

REPRESENTATIVE FOR PETITIONER: David Cobb

REPRESENTATIVE FOR RESPONDENT: Chris Coakes, valuation specialist for the
Tippecanoe County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

David Cobb,)	Petition Nos.: 79-004-16-1-4-00196-21
)	79-004-17-1-4-00197-21
Petitioner,)	79-004-18-1-4-00198-21
)	
v.)	Parcel No.: 79-07-35-252-009.000-004
)	
Tippecanoe County Assessor,)	County: Tippecanoe
)	
Respondent.)	Assessment Years: 2016-2018

Appeal from the Final Determination of the
Tippecanoe County Property Tax Assessment Board of Appeals

March 30th, 2022

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. Indiana law provides two deadlines for property tax appeals: one for challenging a property’s assessed value, and another for alleging certain other claims of error, including that there was a clerical or mathematical mistake or that there was an error in the property’s description. David Cobb does not argue that he filed appeal petitions challenging the 2016-2018 assessments within the deadline for contesting his property’s

assessed value. While he attempts to characterize his claims—that the Tippecanoe County Assessor used an income model for a multiple-tenant as opposed to a single-tenant property and included an unfinished and unused part of the property in estimating its value—as clerical, mathematical, or description errors, they are simply challenges to the property’s assessed value. His appeals were therefore untimely. In any case, Cobb offered no market-based evidence to support his claim for reducing the assessments.

Procedural History

2. On March 3, 2020, Cobb filed Form 130 petitions addressing the 2016-2018 assessment years for his commercial property located at 3806 Amelia Avenue in Lafayette. Cobb completed both Sections II and III of the petitions. Section II is for an “appeal of the current year’s assessment,” and Section III is for “correction of error.” In Section III, Cobb checked the box alleging an error in “the description of the property.”

3. On December 21, 2021, the Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations denying Cobb relief, explaining that his appeals were filed late, and leaving the following assessments in place:

Year	Assessed Value
2016	\$1,248,200
2017	\$1,266,900
2018	\$1,304,900

4. Cobb responded by filing Form 131 petitions with us, asking for the following values:

Year	Assessed Value
2016	\$855,000
2017	\$867,000
2018	\$893,000

5. On January 5, 2022, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Cobb’s petitions. Neither the ALJ nor the Board inspected the property. Cobb represented himself. Chris Coakes, valuation specialist for the Assessor’s office, represented the Assessor. Both testified under oath.

6. Cobb submitted the following exhibits:

Petitioner Exhibit 1:	Narrative summary,
Petitioner Exhibit 2:	2019 Forms 130, 134, and 115,
Petitioner Exhibit 3:	2019 tax statement (Form TS-1A),
Petitioner Exhibit 4:	2016 Forms 131, 130, 114, and 115,
Petitioner Exhibit 5:	2017 Forms 131, 130, 114, and 115,
Petitioner Exhibit 6:	2018 Forms 131, 130, 114, and 115,
Petitioner Exhibit 7:	2019 income model and property record card,
Petitioner Exhibit 8:	2016 income model and property record card,
Petitioner Exhibit 9:	2017 income model and property record card,
Petitioner Exhibit 10: ¹	2018 income model and property record card.

7. The Assessor did not submit any exhibits.

8. 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.

Parties' Contentions

A. Cobb's Contentions

9. Cobb initially appealed his 2019 assessment, alleging that the Assessor had used the wrong "income model" to value the property when he characterized the property as "multi-tenant" rather than "single-tenant." Cobb also alleged that the Assessor had been assessing the entire building since 2011, even though a 2,400-square-foot portion of it was unfinished and unused space. As a result of Cobb's appeal, the Assessor agreed to reduce the 2019 assessment to \$900,000. *Cobb testimony and argument; Pet'r Ex. 1-3, 7.*
10. Cobb now seeks a comparable reduction for the 2016-2018 assessments, for the same reasons. He contends those reasons are objective issues. The property has only one unit, all under one roof, and he has had only one tenant. Neither of those determinations

¹ Cobb also emailed Petitioner Exhibits 11 and 12 to us, but he did not offer those exhibits.

requires subjective judgment. He therefore contends that he had three years to correct the assessments, and that his appeal petitions were timely. *Cobb testimony and argument* (citing I.C. § 6-1.1-15-1.1 and § 6-1.1-15-12 (repealed)); *Pet'r Ex. 1, 4-6, 8-10*.

