

REPRESENTATIVE FOR PETITIONER:
Bruce D. Huntington, Attorney

REPRESENTATIVE FOR RESPONDENT:
Patricia St. Clair, St. Joseph County Chief Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Stewart R. Allen,	)	Petition No.:	71-003-08-3-5-00003
)		
Petitioner,	)	Parcel No.:	71-03-12-451-021.000-003
)		
v.	)	County:	St. Joseph
)		
St. Joseph County Assessor,	)	Township:	Clay
)		
Respondent.	)	Assessment Year:	2008

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

October 29, 2015

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Is the Petitioner able to challenge the subject property's value or condition on a Form 133 petition? If so, did the Petitioner prove the subject property's 2008 assessment was incorrect?

PROCEDURAL HISTORY

2. The Petitioner initiated his 2008 appeal by filing a Petition for Correction of an Error (Form 133) with the St. Joseph County Assessor on July 27, 2012. On March 25, 2013, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. On May 3, 2013, the Petitioner filed a Petition for Review of Assessment (Form 131) with the Board.
3. On August 4, 2015, the Board's administrative law judge (ALJ), Jennifer Bippus, held a hearing on the petition. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Attorney Bruce D. Huntington appeared for the Petitioner. St. Joseph County Chief Deputy Assessor Patricia St. Clair appeared for the Respondent. Stewart R. Allen, appraiser Justine Kline and Patricia St. Clair were sworn and testified.¹
5. The Petitioner submitted the following exhibits:²
 - Petitioner Exhibit 1: Home Inspection Report for the subject property, prepared by Andrew Snell of 1st Assured Home Inspections, LLC, dated March 23, 2015,
 - Petitioner Exhibit 2: Photographs of the subject property,
 - Petitioner Exhibit 3: Letter from Justine Kline to Bruce Huntington, dated August 3, 2015,
 - Petitioner Exhibit 4: Photographs of the subject property,
 - Petitioner Exhibit 5: Quantitative Analysis Appraisal Report for the subject property prepared by Justine Kline, with an effective date of March 1, 2015,
 - Petitioner Exhibit 6: Quantitative Analysis Appraisal Report for the subject property prepared by Justine Kline, with an effective date of March 1, 2013,

¹ County Assessor Rosemary Mandrici was present for the final 15 minutes of the hearing, but she was not sworn nor did she offer any testimony.

² Petitioner's Exhibits 10 and 11 were submitted six days after the hearing. These exhibits were submitted without objection from the Respondent, and the Respondent did not offer any response to the exhibits. Because the Board did not specifically request post-hearing exhibits from the parties, the Board will not consider these exhibits in the final determination. *See* 52 IAC 2-8-8. However, even if the Board were to consider these exhibits, it would not change the final determination.

- Petitioner Exhibit 7: Quantitative Analysis Appraisal Report for the subject property prepared by Justine Kline, with an effective date of March 1, 2014,
- Petitioner Exhibit 8: Quantitative Analysis Appraisal Report for the subject property prepared by Justine Kline, with an effective date of March 1, 2011,
- Petitioner Exhibit 8A: Multiple Listing Service (MLS) for 51633 Hollyhock Road, indicating a closing date of March 21, 2011,
- Petitioner Exhibit 9: Quantitative Analysis Appraisal Report for the subject property prepared by Justine Kline, with an effective date of March 1, 2010,
- Petitioner Exhibit 10: Quantitative Analysis Appraisal Report for the subject property prepared by Justine Kline, with an effective date of March 1, 2009,³
- Petitioner Exhibit 11: Quantitative Analysis Appraisal Report for the subject property prepared by Justine Kline, with an effective date of March 1, 2010.

6. The Respondent submitted the following exhibit:

Respondent Exhibit A: Subject property record card printed on July 31, 2015.

7. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 131 petition with a Form 133 and attachments,
- Board Exhibit B: Hearing notice, dated May 28, 2015,
- Board Exhibit C: Notice of Appearance for Bruce D. Huntington,
- Board Exhibit D: Hearing sign-in sheet.

