the explanatory statement from the Form 134 report. The PTABOA adopted the Assessor's proposed value from the Form 134 report, indicating "Board affirmed Assessor's action. Property Class: 425[.]"

5. GSJ responded by filing a Form 131 petition with the us, electing to proceed under our small claims procedures. GSJ alleged (1) that when the Assessor "corrected the disputed land issue," she removed "the 6% abnormal obsolescence" and added a market factor without exchanging the information she relied on to make those changes, and (2) that the PTABOA issued its determination without giving GSJ notice of a hearing.
6. On September 22, 2021, our designated administrative law judge, Erik Jones ("ALJ"), held a telephonic hearing on GSJ's petition. Neither he nor the Board inspected the property. Melissa Michie appeared as counsel for GSJ. Bartholomew County Assessor Ginny Whipple represented herself and was sworn as a witness.

Record

7. The parties offered the following exhibits as part of the official record:

Petitioner's Exhibit 1	Ind. Code § 6-1.1-15-1.2,
Petitioner's Exhibit 2	<i>Muir Woods Section One Assoc., Inc. et al v. Marion County Assessor</i> , Cause No. 19T-TA-25 (Ind. 2021),
Petitioner's Exhibit 3	Summary of changes to assessed value for 2019-2020,
Petitioner's Exhibit 4	Form 130 petition,
Petitioner's Exhibit 5	Form 134 report,
Petitioner's Exhibit 6	Form 115 determination.
Respondent's Exhibit A	Whipple Resume,
Respondent's Exhibit B	Statement of Professionalism,
Respondent's Exhibit C	2019 Property Record Card ("PRC"),
Respondent's Exhibit D	2020 PRC (before correction),
Respondent's Exhibit E	2020 PRC (corrected),
Respondent's Exhibit F	Aerial photograph of the subject parcel,
Respondent's Exhibit G	Form 130 petition.

8. The record also includes (1) all documents filed by the parties, (2) all orders and notices issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Parties' Contentions

A. Summary of GSJ's case:

9. GSJ raises two issues in its appeal. The first is a "process" challenge. The Indiana Code requires a PTABOA to provide at least 30 days' notice before a hearing. The PTABOA cancelled the scheduled hearing after the parties agreed to change the lot size. GSJ, however, did not receive notice that the obsolescence factor was being removed from the improvements or that the market factor was being changed. It therefore had no chance to argue those issues before the PTABOA. *Michie argument; Pet'r Ex. 1.*
10. As for the merits, GSJ also argues that the PTABOA lacked authority to remove the obsolescence or change the market factor, which are subjective issues, because GSJ raised only an objective error concerning lot size. *Michie argument.*
11. GSJ relies on the recent Indiana Supreme Court decision in *Muir Woods Section One Assoc. v. Marion Cnty. Ass'r* to support this argument. In *Muir Woods*, the Court disagreed with the notion that property assessment has always been inherently subjective, and it held that a Form 133 petition for correction of error could be used to correct an objective error concerning the rate from a land order. Thus, the Court held that it is not always just about the bottom-line assessment. If a taxpayer alleges only an objective error, that part of the assessment can be corrected. In *Muir Woods* the error involved a land rate; here, it involves lot size. According to GSJ, the fact that correcting the error ultimately changes the property's assessed value does not make the error subjective because all appeals ultimately involve assessed value. *Michie argument (citing Muir Woods Section One Assoc., Inc. v. Marion Cnty. Ass'r, 172 N.E.3d 1205 (Ind. 2021)).*
12. Although the Assessor relies on the fact that GSJ completed section II of the Form 130 petition, which addresses the current year's assessment, instead of section III, which addresses correction of errors, that distinction does not matter. GSJ argues that because it raised an objective issue, the Assessor could not use its appeal to make subjective changes, such as removing obsolescence or changing the market factor. *Michie argument.*

B. Summary of the Assessor's case:

13. Although the confusion regarding the canceled PTABOA hearing is unfortunate, the Assessor argues that it does not affect the appeal. Because we hear cases *de novo*, GSJ still received its day in court. *Whipple testimony.*
14. The Assessor concedes that the subject property's lot size was wrong, and she corrected it per GSJ's request. But she believed that the overall assessed value was correct. She therefore removed the abnormal obsolescence she had applied to the improvements and changed the market factor in conjunction with changing the lot size. *Whipple testimony; Resp't Exs. D-E.*

15. Regardless, the Assessor argues that GSJ bears the burden of proving the assessment was inaccurate. It therefore needed to offer probative evidence demonstrating the subject property's market value-in-use instead of merely challenging the Assessor's methodology for computing the assessed value. Because GSJ failed to do so, the assessment should not be changed. *Whipple testimony and argument (citing Southeastern Indiana Medical Holdings v. Bartholomew Cnty. Ass'r pet. no. 03-005-19-1-4-00524-20 (IBTR June 21, 2021))*.

