REPRESENTATIVE FOR PETITIONER: Cathlin Upton, *pro se*

REPRESENTATIVE FOR RESPONDENT: Ayn Engle, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

CATHLIN UPTON,	)	Petition Nos.: 64-003-24-1-5-00499-25
	)	64-003-25-1-5-00671-25
Petitioner,	)	
	)	Parcel No.: 64-09-23-277-026.000-004
v.	)	
	)	
PORTER COUNTY ASSESSOR,	)	County: Porter
	)	
Respondent.	)	Assessment Years: 2024 and 2025

FINAL DETERMINATION

The Indiana Board of Tax Review, 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. Cathlin Upton claims that the Porter County Assessor made objective errors in the inputs used to determine her 2024 and 2025 assessments and asks us to "recalculate" those assessments using what she claims are the correct inputs. We find that her claims are generally untimely as challenges to assessed value. For her sole claim that might qualify as an "objective error," she has not shown that the Assessor failed to follow the Guidelines. We therefore find for the Assessor and order no change to the assessments.

Procedural History

2. On March 7, 2025, Upton filed a Form 130 petition contesting the subject property's 2024 assessment of $360,800 ($36,900 for land and $323,900 for improvements). She filled out section II of that form, which asked her to provide her reasons for appealing the "Current Year's Assessment." She asked for an assessment of $246,900 ($36,900 for land and $210,000 for improvements) and gave the following reasons: "[P]roperty was updated prior to purchase, attic space 20+ years ago[.] Basement does not have a rec room Rehab was not with quality product, barely above builder grade." She did not complete section III of the form, which was reserved for "Correction of Error Per IC 6-1.1-15-1.1(a) and (b)[.]"

3. On May 5, 2025, the Porter County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 determination for Upton's 2024 appeal finding that Upton had not timely filed her appeal.[1]

4. Upton then filed a Form 131 petition with us seeking review of the PTABOA's determination. As with her Form 130 petition, Upton completed the portion of the form reserved for explaining her grounds for challenging the property's assessed value and left blank the section for challenging errors specified in Ind. Code § 6-1.1-15-1.1(a)(2)-(6). She made similar allegations to the ones in her Form 130 petition.

5. On April 28, 2025, just a few days before the PTABOA decided her 2024 appeal, Upton submitted an online appeal to the Assessor contesting the property's 2025 assessment of $359,100 ($40,700 for land and $318,400 for improvements). The electronically generated document did not have separate sections for appealing assessed value and correction of error. Upton requested an assessment of $235,500 ($40,700 for land and $194,300 for improvements). She offered various reasons for her proposed changes, all of which addressed how her assessment was calculated under the assessment Real

[1] It also listed a final determination of values that matched the assessment.

Property Assessment Guidelines promulgated by the Department of Local Government Finance ("DLGF").

6. Because the PTABOA failed to issue a determination concerning Upton's 2025 appeal within 180 days, Upton filed a Form 131 petition directly with us. *See* I.C. § 6-1.1-15-1.2(k) (permitting taxpayers to appeal directly to us if a county property tax assessment board of appeals fails to hold a hearing or issue a determination within 180 days of the filing of the appeal). Once again, she completed only the portion of the form addressing challenges to the property's assessed value.

7. On February 5, 2026, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on Upton's appeals. Neither he nor the Board inspected the property. Upton and Jeanette Crozier, the Assessor's director of appeals, testified under oath.

8. Upton submitted the following exhibits:

Exhibit 1:	Upton's written contentions,
Exhibit 2:	Upton's written findings of fact,
Exhibit 3:	Listing of statutes, case law, and administrative rules,
Exhibit 4:	2023 subject property record card ("PRC"),
Exhibit 5:	2024 subject PRC,
Exhibit 16:	Subject property's Multiple Listing Service ("MLS") sale listing from 4/13/2023,
Exhibit 17:	Photographs from the MLS listing,
Exhibit 19:	2024 Form 130 petition and letter from Sue Neff, County Assessor,
Exhibit 20:	2024 Form 115 with Upton's evidence,
Exhibit 26:	Upton's written statement regarding receipt of 2024 and 2025 Notice of Assessments ("Form 11"),
Exhibit 27:	Cost approach calculation,
Exhibit 28:[2]	2021 REAL PROPERTY ASSESSMENT MANUAL,
Exhibit 29:	Upton's written contentions regarding finished attic space,
Exhibit 31:	2020 Indiana Residential Code ("IRC") section regarding ceiling heights,
Exhibit 32:	Finished attic measurements,
Exhibit 33:	Roofline photographs,

[2] The Assessor offered Exhibit 28.

Exhibit 34:	Attic bedroom measurements and photographs,
Exhibit 35:	Attic closet measurements and photographs,
Exhibit 36:	Attic bathroom measurements and photographs,
Exhibit 37:	Unfinished attic space measurements and photographs,
Exhibit 38:	Upton's written contentions regarding the basement's "Rec Room 3" classification,
Exhibit 40:	2020 IRC sections regarding concrete floors, finished walls, and ceilings,
Exhibit 42:	Photographs of the basement,
Exhibit 43:	Upton's written contentions regarding the quality grade,
Exhibit 44:	2021 REAL PROPERTY ASSESSMENT GUIDELINES, Appendix A—Residential and Agricultural Grade,
Exhibit 45:	Photographs of plumbing, electrical wiring, fireplace mantles, and kitchen cabinets and countertops,
Exhibit 46:	Upton's written contentions regarding the depreciation calculation,
Exhibit 47:	2021 REAL PROPERTY ASSESSMENT GUIDELINES, Appendix B—Residential and Agricultural Depreciation,
Exhibit 50:	Upton's email request for production of evidence,
Exhibit 51:	2023 and 2024 subject PRCs with highlights provided by Assessor,
Exhibit 52:	Email correspondence between Upton and Engle regarding Upton's request for evidence,
Exhibit 53:	Attic ceiling height photographs and measurements,
Exhibit 54:	Affidavit of Cathlin Upton,
Exhibit 55:	Affidavit of Donya Kolosiwsky,
Exhibit 56:	Upton's written contentions regarding updates to the property with photographs,
Exhibit 58:	Subject property's MLS sale listing from 3/28/2000,
Exhibit 59:	Photographs of attic ducts.

