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

Petitions:	**32-022-22-1-4-00503-23 and 32-022-22-1-4-00504-23**
Petitioners:	**New Linden Square II LLC and New Linden Square LLC**
Respondent:	**Hendricks County Assessor**
Parcels:	**32-08-32-473-001.000-022 and 32-08-32-484-020.000-022**
Assessment Year:	**2022**

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

Introduction

1. Despite missing the deadline for filing an appeal related to assessed value, New Linden Square, LLC and New Linden Square, LLC II (collectively the "New Linden companies") seek to reduce their apartment complex's assessment by claiming that the Hendricks County Assessor's purportedly "objective" errors in applying mass-appraisal guidelines could be appealed up to three years after the taxes on the challenged assessment were first due. Since Indiana's shift away from a methodology-based assessment regime to one tethered to the external benchmark of market value-in-use, however, determining a property's assessed value has been an entirely subjective question that requires market-based evidence. The New Linden companies neither timely appealed their property's assessed value, nor offered the type of market-based evidence required to accurately determine that value.

Procedural History

2. On or before April 30, 2022, the Hendricks County Assessor notified the New Linden companies of the 2022 assessment of their apartment complex, which consists of two separate tax parcels. *See Paul Kropp testimony.*

3. On January 6, 2023, the New Linden companies filed Form 130 petitions with the Assessor. They did not fill out section II of that form, which calls for the "Reason for Appeal of Current Year's Assessment." They instead filled out section III, which is reserved for "Correction of Error Per IC 6-1.1-15-1.1(a) and (b)." The New Linden companies checked the boxes to indicate they were claiming a clerical, mathematical, or typographical mistake and an error in the description of the property. For the specific reasons underlying the claimed errors, the New Linden companies wrote: "Apartment framing incorrectly listed as Fire Resistant (steel) and assessment calculated from GCM cost tables. Framing is wood and assessment is to be calculated from GCR tables." *Form 130 petitions.*

4. As a result of the informal preliminary meeting process, the Assessor changed the property record cards to reflect wood-joist framing and the "GCR" schedule. But she

increased the market factor that she had originally applied to the improvements. *Kropp testimony; Pet'r Ex. 6.*

5. On July 5, 2023, the Hendricks County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 determination. The form indicates that the determination was the result of a hearing rather than of the preliminary informal meeting between the New Linden companies and the Assessor. The PTABOA determined the following values for the two parcels:

	Land	**Improvements**	**Total**
New Linden Square Parcel	$1,278,200	$23,148,200	$24,426,400
New Linden Square II Parcel	$408,900	$9,845,600	$10,254,500
			$34,680,900

To justify its determinations, the PTABOA wrote "Adjustment already made for framing type GCM to GCR." In its determination for the New Linden Square parcel, the PTABOA added: "Mortgage indicates higher market value than assessed value." Similarly, in its determination for the New Linden Square II parcel, it added: "2023 sale price indicates higher market value than assessed value." *Form 115 determinations.*

6. The New Linden companies then filed Form 131 petitions with us, electing to proceed under our small claims procedures. As grounds for their appeals, the New Linden companies alleged that the Assessor had properly changed the pricing schedule, but that the increased market factor had offset most of the reduction to the property's assessed value. According to the New Linden companies, the change in schedules was "clear cut and objective," but the increase in the market factor was subjective.

7. On December 7, 2023, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on the New Linden companies' petitions. Neither he nor the Board inspected the property. Paul Kropp, a certified tax representative, appeared for the New Linden companies. Ayn Engle appeared as counsel for the Assessor. Kropp and Ken Surface, senior vice-president of Nexus Ltd., testified under oath.

Record

8. The official record for this matter includes the following:

Petitioner Exhibit 5:[1] The following pages from the 2021 Real Property Assessment Guidelines: Page 2 of Appendix G, page 18 of Chapter 6, and pages 12-13, 15, and 17 of the Commercial and Industrial Cost Schedules; Ind. Code § 6-1.1-4-39; two pages from the

[1] The New Linden companies emailed Exhibits 1-9 to us prior to the hearing, but only offered Exhibits 5, 6, and 8. While the New Linden Companies provided a separate set of exhibits for each parcel, the exhibits are generally identical except for the GCM and GCR cost calculations and proposed assessment calculations, which are parcel specific.

