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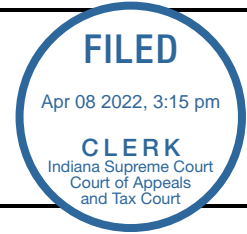
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**IN THE  
INDIANA TAX COURT**

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BUSHMANN, LLC, )  
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Petitioner, )  
 )  
v. ) Case No. 21T-TA-00027  
 )  
BARTHOLOMEW COUNTY ASSESSOR, )  
 )  
Respondent. )

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ON APPEAL FROM A FINAL DETERMINATION OF  
THE INDIANA BOARD OF TAX REVIEW

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**FOR PUBLICATION**  
**April 8, 2022**

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WENTWORTH, J.

Bushmann, LLC challenges the Indiana Board of Tax Review’s final determination that its appeals for a correction of error for the 2016 through 2018 tax years were not timely filed. Upon review, the Court reverses the Indiana Board’s final determination.

**FACTS AND PROCEDURAL HISTORY**

During the years at issue, Bushmann owned a 61,855 square foot parcel of land in Columbus, Indiana. (See Cert. Admin. R. at 48-53.) A convenience store and gas

station were situated on the land. (See Cert. Admin. R. at 48-53.) In both 2016 and 2017, the property was assigned a total assessed value of \$1,266,500 (\$804,100 for land and \$462,400 for improvements). (Cert. Admin. R. at 50, 52, 142.) In 2018, however, the property's assessment increased to \$1,472,500 (\$999,000 for land and \$473,500 for improvements). (Cert. Admin. R. at 48, 142.)

Believing that its 2018 land assessment was incorrect, Buschmann filed an appeal on September 3, 2019, seeking to correct “[a] clerical, mathematical, or typographical mistake.” (Cert. Admin. R. at 18-19.) On January 7, 2020, Bushmann filed two additional appeals for a correction of error, alleging that its 2016 and 2017 land assessments were also the result of “[a] clerical, mathematical, or typographical mistake.” (See Cert. Admin. R. at 5-6, 11-12.) That same day, the Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) conducted a hearing on all three appeals. (Cert. Admin. R. at 4, 10, 17.) The following week, the PTABOA denied Bushmann's appeals. (See, e.g., Cert. Admin. R. at 3-4.)

On February 18, 2020, Bushmann sought review with the Indiana Board, electing to have its appeals heard pursuant to the Indiana Board's small claims procedures. (See, e.g., Cert. Admin. R. at 1-2.) On February 23, 2021, the Indiana Board conducted a hearing on all three appeals during which Bushmann claimed (via its tax representative) that its 2016 through 2018 land assessments were incorrect because the Bartholomew County Assessor did not apply the base rate as set forth in the county's land order<sup>1</sup> to value the land. (See Cert. Admin. R. at 141-43.) Bushmann maintained that the county's

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<sup>1</sup> Land orders provide the base rates that are to be applied to the land in each of the townships throughout a county. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2011 (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2(c) (2011) (amended 2020)), Bk. 1, Ch. 2. See also IND. CODE § 6-1.1-4-13.6 (2016).

land order established that its land was to be assessed at \$10 per square foot for all three years, but instead its land was assessed at \$13 per square foot in 2016 and 2017 and at \$19 per square foot in 2018. (See Cert. Admin. R. at 143-48, 151-52.) To support its claim that its land was incorrectly assessed, Bushmann presented, among other things, a copy of an email that contained the county's purported land order. (See Cert. Admin. R. at 47, 144, 147.) Bushmann explained that to correct the math errors in its land assessments it simply multiplied the square footage of its land (i.e., 61,855) by the correct base rate (i.e., \$10) and arrived at land assessments of \$618,600 for the years at issue. (See Cert. Admin. R. at 145, 148, 150-51.) (See also Cert. Admin. R. at 47-53.)

