

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

**Petitions:** 03-005-16-1-4-00135-20  
03-005-17-1-4-00136-20  
03-005-18-1-4-00137-20  
**Petitioner:** Bushmann, LLC  
**Respondent:** Bartholomew County Assessor  
**Parcel:** 03-95-27-110-001.005-005  
**Assessment Year:** 2016-18

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

1. On January 7, 2020, Bushmann, LLC filed three Form 130 petitions contesting its 2016-18 assessments. It checked the box that it was alleging clerical, mathematical, or typographical mistakes for each year. Bushmann claimed that the Assessor erred by using the wrong base rates to assess its land.
2. The Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 determination denying Bushmann’s appeals and determining the following values:

Year	Land	Improvements	Total
2016	\$804,100	\$462,400	\$1,266,500
2017	\$804,100	\$462,400	\$1,266,500
2018	\$999,000	\$473,500	\$1,472,500

3. Bushmann filed three Form 131 petitions with the Board, electing to proceed under our small claims procedures. On February 23, 2021, Erik Jones, our designated administrative law judge (“ALJ”), held a telephonic hearing on Bushmann’s petitions. Neither he nor the Board inspected the subject property. Milo Smith appeared as Bushmann’s certified tax representative. Bartholomew County Assessor Ginny Whipple represented herself. Both were sworn as witnesses and testified.

**Record**

4. Bushmann offered the following exhibits:

Petitioner Ex. 1 Excerpt from 2011 Real Property Assessment Guidelines  
Petitioner Ex. 2 I.C. § 6-1.1-15-1.1(a)(1)-(g)(2).  
Petitioner Ex. 3 Slideshow presentation of DLGF Cyclical Reassessment

Petitioner Ex. 4 DLGF Cyclical Reassessment Memorandum (March 21, 2018)  
Petitioner Ex. 5 Barry Wood e-mail dated 12/19/18,  
Petitioner Ex. 6 Copy of Barry Wood E-mail dated 12/19/18,  
Petitioner Ex. 7 First Bartholomew County Workplan,  
Petitioner Ex. 10 2015-2018 Bartholomew County land values,  
Petitioner Ex. 11 2018 PRC with petitioner corrections,  
Petitioner Ex. 12 2017 PRC,  
Petitioner Ex. 13 2016 PRC.

5. The Assessor offered two sets of exhibits, one for 2016 and 2017 and another for 2018:

**2016-2017**

Respondent Ex. A Whipple Resume,  
Respondent Ex. B Statement of Professionalism,  
Respondent Ex. C 2012 PRC,  
Respondent Ex. D 2013 PRC,  
Respondent Ex. E 2014 PRC,  
Respondent Ex. F 2015 PRC,  
Respondent Ex. G 2016 PRC,  
Respondent Ex. H 2017 PRC,  
Respondent Ex. I Aerial Photo of Parcel,  
Respondent Ex. J Definitions,  
Respondent Ex. K 2012 Screenshot of Incama,  
Respondent Ex. L 2013 Screenshot of Incama,  
Respondent Ex. M 2014 Screenshot of Incama,  
Respondent Ex. N 2015 Screenshot of Incama,  
Respondent Ex. O 2016 Screenshot of Incama,  
Respondent Ex. P 2017 Screenshot of Incama.

**2018**

Respondent Ex. A Whipple Resume,  
Respondent Ex. B Statement of Professionalism,  
Respondent Ex. C 2017 PRC,  
Respondent Ex. D 2018 PRC,  
Respondent Ex. E Aerial Photo of Parcel,  
Respondent Ex. F Definitions,  
Respondent Ex. G Reassessment Cycle,  
Respondent Ex. H Barry Wood Email to Milo Smith dated 12/13/18,  
Respondent Ex. I-1 Copy of Bartholomew County Reassessment Plan,  
Respondent Ex. I-2 Department of Local Government Finance (“DLGF”) Letter of 7/15/2013,  
Respondent Ex. J I.C. § 6-1.1-2-1.5,  
Respondent Ex. K Duties of the Department—Assessor's Manual pp. 18-19,

