

**STATE OF INDIANA
Board of Tax Review**

OAK COVE REALTY LLC	)	On Appeal from the Hamilton County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
)	
v.	)	Petitions for Correction of Error, Form 133
	)	Petition Nos. 29-006-97-3-4-07023
HAMILTON COUNTY PROPERTY TAX	)	29-006-98-3-4-00028
ASSESSMENT BOARD OF APPEALS	)	29-006-99-3-4-00026
And DELAWARE TOWNSHIP	)	29-006-00-3-4-00021
ASSESSOR	)	29-006-01-3-4-00002
)	
	)	Parcel No. 1511300303001000
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

1. Whether the subject structure should be valued from the General Commercial Kit (GCK) pricing schedule.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-12, Ralph Campbell of Property Valuation Services, Inc. filed Form 133 petitions (Corrections of Error) on behalf of Oak Cove Realty LLC (Petitioner). The Form 133 petitions were filed May 8, 2001. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) Final Determinations are dated November 7, 2001. The Form 133 petitions were subsequently forwarded to the State for review on November 20, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 23, 2002, before Administrative Law Judge (ALJ) Dalene McMillen. Testimony and exhibits were received into evidence. Mr. Ralph Campbell of Property Valuation Services, Inc. represented the Petitioner. Ms. Lori Harmon represented Hamilton County. Mr. Terry McAbee represented Delaware Township.

4. At the hearing, the subject Form 133 petitions were made a part of the record and labeled as Board Exhibits A. The Notices of Hearings on Petitions were labeled as Board Exhibits B. In addition, the following exhibits were submitted to the State:

Petitioner's Exhibit 1 – Two (2) photographs of the subject structure, building specification from MacDougall Pierce Construction, Inc., dated October 11, 1995, and Property Valuation Services' proposed pricing

Respondent's Exhibit 1 – The Township's response to the issue on the Form 133 and a copy of the State's Instructional Bulletin 99-2.

Respondent's Exhibit 2 – A copy of quotes from Tax Court cases on Form 133's and schedule selections from *Rinker Boat v. State Board of Tax Commissioners*, 722 N.E. 2d 919, *Barth, Inc. v. State Board of Tax Commissioners*, 705 N.E. 2d 1084, *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800, and *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113.

5. The subject property is a commercial structure located on 12720 Ford Drive, Fishers, Delaware Township, Hamilton County.

6. The assessed values for the subject property as determined by the PTABOA for the assessment dates as of March 1, 1997, March 1, 1998, March 1, 1999, and March 1, 2000 are:
Land: \$31,970 Improvements: \$145,300 Total: \$177,270

7. The assessed value for the subject property as determined by the PTABOA for the assessment date as of March 1, 2001 is:
Land: \$95,900 Improvements: \$435,900 Total: \$531,800

8. The ALJ did not conduct an on-site inspection of the subject property.

Whether the subject structure should be valued from the General Commercial Kit (GCK) pricing schedule.

9. At the hearing, the parties agreed that a procedural issue should be determined first thus temporarily tabling any other issues for review. The parties agreed the procedural issue to be considered is whether a Form 133 petition can be used to

change the pricing schedule of a structure (selection of schedule). The parties agreed if it is determined that the Form 133 is the proper form, then the parties request the Form 133 petitions be remanded back to the PTABOA to address the issue of whether the building qualifies to be valued from the GCK pricing schedule rather than the GCM pricing schedule. However, if it is determined that the Form 133 petition is not the proper form to review an issue regarding a change in the pricing schedule, then the Form 133 issue will not be addressed and the determination by the PTABOA will stand.

Hearing Testimony

10. The subject structure is a GCK (kit) building. In 1998, Judge Fisher of the Indiana Tax Court, ruled in the case of *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800, that the determination of whether an improvement is a kit building is an objective determination, thereby, correctable by the Form 133. Even though the tax years involved in the *Barth, Inc.* case were for tax years 1990 and 1991, the Petitioner believes that a kit building is an objective error that would be correctable by way of a Form 133 petition for 1995. *Campbell testimony.*
11. 50 IAC 2.2-10-6.1 (a), General Commercial Kit referred to as GCK does not include use type descriptions, the schedule is used to value pre-engineered and pre-designed pole building that are used for commercial and industrial purposes. The fact that the Regulation does not have adequate description or a more defining definition is another indication of why the kit building is an objective determination, correctable by the Form 133. *Campbell testimony.*
12. The Petitioner's Form 133's were denied based on *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113 (Ind. Tax 1997) that the selection of the appropriate pricing schedule is an alleged error that cannot be corrected by way of a Form 133. Therefore choosing between GCM, GCI, GCR, and GCK pricing

schedules in the 1995 Regulation would be subjective. *McAbee testimony and Respondent's Exhibits 1 and 3.*

Conclusions of Law

1. Under the law applicable to these proceedings, the Petitioner is statutorily limited to the issues raised on the Form 133 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 133 petition. Ind. Code §§ 6-1.1-15-1, 2.1, and 4 (Statutes were amended in 2001 but amendments do not apply). See Form 133 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. Tax 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 133 process, the levels of review are clearly outlined by statute. First, the county auditor may correct an error described under subsection (a) (6), (a) (7), or (a) (8) only if the correction is first approved by at least two of the following officials; (1) the township assessor, (2) the county auditor, (3) the county assessor. If two of these officials do not approve such a correction, the county auditor shall refer the matter to the county PTABOA for determination. If the taxpayer disagrees with the PTABOA's decision on the Form 133, then he may appeal to the State for a final administrative determination. Ind. Code § 6-1.1-15-12. Form 133 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 133 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, the State will decide whether the issues

raised on the Form 133 petitions are the type of alleged errors that can be corrected by way of such a petition.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-12.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence

that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at § 5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning

the error raised. Accordingly, the Tax Court will not reverse the State's final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

Issue – Whether the subject structure should be valued from the General Commercial Kit (GCK) pricing schedule.

