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

Petitions:	**71-026-08-1-3-81858-15**
	71-026-09-1-3-90042-15
	71-026-10-1-3-82866-15
	71-026-11-1-3-82263-15
	71-026-12-1-3-20090-15
Petitioner:	**Kramer Ceilley & Associates, Inc.**
Respondent:	**St. Joseph County Assessor**
Parcel:	**71-08-11-378-001.000-026**
Assessment Years:	**2008, 2009, 2010, 2011 and 2012**

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. On April 29, 2015, the Petitioner filed Petitions for Review of Assessment (Form 131s) for the above mentioned assessment years with the Board. The Petitioner elected the Board's small claims procedures for each year under appeal.

2. For the reasons discussed herein, the Petitioner did not file original appeals with the St. Joseph County Assessor for the following assessment years: 2008, 2009 and 2010. For these years, the Petitioner included its copy of the Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130) from its 2007 assessment appeal.

3. For assessment years 2011 and 2012, testimony from the parties indicates a Form 130 was filed at the local level. However, no Form 130 was presented to the Board for these years. The record does indicate that the Petitioner and the Respondent agreed on a reduction to the assessed value for 2011 and 2012. However, a Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134) was presented for only 2012.

4. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) did not issue a determination for any of the years under appeal.[1] The Petitioner filed Form 131s for the above mentioned years with the Board.[2] *See* Ind. Code § 6-1.1-15-1(o)

[1] Generally, the PTABOA is required to hold a hearing within 180 days of the Petitioner initiating the appeal at the local level as required by Ind. Code § 6-1.1-15-1(k).
[2] The record indicates the Petitioner filed Petitions for Correction of an Error (Form 133s) at the local level for each year under appeal. However, no Form 133s were filed with the Board. Any issue raised on a Form 133 at the local level is not properly before the Board.

(permitting taxpayers to appeal directly to the Board if the maximum time for a PTABOA to hold a hearing or issue a determination has elapsed). The following analysis will explain if the Form 131s are properly before the Board.

5. The Board issued notices of hearing on August 3, 2016.

6. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearings on September 27, 2016. She did not inspect the property.

7. Attorney Bruce Huntington appeared for the Petitioner. Bernie Ceilley and Jay Kramer were sworn as witnesses for the Petitioner. Attorney Frank Agostino appeared for the Respondent. St. Joseph County Deputy Assessor Patricia St. Clair was sworn as a witness for the Respondent.

Facts

8. The industrial property under appeal is located at 746 Arnold Street in South Bend.

9. The PTABOA did not act on any of the years under appeal. Based on testimony and subject property record cards, the assessments at issue are as follows:

Year	Land	Improvements	Total
2008	$16,800	$214,100	$230,900
2009	$16,800	$214,100	$230,900
2010	$16,800	$214,100	$230,900
2011	$24,200	$43,000	$67,200
2012	$24,200	$43,000	$67,200

10. The Petitioner requested the following assessments on its Form 131s.

Year	Land	Improvements	Total
2008	$16,800	$49,200	$66,000
2009	$16,800	$49,200	$66,000
2010	$16,800	$49,200	$66,000
2011	$16,800	$49,200	$66,000
2012	$16,800	$49,200	$66,000

Record

11. The official record for this matter is made up of the following:

    a) Form 131s with attachments,

    b) A digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit 1:	Bar graph of the subject property's 2007- 2015 assessed values,
Petitioner Exhibit 2:	Summary Appraisal report prepared by Stephen A. Cox and Philip C. Krause with a "date of value" of December 31, 2006,
Petitioner Exhibit 3:	"Assessed Values and Proposed Corrected Assessed Values."
Respondent Exhibit 1:[3]	Respondent's pre-hearing discovery proof of mailing,
Respondent Exhibit 2:	Subject property record cards for 2008, 2009, 2010, 2011 and 2012,
Respondent Exhibit 3:	Form 131 for 2008,
Respondent Exhibit 4:	2007 Notification of Final Assessment Determination (Form 115),
Respondent Exhibit 5:	Stipulation agreement from 2007,
Respondent Exhibit 6:	Petitions for Correction of Error (Forms 133s) filed at the local level for assessment years 2008, 2009 and 2010,
Respondent Exhibit 7:	Assessing response to Form 133s,
Respondent Exhibit 8:	Memorandum from the Department of Local Government Finance (DLGF) titled SEA 152: *Burden of Proof in Certain Appeals; Interest on Refunds and Payments*, issued June 6, 2013,
Respondent Exhibit 9	Screenshots of the "Real Property Master" indicating adjustments made to the Petitioner's tax liability for assessment years 2011, 2012 and 2013, and screenshots from "Real Property Master" indicating credits applied to the 2013, 2014 and 2015 billing cycles,
Respondent Exhibit 10:	Assessor's memorandum from "Pro Val" including information regarding assessment years 2007, 2011, 2012 and 2014,
Respondent Exhibit 11:	Two aerial photographs of the subject property.
Board Exhibit A:	Form 131s with attachments,
Board Exhibit B:	Notices of hearing dated August 3, 2016,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Notice of Appearance for Attorney Frank Agostino,
Board Exhibit E:	Notice of Appearance for Attorney Bruce Huntington.