9. The Assessor submitted the following exhibits:

Exhibit A:	2024 and 2025 subject PRCs,
Exhibit B:	2024 Form 11,
Exhibit C:	Certificate of bulk mailing,
Exhibit D:	Email from Scotty Scales regarding certificates of mailing,
Exhibit E:	Form 11 history from CAMA system,
Exhibit F:	2024 Form 130 petition,
Exhibit G:	Letter from Sue Neff, County Assessor,
Exhibit H:	Sales disclosure form for the subject property,
Exhibit I:	Subject property's MLS sale listing from 4/13/2023
Exhibit J:	June 2023 Valparaiso Residential Market Summary,
Exhibit K:	January 2024 Valparaiso Residential Market Summary,
Exhibit L:	2021 REAL PROPERTY ASSESSMENT GUIDELINES, Chapter 3—Residential Dwelling Units,

Exhibit M: 2021 REAL PROPERTY ASSESSMENT GUIDELINES, Appendix C—Residential and Agricultural Cost Schedules.

10. The record also includes the following: (1) all petitions or 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.

Objections

11. The Assessor objected to all or part of three exhibits on grounds that they contain hearsay. First, she objected to statements in Exhibits 2 and 29 indicating that "the Assessor's office" told Upton it uses a formula to compute finished attic space. Second, the Assessor objected to Exhibit 55, an affidavit from a licensed real estate agent. Because the ALJ took those objections under advisement, we must now rule on them.

12. We overrule the objections. We agree that the evidence the Assessor objected to is hearsay, which is generally inadmissible under the Indiana Rules of Evidence. *See* Ind. Evidence Rule 801(c) (defining "hearsay" as a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted); *see also*, Evid. R. 802 ("Hearsay is not admissible unless these rules or other law provides otherwise."). But we may admit hearsay with the caveat that if such evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, we cannot base our determination of an appeal solely on that evidence. 52 IAC 4-6-9(d). Although Upton did not claim that the hearsay falls within any recognized exception to the hearsay rule, we do not base any part of our determination in these appeals on that hearsay.

Findings of Fact

A. The subject property

13. The subject property is located at 474 Park Avenue in Valparaiso. It contains a one-story single-family home built in 1930. The home has a basement and an attic. *Exs. 4-5, 51.*

14. The home's first-floor footprint is 1,080 square feet, and the attic covers the entire footprint. A portion of the attic was finished sometime before 2023. As shown in photographs accompanying the property's 2023 listing with the Multiple Listing Service ("MLS"), part of the finished attic area was used as a bedroom. The finished area also includes a bathroom and closet. The rest of the attic is unfinished. *Crozier, Upton testimony; Exs. 4-5, 16-17, 51.*

15. The basement has a concrete floor with painted cinder-block walls and a ceiling that consists of painted beams and a painted subfloor. Walls and doors divide the basement into several spaces: a utility room, a utility closet, a laundry room, and a larger 709-square-foot space. The larger space has a support beam that has been enclosed and painted. *Crozier, Upton testimony; Exs. 5, 17, 42, A.*

B. The property's 2023-2025 assessments

16. The property was assessed for $215,000 in 2023. Of that total assessment, $182,200 was for improvements. The assessment treated the entire 1,080-square-foot attic as unfinished. It similarly treated the basement as unfinished without a "Rec Room." The assessment assigned the home a quality grade of C and a condition rating of average, and it listed the home's effective age as the same as its actual age. *Exs. 4, 51.*

17. In April 2023, the property's previous owner listed it for sale with MLS with an asking price of $375,000. Roughly two months later, in June 2023, Upton bought the property for $360,000. The sale was at arm's length. The market for residential real estate in Valparaiso appreciated between the sale date and January 1, 2024, with average and median prices both increasing during that period. *Upton, Crozier testimony; Exs. 17, H-K.*

18. In July 2023, after looking at photographs and information from the MLS listing, Crozier made changes to the underlying data and judgments that were previously used to assess

the property, and those changes were incorporated into the property's 2024 and 2025 assessments. They included:

- Reducing the attic measurement to 936 square feet, all of which was treated as finished. The attic area was reduced because exterior photographs made it look like there was no attic above the semi-circle window at the front of the home.
- Classifying 709 square feet of the basement as a Rec Room 3.
- Changing the home's quality grade to C+2.
- Changing the home's effective year built to 1985 and its effective age to 39 years.

Crozier testimony; Exs. 4-5, 51, A.

19. Crozier summarized the changes in the following note to the property record card:

> FOR 2024 CORRECTED ATTIC AREA, MADE ATTIC FINISHED AND ADDED REC 3 WITH 709 SQ. FT. PER MLS WHOLE HOUSE HAS BEEN REDONE. CHANGED EFFECTIVE YEAR TO ACCOUNT FOR RENOVATION. CHANGED GRADE FROM C TO C+2.

