REPRESENTATIVE FOR PETITIONER:
Bradley J. Adamsky, Newby Lewis Kaminski Jones, LLP

REPRESENTATIVE FOR RESPONDENT:
Frank J. Agostino

BEFORE THE
INDIANA BOARD OF TAX REVIEW

GLOBAL LIOFIL, LTD and. BRC SOUTH BEND, LLC Petitioners, v. ST. JOSEPH COUNTY ASSESSOR Respondent.	)))))))))))))	Petition Nos.: 71-026-02-3-4-00001 71-026-03-3-4-00002 71-026-05-3-4-00001 71-026-06-3-4-00001 71-026-07-3-4-00001 Parcel No.: 71-09-05-476-001.000-026[1] County: St. Joseph Assessment Years: 2002, 2003, 2005, 2006, 2007

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

November 18, 2011

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:

[1] The three petitions filed by Global Liofil list a different parcel number (18-5201-7763). It appears that the difference stems from a change in the county's numbering system. In any case, all five petitions address the same parcel located at 605 N. Hickory Road in South Bend.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. The Petitioners, Global Liofil, LTD and BRC South Bend, LLC, filed several Form 133 petitions seeking to change the subject property's assessments for 2002-2003 and 2005-2007 to amounts that were based on a stipulated settlement of the property's 2004 assessment. Form 133 petitions, which proceed under Ind. Code § 6-1.1-15-12, are limited to objective errors. Because a property's market value-in-use is an inherently subjective question, and because the stipulation for 2004 did not collaterally estop the Assessor from litigating the property's market value-in-use for any other assessment year, the Petitioners could not challenge the assessments in question using Form 133 petitions. And contrary to the Petitioners' assertions, the certified tax representative from the 2004 appeal did not give appropriate local officials the notice that was required to initiate the more general appeal process under Ind. Code § 6-1.1-15-1.

Background and Procedural History

2. On June 16, 2010, Global Liofil, LTD filed Form 133 petitions with the St. Joseph County Auditor contesting the subject property's assessment for the 2002, 2003 and 2005 assessment years. That same day, BRC South Bend, LLC filed Form 133 petitions for 2006 and 2007. The Auditor and the St. Joseph County Assessor disapproved each petition. On September 22, 2010, the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") denied each petition. Global Liofil and BRC then appealed the PTABOA's determinations to the Board.

3. The Board has jurisdiction over these appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1. On June 21, 2011, the Board's Administrative Law Judge, David Pardo ("ALJ"), held a hearing on the appeals.[2] Neither the Board nor the ALJ inspected the subject property.

[2] At the hearing, it appeared that there might have been a brief malfunction with the ALJ's recording equipment. It occurred during argument by the Assessor's counsel after all the exhibits had been introduced. In listening to the recording of the hearing, it appears that little, if any, argument was lost. In any event,, the ALJ alerted counsel to the potential problem and encouraged counsel to fully address their arguments in their post-hearing briefs.

4. No witnesses testified at the Board's hearing, although the Petitioners offered a chronology for the 2004 appeal in lieu of testimony by Robert Porter, who represented the taxpayer in that appeal. *See Pet'r Ex. 9*.

5. The Petitioners submitted the following exhibits:

Petitioner Exhibit 1:	Hearing notice
Petitioner Exhibit 2:	Stipulation Agreement for the 2004 appeal
Petitioner Exhibit 3:	Stipulation Agreement for appeal of March 1, 2008 assessment
Petitioner Exhibit 4:	June 16, 2010 letter from Peter H. Mullen to Bradley J. Adamsky on letterhead; copy of letter from Mullen to Adamsky not on letterhead; Final Determination, Notice of Stipulated Agreement Order of Dismissal for 2004 appeal; Stipulation Agreement for 2004 appeal; Stipulation Agreement for 2008 appeal; Form 134; Form 133 petitions for 2002, 2003, 2005, 2006 and 2007
Petitioner Exhibit 5:	Form 114 hearing notice dated August 23, 2010
Petitioner Exhibit 6:	Packet identified by the Petitioners as PTABOA hearing exhibits with eight numbered tabs
Petitioner Exhibit 7:	Summary Appraisal Report for the subject property
Petitioner Exhibit 8:	February 1, 2010 memorandum from Barry Wood entitled Assessment Appeals Frequently Asked Questions
Petitioner Exhibit 9:	Robert A. Porter & Associates chronology of events

6. The Assessor submitted the following exhibits:

Respondent Exhibit 1: Property record card for the subject property

7. The Board incorporates into the record the Form 133 petitions, all filings by the parties, including the Petitioners' post-hearing brief and the Assessor's post-hearing statement, and all orders and notices issued by the Board or its duly authorized administrative law judges.