d) These Findings and Conclusions.

[3] A witness list is attached to the Respondent's coversheet that was not identified as an exhibit by the Respondent at the hearing.

Objections

12. Mr. Agostino objected to Petitioner's Exhibits 2 and 3. Mr. Agostino argued Petitioner's Exhibit 2 was not provided prior to the hearing. In response, Mr. Ceilley testified the exhibit was "previously accepted" by the Respondent.

13. Mr. Agostino similarly objected to Petitioner's Exhibit 3 because it was not provided prior to the hearing. The Petitioner responded by stating the Respondent did not request the Petitioner's exhibits prior to the hearing. The ALJ took both objections under advisement.

14. The Board's small claims rules specifically address providing copies of exhibits and witness lists: "*[I]f requested* not later than ten (10) business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5(d)(emphasis added).

15. While the Respondent presented a mailing receipt as proof her evidence had been shared with the Petitioner she did not produce any evidence indicating she had requested the Petitioner's evidence in exchange. *See Resp't Ex. 1*. In fact, Mr. Ceilley testified he requested prehearing evidence from the Respondent but he "was never asked to provide anything prior to this hearing." Thus, Mr. Agostino's objections are overruled and Petitioner's Exhibits 2 and 3 are admitted.

Contentions

16. Summary of the Petitioner's case:

    a) The subject property's 2008, 2009, 2010, 2011 and 2012 assessments are too high. Mr. Ceilley testified he did not file Form 130s petitions with the Assessor for the years' in question. However, the Respondent conceded that a Form 130 was filed for 2011 and 2012. According to Mr. Ceilley, an "employee in the Assessor's office" informed him that given a 2007 appeal of the subject property was still pending, he "did not have to file appeals again for the following years." When Mr. Ceilley "learned later" that he needed to file appeals for these years, an "Assessor's office employee gave him Form 133 petitions and told him that filing those would be sufficient." The Petitioner "detrimentally" relied on "misinformation" he should "not have to suffer the consequences." *Huntington argument; Ceilley testimony.*

    b) The Petitioner purchased the property on May 17, 2007, for $60,000. The previous owners were in bankruptcy. The property, located in a "brownfield," had been empty for four years, and was in very bad condition when purchased. *Ceilley testimony.*

    c) Despite the poor condition, the 2007 assessment was $230,900. The Petitioner timely filed a Form 130 for 2007 with the St. Joseph County Assessor. The PTABOA issued

a Form 115 on April 26, 2010, denying the 2007 appeal. The Petitioner filed a Form 131 petition for 2007 with the Board.[4] Upon filing with the Board, the Petitioner submitted an appraisal of the property to the Respondent. The appraisal was completed by Krause Associates with a "date of value" of December 31, 2006. According to the appraisal, the property should be valued at $63,000. Subsequently, on July 31, 2012, the Respondent and Petitioner signed a stipulation agreement lowering the 2007 assessment to $66,000. *Ceilley testimony; Pet'r Ex. 2.*

d) After the stipulation was reached for the 2007 assessment, Mr. Ceilley "believed" the following years' assessments would also be lowered; however, the Respondent only lowered the 2007 assessment. The 2008, 2009 and 2010 assessments remained at $230,900. *Ceilley argument; Pet'r Ex. 1, 3.*

e) Ultimately the 2011 and 2012 assessments were reduced after former Assessor David Wesolowski inspected the property. "It makes no sense to have three years of high assessments in the middle and the burden should be on the Respondent to justify those higher values." *Ceilley argument; Pet'r Ex. 1, 3.*

f) While the Petitioner "may have" administratively filed the wrong form, the "important thing" is that the Respondent was put on notice that an appeal was filed. Given the misinformation from the Assessor's office, and the fact that the Petitioner ultimately filed Form 133s, the assessments should be corrected. *Huntington argument.*

