

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

Petition: 03-005-19-1-4-00524-20
Petitioner: Southeastern Indiana Medical Holdings, Inc.
Respondent: Bartholomew County Assessor
Parcel: 03-96-30-130-006.900-005
Assessment Year: 2019

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

Procedural History

1. On June 15, 2020, Southeastern Indiana Medical Holdings, Inc., filed a Form 130 petition contesting its 2019 assessment. It left blank Section II of the petition, which provides spaces for a taxpayer to specify the assessment it is seeking for the current year and its reasons for seeking that assessment. Under Section III, Southeastern checked the box indicating that it was alleging a clerical, mathematical, or typographical mistake and wrote “[t]he land size is in error.” It did not specify any assessed value it was seeking.
2. On August 27, 2020, the Bartholomew County Property Tax Board of Appeals (“PTABOA”) issued a Form 115 determination with the following values:

Year	Land	Improvements	Total
2019	\$143,600	\$150,200	\$296,500

The PTABOA reduced the value that the Bartholomew County Assessor had originally assigned to the land (\$172,200), apparently accepting her agreement that the land size had been wrong. But it increased the value the Assessor had originally assigned to the improvements (\$123,600), again apparently based on an amount the Assessor determined after reducing the obsolescence adjustment assigned to the improvements. This represented a \$700 increase in the total assessment.

3. Southeastern timely filed its Form 131 petition 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 Southeastern’s petition. Neither he nor the Board inspected the property. Milo Smith appeared as Southeastern’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:

Petitioner's Exhibit 1	Copy of 2019 Correction of Error petition,
Petitioner's Exhibit 2	I.C. 6-1.1-15-1.1,
Petitioner's Exhibit 3	Except from Real Property Guidelines, Chapter 2,
Petitioner's Exhibit 4	2020 Property Record Card,
Petitioner's Exhibit 5	First 2019 Property Record Card,
Petitioner's Exhibit 6	2019 Form 115,
Petitioner's Exhibit 7	2019 Property Record Card, after PTABOA decision,
Petitioner's Exhibit 8	Muir Woods, Inc. v. Joseph P. O'Connor, Assessor of Marion County, Cause No. 49T10-1302-TA-38,
Petitioner's Exhibit 9	Hatcher v. Indiana State Board of Tax Commissioners, 561 N.E.2d 852 (Ind. Tax Ct. 1990),
Petitioner's Exhibit 10	Correct assessed value.
Respondent's Exhibit A	Whipple Resume,
Respondent's Exhibit B	Statement of Professionalism,
Respondent's Exhibit C	2018 Property Record Card,
Respondent's Exhibit D	2019 Property Record Card,
Respondent's Exhibit E	Aerial Photo of Parcel,
Respondent's Exhibit F	2014 Property Record Card,
Respondent's Exhibit G	2015 Property Record Card,
Respondent's Exhibit H	Sales disclosure of subject parcel,
Respondent's Exhibit I	2016 Property Record Card,
Respondent's Exhibit J	2017 Property Record Card,
Respondent's Exhibit K	MLS listing of subject property.

Contentions

A. Southeastern's Contentions

5. In reviewing the subject property's 2020 property record card, Smith noticed that the parcel size had been reduced from 45,511 square feet down to 34,412 square feet. Knowing that State Street had been widened several years before, he decided to file what he termed "correction of error" petitions as far back as he could go. He filed petitions for 2018 and 2019, but he withdrew the one for 2018. The Assessor agreed to reduce the parcel's size, but she argued to the PTABOA that the obsolescence assigned to the improvements should be reduced from 40% to 26% to maintain the overall value. *Smith testimony; Pet'r Exs. 1, 4-7.*
6. According to Southeastern, neither the Assessor nor the PTABOA was authorized to change the obsolescence factor applied to the property's improvements. Obsolescence is a subjective determination that cannot be made in response to a correction-of-error

