

REPRESENTATIVE FOR PETITIONERS:

Aaron Suozzi, Certified Tax Representative¹

REPRESENTATIVE FOR RESPONDENT:

Susan Engelberth, Kosciusko County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Jerred & Jennifer Reiff,)	Petition Nos.: 43-029-14-3-5-00070-17
)	43-029-15-3-5-00071-17
)	43-029-16-3-5-00069-17
)	
Petitioners,)	
)	Parcel No.: 43-12-03-400-093.000-029
v.)	
)	
)	County: Kosciusko
Kosciusko County Assessor,)	
)	Township: Washington
)	
Respondent.)	Assessment Years: 2014, 2015, & 2016

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

July 27, 2018

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 Respondent indicated Mr. Suozzi’s Power of Attorney form is marked “to serve before the PTABOA only” and the Petitioners failed to mark the box authorizing him to appear before the Board. While the Respondent is correct, she did not object to Mr. Suozzi representing the Petitioners. Accordingly, the Board will allow Mr. Suozzi to appear for this hearing because it most likely was a clerical error.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. Are the Petitioners able to challenge the subject property's value via Form 133 petitions?
If so, did the Petitioners prove the assessments were incorrect?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2014, 2015, and 2016 assessment appeals by filing Petitions for Correction of an Error (Form 133s) with the Kosciusko County Auditor on November 21, 2016. On December 21, 2016, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) denied the Petitioners any relief. On January 12, 2017, the Petitioners filed three Form 133s with the Board.
3. On May 2, 2018, the Board's administrative law judge (ALJ), Patti Kindler, held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Certified tax representative Aaron Suozzi appeared for the Petitioners. County Assessor Susan Engelberth appeared for the Respondent. Darby L. Davis was a witness for the Respondent. All of them were sworn.
5. The Petitioners offered the following exhibits:

Petitioners Exhibit 1:	August 2016 memorandum prepared by the Department of Local Government Finance (DLGF) entitled "Petition for Correction of an Error Fact Sheet,"
Petitioners Exhibit 2:	2017 Notification of Final Assessment Determination (Form 115),
Petitioners Exhibit 3:	2017 Subject property record card,
Petitioners Exhibit 4:	2002 REAL PROPERTY ASSESSMENT GUIDELINES page 7,
Petitioners Exhibit 5:	2002 REAL PROPERTY ASSESSMENT GUIDELINES pages 69 and 70,

Petitioners Exhibit 6: Beacon aerial map of the subject property,
 Petitioners Exhibit 7: Six interior photographs of the detached garage,
 Petitioners Exhibit 8: Petitioners' calculation for requested 2015 and 2016 values.

6. The Respondent offered the following exhibits:

Respondent Exhibit A: Letter from Larry Williamson dated September 5, 2016, with handwritten notations from the Assessor's Office, and attachments,
 Respondent Exhibit B: 2016 Notice of Assessment by Assessing Official (Form 113),
 Respondent Exhibit C: 2016 Notice of Defect in Completion of Assessment Appeal (Form 138) with attachments,
 Respondent Exhibit D: Mr. Suozzi's corrected Power of Attorney dated November 21, 2016,
 Respondent Exhibit E: Undated Meeting Minutes; text of Ind. Code § 6-1.1-15-12; Assessor's Operation Manual pages 142 and 143; and a screenshot of the DLGF's website titled *Petition for Correction of an Error (Objective Appeals)*,
 Respondent Exhibit F: Respondent's contentions.

7. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeal; (2) all orders, notices, and memorandum issued by the Board or our administrative law judge; and (3) the digital recording of the hearing.

8. The property under appeal is a single family residence and outbuildings located at 1843 North State Road 13 in Pierceton.

9. The PTABOA determined the following assessed values:

2014	Land \$97,200	Improvements \$193,000	Total \$290,200.
2015	Land \$97,200	Improvements \$234,300	Total \$331,500.
2016	Land \$83,400	Improvements \$241,500	Total \$324,900.

10. The Petitioners requested the following assessed values on their Form 133s:

2014	Land \$65,055	Improvements \$173,000	Total \$238,055. ²
2015	Land \$65,055	Improvements \$208,800	Total \$273,855. ³
2016	Land \$65,055	Improvements \$214,000	Total \$279,055.

