

REPRESENTATIVE FOR PETITIONERS:

Brad Zimmer, Attorney at Law

REPRESENTATIVE FOR RESPONDENT:

Lisa Garoffolo, Boone County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Andrew Heard &)	Petition Nos.: 06-006-12-3-5-00536-16
Rosalva Cecilia Alvarez De Heard)	06-006-12-3-5-00138-16
)	06-006-13-3-5-00537-16
Petitioners,)	06-006-13-3-5-00141-16
)	
)	Parcel Nos.: 06-04-02-000-034.000-006
v.)	06-04-02-000-036.001-006
)	
)	County: Boone
Boone County Assessor,)	
)	Township: Eagle
Respondent.)	
)	Assessment Years: 2012 & 2013

Appeal from the Final Determination of the
Boone County Property Tax Assessment Board of Appeals

Issued: June 13, 2017

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

ISSUE

1. Whether Petitioners are able to challenge the subject parcels' values on Form 133 petitions and, if so, did Petitioners prove the assessments are incorrect?

PROCEDURAL HISTORY

2. Petitioners initiated 2012 and 2013 assessment appeals for two parcels by filing Petitions for Correction of an Error ("Forms 133") with the Boone County Assessor on May 11, 2015. On November 25, 2015, the Boone County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations denying Petitioners relief. On January 11, 2016, Petitioners filed appeals with the Board.
3. Dalene McMillen, the Board's designated administrative law judge, held a hearing on March 15, 2017. Neither she nor the Board inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Attorney Brad Zimmer represented Petitioners. The following people were sworn and testified:

Andrew Heard, Owner
Lisa Garoffolo, Boone County Assessor¹
Jane Wood, Boone County Deputy Assessor
Janis Wilson, Witness from Government Utilities Technology Services

5. Petitioners offered the following exhibits:

¹ Mrs. Garoffolo left the Board hearing prior to its conclusion. She designated Ms. Wood to represent the assessor's office in her absence.

- Petitioner Exhibit A – Two flood plain maps,
- Petitioner Exhibit B – 2012 Notices of Assessment of Land and Structures – Form 11s for the subject properties,
- Petitioner Exhibit C – 2013 Notice of Assessment of Land and Structures – Form 11 for subject property #06-04-02-000-036.01-006,
- Petitioner Exhibit D – 2012 property record cards (“PRC”) for the subject properties,
- Petitioner Exhibit E – Notifications of Final Assessment Determination – Form 115s for the March 1, 2014, assessment date for the subject properties,
- Petitioner Exhibit F – Copy of Ind. Code § 6-1.1-4-4.4,
- Petitioner Exhibit G – Copy of Ind. Code § 6-1.1-15-17.2,
- Petitioner Exhibit H – *Rinker Boat Co. v. State Board of Tax Commissioners*, 722 N.E.2d 919 (Ind. Tax 1999),
- Petitioner Exhibit I – Petitioners’ chronology of facts.

6. One month prior to the Board’s hearing, Respondent mailed several documents regarding each parcel at issue to the Board. At the hearing, Respondent did not ask that those documents be formally admitted into the record.

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

- Board Exhibit A – Form 133 petitions,
- Board Exhibit B – Hearing notices,
- Board Exhibit C – Hearing sign-in sheet.

8. The assessed values are as follows:

Year	Parcel #	Land	Improvements
2012	06-04-02-000-034.000-006	\$557,300	-0-
2012	06-04-02-000-036.001-006	\$61,700	-0-
2013	06-04-02-000-034.000-006	\$557,300	-0-
2013	06-04-02-000-036.001-006	\$61,700	-0-

9. The Forms 133 claim the assessed values should be as follows:

Year	Parcel #	Land	Improvements
2012	06-04-02-000-034.000-006	\$22,600	-0-
2012	06-04-02-000-036.001-006	\$16,000	-0-
2013	06-04-02-000-034.000-006	\$22,600	-0-
2013	06-04-02-000-036.001-006	\$16,000	-0-

10. Parcel #06-04-02-000-034.000-006 consists of 2.26 acres of vacant land and parcel #06-04-02-000-036.001-006 consists of 0.24 acres of vacant land. Both parcels are located at 515 South 5th Street in Zionsville.

