

REPRESENTATIVE FOR PETITIONERS:

Tony L. Hiles, Vice President and COO of Von, Inc.

REPRESENTATIVE FOR RESPONDENT:

Julie Newsome, Huntington County Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Yvonne C. Hiles & Von, Inc.,	)	Petition No.:	35-005-11-3-5-82416-15
)		
Petitioners,	)	Parcel No.:	35-05-14-100-259.100-005
)		
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

September 11, 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. Are the Petitioners able to challenge the subject parcel’s value or the application of influence factors on a Form 133 petition? And if so, did the Petitioners prove the subject parcel’s assessment is incorrect?

PROCEDURAL HISTORY

2. The Petitioners initiated their 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 19, 2015, the Huntington County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. On December 4, 2015, the Petitioners filed their Form 133 with the Board.
3. On June 13, 2017, the Board's administrative law judge (ALJ), Jennifer Bippus, held an administrative hearing on the petition. Neither the Board nor the ALJ inspected the subject parcel.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Mr. Hiles appeared *pro se*.¹ Deputy County Assessor Julie Newsome and Huntington County Assessor Terri Boone appeared for the Respondent. All were sworn and testified.
5. The Petitioners offered the following exhibits:
 - Petitioners Exhibit 1: "Description of subject property,"
 - Petitioners Exhibit 2: Flood zone map,
 - Petitioners Exhibit 3: "Assessment Summary 2008-2014,"
 - Petitioners Exhibit 4: 2010 Notice of Assessment of Land and Structures (Form 11),
 - Petitioners Exhibit 5: Subject property record card,
 - Petitioners Exhibit 6: Property record card for 228 North Brawley Street,
 - Petitioners Exhibit 7: 2011 REAL PROPERTY ASSESSMENT GUIDELINES pages 9, 43, 44, 45, 46, 47, 48, 49 and 50.
6. The Respondent offered the following exhibits:
 - Respondent Exhibit 1: 2011 subject property record card,
 - Respondent Exhibit 2: Plat map and aerial photograph.
7. The following additional items are recognized as part of the record:
 - Board Exhibit A: Form 133 with attachments,
 - Board Exhibit B: Hearing notice dated May 10, 2017,
 - Board Exhibit C: Hearing sign-in sheet.

¹ Mr. Hiles serves as the Vice-President and COO of Von, Inc.

8. The property under appeal is a vacant lot located on Lindley Street in Huntington.
9. The PTABOA determined a 2011 total land assessment of \$6,400.
10. The Petitioners requested a total assessment of \$100.

JURISDICTIONAL FRAMEWORK

11. 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

12. The subject property's assessment is too high. A drainage ditch runs through the front of the lot and 50% of the lot is situated in a flood zone. The lot is not accessible and lacks public utilities and landscaping. *Hiles argument; Pet'rs Ex. 1, 2.*
13. Both the 2002 and 2011 Guidelines provide criteria for when it is appropriate to apply influence factors. Unique conditions exist on the subject property, and the standards for applying influence factors were not followed. While the amount of an influence factor may require subject judgment, the question of whether to apply an influence factor does not. The Respondent incorrectly removed the influence factors. *Hiles argument; Pet'rs Ex. 5, 7.*
14. In an attempt to prove the subject property is over assessed, the Petitioners presented an assessment of a "base lot" located "close" to the subject property at 228 North Brawley Street. This lot is close in size to the subject property. However, it is not in a flood zone and is not encumbered by a drainage ditch. Yet, this lot is assessed for the same amount as the subject property. *Hiles argument; Pet'rs Ex. 6.*

RESPONDENT'S CONTENTIONS

15. The application of an influence factor is subjective and cannot be challenged via a Form 133. The Respondent reviewed the property record card and “there are no data entry errors.” *Newsome argument; Resp’t Ex. 1, 2.*

ANALYSIS²

16. The Petitioners seek to correct alleged errors on the subject parcel’s 2011 assessment via a Form 133, which the Department of Local Government Finance (DLGF) has prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12.³ 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. 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).
17. 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.*

² The Petitioners initiated their appeal via a Form 133. The challenge of a property’s value is not available via a Form 133. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden rests with the Petitioners.

³ Additionally, the Petitioners cannot avoid the statutory time limitations associated with the 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).

18. Here, the Petitioners have challenged the Respondent's alleged removal of negative influence factors and, to some extent, the parcel's assessed value. Clearly, the challenge of the property's value requires subjective judgment.⁴

19. 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. Regarding the Petitioners' claim that state law or standards require an objective application of a negative influence factor if certain conditions apply, case law is clear that influence factors are not appealable via a Form 133. As such, the Petitioners failed to make a prima facie case.

SUMMARY OF FINAL DETERMINATION

20. 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

⁴ To the extent the Petitioners offered any valuation evidence, the Board will not consider it.

- 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>>.