Crozier testimony; Ex. 51.

20. The changes both increased the home's replacement cost new and decreased the depreciation applied to that cost. As a result, the property's assessment jumped 67.8% to $360,800 for 2024. The assessment then dipped to $359,100 for 2025. *Crozier testimony; Exs. 4-5, A.*

21. Crozier inspected the property on January 30, 2026. That inspection revealed finishes and amenities that were consistent with what was shown in the 2023 MLS listing. The inspection also showed that the attic covered the home's entire footprint, not just 936 square feet as reflected on the 2024 property record card. The additional 144-square-foot area is unfinished. Going forward, the Assessor's office will correct its data to include the additional 144-square-feet of attic space. *Crozier testimony; Exs. 4-5, 16-17, 46, A, I.*

22. It is unclear whether Crozier's inspection confirmed the property record card's measurement of 936 square feet of finished attic area. Upton had measured 400.41

square feet of floor space, including areas with ceiling heights of less than five feet. Crozier testified that she measured 437 square feet of floor space for the same area, which she described as "usable space." *Upton, Crozier testimony; Exs. 29, 32.*

23. But that is not how the Guidelines instruct assessors to measure attic space. As Crozier correctly pointed out, the Guidelines indicate that attic space should be measured using the "base ground floor area and not the actual attic floor." GUIDELINES, ch. 3 at 35. That is because the attic cost schedules "consider the loss of floor area and wall height in typical attic construction." *Id.* The Guidelines do not specify a different methodology for measuring an attic's finished area. *Id.*

C. Upton's appeals

24. On April 30, 2024, the Assessor, through a vendor, mailed Upton a Form 11 Notice of Assessment. The notice listed the new 2024 assessment of $360,800 and informed Upton that the appeal deadline was June 17, 2024. *Crozier testimony; Exs. B-D.*

25. Although Upton claimed she did not receive the Form 11 notice for 2024, she admitted that "[i]f the 2024 appeal was a valuation appeal, it would be untimely." *Upton testimony*.

26. Upton repeatedly maintained that neither of her appeals was a "valuation appeal." She instead indicated that she was appealing "objective" property record card "inputs." *Upton testimony; Exs. 1-2, 29, 38, 43, 46.*

Conclusions of Law and Analysis

A. Upton's 2024 appeal was timely only to challenge errors enumerated under I.C. § 6-1.1-15-1.1(a)(2)-(6).

27. Initially, the parties disagree about whether Upton timely filed her appeal for 2024. Indiana Code § 6-1.1-15-1.1 lays out the deadlines for filing an appeal at the local level. Under that statute, a taxpayer can allege errors relating to the following six things:

> (1) The assessed value of the property.
> (2) The assessment was against the wrong person.
> (3) The approval denial or omission of a deduction, credit, exemption, abatement, or tax cap.
> (4) A clerical, mathematical, or typographical mistake.
> (5) The description of the real property.
> (6) The legality or constitutionality of a property tax or assessment.

I.C. § 6-1.1-15-1.1(a).

28. The statute lays out relatively short deadlines for bringing challenges related to a property's assessed value: a taxpayer must file its appeal by the earlier of "(A) June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year; or (B) 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). But the statute provides a much longer deadline for appeals related to the other enumerated categories: up to three years "after the taxes were first due." I.C. § 6-1.1-15-1.1(a)(2)-(6), (b).

29. Upton admitted that her appeal was untimely to challenge the property's assessed value under subdivision (a)(1). But she represented that she was not claiming a valuation error in either of her appeals. Instead, Upton maintained that she was contesting objectively erroneous changes to the subject home's characteristics. Although she acknowledged that she filled out only the sections of the Form 130 and Form 131 petitions that address valuation challenges, she claimed that she substantively alleged objective errors that may be claimed up to three years after taxes are first due.

30. The question here is whether filing a Form 131 preserves claims of error under subdivisions (a)(4)-(5) when that portion of the form has been left blank. Neither the appeal statute nor our administrative rules expressly foreclose a petitioner from developing claims or arguments beyond those expressly raised in the Form 131. Reviewing the course of litigation here, we do not find Upton has waived her claims, and the Assessor has not suggested the defense of those claims has been prejudiced by unfair surprise. However, for the reasons set out below, most of Upton's claims of error are untimely.

B. Upton is not entitled to any relief on her 2024 appeal.

1. Upton has the burden of proof.

31. Turning to the merits of Upton's appeal, the parties first differ over who had the burden of proof. Upton cited to I.C. § 6-1.1-15-20(b) and argued that because her assessment increased by more than 5% between 2023 and 2024, the Assessor had the burden of proof. Upton also pointed to I.C. § 6-1.1-4-4.9. Under that statute, where an assessor changes the "underlying parcel characteristics, including age, grade, or condition, of a property from the previous year's assessment date," the assessor "shall document: (1) each change; and (2) the reason each change was made." I.C. § 6-1.1-4-4.9(b).

