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

Petitions:	**03-005-16-1-5-00138-20**
	03-005-17-1-5-00139-20
	03-005-18-1-5-00140-20
Petitioner:	**Albert H. Schumaker II**
Respondent:	**Bartholomew County Assessor**
Parcel:	**03-84-11-130-001.200-016**
Assessment Year:	**2016 - 2018**

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

Procedural History

1. These appeals cover assessment years 2016-2018. The Bartholomew County Assessor made no change to the original assessment for 2016. On July 20, 2018, however, the current Assessor's predecessor mailed Form 122 reports notifying the taxpayer, Albert Schumaker II, that he was assessing omitted or undervalued property and raising the subject property's assessments for 2017 and 2018.

2. More than nine months later, on April 30, 2019, Schumaker filed three Form 130 petitions contesting his 2016-18 assessments. His petitions listed only the original assessed value for each year. Schumaker checked the box indicating he was alleging a clerical, mathematical, or typographical mistake. He claimed that the Assessor had incorrectly calculated the subject property's depth.

3. The Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") issued Form 115 determinations denying each appeal and setting the following values:

Year	Land	Improvements	Total
2016	$375,100	$14,200	$389,300
2017	$457,600	$46,300	$503,900
2018	$457,600	$46,300	$503,900

The 2016 value matched the property's original assessment for that year. The 2017 and 2018 values matched what was set forth in the Form 122 reports, although the PTABOA did not specifically refer to those reports.

4. Schumaker then filed three Form 131 petitions with the Board, electing to proceed under our rules for small claims. On February 23, 2021, Erik Jones, our designated administrative law judge ("ALJ"), held a telephonic hearing on Schumaker's petitions.

Neither he nor the Board inspected the property. Milo Smith appeared as Schumaker's certified tax representative. The Bartholomew County Assessor, Ginny Whipple, represented herself. Johnathan Scheidt appeared as a witness for the Assessor. All three were sworn as witnesses and testified. At the hearing, in addition to his substantive arguments, Schumaker argued that the PTABOA had improperly raised the assessments for 2017 and 2018. The Assessor disagreed, although she did not offer the Form 122 reports or otherwise indicate that her predecessor—not the PTABOA—had increased the assessments.

5. On June 21, 2021, we issued a determination finding, among other things, that Schumaker had failed to timely file his Form 130 petitions within the deadline required for a taxpayer to contest his property's assessed value. We therefore ordered no change to the 2016 assessment. But we also found that the PTABOA lacked authority to raise the 2017 and 2018 assessments and ordered the original assessments for those years to be reinstated.

6. On July 2, 2020, the Assessor filed a request for us to re-open the hearing on grounds that her predecessor—not the PTABOA—had increased the original assessments for 2017 and 2018. We interpreted that request as a petition for rehearing, and on July 12, 2021, we granted rehearing. On September 22, 2021, the ALJ held a hearing to resolve the single issue: "what were the assessments of record for the 2017 and 2018 assessment years on the date the taxpayer filed his Form 130 petitions for those years?" Melissa Michie appeared as counsel for Schumaker. Whipple again represented herself. Whipple and Layman were sworn as witnesses and testified.

Record

7. At the two hearings, the parties offered the following exhibits:[1]

Petitioner Exhibit 1	DLGF Statewide General Reassessment FAQ,
Petitioner Exhibit 2	Assessor's Overlay Report,
Petitioner Exhibit 3	2020 Property Record Card ("PRC") (with corrected parcel size),
Petitioner Exhibit 4	2016 PRC,
Petitioner Exhibit 5	2017 PRC,
Petitioner Exhibit 6	2018 PRC.
Respondent Exhibit A	Whipple Resume,
Respondent Exhibit B	Statement of Professionalism,
Respondent Exhibit C	2015 PRC,
Respondent Exhibit D	2016 PRC,
Respondent Exhibit E	2017 PRC,
Respondent Exhibit F	Aerial Photo of Subject Property,

[1] Schumaker did not assign numeric or alphabetic labels to his exhibits. He instead used descriptions like "Petitioner's Exhibit PRC (17). For ease of reference, we have assigned them numeric labels.

Respondent Exhibit G-A	Appraisal Report of Jonathan Scheidt,
Respondent Exhibit H	July 20, 2018 Form 122 for 2017 with PRC
Respondent Exhibit I	July 20, 2018 Form 122 for 2018 with PRC

8. The record also includes the following:
   (1) All petitions and other documents filed in these appeals;
   (2) All orders and notices issued by the Board or our ALJ; and
   (3) Audio recordings of the hearing and rehearing.

Objections

9. On cross examination, Smith said that he believed the intent of Indiana Code § 6-1.1-15-1.1 was to prevent taxpayers from filing correction-of-error petitions based on disputes over a property's assessed value but to enable them to file such petitions based on issues such as mathematical mistakes. The Assessor apparently took that to mean that Smith, who previously was a member of the legislature, was testifying about conversations between legislators connected to enacting the statute. She therefore objected on hearsay grounds. The ALJ took the objection under advisement.