8. The PTABOA left intact the following assessments:

Year	**Land**	**Improvements**	**Total**
2002	$1,023,700	$1,192,800	$2,216,500
2003	$1,023,700	$1,192,800	$2,216,500

2005	$1,090,200	$1,270,300	$2,360,500
2006	$1,090,200	$1,270,300	$2,360,500
2007	$1,269,400	$1,047,900	$2,317,300

9. The Petitioners requested a total assessment of $518,000 for 2002, 2003 and 2005 and a total assessment of $534,000 for 2006 and 2007.

Findings of Fact

10. The subject property contains a "Big Box" store located at 605 N. Hickory Road in South Bend. *Pet'r Ex. 7 at 19*. Several different entities have owned the property, including the Petitioners. *See Resp't Ex. 1*. Target Corporation and its predecessor, L.S. Ayres and Company, had leased the building, but Target vacated the building in 2002, making its last lease payment in 2005. *Pet'r Ex. 1, tab 1*. The property has largely sat vacant since then.

11. On July 11, 2005, Target filed a Form 130 petition contesting the subject property's March 1, 2004 assessment. The property was assessed for $2,216,600—$1,023,700 for the land and $1,192,900 for improvements. Target left blank the portion of the form calling for a taxpayer to set forth its requested assessment. In the petition's body, however, Target wrote "Inability of improvements to support real estate tax burden. Vacancy, economic obsolescence, and condition of improvement dictate demolition of current building before any potential future use of site. Property value equal to land value less cost of demolition." *Pet'r Ex. 6, tab 1 at Form 130 petition*.

12. On September 15, 2005, Target's certified tax representative, Robert Porter, wrote a letter to the Portage Township Assessor outlining his belief that the property should be assessed at the value of the land minus the $400,000 estimated to demolish the building. He concluded the letter by saying "[W]e respectfully request that the 2004 valuation on parcel 18-5201-7736 be reduced to $623,700 for **ONE YEAR ONLY**." *Pet'r Ex. 6, tab*

1 (emphasis in original). Similarly, in a written summary of Target's position that Mr. Porter gave to the PTABOA, he wrote "Therefore we respectfully request that the 2004 assessed valuation on parcel 18-5201-7736 be reduced to $623,700 for **ONE YEAR ONLY**, with the assessed valuation returned to the original 2004 proposed assessed valuation for 2005." *Id. (emphasis in original).*

13. The PTABOA heard Target's appeal on February 16, 2006 but tabled the matter for further review. The PTABOA ultimately issued a Form 115 determination denying Target relief on April 26, 2006. *Id. at Form 115*.

14. On May 22, 2006, Target appealed to the Board by filing a Form 131 petition with the St. Joseph County Assessor. In its Form 131 petition, Target requested an assessment of $623,700. Among other things, Target pointed to the PTABOA's "Failure to reflect property assessment and appraisal theory that sets True Tax Value based upon land value less cost to demolish 'improvements.'" *Pet'r Ex. 6, tab 1 at Form 131 petition*. Target added "I amend my request from 'one year only' to no limitation." *Id.*

15. The Board scheduled a hearing for August 20, 2008, but that hearing was continued. A second hearing was scheduled for May 20, 2010, but the parties settled the appeal before that hearing. *Pet'r Exs. 2, 9*. The parties entered into the following Stipulation Agreement:

> Comes now **Target Corporation**, Petitioner/Petitioner Representative, and **David E. Wesolowski[] St. Joseph County Assessor**, representing St. Joseph County do hereby stipulate and agree to the following issues and the resolution of the issue's pertaining to the above referenced petition brought before the Indiana Board of Tax Review.
>
> (1) Total Assessed value for 2004 for 605 N. Hickory Rd. South Bend, Indiana is $518,000.
>
> **Key # 18-5201-7736**
>
> It is understood and agreed that, in the event that the decision of the IBTR is [c]hallenged in court, the taxpayer and it's representative will not raise any of the above stated stipulated issues as part of the challenge.