18. At the hearing, the parties agreed that a procedural issue should be determined first thus temporarily tabling any other issues for review. The parties agreed the procedural issue to be considered is whether a Form 133 petition can be used to change the pricing schedule of a structure (selection of schedule). The parties agreed if it is determined that the Form 133 is the proper form, then the parties request the Form 133 petitions be remanded back to the PTABOA to address the issue of whether the building qualifies to be valued from the GCK pricing

schedule rather than the GCM pricing schedule. However, if it is determined that the Form 133 petition is not the proper form to review an issue regarding a change in the pricing schedule, then the Form 133 issues will not be addressed and the determinations by the PTABOA will stand.

Procedural Issue Under Review

Whether a request for a change in the pricing schedule from GCM to GCK can be properly reviewed on a Form 133 petition (Correction of Error).

19. The Petitioner claims that the determination of whether a building is a “kit” building and should be valued from the GCK pricing schedule is an objective error and therefore correctable on a Form 133 petition.
20. Reproduction Cost minus Depreciation equals True Tax Value. Prior to tax year 1995, the reproduction cost for commercial and industrial property was the base rate for the model selected less adjustments. 50 IAC 2.1-4-3 and –5.
21. In addition, the State introduced Instructional Bulletins 91-8 and 92-1. Instructional Bulletin 91-8 provided for a 50% reduction in the base rate for qualifying kit buildings. State Instructional Bulletin 91-8 stated, “These amendments allowed for a fifty percent (50%) reduction in the base rate of qualifying structures priced from the General Commercial Mercantile, General Commercial Industrial and the Poultry Confinement Building Pricing Schedules.”
22. State ‘s Instructional Bulletin 92-1 provided local officials instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as required by the State’s Instructional Bulletin 91-8. Instructional Bulletin 92-1 gave a more detailed method to use to assess structures qualifying for the 50% reduction in the base rate.

23. In summary, for appeals prior to the 1995 assessment date, the methodology used (in Instructional Bulletins 91-8 and 92-1) to make this type of adjustment entailed making a 50% reduction to the base rate of the existing pricing schedule that was in use at the time. The change was an objective issue with a mathematical solution and could be addressed using the Form 133 petition.
24. As cited in the *Indiana Administrative Code* (2001), 50 IAC 2.1, “real property assessment” was repealed by the State Board of Tax Commissioners, filed September 14, 1992 (16 IR 662) effective March 1, 1995 and replaced by the “real property assessment” 50 IAC 2.2. The State’s 1995 Regulation, 50 IAC 2.2, eliminated the “kit” building adjustments described in the State’s Instructional Bulletins 91-8 and 92-1 for assessment years 1995 and thereafter.
25. Under the current regulation, the reproduction cost for commercial and industrial property is the base rate for the selected association grouping less adjustments, 50 IAC 2.2-10-6.1 and 2.2-11-6. As previously noted, the term “association grouping” was introduced by the 1995 regulation. Previously, the term “model” was the commonly used descriptive term.
26. 50 IAC 2.2-10-6.1 identifies four (4) association groupings to be used for the selection of the appropriate base rate. These four (4) groupings are: (1) General Commercial Mercantile (GCM), (2) General Commercial Industrial (GCI), (3) General Commercial Residential (GCR), and (4) General Commercial Kit (GCK).
27. The GCK association grouping was added to the 1995 Regulation to value pre-engineered and pole framed buildings used for commercial and industrial purposes. Selecting the GCK association grouping instead of another grouping is not a straightforward finding of fact. Rather, subjective judgment is used to select the appropriate association grouping. First, as part of the assessment analysis, the assessor must necessarily decide whether the physical attributes of the building under review more appropriately fall within the purview of one

association grouping or another. Also, in deciding whether the GCK association grouping should be used, the assessor must decide whether the building under review is a pre-engineered building and whether the frame type is light metal/wood siding. 50 IAC 2.2-11-5, Schedule A4.

28. Errors arising from an assessor's judgment are not the type of errors that can be corrected by way of a Form 133 petition. *Hatcher v. State Board of Tax Commissioners*, 561 N.E. 2d 852 (Ind. Tax 1990).
29. A Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Reams v. State Board of Tax Commissioners*, 620 N.E. 2d 758 (Ind. Tax 1993).
30. Schedule selection involves subjective judgment. Therefore, a Form 133 petition is not the appropriate petition with which to challenge an alleged error made in the selection of schedules. In *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113, 1116 (Ind. Tax 1997), the Tax Court held:

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).

31. For all reasons set forth above, the selection of schedule does not qualify for a review on a Form 133 petition. No change in the assessment is made as a result of this issue.

SUMMARY OF STATE DETERMINATIONS

Issue – Whether a request for a change in the pricing schedule from GCM to GCK can be properly reviewed on a Form 133 petition (Correction of Error).

As a result of this issue the Form 133 petitions are denied. There is no change in the assessment.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this _____ day of _____ 2002.

Chairman, Indiana Board of Tax Review