	Craftsman Building Cost Manual; spreadsheet with GCM and GCR cost calculations; structural and framing notes from the New Linden companies' blueprints; photographs of the property,
Petitioner Exhibit 6:	Summary of the New Linden companies' process and outcomes,
Petitioner Exhibit 8:	Proposed assessment calculations,
Respondent Exhibit R-1:	Subject property record cards.

9. The record also includes: (1) all petitions and 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.

Findings of Fact

10. The subject property is an apartment complex located at 1070 Cobblestone Drive in Avon.[2] It has multiple buildings on two parcels. The Assessor originally identified all of the apartment buildings as having predominantly fire-resistant framing. She used the cost schedules from the 2021 Real Property Assessment Guidelines that were associated with the construction model for general commercial mercantile ("GCM") apartments. Although the buildings on the New Linden Square II parcel had sprinklers, the Assessor did not adjust the cost schedules to account for them. The total improvement values were $23,229,800 for the New Linden Square parcel and $9,909,700 for the New Linden Square II parcel. *Kropp testimony; Ex. R-1.*

11. Following the preliminary informal meeting between the Assessor and the New Linden companies, the Assessor changed the property record cards to reflect wood-joist framing for the apartment buildings. She also applied the model for General Commercial Residential ("GCR") apartments. But she arrived at overall values of $24,426,400 for the New Linden Square parcel and $10,254,500 for the New Linden Square II parcel (both of which the PTABOA adopted in its determinations) by applying a higher market factor to the improvements than she had applied in her original assessments. *Kropp testimony; Pet'r Ex. 6.*

12. The New Linden companies' tax representative, Paul Kropp, revised the Assessor's original calculations to reflect the base rates for GCR apartments, which presuppose wood-joist framing, instead of the base rates the Assessor used for GCM apartments. And he added an adjustment for sprinklers to the base rate for the New Linden Square II apartments. With those changes, and using the same land values from the original assessments, Kropp calculated the following values:

[2] The appeal petitions and PTABOA determination all list the address as Avon. The property record card lists the address as Indianapolis. *Ex. R-1.*

	Land	Improvements	Rounded Total[3]
New Linden Square Parcel	$1,278,200	$18,999,926	$20,278,000
New Linden Square II Parcel	$408,900	$8,141,728	$8,550,700
			$28,828,700

Kropp testimony; Pet'r Ex.8.

13. Finally, Kropp asserted, without any evidence or other explanation, that the value determined through "apartment pricing" was the lowest of the values from the cost, sales, or market approaches. According to Kropp, that was true not only for the subject property, but for all 40 "Birge & Held" apartment complexes throughout Indiana.[4] *Kropp testimony.*

Conclusions of Law and Analysis

A. The New Linden companies' Form 130 petitions were untimely to challenge the property's assessed value, which under Indiana's current real property assessment system is an entirely subjective determination that requires market-based evidence.

14. The parties focus on what corrections were or were not appropriate through the vehicle the New Linden companies chose for their appeals: a request for correction of error other than an error in the property's assessed value.

15. Indiana Code § 6-1.1-15-1.1 establishes the deadlines for filing an initial property tax appeal. Under that statute, a taxpayer can allege errors relating to six things:

> (1) The assessed value of the 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.
> (6) The legality or constitutionality of a property tax or assessment.

I.C. § 6-1.1-15-1.1(a).

16. The statute lays out relatively short deadlines for bringing challenges related to a property's assessed value: a taxpayer must file its appeal by the earlier of "(A) June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year; or (B) June 15 of the year in which the tax statement is mailed by the county treasurer, if the notice of assessment is mailed by the county on or after May 1 of the assessment year." I.C. § 6-1.1-15-1.1(b)(2). But the statute provides a much

[3] These are Kropp's rounding calculations.
[4] Kropp did not explain Birge & Held's relationship to the subject property

longer deadline for appeals related to the other enumerated categories: up to three years "after the taxes were first due." I.C. § 6-1.1-15-1.1(a)(2)-(6), (b).

