

REPRESENTATIVE FOR PETITIONER:

John Mauser, pro se

REPRESENTATIVE FOR RESPONDENT:

Stephen W. Gore, Brown County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

John Mauser,)	Petition Nos.: 07-002-02-3-5-00001
)	07-002-03-3-5-00001
)	07-002-04-3-5-00023
Petitioner,)	
)	Parcel: 005102090000600
v.)	
)	
Brown County Assessor,)	County: Brown
)	Township: Jackson
Respondent.)	Assessment Years: 2002, 2003, and 2004

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

October 23, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (the “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. The petitioner, John Mauser, filed three Form 133 petitions seeking to have his land reclassified as agricultural. Because the Brown County Property Tax Assessment Board of Appeals (“PTABOA”) never made determinations on Mr. Mauser’s petitions, the Board lacks jurisdiction to address his appeals.

PROCEDURAL HISTORY

2. Mr. Mauser started the review process when he filed with the Brown County Auditor three Form 133 Petitions for Correction of Error. Those petitions addressed the 2002, 2003, and 2004, assessment years, respectively. The Auditor stamped the petitions as having been filed on November 10, 2009. *Board Ex. A.* Although the date next to Mr. Mauser’s signature is not entirely legible, it appears that he signed those petitions on November 9, 2006. *Id.*
3. That same day, Donna Lutes, the Brown County Assessor at the time, signed Mr. Mauser’s petitions indicating that she approved of his requested correction. *Id.* On November 17, 2006, however, the Brown County Auditor and the Jackson Township Assessor both signed the petitions indicating their disapproval. *Id.*
4. What happened next is unclear. On October 31, 2007, Stephen Gore, who replaced Ms. Lutes as the Brown County Assessor, signed Section V of the Form 133 petitions. *Id.* That section was designed for the county PTABOA to set forth its determination and explain its reasoning. It includes lines for the PTABOA to list the values that it has determined for land and improvements. In each of Mr. Mauser’s petitions, the entire section was left blank except for the words “to verify mailing date,” which appear immediately above Mr. Gore’s signature. *Id.*

5. At the Board's hearing, Mr. Gore attempted to explain what happened, saying:

Actually, the reason we're here is kind of an unusual circumstance. The property owners went to PTABOA with this case back before I became the assessor. And as it happens, there were only two members present and voting. I believe that they voted in the affirmative to return this property to agricultural classification, but there was a subsequent objection by another PTABOA member that a vote of two in the affirmative was not a legal quorum, and therefore they objected to the change on that technicality. When the form, when this Form 133 went through the auditor for approval, the PTABOA member who objected in the first place went to the auditor and said, I object to this; it's not a legal vote, and the auditor denied 133, as did the township assessor at the time.

[I] didn't think it was proper for me to upset the authority of the auditor and the township assessor, so I thought I would throw this to the IBTR, in their wisdom, perhaps they can decide what's proper, as far as going back and picking up the back years. *Gore testimony.*

6. In any event, 10 days after Mr. Gore signed Mr. Mauser's petitions, Mr. Mauser re-filed them with the Auditor indicating that he wanted to petition the Board for review.¹

7. On August 4, 2009, Alyson Kunack, the Board's designated Administrative Law Judge, held a hearing on all three petitions. She did not inspect Mr. Mauser's property. The following people were sworn-in and presented testimony at the hearing:

John Mauser

Stephen W. Gore, Brown County Assessor

8. Mr. Mauser offered the following exhibits:

Petitioner's Exhibit 1 – Aerial photograph and map of the subject property

Petitioner's Exhibit 2 – Six (6) pages of photographs of the subject property

9. The Assessor did not offer any exhibits.

¹ On his petitions for 2002 and 2003 (07-002-02-3-5-00001 and 07-002-03-3-5-00001), Mr. Mauser did not complete Section VI. That is the section a taxpayer must sign and date when he re-files his Form 133 petition to request that the Board review a PTABOA determination. *See Board Ex. A.* Similarly, they have no file stamp showing that they were re-filed with the Auditor. The Brown County Assessor, however, provided the Board with copies of those petitions and indicated that Mr. Mauser claimed that he had re-filed them along with his petition for 2004 (07-002-04-3-5-00023). Because the Board lacks jurisdiction to hear those petitions for the independent reason that the PTABOA failed to make a determination, it need not address their apparent filing defects.