32. Indiana Code § 6-1.1-15-20 creates a rebuttable presumption about a property's true tax value. Generally, the assessment under appeal is presumed to equal the property's value—a presumption that long predated the adoption of I.C. § 6-1.1-15-20 and its predecessor burden-shifting statutes. *E.g. French Lick Twp. Ass'r v. Kimball Int'l, Inc.*, 865 N.E.2d 732, 736 (2006). This simply means that, in order to prevail in a property tax appeal, the taxpayer must present evidence to prove the value of the property. Under I.C. § 6-1.1-15-20, if that assessment represents an increase of more than 5% over the prior year, the burden shifts to the assessor to meet the same standard that would have been on the taxpayer to present evidence of the property's value. For challenges of an *error* (rather than assessed value) this statute has no application. Similar to challenges of

equality and uniformity, the burden remains on the taxpayer to prove the error. *See Thorsness v. Porter Cnty. Ass'r*, 3 N.E.3d 49, 51 (ind. Tax Ct. 2014) (holding that predecessor to I.C. § 6-1.1-15-20 did not apply to claims alleging a lack of uniformity and equality). In any event, Upton repeatedly indicated that she was not contesting the subject property's *valuation*. Indeed, she admitted that her 2024 appeal was not timely to do so.[3]

33. As for Upton's reliance on I.C. § 6-1.1-4-4.9(b), that statute says nothing about an assessor having the burden of proof in an assessment appeal. The Legislature repealed in 2022 a statute that placed the burden on an assessor to prove that changes to a property's characteristics were valid. *See* I.C. § 6-1.1-4-4.4 (repealed 2022). Upton's argument is without merit.

34. We find the burden of proof is on Upton for her claims of "errors."

2. <u>Upton has failed to meet her burden for her claims of objective errors.</u>

35. Upton alleged the following errors, all of which she claimed were objective:

- Changing the attic measurement to 936 square feet of finished space.
- Classifying 709 square feet of the basement to a Rec Room 3.
- Changing the home's quality grade from C to C+2.
- Changing the home's effective age and using the effective age, instead of the home's chronological age, to calculate depreciation.

Upton asked us to order that those "inputs" be corrected and that the property's assessment be "recalculated" as a "ministerial consequence" of those corrections.

36. The Assessor countered that Upton was simply contesting the methodology used to compute the assessment, which is insufficient to change a property's assessment on

[3] Even if Upton had timely contested the subject property's assessed value, she would lose her appeal. The only credible market-based evidence in the record—the arm's-length sale from less than seven months before the January 1, 2024, valuation date and the data from the Valparaiso residential real estate market showing market appreciation between the sale and valuation dates—demonstrates that the property's true tax value was higher than its assessment.

appeal. And most of the purported errors Upton asserted involved subjective judgments that cannot be addressed through a correction-of-error claim. The only possible exception is the claim that the assessor incorrectly identified how much attic space was finished, which Upton based on her misconception about how such space should be measured under the Guidelines. In any case, the Assessor argued that the assessment represents the property's market value-in-use, as evidenced by the price Upton paid for it in an arm's-length transaction less than seven months before the January 1, 2024, valuation date.

37. First, we note Upton's claims illustrate why the burden for challenging errors (claims under subdivisions (a)(4)-(5)) must remain with the taxpayer and are not subject to the burden-shifting statute. These claims of error are entirely formulated by the taxpayer. It would be impossible for an assessor to anticipate what specific errors might be raised by a taxpayer at a hearing, particularly if there is no requirement to state them with specificity in the Form 131. The number of possible measurements, grade ratings, fixtures, etc., is endless.

38. As to the substance of the claims, we largely agree with the Assessor's sentiments. The entire premise of an "objective error" challenge is inconsistent with the *Town of St. John* requirement of market evidence and the uniform rejection of methodological claims in its aftermath. However, Tax Court precedent continues to breathe life into the moribund progeny of *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852 (Ind. Tax Ct. 1990). We find that Upton has raised an objective error as to the square footage of the attic, but not as to her claims of error as to effective age, quality, or the description of the basement as a "Rec Room."

a. *The Form 130/131 Appeals, the Form 133, Appeals, and the Hatcher Test for Objective Errors*

39. Before the historic *Town of St. John* litigation led to wholesale changes in Indiana's assessment system, a property's true tax value was the figure produced by applying the

"mechanical rules and formulas" set forth in the State Board of Tax Commissioners' regulations. *Town of St. John v. State Bd. of Tax Comm'rs ("St. John I")*, 665 N.E.2d 965, 968 (Ind. Tax Ct. 1996) *rev'd in part on other grounds by Boehm v. Town of St. John ("St. John II")*, 675 N.E.2d 318 (Ind. 1996). It bore no relation to any external, objectively verifiable measurement standard. *Westfield Golf Practice Center,* 859 N.E.2d at398. Evidence of an improvement's actual reproduction cost or the actual market value of land was therefore largely irrelevant. *St. John I,* 665 N.E.2d at 967. Outside of a few narrow circumstances, so too was other market-based evidence, such as fee appraisals or valuations developed under standard appraisal approaches.[4] In other words, it did not matter what the property was really worth from an appraisal perspective—just whether the rules were followed by the assessor.

40. There were two main appeal statutes (and accompanying procedures) under the old regime: one for general appeals, which could raise any challenge to an assessment, including challenges to the methodology used to determine the assessment, and another for correction of narrowly enumerated errors. The general appeal statute—I.C. § 6-1.1-15-1 (repealed 2017)—had short filing deadlines roughly akin to those now contained in I.C. § 6-1.1-15-1.1(b)(1) for errors related to a property's assessed value. The deadlines under the correction-of-error statute—I.C. § 6-1.1-15-12 (repealed 2017)—varied.[5] Depending on the year in question, there was either no filing deadline or a deadline of three years after taxes were first due. *See, e.g., Hutcherson,* 2 N.E.3d at 142 ; *Will's Far-Go Coach Sales*, 847 N.E.2d at1075 ; 2014 Ind. Acts 183, § 19. Different appeal forms were used under the two procedures: Forms 130/131 for appeals under the general statute