> This stipulated assessed valuation will not be documented on the Petitioner's property record card, except as a value assigned as the compromised result of a disputed assessment.

Pet'r Ex. 2 (emphasis in original). Mr. Porter and a representative of the PTABOA signed the agreement on March 28, 2010, while a representative for the St. Joseph County Assessor signed the agreement on May 20, 2010. *Id*.

16. The Board then issued a Final Determination Notice of Stipulated Agreement Order of Dismissal, in which the Board wrote

> The Indiana Board accepts the stipulation between the Petitioner and Township representative/County representative, but the Indiana Board's acceptance of the agreement should not be construed as a determination regarding the propriety of the agreement either implicitly or explicitly. A change in the assessment is made as a result of this issue.

Pet'r Ex. 4.

17. Mr. Porter also challenged the subject property's March 1, 2008 assessment, this time on behalf of an entity called South Bend Garland S & B II, LLC. As part of an informal preliminary meeting, South Bend Garland and representatives of the PTABOA and St. Joseph County Assessor signed a Stipulation Agreement to settle that appeal as well. *Pet'r Exs. 3-4*. They agreed to a value of $534,000 "for the March 1, 2008, assessment." *Pet'r Ex. 3*. Among other things, their agreement contained the following terms:

> 2. The assessed valuation assigned as a result of the compromise reflected by this stipulation does not in fact represent a final determination of the most appropriate or accurate assessed valuation of the property under the applicable assessment rules.
>
> . . . . .
>
> 4. This stipulated assessed valuation will not be documented on the Petitioner's property record card, except as a value assigned as the compromised result of a disputed assessment.

Id.

Conclusions of Law and Analysis

18. The parties have identified two main questions:

    (1) Are the errors claimed by the Petitioners objective errors that can be addressed on a Form 133 petition? and

    (2) Did Target effectively appeal assessment years 2005-2007 when, on its Form 131 petition to the Board, Target included the phrase "I amend my request from 'one year only' to no limitation"?[3]

19. There are two basic avenues for contesting a property's assessment before state and local agencies: (1) the appeal procedure that is initiated under Ind. Code § 6-1.1-15-1, which for want of a better term can be referred to as the "general appeal procedure"; and (2) a more restricted procedure under Ind. Code § 6-1.1-15-12, which is prosecuted using a Form 133 petition. *See Bender v. Indiana State Bd. of Tax Comm'rs,* 676 N.E.2d 1113, 1114 (Ind. Tax Ct. 1997). The Petitioners make arguments that relate to both procedures. Because the appeals at issue were actually filed on Form 133 petitions, the Board will address those arguments first.

A. The errors claimed by the Petitioners cannot be corrected using Form 133 petitions

1. Form 133 petitions can only be used to correct objective errors, and a property's overall market value-in-use is a subjective question.

20. Under the Form 133 procedure, there are eight reasons for which a county auditor "shall correct errors" appearing in a tax duplicate, the following two of which the Petitioners rely on in these appeals: "(6) The taxes, as a matter of law, were illegal[, and] (7) [t]here was a mathematical error in computing an assessment." I.C. § 6-1.1-15-12(a).

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[3] The Assessor also contends that, even if the errors in question can generally be addressed on a Form 133 petition, those petitions were filed past the deadline for giving relief on the 2002-2003 assessments. *See Will's Far-Go*, 847 N.E.2d 1074 (Ind. Tax Ct. 2006) (tying the time for filing a Form 133 petition to the limitations on collecting refunds—three years after the taxes on the challenged assessment were first due). The Petitioners concede that the 2002-2003 petitions were not timely filed, but argue that the Board nonetheless has inherent authority to address those appeals in light of the delay in resolving the 2004 appeal. The Board's holding that the relief that Global Liofil seeks was not available on a Form 133 petition moots that issue.