17. The New Linden companies do not claim that they filed their appeals within the deadline for challenging their property's assessed value. To the contrary, they admit the Assessor mailed the assessment notices by the end of April 2022, and that they did not file their Form 130 petitions until January 2023. Instead, the New Linden companies checked the boxes to indicate that they were challenging a clerical, mathematical, or typographical mistake, and an error in the description of the property. More specifically, they claimed that the Assessor wrongly based the original assessment on the buildings having fire-resistant steel framing instead of wood-joist framing and that she used the wrong cost model—GCM instead of GCR. And the New Linden companies claimed that the Assessor further erred when, after agreeing to make those corrections, she and the PTABOA applied the market factor from the property's 2023 assessment to 2022, effectively negating most of the value reduction from the other changes.

18. According to the New Linden companies, those are objective errors correctible through an appeal filed within the longer three-year deadline. The Assessor counters that the New Linden companies have merely challenged her methodology in determining the assessment, which does not suffice to make a case regardless of the type of error being alleged. Even if the New Linden companies could make such a methodological case, however, the Assessor argues that the longer three-year deadline is reserved only for errors that can be corrected without resort to subjective judgment, and that the choice of the appropriate model to use in valuing improvements under the Guidelines necessarily requires subjective judgment.

19. We largely agree with the Assessor and find that the New Linden companies did not raise the type of claim that may be brought under the statute's more generous three-year deadline.

1. The Tax Court originally created its test for distinguishing between appropriate appeal procedures in the context of Indiana's former methodology-based assessment regime, where market-based evidence was largely irrelevant.

20. To explain why, we begin with the evolution of Indiana's real property assessment system and the procedures for bringing different types of appeals under that system. Before the historic *Town of St. John* litigation led to wholesale changes in Indiana's assessment system, a property's true tax value was the figure produced by applying the "mechanical rules and formulas" set forth in the State Board of Tax Commissioners' property regulations. *Town of St. John v. State Bd. of Tax Comm'rs (St. John I)*, 665 N.E.2d 965, 968 (Ind. Tax Ct. 1996) *rev'd in part on other grounds by Boehm v. Town of St. John*, 675 N.E.2d 318 (Ind. 1996) It bore no relation to any external, objectively verifiable standard of measure. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor,* 859 N.E.2d 396, 398 (Ind. Tax Ct. 2007). Evidence of an improvement's actual reproduction cost or the actual market value of land was therefore largely irrelevant. *St. John I,*665 N.E.2d at 967. Outside of a few narrow circumstances, so too

was other market-based evidence, such as fee appraisals or valuations developed under standard appraisal approaches.[5]

21. There were two main appeal statutes (and accompanying procedures) under the old regime: one for general appeals, which could include any challenge to an assessment, including challenges to the methodology used to determine the assessment, and another for correction of narrowly enumerated errors. The general appeal statute—Ind. Code § 6-1.1-15-1 (2016)—had short filing deadlines roughly akin to those now contained in Ind. Code § 6-1.1-15-1.1(b)(1) for errors related to a property's assessed value. The deadlines under the correction-of-error statute—Ind. Code § 6-1.1-15-12 (2016)—varied. Depending on the year in question, there was either no filing deadline or a deadline of three years after the taxes were first due. *See, e.g., Hutcherson v. Ward,* 2 N.E.3d 138, 142 (Ind. Tax Ct. 2013); *Will's Far-Go Coach Sales v. Nusbaum*, 847 N.E.2d 1074, 1075 (Ind. Tax Ct. 2006); 2014 Ind. Acts 183, § 19. Different appeal forms were used under the two procedures: Forms 130/131 for appeals under the general statute and Form 133 for corrections of error. *Muir Woods, Inc. v. O'Connor*, 36 N.E.3d 1208, 1210 (Ind. Tax Ct. 2015) *review den.*

22. In *Hatcher v. State Bd. of Tax Comm'rs*, the Tax Court created a test for distinguishing between the types of appeals that could be brought under the two statutes (and their accompanying procedures and forms). According to the Court, choosing the appropriate procedure turned on whether the taxpayer claimed an error that could be corrected "without resort to subjective judgment and according to objective standards." *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).[6] If a "simple true or false finding of fact" dictated an issue's resolution, the claimed error was considered objective and could properly be challenged using a Form 133 and the correction of error process. *Bender v. State Bd. of Tax Comm'rs,* 676 N.E.2d 1113, 1115 (Ind. Tax Ct. 1997). Otherwise, a taxpayer had to use Forms 130/131 and the general appeal process.