8. The subject property is a single-family residence located at 19453 Greenacre Street in South Bend.

9. The PTABOA determined the 2008 assessment is \$5,700 for land and \$95,400 for improvements, for a total of \$101,100.

10. On his Form 131, the Petitioner requested an assessment of \$4,800 for land and \$64,000 for improvements, for a total value of \$68,800.

³ Petitioner's Exhibit 10 has the notation "2008 pay 2009" at the top while Petitioner's Exhibit 11 has the notation "2009 pay 2010" at the top. Further, Petitioner's Exhibit 11 has a different valuation estimate than Petitioner's Exhibit 9 which indicates an effective date of March 1, 2010. Thus, the Board surmises that Petitioner's Exhibit 10 should indicate an effective date of March 1, 2008, while Petitioner's Exhibit 11 should indicate an effective date of March 1, 2009.

OBJECTIONS

11. At the onset of the hearing, Ms. St. Clair objected to proceeding with a hearing. She argued that the Petitioner failed to file the proper appeal form. Further she stated that the Petitioner initiated the appeal with the county by filing a Form 133, and that form is only used to appeal “a yes or no question.” Ms. St. Clair went on to argue that if the Petitioner desired to argue issues such as condition, grade, and market value, they should have initiated their appeal by filing a Petition for Review of Assessment by Local Assessing Official (Form 130) with the county. She added, however, that the Form 130 would have been denied because the filing deadline for the 2008 assessment year had expired.
12. In response, Mr. Huntington argued that the hearing should proceed because both parties “are here in good faith . . . and there seems to be a series of errors on both sides with regards to misfiling and subsequent misfiling of the appeal forms.” He went on to argue the filing process is confusing and “the Department of Local Government Finance (DLGF) doesn’t make it any easier with the forms.” Further, Mr. Huntington argued that in this case the Petitioner may have been instructed incorrectly by an employee of the County Assessor. Finally, he argued that even if the Petitioner was able to go back to the county level and start with a Form 130, the “case would end up right back where it is.” Thus, in the name of “judicial economy” he argued that the hearing should proceed.
13. The ALJ took the objection under advisement and proceeded with the hearing. Nevertheless, as discussed in detail below, we conclude that the Petitioner’s challenge of value and condition is not available via a Form 133.
14. Ms. St. Clair initially objected to several of the Petitioner’s appraisals because the effective date of each appraisal was not entirely clear. Ms. Kline, the appraiser, corrected the alleged typographical errors on the appraisals to clarify their effective dates and Ms. St. Clair appeared to withdraw her objections. To the extent Ms. St. Clair meant for any of her objections to stand, her objections go to the weight of the evidence rather than its admissibility, and accordingly they are overruled.

JURISDICTIONAL FRAMEWORK

15. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

16. The assessment is too high. The home is in poor condition, and has been for several years. The Petitioner offered a home inspection report and several appraisals estimating the property's value. *Huntington argument; Allen testimony; Kline testimony; Pet'r Ex. 1, 5, 6, 7, 8, 9, 10, 11.*
17. The "Quantitative Analysis Appraisal Reports" were prepared by Justine Kline, a certified residential appraiser. Ms. Kline mainly relied on the sales-comparison approach in her appraisals. Sales that occurred during the relevant time period were utilized for each appraisal. Ms. Kline made adjustments to account for differences between the subject property and her comparable properties. Most notably, she made large adjustments for "condition" because the Petitioner's home is "not habitable in its current condition." Ms. Kline estimated the following values:

<u>Date</u>	<u>Value</u>
March 1, 2008	\$33,000
March 1, 2009	\$27,000
March 1, 2010	\$25,000
March 1, 2011	\$25,000
March 1, 2013	\$28,000
March 1, 2014	\$28,000
March 1, 2015	\$25,000

Kline testimony; Pet'r Ex. 5, 6, 7, 8, 9, 10, 11.