21. The Indiana Tax Court repeatedly has held that the only errors that may be corrected using a Form 133 petition "are those which can be corrected without resort to subjective judgment." *E.g., Bender*, 676 N.E.2d at 1114 (quoting *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax. Ct. 1990)). For example, the Tax Court has held that the legislature intended the Form 133 procedure to apply only to errors "involving the incorrect use of numbers in determining the assessment" and "errors which can be corrected accurately, with precision, and with rigorous exactness." *Bender,* 676 N.E.2d at 1114 (quoting *Hatcher,* 561 N.E.2d at 852). Where a decision under review is dictated automatically by a simple true or false finding of fact, it is considered objective and properly challenged via a Form 133. *Bender*, 676 N.E.2d at 1115. For example, in *Hatcher*, the court pointed to the question of whether a dwelling has a fireplace as an example of an objective matter, because the answer can be "judged and corrected objectively through a visual inspection," and the value of the non-existent item can be subtracted from the assessment computation. *Hatcher*, 561 N.E.2d at 857. In other words, the decision is objective "because the outcome [is] mandated by a single, relatively uncomplicated factual finding." *Bender,* 676 N.E.2d at 1115.

22. Here, by contrast, the Petitioners are appealing the subject property's overall market value-in-use. That is an inherently subjective question. The Petitioners, however, argue that the resolution of Target's 2004 assessment appeal renders the property's valuation in the years currently under appeal objective, particularly for 2002, 2003 and 2005, which were based on the same January 1, 1999 valuation date as the 2004 assessment. For support, the Petitioners point to the Board's decision in *R.R. Donnelly & Sons, Co., Inc. v. Union Township Assessor and Montgomery County Assessor,* Pet nos. 54-030-03-3-00001 *et. al*. (Ind. Bd. Tax Rev. September 8, 2008).

2. *R.R. Donnelly* was narrowly based on collateral estoppel.

23. In that case, Donnelly had appealed its March 1, 2002 assessment. Donnelly won its appeal after a contested hearing in which it offered a valuation opinion that was based on

two different appraisals. *R.R. Donnelly*, slip op. at 2. Nonetheless, on September 23, 2005, the Union Township Assessor issued Form 113 notices increasing the property's 2003-2005 assessments to match what the property had been assessed for before the Board's decision in Donnelly's 2002 appeal. *Id*. at 3. Donnelly then filed Form 133 and Form 131 petitions for 2003-2005. Donnelly essentially claimed that the Board's 2002 determination, which the assessor had not appealed, conclusively set the property's true tax value and that the assessment could not be changed for later years absent a change in the property's circumstances. *See id*. at 3-4.

24. The parties raised several issues in cross motions for summary judgment, including

- Whether Donnelly's claims could properly be made on a Form 133 petition; and
- Whether Donnelly had timely filed notices of review at the local level as a pre-requisite to seeking relief on a Form 131 petition.

Id. at 6-7. The assessor ultimately withdrew her claim that Donnelly had failed to timely file its review notices. *Id*. at 8. The Board therefore addressed Donnelly's Form 131 petitions, which it found dispositive, and expressly declined to decide the propriety of Donnelly's Form 133 petitions. *Id*. at 8-9.

25. The Board ultimately concluded that its decision in Donnelly's 2002 appeal precluded the assessor from re-litigating the property's value for the 2003-2005 assessment dates. As the Board explained, a branch of the doctrine of *res judicata* known as collateral espoppel (or issue preclusion) bars a party from later re-litigating a fact or issue that was necessarily adjudicated in an earlier lawsuit or administrative proceeding. *Id*. at 9-11 (citing *Tofany v. NBS Imaging Sys., Inc.*, 616 N.E.2d 1034, 1037 (Ind. 1993) and *Lindeman v. Wood*, 799 N.E.2d 1230, 1233 (Ind. Tax Ct. 2003)). The Board, however, also recognized several tensions with that doctrine in the context of property assessments:

- Cases have repeatedly expressed the general principle that each year's property assessment stands on its own. *Id.* at 9 (citing *e.g. Indianapolis Racquet Cub v. State Bd. of Tax Comm'rs*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).

- An assessor can increase the assessment for any property that she believes has been omitted or undervalued on the assessment rolls or tax duplicate. *See* I.C. § 6-1.1-9-1.
- Even before the legislature required assessments to be adjusted annually, assessors were instructed to annually re-evaluate obsolescence. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. F at 4 (incorporated by reference at 50 IAC 2.3-1-2 (2009)).