Respondent Ex. L	Email from Barry Wood dated 2/25/2019,
Respondent Ex. M	Email from DLGF Counsel David Marusarz dated 6/10/2019,
Respondent Ex. N	Email from DLGF Counsel David Marusarz dated 2/14/2020,
Respondent Ex. O	PTABOA Minutes 2/6/2018,
Respondent Ex. P	Commercial Land Application,
Respondent Ex. Q	Industrial Land Application,
Respondent Ex. R	Email from Chris Wilkening dated 4/1/2019,
Respondent Ex. S	Email from Ginny (Whipple) to Melissa (Michie) dated 4/23/2019,
Respondent Ex. T	Email from Ginny to Melissa dated 4/22/2019,
Respondent Ex. U	Copy of Form 11 for Subject Parcel 6/15/2018,
Respondent Ex. V	Copy of 2018 Assessment Calendar 1/17/2018,
Respondent Ex. W	Fundamentals of Mass Appraisal – IAAO,
Respondent Ex. X	I.C. § 6-1.1-4-13.6.

6. 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) an audio recording of the hearing.

### Contentions

#### A. Bushmann's Contentions

7. The Assessor misapplied the statutory cyclical reassessment process. The process requires counties to create reassessment plans covering four-year cycles over which all properties in the jurisdiction are to be reassessed. The first four-year cycle began with the March 1, 2015 assessment date and it ran through the January 1, 2018 assessment. According to Bushmann, once a cyclical reassessment plan is approved, the statutory scheme calls for land to be assessed at the same rate for the entire four-year cycle. *Smith testimony; Pet'r Exs. 2-7.*
8. The base rate for the subject property's neighborhood was \$10/sq. ft. under the initial plan, and there is no evidence that the Assessor ever amended the plan. Despite what the plan said, the Assessor used a base rate of \$13/sq. ft. to assess the subject land for 2016-2017. For 2018, she used a rate of \$19/sq. ft. for 2018, which she took from a new land order that was not approved by the PTABOA until February 2018 and that should not have applied until the first year of the next reassessment cycle. *Smith testimony and argument; Pet'r Exs. 10-13.*
9. Because the Assessor used the cost approach from the DLGF's guidelines to assess Bushmann's property, Smith used the \$10/sq. ft. base rate from the initial reassessment

plan to recalculate the land value. He came up with \$618,600 for each year on appeal. *Smith testimony; Pet'r Exs. 10-13.*

10. Finally, Bushmann disagreed with the Assessor's contention that it was attempting to circumvent the appeal system by filing a correction-of-error claim for what was really a challenge to the property's assessed value. Bushmann pointed to an excerpt from chapter 2 of the DLGF's 2011 Real Property Assessment Guidelines referring to pricing methods and base rates as "mathematical functions":

The most important issue to consider next is the assessing official's task of establishing the market value for residential, commercial, industrial, and agricultural homesite land as of March 1, 2011. The pricing method and base rate are mathematical functions to arrive at this desired value.

Because Ind. Code § 6-1.1-15-1.1(b) allows taxpayers to appeal clerical, mathematical, or typographical mistakes within three years after taxes were first due, Bushmann argued that its appeals were timely. *Smith argument; Resp't Exs. 1-2.*