18. The property has been vacant since “2006 or 2007.” The home has been deteriorating since that time. Mold is visible throughout the home. Further, the drywall is damaged and missing in some areas. *Allen testimony; Kline testimony; Pet’r Ex. 1, 2, 4.*

RESPONDENT’S CONTENTIONS

19. The Petitioner’s appeal is defective and should be denied. The Petitioner incorrectly initiated his assessment appeal on a Form 133. A subjective issue such as “condition” cannot be appealed on a Form 133 petition. A Form 133 is only available for “objective issues.” The PTABOA properly denied the Petitioner’s appeal for this reason. A “regular appeal” must be initiated on a Form 130. However, even if the Petitioner had initiated his appeal on a Form 130 it would have been denied because he was “well past” the deadline to file a 2008 assessment appeal. *St. Clair argument; Bd. Ex. A.*
20. In 2012, a field inspection was conducted on the subject property. It was noted that the property was in poor condition and the assessment was corrected accordingly. That adjustment only applies to the 2012 assessment and “assessments going forward.” *St. Clair argument; Resp’t Ex. A.*

BURDEN OF PROOF

21. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
22. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is

correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

23. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.
24. At the hearing, Mr. Huntington, the Petitioner’s attorney, argued that the burden is on the Respondent because “the burden should always be on the Respondent.” The Respondent did not rebut the Petitioner’s argument. The ALJ made a preliminary determination that the burden rests with the Respondent to prove the assessment is correct.
25. The Petitioner initiated this appeal with a Form 133. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply. Thus, the Board reverses the ALJ’s preliminary determination and the burden rests with the Petitioner.

ANALYSIS

26. The Petitioner initiated this case by filing a Form 133 for the subject property. Only objective errors that can be corrected with exactness and precision can be addressed via a Form 133 filing.
27. Taxpayers have two methods to appeal an assessment: a Petition for Review of Assessment (Form 131) authorized by Ind. Code § 6-1.1-15-1, or a Petition for Correction of Error (Form 133) authorized by Ind. Code § 6-1.1-15-12. “A taxpayer that

challenges a property assessment bears that responsibility of using the appropriate method.” *Franchise Realty Corp. v. State Bd. of Tax Comm’rs*, 682 N.E.2d 832, 833 (Ind. Tax Ct. 1997); *Bender v. State Bd. of Tax Comm’rs*, 676 N.E.2d 1113, 1114 (Ind. Tax Ct. 1997).

28. A taxpayer may file a Form 131 challenging any element of assessment, but this form can generally only be initiated within 45 days after the Notification of Final Assessment Determination is given to the taxpayer. Ind. Code § 6-1.1-15-3(d).
29. Only objective errors that can be corrected with exactness and precision can be addressed with a Form 133. These forms are not for changes that require subjective judgment. Ind. Code § 6-1.1-15-12; *O’Neal Steel v. Vanderburgh Co. Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 857, 860 (Ind. Tax Ct. 2003); *Barth Inc. v. State Bd. of Tax Comm’rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Bender*, 676 N.E.2d at 1114; *Reams v. State Bd. of Tax Comm’rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. of Tax Comm’rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).
30. A determination is objective if it hinges on simple, true or false findings of fact. *See Bender*, 676 N.E.2d at 1115. “[W]here a simple finding of fact does not dictate the result or discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing.” *Id.* And clearly, the issue of a property’s value, or its condition, requires subjective judgment.
31. Here, because the Petitioner initiated his appeal in 2012, several years past the deadline for filing a 2008 Petition for Review of Assessment (Form 130), the appeal can only be timely if the Board treats it as a Form 133 appeal.⁴ Ind. Code § 6-1.1-15-1. While the Petitioner offered evidence regarding the subject property’s value and, alternatively, its condition, those determinations involve subjective judgment. Thus, those challenges are not available via a Form 133.

⁴ Even if the Board were to alternatively treat the appeal as a Form 131, the original filing would still be untimely. *See* Ind. Code § 6-1.1-15-1(c) “[F]or an assessment date in a year before 2009, the notice must be filed on or before May 10 of the year.”

SUMMARY OF FINAL DETERMINATION

32. The challenge of the subject property's assessment is not available via a Form 133. Therefore, the Board finds for the Respondent. The assessment will not be changed.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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>>.