R.R. Donnelly, slip op. at 9-10.

26. Despite those tensions, the Board found that Donnelly had connected its collateral estoppel argument with how Indiana's assessment system operated in 2003-2005. During those years, all property was assessed based on its value as of January 1, 1999, and assessments generally carried forward from year to year to the next general reassessment absent a physical change to the property or a change in its use. *Id.* at 12 (citing, *e.g. Whetzel Enters., Inc. v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1259, 1260 n.3 (Ind. Tax Ct. 1998)). The assessor had not offered any probative evidence to show a change in obsolescence between 2002 and any of the years at issue. *See id*. at 13. Instead, because the assessor disagreed with Board's determination in the earlier appeal, she had simply returned the property's 2003-2005 assessments to the level she believed was supported by her evidence in the 2002 appeal. *Id.* Thus, while the Board recognized that applying collateral estoppel was "somewhat at odds" with an assessor's statutory authority to increase the assessment of undervalued or omitted property, it held that "Donnelly's dispute presents a rare instance where it is appropriate to call a halt." *Id*. at 14.

27. The Petitioners argue that *R.R. Donnely* stands for the proposition that a property's assessment should remain constant for 2002 through 2005 absent a change to the property's physical appearance or use. And while the Board did not address whether a Form 133 petition could be used to make those assessments stay consistent, the Petitioners urge the Board to do so now.

28. The Petitioners, however, read *R.R. Donnelly* too broadly. That decision does not stand for the proposition that a property's assessment must remain constant between 2002 and 2005 absent a physical change to the property or a change in its use. Indeed, both the Board and the Indiana Tax Court have expressly held otherwise. *Charwood*, *LLC et. al. v. Bartholomew County Assessor*, 906 N.E.2d 946, 949-50 (Ind. Tax Ct. 2009). Instead, the Board held that, on the unique circumstances presented in *R.R. Donnelly*, the assessor was collaterally estopped from re-litigating the property's market value-in-use.

3. The 2004 appeal lacks preclusive effect because the subject property's market value-in-use was not actually litigated and determined in that appeal.

29. Here, by contrast, the Target's 2004 assessment appeal does not preclude the Assessor from litigating the subject property's assessment in any of the years at issue in these appeals. Collateral estoppels applies only to issues that were actually litigated and determined in a former action. *Microvote General Corp. v. Ind. Election Comm'n*, 924 N.E.2d 184, 197 (Ind. Ct. App. 2010). The subject property's market value-in-use was not actually adjudicated in the 2004 assessment appeal. Instead, the parties settled that appeal on the condition that the agreed value would "not be documented on the Petitioner's property record card, except as a value assigned as the compromised result of a disputed assessment." *Pet'r Ex. 2*. Thus, the parties disclaimed the settlement amount as necessarily representing the property's market value-in-use. Had Target wanted to use the 2004 appeal as a vehicle to settle other disputed assessments, it could have attempted to do so. Of course, the Assessor might not have agreed to do that, or alternatively, she might have insisted on a higher valuation.

30. Granted, the stipulation agreement was not entirely outside the quasi-adjudicatory process. Indeed, the Board entered an order of dismissal in which it changed the subject property's 2004 assessment based on that stipulation. In some ways, the Board's order might be viewed as being akin to a consent judgment. And at least some Indiana decisions have given preclusive effect to consent judgments under what the Indiana Court of Appeals has termed the "consent-judgment-as-a-contract theory." *Hanover Logansport, Inc. v. Robert C. Anderson, Inc.*, 512 N.E.2d 465, 471 (Ind. Ct. App 1987).

That theory charts a course midway between decisions giving the same preclusive effect to consent judgments as is given to judgments entered after the parties have contested the merits and decisions that deny any preclusive effect on grounds that, in entering a consent judgment, a court is merely exercising an administrative function by recording what the parties have agreed to. *See id*. at 469 n.6. The consent-judgment-as-a-contract theory balances the interests of judicial economy and of avoiding both harassment of parties and the potential for inconsistent judgments on the one hand against the policy of encouraging settlements on the other. *Id*. A consent judgment's preclusive effect is therefore measured by the parties' intent. *Id*. In order to avoid preclusion, however, it must be clear that both parties agreed to reserve an issue or claim and the issues being reserved must be stated precisely. *Id*.