OBJECTION

11. Petitioners' attorney Brad Zimmer objected to the testimony of Janis Wilson. He contends that Ms. Wilson was not on record as testifying at the PTABOA hearing and that constitutes new evidence which should not be allowed. Mr. Zimmer did acknowledge that he received Respondent's exhibit and witness list prior to the Board hearing, which included Ms. Wilson's name. The Board's proceedings are conducted *de novo*, and consequently, the Board owes no deference to the PTABOA. The fact that Ms. Wilson did not testify at the PTABOA hearing is irrelevant to the Board's hearing.

BURDEN OF PROOF

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.

13. 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 tax 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 to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
14. 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,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “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).
15. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
16. Ind. Code § 6-1.1-4-4.4 states that if an assessor changes an underlying parcel’s characteristics, including age, grade, or condition of a property, from the previous year’s assessment, the assessor shall document each change, and 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.
17. Here, Petitioners initiated their appeals using Form 133 petitions. The challenge of a property’s value is not available via a Form 133 petition. *See Pulte Homes of Ind. v. Hendricks Co. Assessor*, 42 N.E.3d 590, 595 (Ind. Tax Ct. 2015). In addition, Petitioners

failed to establish that Respondent changed any underlying parcel characteristics for the properties under appeal. Accordingly, the burden shifting provisions of Ind. Code §§ 6-1.1-15-17.2 and 6-1.1-4-4.4 do not apply and the burden rests with Petitioners.

SUMMARY OF PETITIONERS' CONTENTIONS

18. Petitioners' attorney, Mr. Zimmer, argues that parcel #06-04-02-000-034.000-006, which consists of 2.26 acres, was originally assessed in 2011 for \$22,600, but he contends that for some unknown reason in 2012 the assessment increased to \$557,300. *Zimmer argument; Pet'r Ex. B & D.*

19. Furthermore, according to Mr. Zimmer, Parcel #06-04-02-000-036.001-006, which consists of 0.24 acres, had a 2011 assessed value of \$16,300 that increased to \$61,700 in 2012. Mr. Zimmer contends that there were no changes in the use or characteristics of the properties to warrant such a dramatic increase in their assessed values. He also contends that Respondent failed to give an explanation on Petitioners' Form 11s as to the reason for the increase. *Zimmer argument; Heard testimony; Pet'r Ex. B & D.*

20. Mr. Zimmer contends that the parcels are located in a flood zone. Mr. Zimmer argues the county made an objective error because the properties are physically located in a flood plain that was not recognized in 2012 and 2013. Because the county did not acknowledge the flood plain on parcel #06-04-02-000-034.000-006, the land base rate increased from \$10,000 per acre to \$246,600 per acre. With regard to parcel #06-04-02-000-036.001-006, he contends that the land base rate increased from \$65,200 per acre to \$246,600 per acre. Mr. Zimmer cited *Rinker Boat Co. v. State Bd. of Tax Comm'rs*, 722 N.E.2d 919 (Ind. Tax Ct. 1999), where the Tax Court held that the determinations complained of were based on uncomplicated true or false findings of fact. Therefore, the alleged errors were objective and could be corrected using a Form 133. *Zimmer argument; Heard testimony; Pet'r Ex. A, D, H & I.*

21. Mr. Zimmer argues that Petitioners filed Form 130 appeals in 2014 on the subject properties. As a result of those appeals, he claims that the county reduced the assessed value of parcel #06-04-02-000-034.000-006 from \$557,300 to \$200,000. He further contends that the county reduced the assessed value of parcel #06-04-02-000-036.001-006 from \$61,700 to \$16,000. Mr. Zimmer contends that the county did not give an explanation as to why the 2014 assessments were reduced and that there were no changes in the underlying characteristic of the properties between 2011 through 2014.² Mr. Zimmer argues this shows the properties were incorrectly assessed for 2012 and 2013. *Zimmer argument; Pet'r Ex. E.*
22. Finally, Mr. Zimmer argues that the PTABOA's determinations of the assessed values of Petitioners' properties were arbitrary and capricious. *Zimmer argument.*