In response, the Assessor asserted that Bushmann's appeals should be denied because she used the correct base rate to value its land during the years at issue. (See Cert. Admin. R. at 155-59.) The Assessor maintained that Bushmann's purported land order merely contained a proposed base rates of \$10 rather than the actual base rate that was to be applied to its land during the years at issue. (See Cert. Admin. R. at 156-57.) In addition, the Assessor claimed that Bushmann filed the wrong type of appeals because the errors it was complaining about, i.e., whether the correct base rate was used to value its land, raised only subjective errors regarding the valuation of its land. (See Cert. Admin. R. at 157-59.)

On June 21, 2021, the Indiana Board issued a final determination finding that Bushmann's appeals for a correction of an error were untimely because even though it "checked the box indicating that it was alleging a clerical, mathematical, or typographical mistake," it was "fundamentally challenging the assessed value of its property." (Cert. Admin. R. at 138 ¶¶ 15-16.) As such, the Indiana Board explained that Bushmann should

have filed its appeals within the 45-day statutory deadline for challenging its property's assessed value, not the extended three-year deadline applicable for challenging math errors. (See Cert. Admin. R. at 138-39 ¶¶ 15-24.) Consequently, the Indiana Board found that Bushmann's land assessments should remain at \$804,100 for 2016 and 2017 and \$999,000 for 2018. (See, e.g., Cert. Admin. R. at 140 ¶ 25.)

On July 29, 2021, Bushmann initiated this original tax appeal. After the matter was fully briefed on November 23, 2021, the Court took the case under advisement. Additional facts will be supplied when necessary.

### **STANDARD OF REVIEW**

The party seeking to reverse an Indiana Board final determination bears the burden of demonstrating its invalidity. Hatke v. Potter, 173 N.E.3d 728, 729 (Ind. Tax Ct. 2021). Thus, to prevail in its appeal, Bushmann must demonstrate to the Court that the Indiana Board's final determination is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. See IND. CODE § 33-26-6-6(e)(1)-(5) (2022).

### **LAW**

When Bushmann filed its three appeals for a correction of error with the PTABOA in 2019 and 2020, Indiana Code § 6-1.1-15-1.1(a) authorized taxpayers like Bushmann to initiate appeals of real property assessments by filing a written notice on a form designated by the Department of Local Government Finance with their township or county assessor. See IND. CODE § 6-1.1-15-1.1(a) (2019). (See also, e.g., Cert. Admin. R. at 5-

6 (the “Taxpayer’s Notice to Initiate an Appeal” (“Form 130”)).) A taxpayer’s appeal, with certain exceptions that do not apply in this case, could raise any claim of error related to the following:

- (1) The assessed value of 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[; and]
- (6) The legality or constitutionality of a property tax or assessment.

See I.C. § 6-1.1-15-1.1(a), (e), (h).

The statute further provided that if a taxpayer appealed an assessment made before January 1, 2019, on the basis that there was an error in the assessed value of its property, the appeal must be filed any time after the assessing official’s action, but not later than the earlier of:

- (A) forty-five (45) days after the date on which the notice of assessment is mailed by the county; or
- (B) forty-five (45) days after the date on which the tax statement is mailed by the county treasurer, regardless of whether the assessing official changes the taxpayer’s assessment.

I.C. § 6-1.1-15-1.1(b)(1). If, however, the taxpayer appealed its assessment based on one or more of the objective errors listed under Indiana Code § 6-1.1-15-1.1(a)(2)-(6), the appeal must be filed not later than three years after the taxes were first due. I.C. § 6-1.1-15-1.1(b). See also Square 74 Assocs. LLC, v. Marion Cnty. Assessor, 138 N.E.3d 336, 340 (Ind. Tax. Ct. 2019) (providing that objective errors are errors capable of correction

without resort to subjective judgment); IND. CODE § 6-1.1-22-9(a) (2016) (providing that property taxes assessed for a year generally “are due in two (2) equal installments on May 10 and November 10 of the following year”).