Analysis

16. We agree with GSJ that there was a procedural error below, although it does not give GSJ the relief it seeks. Instead, the error invalidates the PTABOA determination, leaving in place the original assessment.
17. The PTABOA issued a determination purporting to change the subject property's assessment, albeit by only \$300. A county PTABOA may change assessments via one of two avenues: it may change an assessment on its own motion, or may can issue a determination in a taxpayer's appeal. If a county PTABOA changes an assessment on its own motion, it must follow the prescribed notice requirements. *See* I.C. § 6-1.1-13-1 (requiring a county PTABOA to give prior notice by mail before it changes an assessment); *see also*, I.C. § 6-1.1-9-1 (requiring an assessor or county PTABOA that believes property has been omitted from or undervalued on the assessment rolls to give notice of the assessment or increase in assessment, including a general description of the property and a statement describing the taxpayer's right to review). There is no evidence that the PTABOA did so in this case.
18. Instead, the PTABOA issued its determination as part of the appeal process. Under that process, when a taxpayer files an appeal, the assessor must schedule a preliminary informal meeting with the taxpayer and report the results to the county PTABOA on a form prescribed by the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-15-1.2(a)-(b). If the parties agree on all issues, they must sign the report and the PTABOA must then vote whether to accept or deny the resolution. If it accepts the resolution, it must issue a final determination adopting the resolution and vacating any scheduled hearing. I.C. § 6-1.1-15-1.2(b).
19. If the taxpayer's petition is not resolved by agreement, however, a county PTABOA may resolve an appeal in one of two ways: (1) it may determine the appeal without a hearing upon a taxpayer's written request, or (2) it may hold a hearing after giving the parties written notice at least 30 days in advance. I.C. § 6-1.1-15-1.2(d), (g). The parties must be given the opportunity to present evidence at that hearing. I.C. § 6-1.1-15-1.2(l).
20. In this case, the PTABOA issued a determination without following any of the prescribed procedures. It did not receive a signed report resolving all the issues. To the contrary, the Form 134 report was unsigned and indicated that the parties did not agree to resolve

all the issues. Similarly, there is no evidence that GSJ filed a written request for the PTABOA to resolve its appeal without a hearing. And it is undisputed that the PTABOA did not give GSJ advance written notice of a hearing.

21. The Assessor argues that the procedural errors do not matter because our hearings are *de novo*, and GSJ had the opportunity in front of us to offer evidence and arguments in support of its position. We might agree if the PTABOA's determination had simply upheld the original assessment. But the PTABOA changed the assessment. And it had no authority to do so without following fundamental statutory requirements, such as providing advance notice and the opportunity to be heard.
22. Because the PTABOA's determination is invalid, the original assessment remains in place. We therefore turn to the merits of GSJ's claim. Generally, a taxpayer seeking review of an assessing official's determination bears the burden of proving the assessment is incorrect and what the correct assessment should be. Although the Legislature has recognized exceptions to this general rule and shifts the burden of proof to an assessor under certain circumstances (*see, e.g.*, Ind. Code § 6-1.1-15-17.2), counsel for GSJ expressly disclaimed any intent to argue that the Assessor had the burden of proof in this appeal. *Michie statement*.
23. GSJ did not meet its burden. 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.¹ 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 DLGF's rules. 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 2.²
24. Evidence in an assessment appeal should be consistent with that standard. For example, a USPAP-certified market-value-in-use appraisal 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 or assessment 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); *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use). Simply attacking the methodology used to compute an assessment or strictly applying the DLGF's assessment guidelines normally does not suffice to make a case. *See, e.g., id.*

¹ The DLGF has promulgated a new assessment manual, which applies to assessment dates after December 31, 2020. *See* 52 IAC 2.4-1-1 (filed November 2, 2020); 50 IAC 2.4-1-2 (filed November 2, 2020).

² The definition from the new assessment manual is the same. *See* 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

25. GSJ offered no market-based evidence of the kind contemplated by the Tax Court's decisions. Instead, it relies solely on the Assessor's agreement that the assessment was based on an incorrect lot size, and it argues that the property's assessed value must therefore be recomputed by applying the base rate from the property record card to the corrected lot size. This is precisely the type of methodological claim that the Tax Court has repeatedly rejected.
26. Undeterred, GSJ argues that the Indiana Supreme Court's decision in *Muir Woods* supports its position. According to GSJ, *Muir Woods* stands for the proposition that a taxpayer may prove a property's market value-in-use by correcting objective errors in an assessment.³
27. We disagree. GSJ misreads *Muir Woods*. In that case, the Court held that applying a prescribed discount rate to an already determined base-rate for common area land was an objective question that was correctable on a Form 133 petition for correction of error. *Muir Woods*, 172 N.E.3d at 1207-08. But the Court emphasized that it was addressing "unique circumstances involving the use of a now defunct tax appeal form" and that its holding was "focusing only on the narrow challenge before us today." *Id.* at 1208. We find no reason to apply *Muir Woods* to appeals other than those brought under the since-repealed correction-of-error statute (Ind. Code § 6-1.1-15-12) on the now defunct Form 133. Form 133 died with the repeal of Ind. Code § 6-1.1-15-12 in 2017. The Legislature simultaneously added I.C. § 6-1.1-15-1.1. While the new statute contains some language that is similar to the old correction of error statute, the two statutes are not identical. There is no indication that the Legislature intended the old Form 133 case law to apply to appeals under the new statute.
28. In any case, *Muir Woods* does not purport to repudiate the principles the Tax Court laid out in *Eckerling*. Indeed, the Tax Court reaffirmed those principles in a case it decided after the Supreme Court issued *Muir Woods*, finding that the taxpayer "wrongly focused on the method of assessment, rather than the market value-in-use of its building." *Piotrowski v. Shelby Cnty. Ass'r*, 2021 Ind. Tax LEXIS 39 *14.

Conclusion

29. Because the PTABOA failed to give GSJ notice of its hearing, its determination purporting to change GSJ's assessment is invalid. That leaves the original assessment as the assessment of record. Because GSJ failed to offer probative market-based evidence to prove a different value, we order no change to that assessed value. The Assessor, however, agrees that the lot size was incorrect. We therefore order her to change her records to reflect the lot's correct dimensions.

³ GSJ further argues that correcting an objective error is conclusive and that an assessor cannot support the assessment by making other changes to valuation components that require subjective judgment, such as revisiting obsolescence. GSJ does not point to anything in *Muir Woods* for that proposition, but apparently relies on other (uncited) caselaw interpreting the old correction-of-error statute and use of the now defunct Form 133.

ISSUED: 12/21/2021



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>.