23. The Form 133 process operated both ways: it permitted correction of objective errors that raised a property's assessed value as well as those that lowered it. But it did not open up the entire assessment to review. *Hatcher*, 561 N.E.2d at 857. Thus, while an Assessor might correct objective errors in addition to the ones the taxpayer identified, she could not reassess the property. *Id.*; *see also*, *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 807 (Ind. Tax Ct. 1998) *reh'g den.* 705 N.E. 2d 1084, 1088 (Ind. Tax Ct. 1998) (recognizing "unique circumstances" where the State Board could correct a subjective error in a Form 133 review but explaining that those circumstances did not open up the entire assessment to review).

---

[5] *See Canal Square Ltd. P'ship v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 806 (Ind. Tax Ct. 1998) ("[t]he State Board's regulations … require the recognition of obsolescence and ties its definition of obsolescence directly to that applied by professional appraisers under the cost approach[.]"); *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1106 n. 14 (Ind. Tax Ct. 1999) (explaining that using market concepts to quantify influence factors did not run afoul of Ind. Code § 6-1.1-31- 6(c) because the regulations describing land orders and influence factors specifically referred to market concepts).

[6] The Tax Court borrowed the objective/subjective test from language adopted by the New Jersey Legislature. The test was never directly included in language adopted by the Indiana Legislature.

2. After Indiana changed its assessment system to incorporate the external benchmark of market value-in-use, a property's assessed value can be proven only through market-based evidence.

24. Indiana's regime for real property assessment changed with the landmark *Town of St. John* litigation. The Indiana Supreme Court ultimately upheld the Tax Court's determination that the State Board of Tax Commissioners' then-existing cost schedules violated Ind. Const. Art. 10 § 1 because they lacked meaningful reference to property wealth and resulted in significant deviations from substantial uniformity and equality. *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1042-43 (Ind. 1998). Beginning in 2002, the State Board of Tax Commissioners, and its successor, the Department of Local Government Finance ("DLGF"), overhauled the assessment system. It incorporated the external benchmark of market value-in-use as the standard for measuring true tax value. *Westfield Golf,* 859 N.E.2d at 399 ("Beginning in 2002, however, Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark—market value-in-use."). Indeed, under the new regime, true tax value and market value-in-use are synonymous. 2021 REAL PROPERTY ASSESSMENT MANUAL 2.[7] And "market value-in-use" is defined as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." *Id.*

25. The purpose of the DLGF's Manual and Real Property Assessment Guidelines (and of all the DLGF's manuals and guidelines since 2002) is to accurately determine true tax value, not to "mandate that any specific assessment method be followed." 50 IAC 2.4-1-1(c). Assessments have historically been determined using a mass-appraisal version of the cost approach. *Gillette v. Brown Cty. Ass'r*, 54 454, 456 (Ind. Tax Ct. 2016) (quoting 2002 REAL PROPERTY ASSESSMENT MANUAL at 3). The Guidelines provide both the necessary cost schedules and a methodological framework for applying such an approach. But "other relevant information" may be used in applying the cost approach. 2021 MANUAL at 3. And all three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value[.]" *Id.* at 2. The Guidelines therefore merely provide the "*starting point*" for an assessor to determine a property's market value-in-use. *Westfield Golf*, 859 N.E.2d at 399 (referencing the 2002 Guidelines) (emphasis in original). Where an assessor believes that an assessment derived from applying the Guidelines does not accurately reflect the property's market value-in-use, she is "*expected*" to adjust the assessment. *Piotrowski v. Shelby Cty. Ass'r,* 177 N.E.3d 127, 133 (Ind. Tax Ct. 2021) (emphasis in original).

26. From the outset of the new regime, the Tax Court held that taxpayers could no longer prove an assessment was incorrect simply by showing an error in applying the Guidelines. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."). Instead, to make a case for a lower assessment, taxpayers must

[7] For agricultural land, however, the Manual provides that "true tax value shall be the value determined in accordance with the Guidelines adopted by the Department of Local Government Finance and IC 6-1.1-4-13." 2021 MANUAL at 2.

use relevant market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use[.]" *Id.* The Court has continued to follow that precedent throughout the years. *E.g. Piotrowski,* 177 N.E.3d at 131-32; *Wigwam Holdings LLC v. Madison Cty. 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.").

