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

Petition:	**03-009-18-1-4-00103-20**
Petitioner:	**Coutar Remainder III LLC**
Respondent:	**Bartholomew County Assessor**
Parcel:	**03-05-22-000-000.800-009**
Assessment Year:	**2018**

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

Issue Date: February 5, 2021

Procedural History

1. On September 3, 2019, Coutar Remainder III, LLC filed a Form 130 petition contesting its 2018 assessment. It checked the box indicating that it was alleging a clerical, mathematical, or typographical mistake. Coutar claimed that the Assessor erred by using the base rate from a "land order" that was not approved by the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") until after the assessment date.

2. The PTABOA issued a Form 115 determination denying Coutar's appeal and determining the following values:

   Land: $405,500 Improvements: $248,000 Total: $653,500

3. Coutar then filed a Form 131 petition with the Board, electing to proceed under our small-claims procedures. On November 10, 2020, Erik Jones, our designated administrative law judge ("ALJ"), held a telephonic hearing on Coutar's petition. Neither he nor the Board inspected the property. Milo Smith appeared as Coutar's certified tax representative. The Bartholomew County Assessor, Ginny Whipple, represented herself. Smith and Whipple were sworn as witnesses and testified. The parties agreed to incorporate the record from an earlier hearing in *Centra Credit Union v. Bartholomew Cty. Ass'r,* pet. no. 03-005-18-1-4-00104-20, which addressed similar issues, into the record in this appeal.

Record

4. The parties offered the following exhibits:

Petitioner Exhibit 1	2018 Form 11 and PTABOA Land Order Approval,
Petitioner Exhibit 2	Valuation Date (string of emails between Ginny Whipple and Melissa Michie)

Petitioner Exhibit 3	I.C. § 6-1.1-2-1.5,
Petitioner Exhibit 5	DLGF Land Order Clarification (emails between Michie and Chris Wilkening),
Petitioner Exhibit 6	Duplicate of Exhibit 5
Petitioner Exhibit 7	CoE Denial Letter,
Petitioner Exhibit 8	I.C. § 6-1.1-4-13.6,
Petitioner Exhibit 9	2017 PRC,
Petitioner Exhibit 10	2018 PRC,
Petitioner Exhibit 11	2018 Land Order,
Petitioner Exhibit 12	2011 Land Order.[1]

Respondent Exhibit A	Whipple Resume,
Respondent Exhibit B	Statement of Professionalism,
Respondent Exhibit C	2017 PRC,
Respondent Exhibit D	2018 PRC,
Respondent Exhibit E	Aerial Photo of Parcel,
Respondent Exhibit F	Definitions,
Respondent Exhibit G	Reassessment Cycle,
Respondent Exhibit H	Barry Wood email to Milo Smith dated 12/13/2018,
Respondent Exhibit I-1	Copy of Bartholomew County Reassessment Plan,
Respondent Exhibit I-2	DLGF Letter of 7/15/2013,
Respondent Exhibit J	I.C. § 6-1.1-2-1.5,
Respondent Exhibit K	Duties of the Department – Assessor's Manual pp. 18-19,
Respondent Exhibit L	Email from Barry Wood dated 2/25/2019,
Respondent Exhibit M	Email from DLGF Counsel David Marusarz dated 6/10/2019,
Respondent Exhibit N	E-Mail from DLGF Counsel David Marusarz dated 2/14/2020,
Respondent Exhibit O	PTABOA Minutes 2/6/2018,
Respondent Exhibit P	Commercial Land Application,
Respondent Exhibit Q	Industrial Land Application,
Respondent Exhibit R	Email from Chris Wilkening dated 4/1/2019,
Respondent Exhibit S	Email from Ginny (Whipple) to Melissa (Michie) dated 4/23/2019,
Respondent Exhibit T	Email from Ginny to Melissa dated 4/22/2019,
Respondent Exhibit U	Copy of Form 11 for Subject Parcel 6/15/2018,
Respondent Exhibit V	Copy of 2018 Assessment Calendar 1/17/2018,
Respondent Exhibit W	Fundamentals of Mass Appraisal – IAAO,
Respondent Exhibit X	I.C. § 6-1.1-4-13.6.

5. The record also includes the following:

[1] Neither the cover sheet that Coutar submitted nor Smith's recitation at the hearing matched how the exhibits were labeled. We have done our best to make sense of what was offered, using the labeling on the exhibits themselves as well as the discussion of mostly identical exhibits at the *Centra Credit Union* hearing.