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[4] *See Canal Square Ltd. P'ship v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 806 (Ind. Tax Ct. 1998) ("The State Board's regulations ... require the recognition of obsolescence and ties its definition of obsolescence directly to that applied by professional appraisers under the cost approach[.]"); *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1106 n. 14 (Ind. Tax Ct. 1999) (explaining that using market concepts to quantify influence factors did not run afoul of I.C. § 6-1.1-31- 6(c) because the regulations describing land orders and influence factors specifically referred to market concepts), *rev. denied.*

[5] This statute, I.C. § 6-1.1-15-12, was not actually an appeal statute originally—it was an authorization for the assessor to make changes for errors. It did not include any language for a *taxpayer* to file an appeal. It also bears noting that this provision dated to the period when properties were cyclically reassessed every four or six years, and taxpayers who realized an error after the general appeal deadline could only use this statute for relief until the next cyclical assessment.

and Form 133 for corrections of error. *Muir Woods, Inc. v. O'Connor*, 36 N.E.3d 1208, 1210 (Ind. Tax Ct. 2015), *rev. denied.*

41. Naturally, any challenge to an assessment could be described as an "error," so the Tax Court needed to decide what kinds of errors could be raised under each statute. In *Hatcher*, the Tax Court simply invented a distinction not based on any express language in the statute: an error could be appealed under the Form 133 correction of error statute if it could be determined "without resort to subjective judgment and according to objective standards." *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).[6] If a "simple true or false finding of fact" dictated an issue's resolution, the claimed error was considered objective and could properly be challenged using a Form 133 and the correction-of-error process. *Bender v. State Bd. of Tax Comm'rs,* 676 N.E.2d 1113, 1115 (Ind. Tax Ct. 1997). Otherwise, a taxpayer had to use Forms 130/131 and the general appeal process.

42. The correction-of-error process permitted correction of objective errors that raised a property's assessed value as well as those that lowered it. But it did not open the entire assessment to review. *Hatcher*, 561 N.E.2d at 857. Thus, while an assessor might correct objective errors in addition to the ones the taxpayer identified, the assessor could not reassess the property. *Id; see also, Barth, Inc. v. State Bd. of Tax Comm'rs,* 705 N.E.2d 1084, 1088 (Ind. Tax Ct. 1998) (recognizing "unique circumstances" where the State Board could correct a subjective error in a Form 133 review but explaining that those circumstances did not open the entire assessment to review).

[6] The Tax Court borrowed the objective/subjective test from language adopted by the New Jersey Legislature (and repealed by the time *Hatcher* was decided). The language was never adopted by the Indiana Legislature.

b. *The Town of St. John, Objective Market Evidence, and the Rejection of Methodological Challenges.*

43. Indiana's regime for real property assessment changed with the landmark *Town of St. John* litigation. The Indiana Supreme Court ultimately upheld the Tax Court's determination that the State Board of Tax Commissioners' then-existing cost schedules violated Ind. Const. art. 10 § 1 because they lacked meaningful reference to property wealth and resulted in significant deviations from substantial uniformity and equality. *State Bd. of Tax Comm'rs v. Town of St. John ("St. John V")*, 702 N.E.2d 1034, 1042-43 (Ind. 1998). Beginning in 2002, the State Board of Tax Commissioners, and its successor, the DLGF, overhauled the assessment system. It incorporated the external benchmark of market value-in-use as the standard for measuring true tax value. *Westfield Golf*, 859 N.E.2d at 399. Indeed, under the new regime, true tax value and market value-in-use are synonymous. 2021 REAL PROPERTY ASSESSMENT MANUAL 2.[7] And "market value-in-use" is defined 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." *Id.*

44. The purpose of the DLGF's Real Property Assessment Manual and the Guidelines (and of all the DLGF's manuals and guidelines since 2002) is to accurately determine true tax value, not to "mandate that any specific assessment method be followed." 50 IAC 2.4-1-1(c). Assessments have historically been determined using a mass-appraisal version of the cost approach. *Gillette v. Brown Cnty. Ass'r*, 54 N.E.3d 454, 456 (Ind. Tax Ct. 2016). The Guidelines provide both the necessary cost schedules and a methodological framework for applying such an approach. But "other relevant information" may be used in applying the cost approach. 2021 MANUAL at 3. And all three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value[.]" *Id.* at 2. The Guidelines therefore merely provide the "*starting point*" for an assessor to determine a property's market value-in-use. *Westfield*

[7] For agricultural land, however, the Manual provides that "true tax value shall be the value determined in accordance with the Guidelines adopted by the Department of Local Government Finance and IC 6-1.1-4-13." 2021 MANUAL at 2.

Golf, 859 N.E.2d at 399. Where an assessor believes that an assessment derived from applying the Guidelines does not accurately reflect the property's market value-in-use, she is "*expected*" to adjust the assessment. *Piotrowski v. Shelby Cnty. Ass'r,* 177 N.E.3d 127, 133 (Ind. Tax Ct. 2021) (emphasis added).

45. From the outset of the new regime, the Tax Court held that taxpayers could no longer prove an assessment was incorrect simply by showing an error in applying the Guidelines. *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."). Instead, to make a case for a lower assessment, taxpayers must use relevant market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use[.]" *Id.* The Court has continued to follow that precedent throughout the years. *E.g. Piotrowski,* 177 N.E.3d at 131-32; *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.").

c. *Legislative Repeal of I.C. § 6-1.1-15-12 and the Form 133.*

46. The bifurcated appeal processes, and the underlying statutes governing those processes, remained in place for the first 14 years following the changes to the assessment regime. Taxpayers therefore could still file Form 133 petitions.