27. The Legislature has enacted several specialty statutes governing the assessments of specific property types, including properties, like the subject property, that are regularly used to furnish rental accommodations for periods of 30 days or more and that have four or more rental units. For those rental properties, true tax value is the lowest value determined by applying the cost, sales-comparison, and income-capitalization approaches. I.C. § 6-1.1-4-39(a) (2022). Thus, the true tax value of such properties is still tied to an external market-based benchmark. And it can only be determined through specific forms of market-based evidence.[8]

3. Because assessed value can no longer be determined by correcting "objective" errors in applying the Guidelines, taxpayers cannot bring such challenges using the extended deadlines for "correction of error" petitions.

28. The bifurcated appeal processes, and the underlying statutes governing those processes, however, remained in place for the first 14 years following the changes to the assessment regime. Taxpayers therefore could still file Form 133 petitions. But the shift from a rule-based regime to one tethered to the external benchmark of market value-in-use fundamentally altered what those petitions could be used to correct. Under the old regime, if an assessor erred in applying the assessment guidelines, simply correcting that error "dictated" the property's true tax value. For example, if an assessor assigned the wrong quality grade to a building or used the wrong perimeter-to-area ratio, one simply plugged the correct grade or ratio into the formula from the assessment regulations. Although one error required subjective judgment to correct and could only be brought on Forms 130/131 while the other did not and could be brought on Form 133, the value determined after their correction was a mathematical function. So the correction of an underlying error changed two things: the specific input that the error addressed and the property's assessed value.

29. By contrast, determining a property's assessed value under the new regime, with its tie to the external benchmark of market value-in-use and the need to provide market-based evidence, inherently requires the exercise of subjective judgment. The Tax Court foresaw as much even before the new regime was in place:

> A calculation of the effect of real world evidence on an individual assessment will typically require subjective judgment. . . . The court does not foresee any opportunity to apply real world evidence retroactively by using the Form 133 process.

[8] Although Kropp testified that the value determined through the cost approach gave the lowest value for the subject property out of the three approaches, he offered no evidence to support that assertion.

Town of St. John, et al. v. State Bd. of Tax Comm'rs, 698 N.E.2d 399, 400 (Ind. Tax Ct. 1998).

30. Based on those principles, we repeatedly rejected attempts to use the old correction-of-error statute and the Form 133 petition to challenge a property's assessed value. *E.g. WC Middleton, LLC v. Henry Cty. Ass'r* pet. no. 33-006-14-3-4-20421-15 (IBTR July 11, 2017). And we have reached the same conclusion in appeals brought under the new appeal statute's deadline for correcting clerical, mathematical, or typographical mistakes and other errors listed in Ind. Code § 6-1.1-15-1.1(a)(2)-(6). *E.g. Cobb v. Tippecanoe Cty. Ass'r*, pet. no. 79-004-16-1-4-00196-21 etc. (IBTR March 30, 2022).

31. Thus, the law seemed clear that methodological challenges, including the type of "objective error" analysis contained in *Hatcher*, could no longer prevail. The Legislature repealed the old correction of error statute (I.C. § 6-1.1-15-12) and expressly adopted the shortened appeal deadlines for all challenges to assessed value. I.C. § 6-1.1-15-1.1(b)(1)-(2). Litigants could neither resurrect a belated challenge to assessed values simply by labeling it as a "mistake" or issue of "legality," nor prevail on methodological challenges.

4. Neither the Indiana Supreme Court's decision in *Muir Woods*, nor a trio of Tax Court cases decided in its wake, alters our conclusion.

32. The Indiana Supreme Court's decision in *Muir Woods Section One Ass'n v. Marion Cty. Ass'r* and a trio of Tax Court decisions issued in its wake have muddied the waters, however. In *Muir Woods*, several homeowners' associations ("HOAs") filed Form 133 appeals concerning the 2001 through 2003 assessments of common-area land in various subdivisions. *Muir Woods Section One Ass'n v. Marion Cty. Ass'r* 172 N.E.3d 1205, 1206-07 (Ind. 2021). Among other things, the HOAs alleged that the relevant land orders and neighborhood valuation forms prescribed that common areas were to receive an 80% discount from the base rate established for land in the geographic areas in which those common areas were located. *Id.* We dismissed the appeals on grounds that the Form 133 procedure was an improper way to appeal the HOAs' claims because they all went to "the inherently subjective question of how their properties should have been valued." *Id.* at 1206. The Tax Court largely affirmed our determination, and it found that the assessor's alleged failure to apply the discount was an inherently subjective judgment. *Id.*