10. We overrule the objection. We do not take Smith's answer as testimony about statements from other legislators. Instead, Smith, who was acting both as a fact witness and as Schumaker's certified tax representative, was simply answering a question about his argument that the PTABOA lacked authority to increase a property's assessed value in response to a petition for correction of a clerical, mathematical, or typographical mistake. The only reference to legislative discussions came during his response to the Assessor's objection or to her follow-up questions.

11. Even if we were to view Smith's statement as testimony about out-of-hearing assertions by other legislators—and therefore hearsay—our procedural rules allow us to admit hearsay. 52 IAC 4-6-9(d). That comes with a caveat: in reaching our final determination, we may not rely solely on hearsay that is properly objected to and that does not fall within a recognized exception to the hearsay rule. *Id.* But we do not rely on Smith's statements in determining these appeals. To the contrary, we rely on the appeal statute's plain language—not vague testimony regarding individual legislators' intent—in reaching our conclusions.

12. Schumaker objected to Assessor's Exhibit G-A—Johnathan Scheidt's appraisal report—on relevance grounds. According to Schumaker, because the report sets forth Scheidt's subjective valuation opinion, it is irrelevant to an appeal seeking to correct clerical, mathematical, or typographical errors. Once again, the ALJ took the objection under advisement.

13. We overrule the objection. Schumaker sought to change the property's assessed value through his appeal petitions. Although we ultimately find that he did not file his appeal petitions within the prescribed time for seeking that relief, Scheidt's appraisal was relevant to the issue Schumaker raised.

Contentions

A. Schumaker's contentions

14. The Assessor miscalculated the depth of Schumaker's lot. She listed the depth as 141 feet, when it was only 102 feet deep on the west side and 75 feet deep on the east side. The Assessor corrected the error and used the correct depth of 110 feet on the property's 2020 record card. But she did not reduce the assessed value accordingly either for that year or for any of the years under appeal. *Smith testimony and argument; Pet'r Exs. 1-6.*

15. Because the property has not been re-platted, the corrected measurements should apply to each of the three years in dispute. Using the corrected depth, the adjusted base rate should be $2,975 per front foot, which when multiplied by the lot's 105 feet of frontage yields a land value of $312,400. *Smith testimony and argument; Pet'r Ex. 3.*

16. At the rehearing, Schumaker conceded that by offering the Form 122 reports, the Assessor had proved what the assessments for 2017 and 2018 were at the time Schumaker filed his Form 130 petitions. Schumaker instead mostly argued that a series of miscommunications had led to the error in our original determination and asked us to decide whether it would be fair to uphold the values from the Form 122 reports under those circumstances. Shumaker's representative also expressed confusion over what she described as inconsistencies in the forms that assessors across the state use to assess omitted or undervalued property. She indicated that some use Form 122 reports while others use Form 113 notices, and she invited us to offer guidance on that question.[2] *Michie argument.*

B. The Assessor's contentions

17. The Assessor concedes that depth measurements on the pre-2020 property record cards were wrong and would be glad to change those. But she does not believe that Schumaker could challenge the property's assessed value through an appeal seeking the correction of a clerical, mathematical, or typographical error. And she disagrees with Schumaker that the PTABOA lacked authority to raise the assessment. *Whipple argument.*

18. Indeed, the Assessor believes that the available evidence supports the PTABOA's valuation. Jonathan Scheidt, a certified appraiser, performed an appraisal that complied with the Uniform Standards of Professional Appraisal Practice. He used the lot's corrected dimensions and valued the property at $505,000 as of all three assessment dates, which is higher than any of the assessments under appeal. Scheidt appraised the

[2] We decline her invitation. We do not issue advisory opinions. Schumaker does not claim that the assessments of omitted or undervalued property in this case were procedurally flawed or that the Form 122 reports were improper vehicles through which to notify him of those assessments. A general discussion of the proper use of forms promulgated by the Department of Local Government Finance is therefore outside the scope of the issues properly before us.

property using the sales-comparison approach. He analyzed sales from the same lake, Grandview Lake, on which the subject property is located. Because most of the lots along the lake were already developed, he looked back further than he otherwise would. He settled on four lots that sold between 2010 and 2015. Two were undeveloped, one had minimal improvements, and another had a dwelling, garage, boathouse, and dock. The lots ranged from 14,700 to 26,500 square feet, and they sold for prices ranging from $405,000 to $525,000. *Whipple argument; Scheidt testimony; Resp't Ex. G-A.*