47. But the shift from a rule-based regime to one tethered to the external benchmark of market value-in-use fundamentally altered what those petitions could be used to correct. Under the old regime, if an assessor erred in applying the assessment guidelines, simply correcting that error dictated the property's true tax value. For example, if an assessor assigned the wrong quality grade to a building or used the wrong perimeter-to-area ratio, one could simply plug the correct grade or ratio into the formula from the assessment regulations. So correcting an underlying error changed two things: the specific input at

issue and the property's assessed value. The change in value was akin to a mathematical function, or in Upton's words, was a "ministerial consequence" of the correction.

48. By contrast, determining a property's proper assessed value under the new regime, with its tie to the external benchmark of market value-in-use and the need to provide market-based evidence, inherently requires the exercise of subjective judgment. The Tax Court foresaw as much even before the new regime was in place:

> A calculation of the effect of real world evidence on an individual assessment will typically require subjective judgment. . . . The court does not foresee any opportunity to apply real world evidence retroactively by using the Form 133 process.

Town of St. John, et al. v. State Bd. of Tax Comm'rs ("St. John IV"), 698 N.E.2d 399, 400 (Ind. Tax Ct. 1998).

49. Based on those principles, we repeatedly rejected attempts to use the old correction-of-error statute and the Form 133 petition to challenge a property's assessed value. *E.g. WC Middleton, LLC v. Henry Cnty. Ass'r* pet. no. 33-006-14-3-4-20421-15 (IBTR July 11, 2017). And we reached the same conclusion in appeals brought under the new appeal statute's deadline for correcting clerical, mathematical, or typographical mistakes and other types of errors listed in I.C. § 6-1.1-15-1.1(a)(4)-(6). *E.g. Cobb v. Tippecanoe Cnty. Ass'r*, pet. no. 79-004-16-1-4-00196-21 etc. (IBTR March 30, 2022).

50. Thus, the law seemed clear that methodological challenges, including the type of "objective error" analysis contained in *Hatcher*, could no longer prevail. The Legislature repealed the old correction of error statute (I.C. § 6-1.1-15-12) and expressly adopted the shortened appeal deadlines for all challenges to assessed value. I.C. § 6-1.1-15-1.1(b)(1)-(2). Litigants could neither resurrect a belated challenge to assessed value simply by labeling it as a "mistake" or issue of "legality," nor prevail on methodological challenges.

d. *Muir Woods, Camelot, Bushmann, and Chevrolet*

51. The Indiana Supreme Court's decision in *Muir Woods Section One Ass'n v. Marion Cnty. Ass'r* and a trio of Tax Court decisions issued in its wake have muddied the waters, however. In *Muir Woods*, several homeowners' associations ("HOAs") filed Form 133 appeals concerning the 2001-2003 assessments of common-area land in various subdivisions. *Muir Woods Section One Ass'n v. Marion Cnty. Ass'r* 172 N.E.3d 1205, 1206-07 (Ind. 2021). Among other things, the HOAs alleged that the relevant land orders and neighborhood valuation forms prescribed that common areas were to receive an 80% discount from the base rate established for land where the common areas were located. *Id.* We dismissed the appeals on grounds that the Form 133 procedure was an improper way to appeal the HOAs' claims because they all went to "the inherently subjective question of how their properties should have been valued." *Id.* at 1206. The Tax Court largely affirmed our determination, and it found that the assessor's alleged failure to apply the discount was an inherently subjective judgment. *Id.*

52. The Supreme Court granted transfer and reversed the Tax Court's decision on that issue.[8] The Court began by reaffirming that "[g]enerally speaking, the valuation and assessment of real property in Indiana is an inherently subjective exercise[,]" and noting that the case turned on "unique circumstances involving the use of a now-defunct tax appeal form[.]" *Id.* at 1205-06. It then went on to address the merits of the HOAs' claim, although it noted that the assessor had neither directly addressed that claim before the Tax Court nor filed a brief in response to the HOAs' petition for review. *Id.* at 1207, n. 2.

53. The Court explained that while the assessor's initial determination of the base rate for the HOAs' common areas might have been inherently subjective, the same was not true for applying the discount factor: either that factor was applied or it wasn't. *Id.* at 1207. The Court also rejected the Assessor's claim that the HOAs should have first used the general

[8] The Supreme Court summarily affirmed the Tax Court in all other respects. *Muir Woods,* 172 N.E.3d 1205, 1208 (Ind. 2021).

appeal process to challenge the subjective determination of the properties' base rates, explaining that "*[f]ocusing only on the narrow challenge before us today*, we find the HOAs are challenging the objective application of a prescribed discount rate to an already determined base rate." *Id.* at 1208 (emphasis added). Thus, it appears that the Indiana Supreme Court simply held that a Form 133 challenge filed prior to the repeal of I.C. § 6-1.1-15-12 should prevail under the old *Hatcher* standard—notably when two of the tax years predated the DLGF adoption of market value-in-use as the measure of true tax value.