17. Summary of the Respondent's case:

a) The property is correctly assessed. Even if the Petitioner were able to establish the assessments are incorrect, Mr. Ceilley did not timely file Form 130s. Furthermore, the Form 131s were not filed until April 25, 2014, which is untimely. A taxpayer must file an appeal petition for each assessment year in disagreement. The Board has issued prior rulings stating that each year stands alone. *Agostino argument; St. Clair testimony.*

b) Additionally, the Petitioner erroneously filed Form 133s on April 25, 2014, with the county. These were also untimely filed. Moreover, there were no apparent "objective" errors that could be corrected via a Form 133. Form 133's cannot be used to argue "the value is incorrect." The only "avenue" available for the Petitioner to make its argument is via a Form 130. But again, the Petitioner failed to timely file its Form 130s. *Agostino argument; St. Clair testimony; Resp't Ex. 6.*

c) Ms. St. Clair did concede "the possibility that an Assessor's office employee could have erred in instructing the Petitioner that there was no need to file appeals for the 2009, 2010, 2011, and 2012 assessment years." She also admitted that it was possible

[4] Although the Petitioner offered testimony about filing with the Board, the Board does not have any record of this 2007 assessment appeal.

an assessing official "may have" given the Petitioner Form 133s "not realizing the forms were inappropriate for the Petitioner's issue." *St. Clair testimony.*

d) Ms. St. Clair also testified that she "believed" the Petitioner filed Form 130 petitions for the 2011 and 2012 assessment years. According to Ms. St. Clair, the Petitioner agreed, via a Form 134, to a lower assessment of $67,200 for 2011 and 2012 assessment years. Thus, as indicated on the subject property record card, the 2011 and 2012 assessments have already been lowered. *St. Clair testimony; Resp't Ex. 9, 10.*

Burden of Proof

18. 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, 1233 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

19. 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).

20. 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 has application to all appeals pending before the Board.

21. For the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 to apply, the Petitioner's appeals must properly be before the Board. As this is a matter of dispute here, and the Board's findings as to which party bears the burden for each year depends on the previous year's determination, we defer our ruling regarding the burden of proof to the discussion below.

Analysis

22. The Petitioner failed to make a case for reducing the assessments.

a) The Board must first address the question of whether the Petitioner timely filed appeals for the years in question. For 2008, 2009 and 2010, the Board finds the Petitioner failed to timely file.

b) A taxpayer may challenge an assessed value by seeking a review by a property tax assessment board of appeals. Ind. Code § 6-1.1-15-1(a). The requirements for obtaining a review include filing a written notice with the county assessor within forty-five days after receiving a notice of assessment. Ind. Code § 6-1.1.15-1(c). Even when a notice of assessment is not given, if a taxpayer wishes to initiate an appeal, he must file a written notice with the county assessor by the later of May 10 of the year, or forty-five days after the tax statement is mailed. Ind. Code § 6-1.1-15-1(d). Failure to initiate the appeal within the applicable time bars a taxpayer from seeking review. 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 had created specific appeal procedures by which to challenge assessments, a taxpayer must comply with the statutory requirements of filing the proper petitions within a timely manner); see also *Reams v. State Bd. of Tax Comm'rs,* 620 N.E.2d 758, 759, 760 (Ind. Tax Ct. 1993) (stating that if a taxpayer misses the thirty day post-notice deadline for the Form 130 petition, the Form 130 and Form 131 review process is no longer available).[5]

c) The record does not indicate when the Respondent issued notices of assessment for the years at issue. Nevertheless, the Board can still determine whether the Petitioner complied with the filing requirements of Ind. Code § 6-1.1-15-1(d). Again, if a taxpayer fails to timely initiate an appeal, he will be time-barred from seeking review. *Williams Industries,* 648 N.E.2d at 718; *Reams*, 620 N.E.2d at 759, 760.