07-002-02-3-5-00001, 07-002-03-3-5-00001,
and 07-002-04-3-5-00023

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10. The Board officially recognizes the following additional items as part of the record of proceedings and labels them Board Exhibits:

Board Exhibit A – The Form 133 petitions

Board Exhibit B – Notice of hearing dated March 6, 2008²

Board Exhibit C – Hearing sign-in sheet

Board Exhibit D – Waiver of 30-day notice for petitions 07-002-02-3-5-00001 and 07-002-03-3-5-00001

Board Exhibit E – July 16, 2009, facsimile from the Brown County Assessor and copies of petitions 07-002-02-3-5-00001 and 07-002-03-3-5-00001

ANALYSIS

11. The Board is a creature of the legislature and therefore has only those powers conferred by statute. *See Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999) (addressing the authority of the now-abolished State Board of Tax Commissioners). And “[a]ll doubts regarding a claim to power of a governmental agency are resolved against the agency.” *State ex rel. ANR Pipeline Co. v. Indiana Dep’t of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996). Thus, where the General Assembly has laid out statutory procedures for appealing to the Board, those procedures must be substantially followed before the Board can hear an appeal. *See State Bd. of Tax Comm'rs v. Mixmill Mfg.*, 702 N.E.2d 701, 704 (Ind. 1998). (“[T]he legislature intended to require the taxpayer to follow all statutory procedures for review before going to the Tax Court. This is not an irrational requirement.”)
12. Indiana Code § 6-1.1-15-12 provides specific procedures for correcting certain statutorily listed errors, including that a taxpayer’s taxes, as a matter of law, were illegal, or that there was a mathematical error in computing his property’s assessment. *See* Ind. Code § 6-1.1-15-12(a). A taxpayer seeking to correct one or more of those listed errors may file a Form 133 petition with the county auditor. The auditor, however, cannot correct the alleged error unless two of the following three officials approve: the auditor, the county

²The Board did not issue hearing notices for the petitions covering 2002 and 2003 (07-002-02-3-5-00001 and 07-002-03-3-5-00001). Instead, the parties waived their rights to 30-days advance notice of the hearing. *Board Ex. D.* 07-002-02-3-5-00001, 07-002-03-3-5-00001, and 07-002-04-3-5-00023

assessor, and the township assessor. I.C. § 6-1.1-15-12(d).³ Absent that approval, the auditor must forward the matter to the county PTABOA for determination. *Id.* If the taxpayer disagrees with the PTABOA's determination, he may appeal that determination to the Board. I.C. § 6-1.1-15-12(e).

13. In each of Mr. Mauser's petitions, the portion set aside for the PTABOA to set forth its determination and explain its reasoning is blank. Thus, Mr. Mauser's petitions are missing a PTABOA determination—the last crucial step before a Form 133 petition comes to the Board.
14. While Mr. Gore apparently tried to explain the lack of a PTABOA determination, his version of events appears somewhat inconsistent with the record. According to Mr. Gore, Mr. Mauser's Form 133 petitions were initially granted by two PTABOA members only to be later disapproved by the Auditor and Jackson Township Assessor. That does not match the statutory procedures, which call for those officials (and the county assessor) to address a Form 133 petition before it is referred to the PTABOA for a determination. And the timing of the officials' signatures in this case supports the inference that they addressed Mr. Mauser's Form 133 petitions before those petitions were referred to the PTABOA. In fact, Ms. Lutes approved Mr. Masuer's Form 133 petitions on the same day that Mr. Mauser signed them, and the Auditor and Jackson Township Assessor disapproved the petitions only eight days later. *Board Ex. A.*
15. Regardless, Mr. Gore's explanation does not change the equation. According to Mr. Gore, the PTABOA never officially acted because it did not have a quorum. Thus, even if events happened exactly as Mr. Gore described them, Mr. Mauser's petitions would still be missing the necessary PTABOA determinations.

³ The outlined procedures apply to cases, such as Mr. Mauser's, where the assessment under review was made by a county or township official rather than the Department of Local Government Finance ("DLGF"). Different procedures apply where the DLGF made the assessment. Ind. Code § 6-1.1-15-12(c).

16. Because the PTABOA did not make determinations on Mr. Mauser's Form 133 petitions, the Board lacks jurisdiction over Mr. Mauser's appeals.

SUMMARY OF FINAL DETERMINATION

17. The Board lacks jurisdiction over Mr. Mauser's appeal petitions. The Board therefore dismisses those petitions, but instructs the PTABOA to make determinations on them.

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

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>