19. Scheidt considered adjustments to account for relevant ways in which his comparable properties differed from the subject property, explaining that the two primary drivers of value were location on, and view of, the lake. To illustrate, he pointed to two sets of paired sales. The first involved two sales from his sales-comparison analysis. Both were vacant lots. The larger lot sold for less than the one with a superior view of the lake. A second set of paired sales showed the same thing. Although lot size is relevant, Scheidt explained that it is not as significant as location on, and view of, the lake. *Scheidt testimony; Resp't Ex. G-A.*

20. The adjusted prices ranged from $480,000 to $515,000. Because his fourth comparable sale was the most recent, Scheidt gave the greatest weight to its adjusted price of $503,000. He reconciled to a value of $505,000, the vast majority of which ($455,000) he attributed to the land. *Scheidt testimony; Resp't Ex. G-A.*

21. At the rehearing, the Assessor offered the Form 122 reports and argued that we erred in finding that the PTABOA had raised the 2017 and 2018 assessments. She therefore argued that we should find that the values reflected in those Form 122 reports ($503,900) should remain unchanged. *Whipple testimony; Resp't Exs. E, H, I.*

Analysis

22. At the heart of these appeals is a question over what type of relief a taxpayer may seek, and what a reviewing tribunal may order, when an appeal ostensibly raises a clerical, typographical, or mathematical mistake but really challenges the property's assessed value. The parties couch their arguments in terms of whether the appeals raised objective or subjective errors. As explained below, however, we find those arguments beside the point under the current statutory regime for property tax appeals.

23. 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 prior to 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 (a)(4), (b). Those deadlines were the same whether the assessment being appealed was an original assessment or an assessment of undervalued or omitted property under Ind. Code § 6-1.1-9-1.

24. 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 is under Ind. Code § 6-1.1-15-1.1 and Ind. Code § 6-1.1-15-12.1. But the new statutory regime retained separate statutes of limitation for errors of assessed value and other claims of error. The disputes over the correct form have ended, but the arguments over timeliness continue.

25. Now that there is no Form 133, and the statute enabling it and the administrative rules interpreting it have been repealed, should we continue to look to the subjective/objective standard created by the Tax Court in *Hatcher v. Indiana State Bd. of Tax Comm'rs*, 561 N.E.2d 852 (Ind. Tax Ct. 1990) to determine the timeliness of the new Form 130? For the following reasons, we find that we should not.

26. 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 Indiana 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.

27. 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.[3]

28. 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.[4] 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.

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[3] 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.

[4] *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)).

29. Accordingly, we decline to apply *Hatcher* and instead follow 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 cannot suffice to trigger the longer statute of limitations. To allow that would ignore the legislative intent behind the separate statutes of limitation. Because the errors Schumaker has alleged challenge his property's assessed value, he needed to file his appeals within the 45-day deadline established in Ind. Code § 6-1.1-15-1.1(b)(1).

30. Although Schumaker checked the box on his Form 130 petitions to indicate he was alleging a clerical, mathematical, or typographical mistake, he is really challenging the assessed value of his property. He does not seek to merely change incorrect data on his property record card, something the Assessor has agreed to do. He instead seeks to apply that corrected data to a specific valuation methodology—the mass-appraisal version of the cost approach from the 2011 Real Property Assessment Guidelines—to change the property's assessed value. To do that, he needed to file his Form 130 petition for 2016 within 45 days after the Form 11 or tax statement was mailed. For 2017 and 2018, he needed to file his Form 130 petitions within 45 days after the Form 122 reports were mailed. He does not claim to have met those deadlines. To the contrary, he relies solely on the three-year window for appeals to correct clerical, mathematical, or typographical errors.

31. As explained above, based on our mistaken belief that the PTABOA had raised the 2017 and 2018 assessments in connection with Schumaker's appeals, we originally issued a determination ordering no change to the 2016 assessment but ordering the original 2017 and 2018 assessments to be reinstated. On rehearing, the Assessor has shown that her predecessor had raised the original assessments for 2017 and 2018 before Schumaker filed his Form 130 petitions and that the PTABOA made no changes.

32. Because the PTABOA made no changes to the 2017 and 2018 assessments through the appeals process, and Schumaker did not timely file his Form 130 petitions for any of the years at issue, we again find for the Assessor and order no changes to any of the disputed assessments. We reject Shumaker's argument that it would be unfair to revisit our initial determination because miscommunications by the parties led to our erroneous belief that the PTABOA had raised the 2017 and 2018 assessments. Even if we were empowered to decide cases on generalized notions of fairness (we are not), the primary source of those miscommunications was Schumaker's own tax representative.

Conclusion

33. Shumaker did not appeal within the statutory deadline for challenging the subject property's assessed value. We therefore order no changes to the 2016-2018 assessments. Because the Assessor proposes to change the underlying data on the property record cards to reflect the subject lot's correct dimensions for all years at issue, however, we order her to do so.

ISSUED: 10/7/21

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>.