(1) all petitions and other documents filed in this appeal;
(2) all orders and notices issued by the Board or our ALJ;
(3) an audio recording of the hearing; and
(4) the hearing record from *Centra Credit Union v. Bartholomew Cty. Ass'r*.

Contentions

A. Coutar's Contentions

6. Before 2018, the Assessor used a base rate of $250,000/acre for primary land to assess Coutar's property.[2] That rate came from a 2011 land order. For 2018, the Assessor used a base rate of $304,900/acre, which she took from a land order that the PTABOA did not approve until February 6, 2018—more than a month after the January 1, 2018 assessment date. *Smith argument; Pet'r Exs. 1, 10-12*.

7. According to Coutar, nothing in Ind. Code § 6-1.1-4-13.6 permits county officials to apply rates from a land order retroactively; to the contrary, the statute instructs them to use the rates that were already approved. The Indiana Tax Court has previously denied attempts to apply rates retroactively unless the body adopting the order unambiguously intended retroactive application. *Smith argument* (*citing Mahan v. State Bd. of Tax Comm'rs*, 622 N.E.2d 1058, 1062 (Ind. Tax Ct. 1993)); *Pet'r Exs. 3, 8*.

8. Although the Assessor contends that the new rate could be used because she did not issue Form 11 notices until after the land order had been approved, neither the statute nor guidelines from the Department of Local Government Finance ("DLGF") support such a procedure. Coutar points to an email from Christopher Wilkening, a DLGF field representative, in which Wilkening responded to the following question from Smith's employee, Melissa Michie: "Once the land order has been submitted, do the new land values apply to the following calendar year or to the first year of the next [reassessment] cycle?" Wilkening responded that traditionally, land orders are made effective in the year after they are approved. For example, if a land order was approved by a county PTABOA in July 2019, it would be effective January 1, 2020. Wilkening had not heard of a county approving a land order in one year and then waiting until the next reassessment cycle for it to become effective. Doing so would require new sales information, and the older information would need to be adjusted for time. *Smith testimony and argument; Pet'r Ex. 5*.

[2] The parties disputed whether a spreadsheet that the Assessor provided to Smith's office included actual values, as opposed to proposed values, for 2017. On cross-examination, Smith testified that Barry Wood, the director of assessments for the Department of Local Government Finance, could not find any proposed values. The Assessor made a hearsay objection and the ALJ took it under advisement. We agree that Smith's testimony was hearsay: it implicitly referenced a statement from a declarant (Wood) who did not testify at the hearing, and it was offered for the truth of the matter asserted in that statement. Ind. Evidence Rule 801(C). But our procedural rules allow us to admit hearsay, with the caveat that we cannot base our final determination solely on hearsay that has been properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d). We overrule the objection. We do not base any part of our determination on Wood's statement, however.

9. The Assessor used the cost approach from the DLGF's guidelines to assess Coutar's property. Smith therefore recalculated the assessment using the appropriate base rate from the land order that existed on the assessment date and concluded that the property should be assessed for $580,500 ($332,500 for land and $248,000 for improvements). *Smith testimony; Pet'r Exs. 10, 12*.

10. Finally, Coutar disagrees with the Assessor's contention that it was attempting to circumvent the appeal system by filing a correction-of-error claim to challenge what is really an issue of methodology. In 2017, the legislature enacted Ind. Code § 6-1.1-15-1.1, which Coutar argues consolidated subjective and objective appeals into one proceeding. Under the new system, a taxpayer may raise any claim related to its property's assessed value. *Smith testimony and argument.*

B. The Assessor's Contentions

11. Coutar has tried to circumvent the appeal process by alleging a clerical, mathematical, or typographical error in order to raise what is really a methodological challenge. Such a challenge had to be filed within 45 days of the Assessor issuing a Form 11 notice. She issued Form 11 notices, including the notice to Coutar, on June 15, 2018. It also appears that Coutar is attempting to appeal the base rates determined by the land order under the guise of an assessment appeal. But Ind. Code 6-1.1-4-13.6(d) requires such appeals to be brought within 45 days of the PTABOA certifying the values, which in this case happened on February 6, 2018. *Whipple testimony and argument*; *Resp't Exs. M, U, X*.