SUMMARY OF RESPONDENT'S CONTENTIONS

23. Petitioners are utilizing Form 133 petitions for subjective issues. A taxpayer may only correct objective errors with a Form 133. Form 133 cannot be used to get changes that require subjective judgment, such as how to value land located in a flood plain. *Wilson testimony.*
24. According to Ms. Wilson, the vast difference in assessed values between 2011 and 2012 was a result of the redefinition of neighborhoods. The subject properties were removed from Eagle Township and placed in the Zionsville Village neighborhood. Furthermore, a statewide mandated reassessment resulted in the change of land base rates. *Wilson testimony.*
25. Ms. Wilson testified that, at the 2014 PTABOA hearing, Petitioners presented an appraisal showing a value of \$250,000. The PTABOA accepted that appraisal and then

² The March 1, 2014, Form 115 for parcel #06-04-02-000-034.000-006 shows an explanation was provided for the reduction. It states the property's value was reduced because of an appraisal and being located in a flood plain. *Pet'r Ex. E.*

requested that the assessor apply various influence factors to lower the assessed values of the subject properties. *Wilson testimony*.

Analysis

26. Petitioners seek to correct alleged errors in the 2012 and 2013 assessments via Form 133 petitions, which the DLGF has prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12. But only objective errors that can be corrected with exactness and precision can be addressed with a Form 133 petition.³ 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 v. State Bd. of Tax Comm'rs*, 676 N.E.2d 1113, 1114 (Ind. Tax Ct. 1997); *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).
27. 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.*
28. Petitioners challenged the fact that the properties are located in a flood plain and the assessed values dramatically increased without any explanation between 2011 and 2012. While the properties might indeed be located in a flood plain, a challenge of their respective values nonetheless requires a subjective analysis to determine the amount to which the property’s value is affected.

³ Additionally, Petitioners cannot avoid the statutory time limitations associated with the Form 131 review process by filing its claim on a Form 133 petition. *See Williams Indus. v. State Bd. Of Tax Comm'rs*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) (stating that because the legislature has created specific appeal procedures, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner). *See also Lake County Prop. Tax Assessment Bd. Of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1236-37 (Ind. 2005) (stating that because the taxpayer failed to challenge its assessments within the applicable time period for which a Form 130 was available, it was foreclosed from using a Form 133 for that purpose).

29. Individual parcels within a neighborhood may have peculiar conditions that are not reflected in the base rate of the land, such as being located in a flood plain. Assessors use influence factors to account for how those conditions affect an individual parcel's value. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, CH. 2 at 43. Because it is directly tied to the determination of value, the estimation of the appropriate influence factor percentage or whether it should be applied is subjective.
30. Petitioners argued that Respondent's purported change to the 2012 assessments from \$22,600 to \$557,300 and \$16,300 to \$61,700 were made without cause and carried forward to 2013. But Petitioners again fail to establish those were objective errors.
31. Petitioners also argued that because Respondent acknowledged the flood plain, applied an influence factor, and subsequently reduced the subject properties' assessed values in 2014, that the same result should apply for 2012 and 2013. However, the Board and the Indiana Tax Court have repeatedly held that each assessment and each tax year stand alone. *See Fleet Supply, Inc. v. State Bd. Of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (“[F]inally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.”) The impact of the flood plain on the property's value is a subjective question for each tax year.
32. Petitioners also argue that the assessed values were arbitrary and capricious. Petitioners misunderstand their burden in this instance. It is Petitioners' burden to show the errors were objective and not subjective and thus, correctable via Form 133 petitions. *See Bender*, 676 N.E.2d at 1115. Because Petitioners presented no evidence to support there was an objective error in assessing the subject properties, Petitioners failed to make a prima facie case for a reduction for the 2012 or 2013 assessments.
33. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy*

Diversified Indus. v. Dep't of Local Gov't Fin., 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

34. The Board finds for Respondent.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date 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>>.