11. Cobb's requested assessments are based on the same percentage reduction he received as a result of his 2019 appeal, which he computed as 31.23%. At hearing, he requested "rounded" versions of the amounts he listed on his Form 131 petitions: \$850,000 for 2016, \$870,000 for 2017, and \$890,000 for 2018. *Cobb testimony and argument*.

B. The Assessor's Contentions

12. Cobb did not timely file his appeals. The 2019 assessment upon which Cobb bases his 2016-2018 assessment requests was not determined by a correction of error or objective calculation. Rather, the \$900,000 assessment was the result of an "informal agreement" between Cobb and the Assessor. *Coakes testimony and argument; see also, Pet'r Ex. 2*.
13. The issue in dispute—whether the correct income model was used—is a subjective issue. Assessors are not required to use the income approach to value property. When they do use that approach, the inputs are subjective. In any case, the assessments are correct, because even though Cobb only had one tenant, the property had two rental units. And assessors assess real property, not a taxpayer's rental business. *Coakes argument*.

Analysis

14. Cobb's Form 130 petitions were untimely. Indiana Code § 6-1.1-15-1.1 sets different filing 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 the 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). For other enumerated errors—including errors in a property's description or clerical or

mathematical mistakes—a taxpayer had three years after the taxes were first due to file an appeal. I.C. § 6-1.1-15-1.1(a)(2)-(6), (b).

15. Cobb does not even attempt to argue that he timely appealed his property's assessed value. Instead, he argues that he is merely alleging an error in the property's description and clerical or mathematical mistakes. But simply calling something a description error or a clerical or mathematical mistake does not make it so.
16. 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 under Ind. Code § 6-1.1-15-1.1 and Ind. Code § 6-1.1-15-12.1. But the new statutory regime retained one statute of limitation for challenges to assessed value and another for claims of error.
17. The arguments by Cobb and the Assessor over whether Cobb alleged objective or subjective errors stem from a test that the Tax Court first announced in *Hatcher v. Indiana State Bd. of Tax Comm'rs*, 561 N.E.2d 852 (Ind. Tax Ct. 1990) governing when taxpayers could use the old Form 133 and its expanded filing deadlines. Now that there is no Form 133, and the statute enabling it and the administrative rules interpreting it have been repealed, we no longer look to *Hatcher's* objective/subjective test to determine timeliness.
18. 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.

19. Second, in analyzing 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.3.²

20. 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 has established that only “objectively verifiable” evidence is sufficient to prove that an assessment is incorrect.³ *Hatcher* has been largely rendered obsolete because a taxpayer must present evidence of its property’s market value-in-use, and merely identifying a methodological error is insufficient to challenge assessed value.

21. What remains under the new statutory regime are the separate statutes of limitation for challenges: one for assessed value and another for 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 “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 limitation. To allow that would ignore the legislative intent behind the separate statutes of limitation.

² 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 the 133...” *Id.* at 1237.

³ *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)).

22. Cobb's appeals fundamentally contest his property's assessed value for each year. That is demonstrated by the relief he requests: he wants his property valued on an "income model" that treats his property as a single-tenant property. And Cobb does not claim to have filed his appeals within the statutory deadline for challenging assessed value.
23. Even if we were to find that Cobb's appeals were timely to contest the subject property's assessed value, he failed to make a prima facie case for reducing the assessments. Again, Cobb's evidence focused mainly on an irrelevant question: whether the Assessor or PTABOA could "subjectively" use a different income model to assess the property than the model he believes the Assessor agreed to use when they settled Cobb's 2019 appeal. 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, the taxpayer 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).
24. Cobb's position also ignores two other well-settled concepts. First, each tax year—and each appeal process—stands alone. *Fisher v. Carroll Cnty. Ass'r*, 74, N.E.3d 582, 588 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year therefore has little bearing on its true tax value in another. *Fleet Supply, Inc. v. State Bd. of Tax Comm'r*, 747 N.E. 2d 645, 650 (Ind. Tax Ct. 2001). So the property's 2019 assessment does little to show its market value-in-use for 2016-2018.
25. Second, that 2019 value was the product of settlement negotiations. We have repeatedly rejected attempts to use evidence of settlement agreements or negotiations to prove value. Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. Tax Ct. 2005).

Final Determination

26. We find for the Assessor and order no change to the subject property's 2016-2018 assessments.

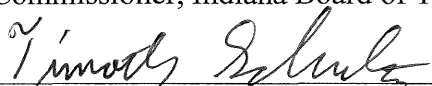
We issue this Final Determination on the date first written above.



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>.