33. The Supreme Court granted transfer and reversed the Tax Court's decision on that issue.[9] The Court began by reaffirming that "[g]enerally speaking, the valuation and assessment of real property in Indiana is an inherently subjective exercise[,]" and noting that the case turned on "unique circumstances involving the use of a now-defunct tax appeal form[.]" *Id.* at 1205-06. It then went on to address the merits of the HOAs' claim, although it noted that the assessor had neither directly addressed that claim before the Tax Court nor filed a brief in response to the HOAs' petition for review. *Id.* at 1207, n. 2.

34. The Court explained that while the assessor's initial determination of the base rate for the HOAs' common areas might have been inherently subjective, the same was not true for

[9] The Supreme Court summarily affirmed the Tax Cour in all other respects. *Muir Woods,* 172 N.E.3d at 1208.

applying the discount factor: either that factor was applied or it wasn't. *Id.* at 1207. The Court also rejected the Assessor's claim that the HOAs should have first used the general appeal process to challenge the subjective determination of the properties' base rates, explaining that "*[f]ocusing only on the narrow challenge before us today*, we find the HOAs are challenging the objective application of a prescribed discount rate to an already determined base rate." *Id.* at 1208 (emphasis added).

35. In the two years following *Muir Woods*, the Tax Court issued three decisions where taxpayers had filed "correction-of-error" appeals under the current appeal statute. *Camelot Co., LLC v. Bartholomew Cty. Ass'r*, 224 N.E.3d 1007 (Ind. Tax Ct. 2023); *Bushmann, LLC v. Bartholomew Cty. Ass'r*, 187 N.E.3d 355 (Ind. Tax Ct. 2022); *Chevrolet of Columbus, Inc. v. Bartholomew Cty. Ass'r*, 187 N.E.3d 349 (Ind. Tax Ct. 2022). In those cases, the taxpayers alleged that the Bartholomew County Assessor had applied the wrong base rates to assess their land. Among other things, the parties disagreed about what the applicable land orders provided as well as whether the land order that the assessor used for the 2018 assessment had been submitted to, or adopted by, the county PTABOA in time for it to apply to that assessment year. *Camelot,* 224 N.E.3d at 1008-09; *Bushmann*, 187 N.E.3d at 356-57; *Chevrolet*, 187 N.E.3d at 349-50. We did not address those disputes. Instead, we found that the appeals were untimely because they challenged the properties' assessed values and the taxpayers had not filed them within the shorter deadline for bringing such appeals. *Id.*

36. In each case, the Tax Court reversed our determination. The Court explained that in repealing the old general-appeal and correction-of-error statutes and enacting the current appeal statute, the Legislature did not eliminate "the long-standing distinction between objective and subjective errors for purposes of the correction of error appeal procedure." *Bushmann,* 187 N.E.3d at 359. In all three appeals, the Court found that similar to *Muir Woods*, the taxpayers alleged objective errors. In *Bushmann* and *Chevrolet*, the Court characterized the appeals as challenges to the objective application of a pre-determined base rate. *Bushmann*, 187 N.E.3d at 358; *Chevrolet,* 187 N.E.3d at 353. In *Camelot*, it characterized the appeal as raising "the objective error whether the Assessor used the proper land order (and thus the proper base rate) to determine the assessed value" of the taxpayer's land. *Camelot,* 224 N.E.3d at 1014. The Court remanded the *Bushmann* and *Chevrolet* appeals to us to determine whether the Assessor applied the proper base rate. *Bushmann*, 187 N.E.3d at 360; *Chevrolet,* 187 N.E.3d at 354.[10] In *Camelot*, the Court held that the taxpayer failed to show that the assessor had used the wrong land order to assess its property and affirmed our ultimate determination that the taxpayer was not entitled to a change in its assessment. *Camelot,* 224 N.E.3d at 1014-1016.

37. *Muir Woods* and its Tax Court progeny do not purport to overrule the holdings from *Eckerling* and similar cases that a party cannot rebut the presumption of an assessment's correctness simply by showing that an assessor erred in applying the Guidelines but must instead offer market-based evidence to show the property's true market value-in-use.