d) Regardless of when notices of the assessments were actually issued, Mr. Ceilley testified that the Petitioner did not, and has not, filed original appeals of the 2008, 2009, and 2010 assessments. The Board is sympathetic to the Petitioner's plight noting it is unfortunate that Mr. Ceilley may have relied on incorrect information from the Assessor's office in failing to initiate appeals for 2008, 2009 and 2010. Yet, that does not alter the statutory filing requirements included in Ind. Code § 6-1.1-15-1. Further, it is a well-settled concept in Indiana that each assessment year stands alone. *See Fleet Supply, Inc. v. State Bd. of Tax Comm'rs,* 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs,* 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) ("[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

[5] At the time *Reams* was decided, Ind. Code § 6-1.1-15-1 only allowed thirty days for a taxpayer to initiate an appeal. The statute was subsequently amended to allow forty-five days.

years later.") Based on both statute and relevant case law, the Petitioner's reliance on a 2007 assessment determination to provide it relief in 2008, 2009, and 2010 was misplaced.

e) The Board concludes the Petitioner failed to initiate the appeal process for the 2008, 2009, and 2010 assessments as provided by Ind. Code § 6-1.1-15-1. The Board is a creation of statute, and it has only those powers conferred by statute. *Mantonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). The Board is unable to find any authority to waive statutory filing requirements, and the Petitioner did not point to any. Thus, as a matter of law, the 2008, 2009 and 2010 appeals are not properly before the Board and are denied.

f) Turning to the 2011 and 2012 assessment appeals, the record again lacks any documentary evidence the Petitioner initiated local appeals. The Respondent however, conceded that the Petitioner filed Form 130s for both 2011 and 2012. Further, the Respondent's testimony indicates that an informal meeting was held resulting in a stipulation agreement lowering the assessment to $67,200 for 2011 and 2012. These years may not be properly before the Board, but the record on that point is poorly developed. Consequently, the Board will not rest its determination on that point.

g) The PTABOA did not hold a hearing or issue a decision within the timeframes required by Ind. Code § 6-1.1-15-1(k). Because the assessment of record decreased from $230,900 in 2010 to $67,200 in 2011, the burden is on the Petitioner to prove any further reduction in the assessment.

h) The Petitioner failed to offer any probative valuation evidence that would apply to the 2011 or 2012 appeal. In fact, at the hearing Mr. Ceilley seemed satisfied upon learning that the assessment of record is $67,200 for 2011. Mr. Ceilley did present a chart indicating what he "thought" the assessments should be, but this analysis lacks probative value because the Petitioner failed to sufficiently support the data. Further, the Petitioner failed to establish that the analysis complies with generally accepted appraisal practices. The Petitioner did present some market based evidence. The appraisal, however, lacks probative value because the effective date is roughly five years removed from the relevant valuation date. The appraiser was not present to provide testimony to relate his valuation date to the relevant valuation date of March 1, 2011. The Tax Court has clearly held that the evidence before the Board must indicate the value as of the valuation date. *Long,* 821 N.E.2d at 471; *Monroe Co. Ass'r v. Kooshtard Properties I, LLC,* 38 N.E.3d 754, 757 (Ind. Tax Ct. 2015). But nothing in the record establishes how the appraised value relates to the required valuation dates for a 2011 or 2012 assessment. Therefore, the Petitioner's evidence lacks probative value and no further reduction in the 2011 or 2012 assessment is warranted. Where the 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).

i) Finally, the Petitioner pointed to several Form 133s offered by the Respondent, claiming they were timely filed "locally." *See Resp't Ex. 6.* To the extent any of the Form 133s were timely, the Petitioner failed to offer any evidence they were ever filed with the Board. Simply pointing to forms offered by the Respondent at a hearing does not constitute a filing with the Board. Thus, the Petitioner's Form 133s are not properly before the Board and the Board will not address them.

Conclusion

23. The Board finds for the Respondent for all five years under appeal. The 2008, 2009 and 2010 appeals are not properly before the Board. As for the 2011 and 2012 appeals, the Petitioner failed to offer any probative evidence supporting a further reduction of the assessments.

Final Determination

In accordance with these findings and conclusions, the 2008, 2009, 2010, 2011 and 2012 assessments will not be changed.

ISSUED: January 25, 2017

_____
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>.