² Mr. Suozzi erroneously listed the total as \$271,855 on the Form 133.

³ Mr. Suozzi erroneously listed the total as \$271,855 on the Form 133.

OBJECTIONS

11. Mr. Suozzi objected to Respondent's exhibits A-E on grounds the Respondent failed to exchange the evidence prior to the hearing.⁴ In response, the Respondent argued "there was no place on the Form 133 petition for marking the petition small claims or non-small claims so [she] assumed the petition fell under the Board's small claims procedures, which do not require parties to provide exhibit and witness lists prior to the hearing, unless requested by the other party." The ALJ took the objection under advisement.
12. The Board's procedural rules require both parties to exchange copies of their documentary evidence at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). The exchange requirement allows parties to be better informed and to avoid surprises, and it also promotes an organized, efficient, and fair consideration of the issues at the hearing. Failure to comply with this requirement can be grounds to exclude evidence. 52 IAC 2-7-1(f). Here, the Respondent's argument is flawed because the Board's small claims procedures do not apply to Form 133 petitions. Additionally, the Respondent should have been aware the hearing was a "standard hearing" from the hearing notice. Accordingly, the Respondent was responsible for providing the Petitioners with copies of documentary evidence prior to the hearing.
13. With that being said, the Petitioners should not have been surprised by Respondent's Exhibits A, B, C, and D because they either drafted the exhibit or had their representative sign it, indicating they have previously viewed the exhibits. Accordingly, the Board overrules the Petitioners objection to these exhibits.
14. Respondent's Exhibit E is an exhibit that was never viewed by the Petitioners and allowing this exhibit could prejudice the Petitioners. Accordingly, the Petitioners'

⁴ Mr. Suozzi also objected to the Respondent citing to final determinations issued by the Board because they were not introduced as evidence. In response, the Respondent argued she referred to the final determinations because "the determinations clearly say the correction of error process is not available for matters of subjective judgment." The ALJ took the objection under advisement. While the Board is not bound by its prior determinations, parties may reference those determinations in making their arguments. Accordingly, the objection is overruled.

objection is sustained and this exhibit is excluded from the record. The Board notes these rulings do not affect the final determination.

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.

PETITIONERS' CONTENTIONS

16. The property's assessment is too high. Not only did the PTABOA erroneously deny the appeals, they failed to provide proper notice of the hearing preventing the Petitioners from offering testimony and evidence. *Suozzi argument.*
17. These appeals comply with the DLGF rules pertaining to Form 133s. According to the DLGF, a Form 133 petition may be used "if there is a math error in computing the assessment and the description of the real property is in error" as is the case here. *Suozzi testimony; Pet'r Ex. 1.*
18. The detached garage is improperly labeled as a "dwelling situated on a home-site." Photographs of the interior of the detached garage indicate it is not being used for "commercial" or residential purposes.⁵ Instead, it is "used as storage of personal items." According to the Guidelines, the definition of a dwelling is "any building or portion of a building designed or occupied in whole or part as a place of residence." The Guidelines also indicate that there must be a residential dwelling unit on a parcel before the home-site acreage rate can be used. The detached garage has not been used for commercial

⁵ Because the Petitioners failed to present subject property record cards for the years under appeal, it is unclear how the Respondent assessed the detached garage and accompanying land.

purposes since 2008 and it was “never used as a residence.” Accordingly, the land is improperly assessed as a “home-site” when it should be assessed as “excess acreage.” *Suozzi argument; Pet’r Ex. 4, 5, 7.*

19. In 2017, the PTABOA corrected “most of the errors” listed on the Form 133s by changing the detached garage from a residential dwelling unit to a detached garage and changing the land priced as a “home-site around the detached garage to excess residential acreage with a well and septic.” The changes made in 2017 establish there are errors in the assessment years under appeal. The 2017 assessment is correct with a “few exceptions” and the changes should be applied to the years under appeal.⁶ *Suozzi argument; Pet’r Ex. 2.*