### **ANALYSIS**

On appeal, Bushmann contends that the Indiana Board’s final determination that its three correction of error appeals were filed untimely must be reversed given the Indiana Supreme Court’s recent decision that the application of a base rate discount in a county land order was an objective error, not a subjective error regarding a property’s assessed value. (See Pet’r Br. at 4-6 (citing Muir Woods Section One Ass’n v. O’Connor, 172 N.E.3d 1205 (Ind. 2021)).) Thus, Bushmann asks the Court to remand this matter to the Indiana Board to correct its land assessments by applying the required \$10 base rate from the applicable county land order. (See Pet’r Br. at 6-8.)

The Assessor, on the other hand, claims that Bushmann’s reliance on Muir Woods is misplaced because that case “does not give taxpayers the opportunity to argue about any wrong perceived to have occurred [in a land assessment] simply because a land order is part of the argument.” (Resp’t Br. at 10-11.) The Assessor explains that Muir Woods upholds all the caselaw that required taxpayers, like Bushmann, to follow the shorter appeal deadline when challenging nothing more than assessment methodology. (See Resp’t Br. at 10-12.) Moreover, the Assessor claims that even if Bushmann’s appeals were timely filed, Bushmann is not entitled to the relief it seeks because it merely provided the Indiana Board with a spreadsheet, not the actual Bartholomew County land order at issue. (See Resp’t Br. at 11, 13-15.)

In Muir Woods, the Indiana Supreme Court evaluated whether the claim that an

assessor failed to apply a certain base rate discount when calculating the assessed value of common area land was on objective error that could be raised under the former Form 133 correction of error process. See Muir Woods Section One Ass'n, 172 N.E.3d at 1206. The Indiana Supreme Court explained that when the Form 133 appeal process was in use, it “could only be used to remedy ‘errors which can be corrected without resort to subjective judgment and according to objective standards.’” Id. at 1207 (quoting Muir Woods, Inc. v. O’Connor, 36 N.E.3d 1208, 1213 (Ind. Tax Ct. 2015), review denied). The Indiana Supreme Court further explained that while an assessor’s initial determination of a base rate was inherently subjective, the application of the discount factor as prescribed in the land order was not. Id. Consequently, the Indiana Supreme Court found that the use of the Form 133 correction of error process was proper because it was used to “challeng[e] the objective application of a prescribed discount rate to an already-determined base rate.” Id. at 1208.

In this case, similar to the appeal in Muir Woods, Bushmann’s three appeals present questions about the objective application of an already-determined base rate prescribed by a land order. Specifically, during the administrative process, Bushmann claimed each of its land assessments contained a “math error” because the Assessor did not use the established base rates in Bartholomew County’s land order when calculating the assessed values of its land. (See, e.g., Cert. Admin. R. at 143-52.) Consequently, the Court finds that the errors raised in Bushmann’s appeals are not inherently subjective, but instead challenge the objective application of a pre-determined base rate: the base rate from Bartholomew County’s land order was either applied or it was not.

Whether Bushmann’s correction of error appeals challenge objective errors is

critical due to the differing time limitations for appealing an objective error versus a subjective error. See Square 74 Assocs., 138 N.E.3d at 340-46 (affirming the Indiana Board's dismissal of Form 133 correction of error appeals as untimely because they sought to correct subjective errors); Pulte Homes of Indiana, LLC v. Hendricks Cnty. Assessor, 42 N.E.3d 590, 593-96 (Ind. Tax Ct. 2015) (explaining that the Form 133 correction of error appeal procedure is reserved for the correction of objective errors only), review denied; Hatcher v. State Bd. of Tax Commr's, 561 N.E.2d 852, 853-58 (Ind. Tax Ct. 1990) (explaining that errors susceptible to correction under the Form 133 correction of error appeal procedure are objective errors, not errors that require subjective judgments). Prior to 2017, taxpayers could file a Form 133 correction of error appeal, taking advantage of the extended statute of limitations under Indiana Code § 6-1.1-15-12, to correct the following objective errors in assessments:

