

REPRESENTATIVE FOR PETITIONER:

Glenn R. Blossom, pro se

REPRESENTATIVE FOR RESPONDENT:

Frank J. Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

GLENN R. BLOSSOM,)	Petition No.: 71-026-16-3-5-00365-18
)	
Petitioner,)	
)	Parcel No.: 71-08-24-137-008.000-026
v.)	
)	
ST. JOSEPH COUNTY)	County: St. Joseph
ASSESSOR,)	
)	
Respondent.)	Assessment Year: 2016

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

June 18, 2019

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. Blossom contends that his 2016 assessment is too high because it fails to account for his property's interior structural and operational problems. He further contends that the assessment exceeds his purchase price. However, the Form 133 correction of error process he used does not allow for subjective challenges to a property's assessed value. We therefore dismiss his petition.

PROCEDURAL HISTORY

2. On June 5, 2017, Blossom filed a Form 133 petition seeking to correct an error in his property's 2016 assessment. On February 20, 2018, the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 determination lowering his 2016 assessment to \$31,100 (\$4,100 for land and \$27,000 for improvements), which Blossom timely appealed to us using a Form 131 petition.¹
3. On April 3, 2019, the Board's designated administrative law judge, Joseph Stanford ("ALJ"), held a consolidated hearing on the petitions. Neither he nor the Board inspected Blossom's property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Blossom appeared pro se. Attorney Frank J. Agostino represented the Assessor. Blossom and St. Joseph County Assessor Rosemary Mandrici testified under oath.
5. Blossom submitted following exhibits:

Petitioner Exhibit 1:	Photograph of the bathroom when Blossom purchased the property
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¹ While Blossom appealed the PTABOA's determination to us using a Form 131 petition, he initiated his county-level appeal on a Form 133 petition. We therefore consider his Form 131 petition to be a continuation of the Form 133 appeal filed below. Blossom's Form 131 petition also purports to include the 2017 assessment year, but he did not file a separate petition for that year. Moreover, in the Form 115 he attached to his Form 131 petition, the PTABOA only addressed the 2016 assessment year. Thus, we treat this as a 2016 Form 133 appeal.

Petitioner Exhibit 2:	Photograph of the front room when he purchased the property
Petitioner Exhibit 3:	Photograph of the kitchen when he purchased the property
Petitioner Exhibit 4:	Photograph of the outside of the house when he purchased the property
Petitioner Exhibit 5:	Photograph of the outside of the house after Blossom repaired it
Petitioner Exhibit 6:	Interior photograph of the property while being repaired
Petitioner Exhibit 7:	Photograph of the outside of the house after repair
Petitioner Exhibit 8:	Photograph of the outside of the house after repair
Petitioner Exhibit 9:	Interior photograph of the property while being repaired
Petitioner Exhibit 10:	Photograph of the bathroom after repair
Petitioner Exhibit 11:	Photograph of the new central air conditioner

6. The Assessor submitted the following exhibits:

Respondent Exhibit 1:	Form 131 petition
Respondent Exhibit 2:	Form 133 petition
Respondent Exhibit 3:	Form 115 determination
Respondent Exhibit 4:	Form 130 petition for 2017
Respondent Exhibit 5:	Subject property record card
Respondent Exhibit 6:	Subject property's valuation history, 2015-2018
Respondent Exhibit 7:	"Memo list" for the property
Respondent Exhibit 9: ²	<i>Stewart R. Allen v. St. Joseph Co. Ass'r</i> , pet. no. 71-003-08-3-5-00003 (Ind. Bd. of Tax Rev., Oct. 29, 2015)

7. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

² The Assessor did not submit an exhibit labeled Respondent Exhibit 8.

SUMMARY OF BLOSSOM'S CASE

8. Blossom purchased the property on February 22, 2017 for approximately \$9,500.³ When he bought the property, it was uninhabitable. He claims that he has standing to appeal the 2016 assessment because he paid the taxes on that assessment, which were due in 2017. He seeks an assessment more reflective of his purchase price. *Blossom testimony.*
9. While Blossom acknowledges that he may have filed the wrong form to appeal his assessment, he simply filed the form that the Assessor's office gave him. Further, as a result of his Form 133 filing, the PTABOA visited the property and addressed issues relating to the home's exterior. Consequently, it lowered the assessment. The Assessor has therefore waived any argument that he filed the wrong form. *Blossom testimony.*
10. Although the PTABOA addressed exterior issues, there were even more problems on the inside of the home. None of the water fixtures worked. The water heater, furnace, and air conditioner did not work, and there were water and gas leaks. The electrical box was out of code. The bathroom, kitchen, and front room also needed extensive repairs, which Blossom has since made. *Blossom testimony; Pet'r Exs. 1-11.*

SUMMARY OF THE ASSESSOR'S CASE

11. Blossom lacks standing to appeal the property's 2016 assessment. He was not the owner of record as of January 1, 2016, and he submitted no documentary evidence showing that he was responsible for the taxes based on the 2016 assessment. *Agostino argument.*
12. In any event, Blossom is appealing the value of his property, which is a subjective matter, past the deadline to do so. For a January 1, 2016 assessment, appeals based on subjective matters were due on June 3, 2017. But Blossom did not file his appeal until June 5, 2017.

