

REPRESENTATIVE FOR PETITIONER:

Phillip R. Drake, *Pro se*

REPRESENTATIVE FOR RESPONDENT:

Scott Potts, Local Government Representative for the White County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Phillip R. Drake,)	Petition Nos.: 91-015-07-3-5-00001
)	91-015-08-3-5-00002
)	91-015-09-3-5-00003
Petitioner,)	
)	Parcel: 91-54-12-000-000.806-015
v.)	
)	White County
White County Assessor,)	Prairie Township
)	
Respondent.)	Assessment Years: 2007, 2008, & 2009

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

November 20, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The property is an improved residential property located at 8828 S. 225 East, Brookston, Indiana.

2. The Petitioner filed Petitions for Correction of an Error (Form 133) regarding the assessment of the subject property for 2007, 2008, and 2009. The Property Tax Assessment Board of Appeals (“PTABOA”) denied the petitions on June 11, 2013. The Petitioner filed the Petitions for Correction of Error with the Board on July 1, 2013.
3. For 2007, the PTABOA determined the assessed value is \$29,800 for the land and \$77,700 for the improvements (total \$107,500). For 2008 and 2009, the PTABOA determined the assessed value is \$33,000 for the land and \$71,900 for the improvements (total \$104,900).
4. On his Form 133 Petition, the Petitioner contended the assessed value for those years should be \$33,000 for the land and \$29,900 for the improvements (total \$62,900), which would be the same as the assessed value for 2010.
5. Administrative Law Judge (“ALJ”) Ellen Yuhan held a hearing on these petitions on October 11, 2013. Neither the Board nor the ALJ inspected the subject property.
6. Phillip R. Drake and Scott Potts were sworn as witnesses and presented testimony at the hearing.
7. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Summary of the property’s assessments,
 - Petitioner Exhibit 2 – Property record card,
 - Petitioner Exhibit 3 – Photographs of the subject property from 2007.
8. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – IBTR determination for petition 91-015-06-1-5-00025 (Petitioner’s 2006 appeal),
 - Respondent Exhibit 2 – Subject property record card.
9. The following additional items are recognized as part of the record:
 - Board Exhibit A – The Form 133 Petitions,
 - Board Exhibit B – Notices of Hearing,
 - Board Exhibit C – Hearing Sign-In Sheet.

SUMMARY OF THE PETITIONER'S CASE

10. The assessed value for this property increased from \$38,300 in 2001 to \$137,700 in 2002. There was no change to the property. Nothing was added or removed. The Respondent speculated that because 2002 was a reassessment year, the property may have been re-evaluated. There was a change in the classification of the property from a Type – 3 Pole Barn to a single-family dwelling. Neither the Petitioner, nor the Respondent has the property record cards for that period. *Drake testimony; Petitioner Exhibit 1; Potts testimony.*
11. The subsequent assessed values were based on the 2002 assessed value. In 2006, the Petitioner filed a Form 130 appeal and the assessment decreased from \$107,500 to \$98,500. In 2008 and 2009, the assessed value was \$104,900. The subject property is assessed higher than the four-bedroom house next door and the house across the street. The Petitioner does not know how the Assessor justifies the assessment because an outside appraiser valued the property for \$75,000 in 2007. *Drake Testimony; Petitioner Exhibit 1.*
12. After several years of requesting an inspection, the Respondent visited the property in 2011, physically inspected it and reduced the value to \$62,900. As a result of this decrease, the Petitioner filed Form 133 petitions for assessment years 2007, 2008, and 2009. *Drake testimony.*
13. Nothing has been done to this property since 1999 when the Petitioner left the area. There have been no changes except for the items stored in the building. If the value for 2012 is \$40,000 and nothing has been done since 2007, then the value for 2007 should be \$40,000. *Drake testimony.*