31. Within the context of the more relaxed procedural rules governing administrative litigation, the stipulation agreement for Target's 2004 appeal shows that the parties intended to reserve the question of what the subject property's market value-in-use actually was and to instead simply reach a compromise on the property's 2004 assessment. The Board echoed that intent by explaining that its acceptance of the agreement "should not be construed as a determination regarding the propriety of the agreement either implicitly or explicitly." *Pet'r Ex. 4*. Thus, the Board's order did not adjudicate the property's market value-in-use, but instead simply set an agreed assessment for 2004.

4. The Department of Local Government Finance's February 1, 2010 memorandum does not support the Petitioners.

32. The Petitioners also point to the following excerpt from a document issued by Department of Local Government Finance entitled "Assessment Appeals Frequently Asked Questions February 1, 2010":

> **I appealed my taxes in 2009 and my appeal was successful. However, when I received my 2010 tax bill, they had the assessed value wrong again! Why would they do that?**

> A change in the assessment made as a result of an appeal filed by a taxpayer remains in effect from the assessment date for which the change is made until the next assessment date. In other words, each assessment year stands alone, so the assessed value may increase, decrease, or remain the same in the annual adjustment process from year to year.
>
> *However, if a taxpayer successfully appeals their assessment, and as a result of the successful appeal, the assessor changes the underlying parcel characteristics (i.e., grade, condition, etc.) those changes resulting from the successful appeal should carry-over to succeeding assessment dates unless there is documented evidence of a change to the property brought about by new construction, remodeling, demolition, or destruction that requires an update to those underlying parcel characteristics.*

Pet'r Ex. 9 at 4 of 5 (bold in original, italics added).[4] According to the Petitioners, once the subject property's value was determined by the parties' admittedly subjective stipulations for the 2004 and 2008 assessments, the property's assessments for the interim years can be determined objectively by using mathematical calculations to trend the 2004 assessment forward. Because there were no physical changes to the property,[5] the Petitioners argue that anything other than values mathematically trended from the stipulated 2004 assessment would be illegal under the DLGF's memo.

33. The Petitioners misread the DLGF's memo. Indeed, the memo recognizes the general proposition that each tax year stands alone—a proposition at odds with the Petitioners' position. The DLGF does recognize one exception: where an appeal results in an assessor changing the appealed property's underlying characteristics, such as its grade or condition, there must be documented evidence of a change to the property before an

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[4] Presumably the DLGF was referring to Ind. Code § 6-1.1-4-4.4, which provides

> (a) This section applies to an assessment under section 4 or 4.5 of this chapter or another law.
> (b) If the assessor changes the underlying parcel characteristics, including age, grade, or condition, of a property, from the previous year's assessment date, the assessor shall document:
> (1) each change; and
> (2) the reason that each change was made. In any appeal of the assessment, the assessor has the burden of proving that each change was valid.

I.C. § 6-1.1-4-4.4.

[5] The property record card contains the following entry: "07/08 Int. remdl, $160,000, #103668. Usage was supermarket, removed A/C from basement, added sprinklers, updated plumb. 10/07." The Petitioners contend that the remodeling occurred after March 1, 2007 and therefore should not affect any of the assessment dates at issue.

assessor can update those characteristics. But there is no evidence that the Portage Township Assessor changed the subject property's underlying characteristics as a result of the 2004 appeal. To the contrary, in settling the 2004 appeal, the parties agreed that "the stipulated assessed valuation will not be documented on the Petitioner's property record card, except as a value assigned as the compromised result of a disputed assessment." *Pet'r Ex. 2*. Thus, the fact that the property's 2005-2007 assessments remained above $2,000,000 cannot be viewed as somehow reflecting undocumented updates of the properties' underlying characteristics.