54. In the two years following *Muir Woods*, the Tax Court issued three decisions where taxpayers had filed "correction-of-error" appeals under the current appeal statute. *Camelot Co., LLC v. Bartholomew Cnty. Ass'r*, 224 N.E.3d 1007 (Ind. Tax Ct. 2023); *Bushmann, LLC v. Bartholomew Cnty. Ass'r*, 187 N.E.3d 355 (Ind. Tax Ct. 2022); *Chevrolet of Columbus, Inc. v. Bartholomew Cnty. Ass'r*, 187 N.E.3d 349 (Ind. Tax Ct. 2022). In those cases, the taxpayers alleged that the assessor had applied the wrong base rates to assess their land. Among other things, the parties disagreed about what the applicable land orders provided as well as whether the land order that the assessor used for the 2018 assessment had been submitted to, or adopted by, the county property tax assessment board of appeals in time for it to apply to that assessment year. *Camelot,* 224 N.E.3d at 1008-09; *Bushmann*, 187 N.E.3d at 356-57; *Chevrolet*, 187 N.E.3d at 350-51. We did not address those disputes. Instead, we found that the appeals were untimely because the taxpayers had not filed them within the deadline for challenging the properties' assessed values. *Camelot,* 224 N.E.3d at 1009; *Bushmann*, 187 N.E.3d at 356; *Chevrolet*, 187 N.E.3d at 351.

55. In each case, the Tax Court reversed our determination. The Court explained that in repealing the old general-appeal and correction-of-error statutes and enacting the current appeal statute, the Legislature did not eliminate "the long-standing distinction between objective and subjective errors for purposes of the correction of error appeal procedure." *Bushmann,* 187 N.E.3d at 359. In all three appeals, the Court found that like *Muir*

Woods, the taxpayers alleged objective errors. In *Bushmann* and *Chevrolet*, the Court characterized the appeals as challenges to the objective application of a pre-determined base rate. *Bushmann*, 187 N.E.3d at 358; *Chevrolet,* 187 N.E.3d at 353. In *Camelot*, it characterized the appeal as raising "the objective error whether the Assessor used the proper land order (and thus the proper base rate) to determine the assessed value" of the taxpayer's land. *Camelot,* 224 N.E.3d at 1014. The Court remanded the *Bushmann* and *Chevrolet* appeals to us to determine whether the assessor applied the proper base rate. *Bushmann*, 187 N.E.3d at 360; *Chevrolet,* 187 N.E.3d at 354.[9] In *Camelot*, the Court held that the taxpayer failed to show the assessor had used the wrong land order to assess its property and affirmed our ultimate determination that the taxpayer was not entitled to a change in its assessment. *Camelot,* 224 N.E.3d at 1014-1016.

56. *Muir Woods* and its Tax Court progeny do not purport to overrule the holdings from *Eckerling* and similar cases that a party cannot rebut the presumption of an assessment's accuracy simply by showing that an assessor erred in applying the Guidelines but must instead offer market-based evidence to show the property's market value-in-use. Indeed, the Supreme Court went out of its way to limit its holding to the unique facts before it. While the Tax Court did not similarly cabin its decisions in *Camelot*, *Bushmann*, and *Chevrolet*, it did not grant relief that changed the assessed value of the properties at issue either.

57. Neither the Indiana Supreme Court nor the Tax Court has directly analyzed the contradiction between *Hatcher* and *Eckerling*. The practical impact of *Camelot*, *Bushmann*, and *Chevrolet* is the recognition of an exception to the market evidence requirements of *Town of St. John*. This exception for *Hatcher* "objective errors" has no basis in the plain language of the appeal statute, the DLGF's Guidelines, or the case law interpreting Indiana's market value-in-use standard.

[9] Following remand, we determined that the taxpayers failed to prove the assessor applied the wrong base rates, and the Court affirmed our determinations. *Bushmann v. Bartholomew Cnty. Ass'r*, 230 N.E.3d 407 (Ind. Tax Ct. 2024); *Chevrolet of Columbus, Inc. v. Bartholomew Cnty. Ass'r*, 230 N.E.3d 400, 405-07 (Ind. Tax Ct. 2024).

58. Until that contradiction is addressed, we must find that methodological challenges to an assessment are timely under subdivisions (a)(4)-(5) of the appeal statute as long as they meet the *Hatcher* test for objective errors.

e. *Uniformity and equality in assessments.*

59. One more item should be resolved before addressing whether Upton's claims of error are "objective." Upton argues that if an assessor "chooses to use a cost-based formula for mass appraisal," she must use accurate inputs, and that an assessment derived from inaccurate measurements, misclassified finishes, unsubstantiated adjustments to quality grade, and an improper depreciation percentage violates the "requirement for a uniform and just system of taxation."

60. While we agree that assessors should strive to use accurate data in determining assessments under the Guidelines, the failure to do so does not, by itself, create a lack of uniformity and equality. Our state constitution requires the Legislature to "provide, by law, for a uniform and equal rate of property assessment and taxation . . . ." Ind. Const. Art. 10, § 1. It speaks to the *rate* of assessment, which as we have already explained, is measured against the external benchmark of market value-in-use. *Westfield Golf*, 859 N.E.2d at 399. A lack of uniformity and equality therefore cannot be shown by focusing solely on the methodology used to determine assessments. *See id.* (holding that taxpayer failed to prove a violation of the property taxation clause where it showed neither its property's market value-in-use nor the market value-in-use any comparable properties).

3. <u>Upton did not prove any objective errors</u>.

61. Most of the "errors" challenged by Upton are not "objective" because they require subjective judgment to resolve. The Tax Court has repeatedly held that selection of the appropriate quality grade requires subjective judgment. *See e.g., Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758, 759 (Ind. Tax Ct. 1993). Similarly, in determining whether basement area should be classified as a recreation room, an assessor must consider whether the area adds value to the home and whether its finish is inconsistent

with the finish in the rest of the home. GUIDELINES, ch. 3 at 28, 36. Those are not simple true or false findings of fact.