³ On his Form 133 petition, Blossom stated that he purchased the property on January 20, 2017. But on cross-examination, he agreed that the property record card (Resp't Ex. 5) showed he purchased the property on February 22, 2017. Additionally, on his Form 133 and 131 petitions, Blossom indicated that he purchased the property for \$8,360 and was seeking to have his property assessed for that value. However, he claimed to have purchased it for \$9,500 during testimony.

Thus, Blossom's Form 133 was untimely. The PTABOA previously addressed the objective issues he raised, and consequently lowered the 2016 assessment from \$53,600 to \$31,100. *Agostino argument; Mandrici testimony; Resp't Exs. 2, 3.*

13. Even if Blossom could legally appeal his property's value on a Form 133, he failed to support a reduction. Blossom failed to quantify the effect the lack of utilities, lack of fixtures, and damage to the foundation had on the property's value. He could not testify with certainty regarding his exact purchase price. Nor did he offer any documents substantiating his purchase price. *Agostino argument.*

ANALYSIS AND CONCLUSIONS OF LAW

A. BURDEN OF PROOF

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d).

15. Here, Blossom filed a Form 133 appeal for 2016. Because a taxpayer may not challenge the assessed value of a property via a Form 133, the burden-shifting provisions of I.C. § 6-1.1-15-17.2 do not apply. Even if they did, the assessment for Blossom's property decreased from 2015 to 2016, and he would therefore bear the burden of proof.

B. TRUE TAX VALUE

16. Indiana assesses property based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). The DLGF defines "true tax

value” as “market value-in-use,” which it in turn defines 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.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2.

Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id; see also, Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

17. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property’s value as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2016, the valuation date was January 1, 2016. Ind. Code § 6-1.1-2-1.5(a).

C. DISMISSAL OF BLOSSOM’S 2016 APPEAL

18. Before we can reach the merits of Blossom’s petition, we first need to address whether it is properly before us. More specifically, we need to address (1) whether Blossom has standing to appeal the property’s 2016 assessment, and, if so, (2) whether he used the right procedure to challenge the assessment.
19. The Assessor argues that Blossom lacks standing to appeal the 2016 assessment because he was not the owner of record as of January 1, 2016, and he submitted no documentary evidence showing that he was responsible for the taxes based on the 2016 assessment.
20. Pursuant to our procedural rules, either the owner of the subject property or the taxpayer responsible for paying the property taxes on the subject property can be a proper party to an appeal. 52 IAC 2-2-13. In Indiana, property taxes are due and payable in two (2) equal installments on May 10 and November 10 of the year following an assessment. Ind. Code § 6-1.1-22-9(a).

21. Blossom testified that he bought the property in 2017 before the taxes based on the 2016 assessment were due. He further testified that his purchase agreement stipulated that he was to pay the 2016 taxes, which he ultimately did. Because Blossom's testimony that he paid those taxes is undisputed, we conclude he has standing to appeal the property's 2016 assessment.

22. However, a taxpayer must use the appropriate method to challenge a property's assessment. *Bender v. State Bd. of Tax Comm'rs*, 676 N.E.2d 1113, 1114 (Ind. Tax Ct. 1997). During the 2016 tax year, a taxpayer had two methods for challenging an assessment: (1) the process under Ind. Code § 6-1.1-15-1 through -4, which is commonly known as the Form 130/131 process; or (2) the correction of error process under Ind. Code § 6-1.1-15-12, for which the Form 133 petition is prescribed. Taxpayers could use the Form 130/131 process to challenge both subjective and objective errors, but they could use a Form 133 petition only to challenge objective errors. *See, e.g., Muir Woods, Inc. v. O'Connor*, 36 N.E.3d 1208, 1210-1211 (Ind. Tax Ct. 2015); *Hatcher v. St. Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).

23. Under Indiana's current assessment system, determining a property's true tax value inherently requires subjective judgment. The Tax Court has recognized as much:

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.”

Town of St. John, et al. v. State Bd. of Tax Comm'rs, 698 N.E.2d 399, 400 (Ind. Tax Ct. 1998); *see also, Muir Woods*, 36 N.E.3d at 1210-1211 (explaining that value cannot be determined from a simple rendition of objective facts). Because the valuation of a property involves subject judgments, taxpayers cannot use the Form 133 correction of error process to challenge a property's assessed value. Even if you treat the form 133 as a 131, we agree with the assessor that it was untimely filed. We therefore dismiss Blossom's petition.

24. Even if we reached the merits of Blossom's appeal, he would nevertheless be unsuccessful because he failed to offer any probative evidence to demonstrate his property's correct market value-in-use. While the issues with his property likely had a negative effect on its value, he failed to quantify their effect using market-based evidence. And Blossom's assertion that his purchase price reflects his property's correct value would fair no better. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, however, Blossom not only seemed unsure of the exact purchase price, he failed to demonstrate that his purchase was the result of an open market, arms-length sale. Blossom also purchased the property more than a year after the relevant valuation date, and he failed to relate the purchase price to that date.

SUMMARY OF FINAL DETERMINATION

25. Blossom failed to follow the proper procedure to challenge his 2016 assessment. We therefore dismiss his petition.

The Final Determination of the above captioned matter is issued 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 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>>.