petition, which raises only objective questions. For support, Southeastern cites to *Muir Woods Inc. v. Marion Cnty. Ass'r*, 36 N.E.3d 1208 (Ind. Tax Ct. 2015) and *Hatcher v. State Bd of Tax Comm'rs*, 561 N.E.2d 852 (Ind. Tax Ct. 1990). Although the Assessor claims that the statutory scheme has changed since those decisions, she is wrong. Southeastern argues that because assessments under the guidelines promulgated by the Department of Local Government Finance (“DLGF”) are presumed to be correct, Southeastern is entitled to have its assessment changed to \$296,900. That amount represents the land value determined by using the agreed parcel area (\$146,300) and the improvement value as determined before improperly changing the obsolescence factor (\$123,600). *Smith testimony and argument; Pet'r Exs. 1-2, 8-10.*

B. The Assessor's Contentions

7. The Assessor argues that Southeastern failed to timely appeal the property's assessed value. The Assessor originally worked with Southeastern to resolve an issue concerning its parcel's size. Because there was no dispute regarding valuation, she removed some of the abnormal obsolescence to maintain the overall assessment. It was not until September 7, 2020, that Southeastern filed its Form 131 petition alleging that the assessed value was incorrect. This was almost three months after the June 15, 2020, deadline for contesting the property's assessed value.
8. In any case, Southeastern merely challenges the methodology used to determine the property's assessed value. That is insufficient. To successfully challenge an assessment, a taxpayer must show the property's market value-in-use. Southeastern failed to do that. *Whipple argument (citing Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006)).
9. According to the Assessor, the available evidence shows that the property was assessed too low. Southeastern bought it for \$300,000 in 2015. In 2020, it listed the property with the multiple listing service for \$330,000. That listing shows both that the property was exposed to the market and what Southeastern believes it is worth. The Assessor therefore asks us to raise the assessment to match Southeastern's asking price. *Whipple testimony; Resp't Exs. C-D, F-K.*

Analysis

10. The crux of this dispute is the parties' differing views on what type of relief Southeastern sought when it filed its Form 130 petition below and what the PTABOA could do in response to that petition. Southeastern claims it sought correction of a clerical, mathematical, or typographical error—its parcel size—and that the only corrections the PTABOA could make were to change the size and reduce Southeastern's land assessment accordingly. In Southeastern's view, the PTABOA could not change any aspect of the assessment that would require subjective judgment, including changing the obsolescence adjustment applied to Southeastern's improvements.

11. The Assessor, by contrast, believes that Southeastern did not challenge any aspect of the property's assessed value when it filed its Form 130 petitions. She claims that the PTABOA's change to the improvement value was simply the result of it accepting her proposed change to the obsolescence adjustment so it could maintain the property's overall assessment after the Assessor had agreed to correct the land size. She argues that Southeastern did not contest the property's assessed value until September 2020, when it filed its Form 131 petition challenging the reduced obsolescence adjustment. And that was past the statutory deadline for appealing a property's assessed value.
12. 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 after December 31, 2018, a taxpayer has to file notice by the earlier of (1) June 15 of the assessment year, if the notice of assessment is mailed by the county prior to May 1 of the assessment year, or (2) June 15 of the year in which the tax statement is mailed by the county treasurer, if the notice of assessment is mailed by the county on or after May 1 of the assessment year. I.C. § 6-1.1-15-1.1(a)(1), (b)(2). By contrast, a taxpayer may file a Form 130 petition raising five other enumerated categories of error—including that there was 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(a)(2)-(6), (b).
13. Southeastern filed its Form 130 petition on June 15, 2020. Although the record does not show when the Assessor mailed notice of assessment for 2019, she acknowledged that the deadline for Southeastern to file a Form 130 petition contesting its property's assessed value was June 15, 2020. Southeastern's petition was therefore timely to challenge its property's assessed value or to allege any of the enumerated errors under Ind. Code § 6-1.1-15-1.1(a)(2)-(6). The parties, however, dispute precisely what errors Southeastern actually raised and what the PTABOA could order.
14. The parties' arguments harken back to the confusion that permeated Indiana's property tax appeal regime before the Legislature overhauled that regime in 2017. In particular, the parties focus on the subjective/objective test invented by the Tax Court in *Hatcher v. Indiana State Bd. of Tax Comm'rs*, 561 N.E.2d 852 (Ind. Tax Ct. 1990) for what types of errors could be raised on the old Form 133 petition for correction of error. The Form 133 was dispatched with the repeal of Ind. Code § 6-1.1-15-12 and its bifurcated recodification under Ind. Code § 6-1.1-15-1.1 and Ind. Code § 6-1.1-15-12.1. We find that the Legislature dispatched the *Hatcher* test along with it.
15. 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 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.