62. The same is true for Upton's claim that the Assessor erred in using the property's effective age—rather than its chronological age—to calculate depreciation. The Tax Court has held that determining a building's effective age, which is essential to estimating depreciation, requires subjective judgment because the building's condition must be factored into the decision. *Franchise Realty Corp. v. Indiana State Bd. of Tax Comm'rs*, 682 N.E.2d 832, 834-35 (Ind. Tax Ct. 1997). The Guidelines no longer require assessors to expressly estimate a property's effective age. They instead instruct assessors to separately rate a home's condition, which will reflect the property's effective age. Depreciation is then determined through tables that consider grade, chronological age, and condition rating and is further adjusted based on a neighborhood factor. GUIDELINES, App. B at 3-12. It might have been more appropriate for the Assessor to account for the subject home's renovations and maintenance by tweaking its condition rating instead of separately estimating its effective age. But that does not change the subjective nature of what she was addressing: the home's depreciation.

63. Upton's last challenge is whether the measurement of the attic should be based on the total floor print or only the usable space.[10] However, as we have already explained, the Assessor correctly applied the Guidelines in calculating attic space. GUIDELINES, ch. 3 at 35. Thus, Upton is not entitled to any relief on these grounds.

[10] There was competing testimony as to whether the usable attic floor space was 400.47 s/f or 437 s/f. This illustrates another of the many infirmities inherent in *Hatcher*: even resolving a simple question of square footage requires the factfinder to make **subjective** determinations regarding the credibility of the witnesses to decide the usable floor space. It also reveals the inefficiencies and shortcomings of the old methodological system before the *Town of St. John* cases. **The <u>question</u> that ought to be resolved in a property tax appeal—the only one that truly matters—is whether <u>the assessment</u> reflects the house's market value-in-use, not whether the property tax card's measurements are off by 37 s/f.** The purpose of an appeal is to test the accuracy of an assessment; it is not an audit of the assessment process. In any event, the dispute is irrelevant because, as explained in our findings of fact, the Guidelines require attic measurements to be based on the home's ground-floor footprint, not the attic's interior floor space.

4. The Assessor complied with I.C. § 6-1.1-4-4.9. Even if she hadn't, that statute does not provide Upton with the remedy she seeks.

64. Finally, citing I.C. § 6-1.1-4-4.9, Upton claimed she was entitled to relief based on what she views as the Assessor's failure to document changes to the "inputs" used to assess the subject property. According to Upton, the Assessor's note on the property record card does not suffice to meet the statute's requirements because the note does not contemporaneously document the basis for the changes through inspections, records, measurements, permits, or photographs. In Upton's view, relying on information from an MLS listing does not suffice; instead, she believes the statute requires an Assessor to offer detailed documentation from her own inspection of a property. And the Assessor's office did not inspect the subject home's interior until January 2026, well after the changes were made to the inputs.

65. We disagree. The note on the property record card indicates that the assessment reflected changes to the home's grade, finished attic area, and effective age and that a Rec Room 3 had been added to the basement. It further identified the main source for those changes: the MLS listing. While the note might not be as detailed as Upton wanted, we do not read the statute as requiring a greater degree of specificity. Nor does the statute require that changes to property characteristics be based on personal inspection by an assessor or her employees. We find the Assessor has met the requirements of I.C. § 6-1.1-4-4.9.[11]

C. Upton did not make a case for changing the property's 2025 assessment.

66. Upton's electronic appeal for 2025 was timely to put the subject property's assessed value at issue, even though she denied that she was challenging the property's valuation. So Indiana Code § 6-1.1-15-20 applies to her appeal. The 2025 assessment is less than the prior year's assessment, as last determined by us as the reviewing authority. We therefore must start with the rebuttable presumption that the 2025 assessment equals the

[11] We likewise note that this statute does not provide a remedy, and Upton has failed to cite to any authority that an assessor's failure to comply with the documentation requirements of I.C. § 6-1.1-4-4.9 would render the assessment invalid.

property's true tax value. I.C. § 6-1.1-15-20(a)-(b) (creating a rebuttable presumption that the assessment under appeal is presumed to equal the property's true tax value unless it represents an increase of more than 5% over the prior year's assessment, as last corrected by an assessing official, stipulated to by the parties, or determined by a reviewing authority). That presumption continues unless the totality of the probative evidence is sufficient to demonstrate the property's true tax value. I.C. § 6-1.1-15-20 (f).

67. Upton did not even attempt to offer any market-based evidence to demonstrate the property's true tax value. While there is evidence showing that she bought the property for $900 more than its 2025 assessment, the sale was almost 1 ½ years before the January 1, 2025, valuation date, and there is no evidence to relate that sale price to the valuation date. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005) (holding that taxpayers' evidence lacked probative value because they failed to explain how it demonstrated, or was relevant to, the property's value as of the applicable valuation date), *rev. denied.* The totality of the evidence therefore does not suffice to demonstrate the property's true tax value for 2025, and we must presume that the challenged assessment is equal to its value.

68. Of course, Upton argues that she is really claiming objective errors in the property's 2025 assessment. But her evidence and arguments are identical to what she relied on for her 2024 appeal. We therefore reach the same conclusion as we did for her 2024 appeal.

Conclusion

69. Upton did not appeal her 2024 assessment within the deadline for contesting the subject property's assessed value, and she has failed to meet her burden to establish an "objective" error that must be corrected. Although Upton did appeal in time to contest the subject property's assessed value for 2025, she failed to offer any evidence to rebut the presumption that the property's assessment equaled its true tax value. We therefore find for the Assessor in both appeals and order no changes to the assessments.

Date: June 11, 2026

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>.