SUMMARY OF THE RESPONDENT'S CASE

14. This building is unusual in that there is more garage area than living space. The property has cabinets, a kitchen sink, toilet, a hot water heater, and interior finish. In 2006, the person who inspected the property assessed it as a 1 ½-story dwelling with a 32 foot by 38 ½ foot unfinished half story over the garage. *Potts testimony.*
15. The Petitioner appealed his 2006 assessment and submitted an appraisal. The PTABOA denied relief. The Petitioner appealed to the IBTR and it upheld that PTABOA decision. The Petitioner did not file Form 130 petitions for 2007, 2008 or 2009, but did file a Form 130 appeal for 2010. *Potts testimony; Respondent Exhibit 1.*
16. As a result of the 2010 Form 130 appeal, the Respondent inspected the property. It reviewed the prior evidence and the history of the property. His understanding was that the Petitioner planned to build a house on the property and then the existing building would serve as a garage. Some finishes may have been removed and he decided to value the property as a detached garage with an unfinished loft and additional plumbing fixtures and additional finishes. The building does not fit a detached garage schedule or a dwelling schedule very well. With the appropriate adjustments, it could be either one. Therefore, the changes were subjective changes. The Respondent would not change the assessment based on a Form 133 Petition because a Form 133 appeal is not appropriate for a valuation challenge. *Potts testimony.*

ANALYSIS

20. Taxpayers have two methods to appeal an assessment: a Petition for Review of Assessment (Form 131) authorized by Indiana Code section 6-1.1-15-1, or a Petition for Correction of Error (Form 133) authorized by Indiana Code section 6-1.1-15-12. “A taxpayer that challenges a property assessment bears the responsibility of using the appropriate method.” *Franchise Realty Corp. v. Indiana Bd. of Tax Comm'rs*, 682 N.E.

2d 832, 833 (Ind. Tax Ct. 1997) (citing *Bender v. State Bd. of Tax Comm'rs*, 676 N.E.2d 1113, 1114 (Ind. Tax Ct. 1997)).

21. A taxpayer can file a Form 131 challenging any element of an assessment, but the appeal must be initiated within 45 days receiving notice of the assessment, or by May 10 of the assessment year, whichever is later. Ind. Code § 6-1.1-15-1(b).
22. The time for filing a Form 133 is longer.¹ The issues that can be raised with a Form 133, however, are limited. A taxpayer may file a 133 Petition to correct only objective errors in an assessment. It is not for changes that require subjective judgment. Ind. Code § 6-1-15-12; *O'Neal Steel v. Vanderburgh Co. Property Tax Assessment Board of Appeals*, 791 N.E.2d 857, 860 (Ind. Tax Ct. 2003); *Bender*, 676 N.E.2d at 1114. Section 12 provides an avenue for correcting objective mistakes in an assessment, not errors in subjective judgment. Ind. Code § 6-1-15-12.
23. A determination is objective if it hinges on a simple, true or false finding of fact. *See Bender*, 676 N.E.2d at 1115. “[W]here a simple finding of fact does not dictate the result and discretion plays role, [the] decision is considered subjective and may not be challenged through a Form 133 filing.” *Id.*
24. The Petitioner did not allege an error delineated in Ind. Code § 6-1.1-15-12. The Petitioner did allege that the Assessor erred in arriving at the schedule selection used to assess the property. Specifically, the Petitioner claimed that “[t]he improvement at this property is not a single family – but a garage.” *See* Form 133 Petitions. In essence, the Petitioner is challenging the schedule selection by the Assessor to arrive at the assessment.
25. Unlike an objective error that is clear on its face, a schedule selection involves subjective judgment by the assessor based on characteristics of the property. A Form 133 petition is

¹ Indiana Code section 6-1.1-15-12 does not specify a time limit. Nevertheless, the time limit for filing a Form 133 is three years. *See Will's Far-Go Coach Sales v. Nusbaum*, 847 N.E.2d 1074, 1078 (Ind. Tax Ct. 2006).

not the appropriate petition in which to challenge such an error. A simple finding of fact does not dictate the result in determining schedule and discretion plays a role, as the Respondent's testimony illustrates. Schedule selection is subjective and may not be challenged through a Form 133 filing. The determination of which schedule to use does not fall into any of the categories in Ind. Code § 6-1-15-12. In *Bender*, 676 N.E. 2d at 1116, the Tax Court explained:

Clearly, the assessor must use his judgment in determining which schedule to use. It is not a decision automatically mandated by a straightforward finding of fact. The assessor must consider the property in question, including its physical attributes and predominant use, and make a judgment as to which schedule is most appropriate. Just as the assessor must use subjective judgment to determine which base price model to employ within these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. In some cases, this decision will be a closer call than in others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citations omitted).

Summary of Final Determinations

26. Form 133 petitions are reserved for correcting objective errors. Because the selection of a pricing schedule is a subjective issue, the Petitioner is not entitled to relief for any of the years under appeal. The Board finds for the Respondent.

ISSUED: _____

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>>.