B. A vague statement in Target's Form 131 petition did not suffice to initiate the general appeal process for 2005-2007.

34. Finally, the Petitioners argue that, even if their Form 133 petitions were improper, Target initiated the general appeal procedure for the subject property's 2005-2007 assessments when Mr. Porter included the following statement in the Form 131 petition for Target's 2004 appeal: "I amend my request from 'one year only' to no limitation." *Pet'r Ex. 6, tab 1 at Form 131 petition*. According to the Petitioners, Mr. Porter's statement notified the Assessor that all assessments that occurred while the 2004 appeal remained pending were being appealed. The Petitioners argue that requiring the property's owners to file separate review notices under those circumstances would be unduly burdensome and would serve only to clog the system. They therefore ask that the Board either remand to the PTABOA to hold a hearing on the subject property's 2005-2007 assessments, or to let the Petitioners file Form 131 petitions for those years.

35. The Board disagrees with the Petitioners' underlying premise and therefore declines their alternative requests for relief. Before July 1, 2007, a taxpayer seeking review of an assessment by a county PTABOA had to file a written request for a preliminary conference with the township or county official who made the assessment. I.C. § 6-1.1-15-1(a) and (b) (2006 rep. vol.). The taxpayer did not have to file a specific form; instead, the statute simply required the notice to include the taxpayer's name, address, and telephone number and the property's parcel or key number. I.C. § 6-1.1-15-1(e)

(2006 repl. vol.). It was not (and still is not) a burdensome process. But Target did not follow even those minimum requirements. Instead, Mr. Porter included a vague statement about "amending" an unspecified request from "'one year only' to no limitation." *Pet'r Ex. 6 , tab 1 at Form 131 petition*. He did not request a preliminary conference. And he buried that statement in the body of a Form 131 petition to the Board. Although Target actually filed that petition with the St. Joseph County Assessor, as the statute then required it to do,[6] that petition asked the Board to grant relief; it was not a request directed to the Portage Township Assessor or the PTABOA. Thus, the Form 131 petition cannot reasonably be seen as having put the Portage Township Assessor or any other local official on notice that Target was seeking review of the subject property's 2005-2007 assessments.

36. That being said, the Board recognizes that Target's 2004 assessment appeal remained pending before the Board for an unusually long time without receiving a hearing. Fortunately, that is by far the exception rather than the rule. Regardless, the delay in receiving a hearing did not prevent Mr. Porter from timely requesting review of the succeeding years' assessments. Even if the Board had acted within the statutory deadlines for holding a hearing and issuing a determination, Target might not have known the result until after the deadline for initiating review of the subject property's assessment for one or more of the years at issue in these appeals.[7] And Target was also free to petition for judicial review once the Board's deadline for making a final determination had run. I.C. § 6-1.1-15-4(i).

37. Granted, the Board's determination leaves an assessment record for the subject property

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[6] Under Ind. Code § 6-1.1-15-3 as it read at the time that Target filed its Form 131 petition, a taxpayer appealed to the Board by filing a Form 131 petition with the county assessor, who then forwarded that petition to the Board. I.C. § 6-1.1-15-3(c) and (e) (2006 rep. vol.). Currently, a taxpayer must file its Form 131 petition directly with the Board. I.C. § 6-1.1-15-3(d).

[7] By statute, the Board was required to hold a hearing within nine months of Target's petition having been filed and to issue a determination within 90 days of the hearing, although the Board could have extended that second deadline up to 180 days. I.C. § 6-1.1-15-4(e) and (g). Even without an extension, the Board's deadline to decide the 2004 appeal would have been May 21, 2007. Depending on when the Petitioners received notice of the subject property's 2005, 2006, and 2007 assessments, the deadline for seeking review in one or more of those years might have already passed.

where assessments of $518,000 in 2004 and $534,000 in 2008 bracket assessments of more than $2,000,000 for the three intervening years. While that might seem inconsistent, it is a function of the Petitioners failing either to timely appeal the intervening assessments or to negotiate settlements of the 2004 and 2008 appeals that addressed those intervening years.

SUMMARY OF FINAL DETERMINATION

38. Form 133 petitions are reserved for correcting objective errors. Because a property's market value-in-use is an inherently subjective question and the Assessor is not collaterally estopped from litigating that question for any of the years under appeal, the Petitioners are not entitled to relief on their Form 133 petitions. And contrary to the Petitioners' assertions, Mr. Porter's vague statement about amending Target's "request" from "'one year only' to no limitation" did not meet the statutory requirements for initiating appeals under the general appeal procedure for the 2005-2007 assessment years. The Board therefore finds for the Assessor.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>