12. In any event, the Assessor contends that Coutar misunderstands how land orders are created and applied as part of the cyclical reassessment cycle. Both she and other assessors throughout the state gather sales information from the previous four years. Bartholomew County's cyclical reassessment plan specified that the Assessor needed to submit land values by year four, which was 2018. She began collecting sales in September 2017. Once all the 2017 sales were in, she presented them to the PTABOA. *Whipple testimony and argument; Resp't Exs. G-H, I-1, I-2, L.*

13. Assessors cannot set values by January 1. They first need to do various other things, such as developing neighborhood factors and preparing ratio studies that the DLGF must approve. Values are set when Form 11 notices are mailed out, in this case in June 2018. But those values apply to the January 1 assessment date. This process is not unique to Indiana—the International Association of Assessing Officers lays out similar procedures. *Whipple testimony; Resp't Exs. U, V-W.*

14. Nothing in the statute says that the PTABOA needs to approve an assessor's land values. As interpreted by the DLGF's deputy general counsel, the PTABOA need only act if an assessor has not established values. The county's reassessment plan required the Assessor submit land values to the PTABOA so the PTABOA would know that it did not need to establish values itself. According to an email from Barry Wood, the DLGF's

director of assessments and Wilkening's boss, it appeared that she had met the statutory requirements. *Whipple testimony; Resp't Exs. G, L-N*.

Analysis

15. Coutar appealed the assessment of its individual property. It did not, as the Assessor suggests, make a backdoor attempt to appeal the values in the land order. But there is a legitimate question as to whether Coutar's appeal was timely. Indiana Code § 6-1.1-15-1.1 sets different deadlines for different types of appeals. To appeal the assessed value of its property for assessment dates before January 1, 2019, a taxpayer had to file notice by the earlier of (1) 45 days after the date notice of assessment was mailed, or (2) 45 days after the date the tax statement was mailed. I.C. § 6-1.1-15-1.1(b)(1). By contrast, a taxpayer could file notice raising a claim of error due to a "clerical, mathematical, or typographical mistake" any time within three years after "the taxes were first due." I.C. § 6-1.1-15-1.1(b).

16. Coutar checked the box on its Form 130 petition to indicate it was alleging a clerical, mathematical, or typographical mistake, and it filed the petition well within three years of when taxes on the 2018 assessment were first due. But simply calling something a clerical, mathematical, or typographical mistake does not make it so. Coutar is challenging the assessed value of its property. Smith acknowledged as much at the hearing.

17. Coutar therefore needed to file its Form 130 petition within the earlier of 45 days after the Form 11 notice of assessment for its property was mailed or 45 days after its tax bill was mailed. The Assessor testified that Form 11 notices were mailed on June 15, 2018. And she submitted a copy of a Form 11 notice for the property under appeal addressed to Coutar that bore the same date.[3] She therefore raised a rebuttable presumption that notice of the January 1, 2018 assessment was mailed to Coutar on June 15, 2018. *See Tibero v. Allergy Asthma Immunology of Rochester*, 664 F.3d 35, 37 (2nd Cir. 2011) ("There is a presumption that a notice provided by a government agency was mailed on the date shown on the notice."). Coutar did not dispute that fact. Because Coutar did not file its Form 130 petition until more than one year later, that petition was untimely.

18. Addressing the merits of Coutar's claim would not change the result. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Although the legislature has recognized exceptions to the general rule under certain circumstances (*see, e.g.*, I.C. § 6-1.1-15-17.2), Coutar does not claim that those exceptions apply here. Smith expressly said Coutar did not intend to argue that the Assessor had the burden of proof.

[3] The Assessor offered the Form 11 notice as Respondent's Exhibit U. Coutar also offered a Form 11 notice as Petitioner's Exhibit 1. The two notices specified the same assessed values. One gave the reason for revision of the assessment as "Annual Trending," and listed the assessing official as Lew Wilson. *Pet'r Ex. 1*. The other gave the reason for the revision as "Correction of Error" and listed the assessing official as Ginny Whipple. *Resp't Ex. U*.

19. Coutar did not meet its burden. Its evidence focused solely on an irrelevant question: whether the Assessor could apply base rates that the PTABOA did not approve until February 6, 2018 to assess Coutar's property for January 1, 2018. A taxpayer challenging the assessed value of its property generally cannot meet its burden by simply contesting the methodology used to compute the assessment. Instead, it must offer evidence that complies with generally accepted appraisal principles to show the property's market value-in-use. *See Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (explaining that strict application of assessment regulations is not enough to rebut the presumption that an assessment is correct and identifying the types of evidence that may be used). It therefore does not matter which base rates the Assessor used in computing Coutar's assessment. Coutar needed to offer individualized market-based evidence to show its property's actual market value-in-use. Because Coutar did not even try to do so, it failed to make a prima facie case for changing the assessment.

Final Determination

20. Coutar did not timely file an appeal to contest the assessed value of its property. We find for the Assessor and order no change.

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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>.