#### **B. The Assessor's Contentions**

11. Bushmann has tried to circumvent the appeal process by alleging a clerical, mathematical, or typographical error to raise issues concerning its property's assessed values. *Whipple testimony and argument; Resp't Ex. U.*
12. According to the Assessor, Bushmann's claim that the base rate was \$10/sq. ft. from 2012 forward is misinformed. A previous vendor created the document on which Bushmann relies, and neither the Assessor nor anyone in her office had a hand in creating it. Although the Assessor believed it to be accurate when she provided it to Smith, she now believes the values were wrong. For support, she pointed to several screenshots from her office's database showing that the base rate was \$13/sq. ft. beginning in at least 2012 and continuing through the 2017 assessment year. *Whipple testimony and argument; Resp't Exs. K-O (2016-17).*
13. The Assessor similarly disagreed with Bushmann's claim that she erred by applying the base rate from the new land order to the 2018 assessment. Neither the statute nor the DLGF's guidance requires assessors to use the same base rate for the entire four-year reassessment cycle. To the contrary, the DLGF's rules expressly allow assessors to adjust land values annually. *Whipple testimony and argument; Resp't Ex. G (2018).*
14. In any case, the Assessor claimed that she followed the county's reassessment plan by submitting the land order in the fourth year of the plan. Barry Wood, the DLGF's assessment division director, acknowledged that she had met the statutory requirements and followed the county's reassessment plan. Although she did not set values for individual properties until June, that is the nature of the process. She had to verify sales data through the end of 2017. After submitting the land order to the PTABOA, she then

had to determine neighborhood factors and perform other tasks before Form 11 notices could be sent out. *Whipple testimony; Resp't Exs. G (2018), L-N (2018), U (2018)*.

### Analysis

15. Bushmann's appeals were untimely. 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(b).
16. On each Form 130 petition, Bushmann checked the box indicating that it was alleging a clerical, mathematical, or typographical mistake, and it filed each petition within three years of when taxes on the contested assessment were first due. But simply calling something a clerical, mathematical, or typographical mistake does not make it so. Bushmann is fundamentally challenging the assessed value of its property. Bushmann's request for relief plainly shows that it was disputing the property's assessed value.
17. 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 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.
18. 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 invented 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.
19. 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.
20. 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.<sup>1</sup>

21. 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.<sup>2</sup> 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.
22. 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 Bushmann has alleged challenge its property’s assessed value, it needed to file its appeals within the 45-day deadline established in Ind. Code § 6-1.1-15-1.1(b)(1).
23. Nothing in the excerpt from the 2011 Real Property Assessment Guidelines cited by Bushmann changes that fact. To the contrary, it emphasizes that assessors must try to determine market value for land. Under the Guidelines’ mass-appraisal methodology, assessors examine sales to determine unit values—such as price per square foot, price per acre, or price per front foot—for lots within assessment neighborhoods. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 13. They then multiply those base rates by the parcel’s size: if they determined a base rate of \$100 per acre for primary commercial land and a property has two acres of primary land, its assessment would be \$200 (assuming no adjustments, such as applying an influence factor, are needed). *See id.* at 75. In that sense, the base rate is an input to a mathematical equation. But the property’s market value-in-use—and hence its correct assessed value—is not a mathematical function.
24. Bushmann does not claim to have met the 45-day deadline for appealing its assessed value. To the contrary, it relies solely on the three-year limitations period for challenging mathematical errors. Its petitions were therefore untimely.

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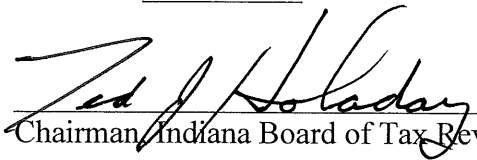
<sup>1</sup> Rather, it held challenges to assessed value methodology could “be made only to the current year’s assessment, not prior years’.” *BP Amoco Corp.*, 820 N.E.2d at 1232. Because the taxpayer failed to file in the “time periods for which Form 130 was available,” it was “foreclosed from using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

<sup>2</sup> *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)).

### Conclusion

25. Despite checking the box for clerical, mathematical, or typographical mistake on its Form 130 petitions, Bushmann alleged an error in its property's assessed value. Because it did not file its petitions within the statutory deadline for raising such a challenge, those petitions were untimely. We therefore find for the Assessor and order no change to the assessments.

ISSUED: 6-21-21

  
Chairman, Indiana Board of Tax Review

  
Commissioner, Indiana Board of Tax Review

  
Commissioner, Indiana Board of Tax Review

#### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.