RESPONDENT’S CONTENTIONS

20. A Form 133 can only be used to correct objective errors. An error is objective “if it hinges on simple, true or false findings of fact.” Changes that require subjective judgment must be appealed on a Petition for Review of Assessment by Local Assessing Official (Form 130) and submitted within 45 days after an assessment is issued. The Board has issued several determinations that state Form 133s cannot be used for changes that require subjective judgment. *Engelberth argument; Resp’t Ex. E.*
21. The Petitioners were issued Notices of Assessment of Land and Improvements (Form 11s) for each year under appeal. Upon receipt of their Form 11, the Petitioners “could have filed a Form 130 at that time.” Instead, they waited until they received a Form 113 on September 20, 2016, regarding their 2016 assessment. Upon receipt of the Form 113, the Petitioners attempted to file a Form 130 for the 2016 assessment year. This Form 130 was “defected as late.” Accordingly, the Petitioners attempted to file Form 133s to “circumvent the deadline.” Taxpayers cannot use the correction of error process to

⁶ Mr. Suozzi argued the 2017 assessment was correct except that he “believes” the additional cost of \$2,500 for the well and septic should not be assessed because it does not “add any value” to the sale price of a property. He also argued that the ponds should be assessed as “farm ponds” and the grade of the detached garage should not be higher than “C” grade.

circumvent the deadlines and procedures of an appeal. *Engelberth testimony; Resp't Ex. B.*

22. The Petitioners' argument that their 2017 appeal has any bearing on their 2014, 2015, or 2016 appeals is flawed. Each assessment year stands alone and Form 133's do not have "retroactive subjective relief" for prior years. *Engelberth testimony; Resp't Ex. E.*
23. Finally, the Petitioners' claim that the PTABOA should have "invited" them to the local hearing is misplaced. Indiana Code 6-1.1-15-12(d)(3) does not say "anything about inviting" the taxpayers or their representative to a hearing on a Form 133. *Engelberth testimony; Resp't Ex. E.*

ANALYSIS

24. The Petitioners seek to correct alleged errors in their 2014, 2015, and 2016 assessments via Form 133s, which the DLGF has prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12.⁷ But 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.⁸ 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 at 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).
25. A determination is objective if it hinges on simple, true or false findings of fact. *See Bender*, 676 N.E.2d at 1115. "Where a simple finding of fact does not dictate the result

⁷ The Petitioners cannot avoid the statutory time limitations associated with the Petition for Review of Assessment (Form 131) review process by filing their claim on a Form 133. *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 Co. Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.*, 820 N.E.2d 1231, 1236-1237 (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).

⁸ To the extent the Petitioners offered any valuation evidence, the Board will not consider it.

or discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing.” *Id.*

26. Here, the Petitioners have raised four issues. First, the Petitioners challenge the Respondent’s alleged assessment of the detached garage and the accompanying land. Second, the Petitioners challenge the value of the “extra well and septic.” Third, the Petitioners challenge the grade of the detached garage. And finally, the Petitioners challenge the assessment of the ponds. Clearly, the challenge of the property’s values requires subjective judgment.

27. As to whether the Assessor used the proper pricing models or land classifications, subjective judgment is required to select pricing models, as it involves a judgment by the Assessor based on the characteristics of the property. Certainly, there can be times when the correct selection appears somewhat obvious, and much less judgment is required. Nevertheless, even in those instances, the selection of one of many pricing models, performed while comparing salient features of the property to the features associated with the respective models, involves more than just a simple true or false finding of fact. Mr. Suozzi’s testimony establishes that subjective judgment is involved, for example, in determining whether the detached garage should be priced as a commercial building, finished garage or as a dwelling. Additionally, subjective judgment is required in determining whether the detached garage is “graded too high,” whether the septic and well add value, and how the ponds should be classified.⁹

28. The determination of which pricing model to use or land classification does not fall into any of the categories contemplated in Ind. Code § 6-1.1-15-12 and it certainly cannot be identified as a mathematical error, as alleged by the Petitioners. The Tax Court has

⁹ Mr. Suozzi vacillates between referring to the detached garage as a commercial building and a residential dwelling; and the accompanying land as a home-site and a commercial site. Because the Petitioners did not present a subject property record card for the years under appeal, it is unclear how the garage and accompanying land was assessed.

explicitly stated that an assessor must use subjective judgment to determine which pricing model to employ. *See Bender*, 676 N.E.2d at 1116; *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 894 (Ind. Tax Ct. 1995).

SUMMARY OF FINAL DETERMINATION

29. The Board finds for the Respondent.

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>>.