

REPRESENTATIVE FOR PETITIONER:
Tony L. Hiles, Vice President of Von Incorporated

REPRESENTATIVE FOR RESPONDENT:
Julie Newsome, Huntington County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Von Incorporated	)	Petition No.:	35-005-11-3-5-82426-15
)		
Petitioner,	)	Parcel No.	35-05-14-100-182.501-005
)		
v.	)	County:	Huntington
)		
Huntington County Assessor,	)	Township:	Huntington
)		
Respondent.	)	Assessment Year:	2011

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

Issued: February 13, 2017

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

ISSUE

1. Is Petitioner able to challenge the subject parcel's value or the application of an influence factor on a Form 133 petition? And if so, did Petitioner prove the subject parcel's assessment is incorrect?

PROCEDURAL HISTORY

2. Petitioner initiated a 2011 assessment appeal by filing a Petition for Correction of an Error ("Form 133") with the Huntington County Auditor on May 8, 2015. On October 16, 2015, the Huntington County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Petitioner any relief. On December 8, 2015, Petitioner filed the Form 133 appeal with the Board.
3. Dalene McMillen, the Board's designated administrative law judge, held a hearing on November 15, 2016. Neither she nor the Board inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The subject property is an 8 foot by 145 foot vacant lot located on Lindley Street in Huntington.
5. The following people were sworn and testified:¹

Tony L. Hiles, Vice President of Von Incorporated
Julie Newsome, Huntington County Deputy Assessor.

¹ Terri Boone, Huntington County Assessor was sworn but did not testify.

6. Petitioner offered the following exhibits:

- Petitioner Exhibit 1 – Property record card (“PRC”),
- Petitioner Exhibit 2 – Two exterior photographs of the subject property,
- Petitioner Exhibit 3 – Chapter 2 – page 47 of the Real Property Assessment Guidelines (“Guidelines”),
- Petitioner Exhibit 4 – Petitioner’s description of the subject property,
- Petitioner Exhibit 5 – Value opinion letter prepared by Stephen Ness of Realliving Ness Bros. Real Estate & Auction Co.,
- Petitioner Exhibit 6 – Value opinion email prepared by Joanie Veach,
- Petitioner Exhibit 7 – Aerial map for comparable property #35-05-14-100-701.800-005,
- Petitioner Exhibit 8 – PRC for comparable property #35-05-14-100-701.800-005.

7. Respondent offered the following exhibits:

- Respondent Exhibit 1 – Form 133 petition,
- Respondent Exhibit 2 – 2011 PRC,
- Respondent Exhibit 3 – Department of Local Government Finance (“DLGF”) memorandum “Legislative Changes Affecting the Correction of Error Appeal,” dated May 7, 2014 and Indiana Code § 6-1.1-15-12.

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

- Board Exhibit A – Form 133 petition,
- Board Exhibit B – Hearing notice,
- Board Exhibit C – Hearing sign-in sheet.

9. The total assessed value for 2011 is \$400.

10. The Form 133 claimed a total assessment of \$100.

PETITIONER’S CONTENTIONS

11. Petitioner argues Respondent’s evidence shows the Form 133 petition was timely filed. Petitioner testified that for the 2011 assessment year, the taxes were first due on May 10,

2012, therefore the deadline to file the Form 133 petition was May 10, 2015. Since he filed his petition on May 8, 2015, it was thus timely. *Hiles testimony; referencing Resp't Ex 3.*

12. Petitioner argues the application of the negative influence factor and that certain assessment “standards” were not followed. Specifically, Petitioner argues this parcel lacks a driveway and public utilities and that various obstructions limit the access and to and use of the property. The property also has topography extreme elevation issues. *Hiles testimony; Pet'r Ex. 2-4.*
13. Petitioner presented an opinion of value prepared by Stephen Ness of Realliving Ness Bros. Real Estate & Auction Co. The letter was dated November 21, 2013. Mr. Ness' letter indicated that the parcel is an 8 foot strip that is located adjacent to another property owned by Petitioner. He estimated the property's value at \$300. *Hiles testimony; Pet'r Ex. 5.*
14. Petitioner also presented an opinion of value email prepared by Joanie Veach, dated November 21, 2013. Ms. Veach has been a real estate broker since 1976. She based her opinion on comparable properties that sold in 2011 that were in close proximity to the subject property. She indicated the subject property was an 8 foot wide unbuildable lot that was purchased to prevent an encroachment because the adjoining structure was built too close the property line. Ms. Veach valued the lot at \$200. *Hiles testimony; Pet'r Ex. 6.*
15. Petitioner further testified that in a previous Board hearing, he offered the testimony of realtor Kent Bowers. He stated that Mr. Bowers placed the value of the subject lot at “basically zero.” *Hiles testimony.*
16. As a proposed comparable property, Petitioner offered a 10 foot wide strip of usable flat land located in close proximity to the subject property. He claims Respondent applied a negative 50% influence factor to this usable land. *Hiles testimony; Pet'r Ex. 7-8.*

17. Finally, Petitioner argued that he did not feel he was given adequate time at his PTABOA hearing to present testimony and evidence on his various appeals that were heard, which included the subject property. *Hiles testimony.*

RESPONDENT'S CONTENTIONS

18. Respondent's 2011 PRC shows the subject is an 8 foot by 145 foot lot assessed with a negative influence factor of 55% for an assessed value of \$400. *Newsome testimony; Resp't Ex. 2.*
19. Respondent contends Petitioner is attempting to use a Form 133 petition to argue a subjective issue. Because no objective errors were presented, Respondent contends this appeal was filed erroneously. Respondent argues Petitioner should have filed Form 130 petition in order to challenge his assessed value. *Newsome testimony.*
20. Because Petitioner's Form 133 petition was received by the Auditor's office on May 8, 2015, Respondent contends that petition was not timely filed.. *Newsome testimony; Resp't Ex. 1 & 3.*

Analysis

21. Petitioner seeks to correct alleged errors in the 2011 assessment via Form 133 petition, 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.² These forms are not for changes that require subjective judgment. Ind. Code § 6-1.1-15-12; *O'Neal Steel v. Vanderburgh*

² Additionally, Petitioner 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).

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. 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).

22. 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.*
23. Here, Petitioner challenged the application of the negative influence factor, and to some extent, the parcel’s assessed value. Clearly, the challenge of the property’s assessed value requires subjective judgment.
24. Subjective judgment is required to apply influence factors. Individual parcels within a neighborhood may have peculiar conditions that are not reflected in the base rate of the land. 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, if any, is subjective. As to Petitioner’s claim that state law requires an objective application of a negative influence factor if certain conditions apply, the case law is clear that influence factors are not applicable under a Form 133.³
25. 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).

³ In addition, Petitioner argued the lot was not receiving a negative influence factor in 2011, however, Respondent’s PRC shows the lot was receiving a negative 55% influence factor to the land. *Resp’t Ex. 2.*

SUMMARY OF FINAL DETERMINATION

26. 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>>.