16. 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. 3.¹
17. 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.² 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.
18. What remains under the new statutory regime are the separate statutes of limitation for errors of assessed value and other claims of error. In keeping with 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 does not suffice to trigger the longer statute of limitations. To allow that would ignore the legislative intent behind the separate statutes of limitation.
19. As we have already explained, Southeastern’s Form 130 petition was timely to raise any errors under Ind. Code § 6-1.1-15-1.1(a), including a challenge to its property’s assessed value. The question is whether Southeastern’s characterization of its claim as a mathematical mistake precluded it from seeking a reduction in its property’s assessed value, or the PTABOA from increasing that value. In keeping with the legislative intent in revising the statutory regime for property tax appeals, we do not look at whether Southeastern was alleging a subjective or objective error, but rather at the fundamental nature of its claim. Despite not asking for any specific value on the face of its petition, Southeastern has contested its property’s assessed value throughout the process. It seeks to apply a specific valuation methodology—the mass-appraisal cost approach from the 2011 Real Property Assessment Guidelines—to lower its assessment. That Southeastern bases its challenge on the Assessor’s apparent error in calculating some of the data (parcel size) used in that methodology does not transform that valuation question into a

¹ Rather, it held challenges to assessed value methodology could “be made only to the current year’s assessment, not prior years’.” *BP Amoco Corp.*, 820 N.E.2d at 1232. Because the taxpayer failed to file in the “time periods for which Form 130 was available,” it was “foreclosed from using Form 133” *Id.* at 1237.

² *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006); *Wigwam Holdings LLC v. Madison Cnty. Ass’r*, 115 N.E.3d 531, 538 (Ind. Tax. Ct. 2018) (“It is well established that when a taxpayer claims its property assessment is too high, it has the burden to prove its claim with market-based evidence. *See, e.g., McKeeman v. Steuben Cnty. Ass’r*, 10 N.E.3d 612, 614 (Ind. Tax Ct. 2014). Merely challenging the Assessor’s methodology will not suffice. *See, e.g., Gillette v. Brown Cnty. Ass’r*, 54 N.E.3d 454, 456 (Ind. Tax Ct. 2016)).

claim of mathematical mistake. Given that the PTABOA raised the assessment by \$700, it also treated the petition as putting the property's assessed value at issue.

20. As for the merits of Southeastern's claim, a taxpayer seeking review of an assessing official's determination generally bears 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), Southeastern does not claim that those exceptions apply here. Smith expressly said Southeastern did not intend to argue that the Assessor had the burden of proof.
21. Southeastern failed to meet its burden. Its evidence focused solely on an irrelevant question: whether the Assessor or PTABOA could "subjectively" decrease the obsolescence adjustment assigned to Southeastern's improvements. As already explained, a taxpayer challenging its property's assessed value does not meet its burden by simply contesting the methodology used to determine 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* 841 N.E.2d at 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). Southeastern offered no such evidence.
22. We similarly decline the Assessor's request to raise the property's assessment. She bases her request on Southeastern's listing of the property with an asking price of \$330,000. A seller's asking price, by itself, does not show a property's market value-in-use. It might set a ceiling on that value, at least if the property has been marketed in a commercially reasonable manner for a lengthy period, and it does not generate any offers at that asking price. But the Assessor does not want us to set a ceiling on the value of Southeastern's property—she wants us to set a floor. The listing does not prove that the property was worth \$330,000.

Final Determination

23. Neither party offered probative evidence to support changing the property's assessed value. We therefore order no change.

ISSUED: 6-21-21



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>.