[10] Following remand, we determined that the taxpayer failed to prove that the assessor applied the wrong base rates, and the Court affirmed our determinations. *Bushmann v. Bartholomew Cty. Ass'r*, 230 N.E.3d 407 (Ind. Tax Ct. 2024); *Chevrolet of Columbus, Inc. v. Bartholomew Cty. Ass'r*, 230 N.E.3d 400, 405-07 (Ind. Tax Ct. 2024).

Indeed, the Supreme Court went out of its way to limit its holding to the unique facts before it. While the Tax Court did not similarly cabin its decisions in *Camelot*, *Bushmann*, and *Chevrolet*, it did not grant relief that changed the assessed value of the properties at issue either.

38. To the extent that *Muir Woods* and its progeny have arguably opened the door to bald methodological challenges, neither the Supreme Court nor the Tax Court has directly analyzed the tension between *Hatcher* and the *Eckerling* standard. Until such time as that tension has been judicially resolved, we will continue to operate under the *Town of St. John* framework.

39. However the tension that may exist between *Muir Woods* and its progeny on one hand, and the *Town of St. John* and *Eckerling* line of cases on the other is resolved, no case decided under our current assessment system holds that a taxpayer can do what the New Linden companies seek to do in these appeals: use the longer deadline for contesting "objective" errors to change a property's assessed value by simply alleging errors in applying the Guidelines' cost schedules. At most, the New Linden companies timely raised one narrow claim of error: that the property record cards incorrectly reflected apartment portions of the buildings as having fire-resistant, rather than wood-joist, framing. *See* I.C. § 6-1.1-15-1.1(a)(5)(listing an error in "the description of the real property" as one of the enumerated errors that may be appealed within three years after taxes are first due). But the question is moot because the property record cards now reflect the buildings as having wood-joist framing.

B. Even if we were still operating under the old methodology-based assessment system, the New Linden companies' appeals would be untimely because choosing an appropriate model and accompanying cost schedule requires subjective judgment.

40. Even if we were still operating under the pre-*Town of St. John's* rule-based assessment system, the New Linden companies would not be entitled to the relief they seek. Their claim that the Assessor incorrectly used cost schedules for the GCM, rather than the GCR, apartment model to their buildings would not qualify as an objective error. The Tax Court explained as much in *Bender v. State Bd. of Tax Comm'rs,* where the taxpayer had alleged that the assessor erred in using the residential, rather than the GCR, pricing schedule:

> Clearly, the assessor must use his judgment in determining which schedule to use. It is not a decision automatically mandated by a straightforward finding of fact. The assessor must consider the property in question, including its physical attributes and predominant use, and make a judgment as to which schedule is most appropriate. Just as the assessor must use subjective judgment to determine which base price model to employ within these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. In some cases, this decision will be a closer call than in others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citations omitted).

Bender, 676 N.E.2d at 1116; *see also, O'Neal Steel v. Vanderburgh Cty. Prop. Tax Assessment Bd. of App.*, 791 N.E.2d 857, 859-60 (Ind. Tax Ct. 2003) (holding that the choice of whether to use the pricing schedule for general commercial industrial buildings instead of general commercial kit buildings was subjective).

41. The question of whether the Assessor correctly classified the subject buildings' framing as fire-resistant steel instead of wood joist, however, might have been the type of simple true-or-false factual finding that would have qualified as objective under the old rule-based system, and that once corrected, could have served as a basis for changing the property's assessed value. But the New Linden companies did not offer any computations using the GCM Apartment model with an adjustment to reflect wood-joist framing. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (("[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis"). Thus, they still would have failed to make a case for changing the property's assessed value.

C. Because the New Linden companies' appeals were untimely to challenge the property's assessed value, the value from the original assessment must be reinstated.

42. Finally, despite the fact that the New Linden companies' Form 130 petitions were untimely to put the property's assessed value at issue, the PTABOA issued determinations lowering each parcel's assessment slightly. We agree with the Assessor that the original assessments should be reinstated. The PTABOA and the Assessor cannot use an untimely petition as a vehicle for changing a property's assessed value any more than a taxpayer can.

Conclusion

43. The New Linden companies did not appeal in time to challenge their property's assessed value, which is the primary relief that they seek. While they did timely challenge the Assessor's description of their buildings' framing, that error has already been corrected. We therefore find for the Assessor.

Date: June 4th 2024

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 after 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>.