- (1) The description of the real property was in error[;]
- (2) The assessment was against the wrong person[;]
- (3) Taxes on the same property were charged more than one (1) time in the same year[;]
- (4) There was a mathematical error in computing the taxes or penalties on the taxes[;]
- (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another[;]
- (6) The taxes, as a matter of law, were illegal[;]
- (7) There was a mathematical error in computing an assessment[; and]
- (8) Through an error or omission by any state or county officer, the taxpayer was not given:
  - (A) the proper credit under IC 6-1.1-20.6-7.5 for property taxes imposed for an assessment date after January 15, 2011;



- (B) any other credit permitted by law;
- (C) an exemption permitted by law; or
- (D) a deduction permitted by law.

IND. CODE § 6-1.1-15-12(a) (2017) (repealed 2017). See also Hutcherson v. Ward, 2 N.E.3d 138, 142 (Ind. Tax Ct. 2013) (explaining that as of 2013, the Form 133 correction of error appeal procedure was not restricted to a three-year time limitation given the repeal of 50 IAC 4.2-3-12).

In 2017, the Legislature passed Senate Enrolled Act No. 386, which revised the property assessment appeal process by (1) repealing Indiana Code § 6-1.1-15-1 that required the use of the former Form 130 to challenge subjective errors in assessments, (2) repealing Indiana Code § 6-1.1-15-12 that required the use of a Form 133 to challenge objective errors in assessments, (3) adopting Indiana Code § 6-1.1-15-1.1 that required the use of a single form to challenge subjective and objective errors in assessments (i.e., the revised Form 130), and (4) adding a three-year statute of limitations for filing a correction of error appeal. See IND. CODE § 6-1.1-15-1 (2017) (repealed 2017); I.C. § 6-1.1-15-12; IND. CODE § 6-1.1-15-1.1 (2017) (amended 2019); Pub.L. No. 232-2017. In so doing, however, the Legislature did not eliminate the long-standing distinction between objective and subjective errors for purposes of the correction of error appeal procedure. Instead, as just mentioned, taxpayers now use just one form, the revised Form 130, to challenge both subjective errors in their assessments (under Section II “Reason for Appeal of Current Year’s Assessment”) or objective errors in their assessments (under Section III “Correction of Error Per IC 6-1.1-15-1.1(a) and (b)”). (See, e.g., Cert. Admin. R. at 5-6.) For the most part, the objective errors enumerated in Indiana Code § 6-1.1-

15-1.1(a)(2)-(6) are the same types of errors as formerly listed under Indiana Code § 6-1.1-15-12. Compare I.C. § 6-1.1-15-1.1(a)(2)-(6) (describing what errors could be corrected under the revised Form 130 correction of error appeal procedure), with I.C. § 6-1.1-15-12(a) (describing what errors could be corrected under the Form 133 appeal procedure).

There is no dispute that Bushmann's three appeals were initiated using the revised Form 130 correction of error appeal procedure. (See Cert. Admin. R. at 5-6, 11-12, 18-19.) There is also no dispute that Bushmann filed its appeals for a correction of error within three years of when the taxes on its 2016 through 2018 assessments were first due. (See Cert. Admin. R. at 5-6, 11-12, 18-19, 138 ¶ 16.) Moreover, Bushmann's appeals raised objective errors concerning whether the Assessor used the base rate from the applicable Bartholmew County land order when calculating the assessed values of its land. Accordingly, the Indiana Board erred in finding that Bushmann's appeals were not timely filed.

### **CONCLUSION**

For the foregoing reasons, the Indiana Board's final determination is REVERSED and REMANDED. On remand, the Indiana Board shall determine whether the Assessor applied the proper base rate to Bushmann's 2016 through 2018 assessments based exclusively on the evidence already included in the certified administrative record.