

**STATE OF INDIANA
Board of Tax Review**

PRESTWICK JUNCTION POINTE, INC,)	On Appeal from the Hendricks County
)	Property Tax Assessment Board of Appeals
Petitioner,)	
)	Petition for Correction of an Error, Form 133
v.)	Petition Nos. 32-022-98-3-4-00026
)	32-022-99-3-4-00027
HENDRICKS COUNTY PROPERTY)	32-022-00-3-4-00028
TAX ASSESSMENT BOARD OF)	
APPEALS and WASHINGTON)	Parcel No. 1230951E125001
TOWNSHIP ASSESSOR,)	
)	
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 Form 133 is a proper form with which to challenge whether the subject structure should be valued from the General Commercial Kit (GCK) or General Commercial Industrial (GCI) schedule.

2. Whether the subject structure is a GCK structure.

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, Milo Smith, on behalf of Prestwick Junction Pointe, Inc. (Petitioner), filed Form 133 petitions requesting a review by the State. The Hendricks County Property Tax Assessment Board of Appeals' (PTABOA) Final Determinations on the underlying Form 133 petitions are dated August 20, 2001. The Form 133 petitions were filed on August 27, 2001.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 25, 2002, before Administrative Law Judge Brian McKinney. Testimony and exhibits were received into evidence. Milo Smith represented the Petitioner. Gordon McIntyre, Lester E. Need, Ronald L. Faulkner, and Robert Richardson, all members of the PTABOA, represented Hendricks County. Michael A. Watkins represented the Washington Township Assessor's Office.

4. At the hearing, the subject Form 133 petitions were made part of the record and labeled Board's Exhibit A. The Notices of Hearing on Petition were labeled Board's Exhibit B. In addition, the following exhibits were submitted to the State without objection:
 - Petitioner's Exhibit 1 – Copy of *LDI v. State Board of Tax Commissioners*, 759 N.E. 2d 685 (Ind. Tax 2001);
 - Petitioner's Exhibit 2 – Copy of *Barth v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax 1998);
 - Petitioner's Exhibit 3 – Copy of State Final Determination 36-017-93-1-4-00007R (Donald G. Morris);
 - Petitioner's Exhibit 4 – Copy of 50 IAC 2.2-10-6.1(a);
 - Petitioner's Exhibit 5 – Copy of State Final Determination 03-005-95-1-4-00008 (Sweemey & Roberts);

Petitioner's Exhibit 6 –Notification of Final Assessment Determination of PTABOA for 2001 for subject property;

Petitioner's Exhibit 7 – Copy of *Hatcher v. State Board of Tax Commissioners*, 561 N.E. 2d 852 (Ind. Tax 1990);

Petitioner's Exhibit 8 – Copy of Petitioner Exhibit 6;

Petitioner's Exhibit 9 – Copy of State Instructional Bulletin 91-8;

Petitioner's Exhibit 10 – Copy of State Instructional Bulletin 92-1; and

Petitioner's Exhibit 11 – Rebuttal evidence and testimony.

Respondent's Exhibit 1 – Copy of the Notice of Defect for all three (3) petitions;

Respondent's Exhibit 2 – Copy of all three (3) Form 133 petitions; and

Respondent's Exhibit 3 – Copy of *Bender v. State Board of Tax Commissioners*, 676 N.E. 1113 (Ind. Tax 1997).

5. The subject property is a health club structure located at 4807 Beechwood Dr., Avon, Indiana (Hendricks County, Washington Township). The tax years under appeal are 1998, 1999, and 2000. The Administrative Law Judge did not inspect the subject property.
6. At the hearing, the parties agreed the values under appeal are \$42,300 for the land for all three (3) petitions. The value under appeal for the improvements is \$425,430 for 1998 and 1999, and \$429,970 for 2000.

Testimony

7. The Petitioner testified that the Form 133 petition is a proper appeal process to challenge whether the subject structure should be priced from the GCK pricing schedule. The Petitioner argues that the 91-8 and 92-1 State Instructional Bulletins are still in effect because they have not been specifically replaced.
Smith Testimony.

8. The Petitioner testified that the building is a GCK structure, and submitted a Notice of Final Assessment Determination dated June 11, 2001, for the 2001 Assessment Year. The subject structure was assessed in 2001 as a GCK structure. *Smith Testimony*.
9. The Respondent testified that selection of schedule is not proper on a Form 133 because it involves the assessor's subjective judgment. *McIntyre Testimony*.

Conclusions of Law

1. Under the law applicable to these proceedings, the Petitioner is 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. 50 IAC 17-5-3. See also the Form 133 petition authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. 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 issue raised on the Form 133 petitions is the type of alleged error 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.

D. Use of the GCK Schedule

18. The Petitioner claims that the determination of whether a building is a "kit" building and should be assessed from the GCK pricing schedule is an objective error and, therefore, correctable by a Form 133 petition.
19. 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. The State's Instructional Bulletin 91-8 provided for a 50% reduction in the base rate for qualifying kit buildings. The State's 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."

For appeals prior to the 1995 assessment date, the methodology used to make this type of adjustment entailed making a fifty percent (50%) reduction to 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.

20. 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.
21. 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 50 IAC 2.2-11-6. (The term “association grouping” was introduced by the 1995 regulation. Previously, the term “model” was the commonly used descriptive term).
22. 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).
23. 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 2.2-11-6, Schedule A4.

24. 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).
25. 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).
26. 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).

27. The Petitioner testified that 50 IAC 4.2-1-5 states that "instructional bulletins" will remain in effect unless specifically rescinded or revised by subsequent directives or instructional bulletins. Therefore, The Petitioner contended, the State's

Instructional Bulletins 91-8 and 92-1 that outline and identify the characteristics of a kit building is an objective error that would be correctable by way of the Form 133 petition.

28. However, 50 IAC 4.2-1-5 of the *Indiana Administrative Code* (2001) is the administrative code governing “Tangible Personal Property”; therefore, this code is not applicable to the real property assessment, which is at issue in this hearing. Tangible personal property (50 IAC 4.2) and real property assessments (50 IAC 2.2) are clearly separate Regulations established by the State to govern different types of property assessments.
29. The Petitioner also testified that 50 IAC 4.3-1-5 also stands for the same proposition, and that it is a proposed rule of the Department of Local Government Finance. However, this rule is also part of the “Tangible Personal Property” rule and is not applicable to the real property assessment.
30. For all reasons set forth above, the issue of selection of schedule does not qualify for review on a Form 133 petition. No changes are made in the assessments as a result of this issue.

E. Whether the Building should be priced from the GCK Schedule.

31. Assuming that the Petitioner can argue this type of alleged error on a Form 133, the Petitioner must still present probative evidence establishing the subject structure is a GCK structure.
32. At the hearing, the Petitioner only presented one exhibit in an attempt to show the subject building is a GCK structure. The Petitioner presented a Final Assessment Determination dated June 11, 2001 for Assessment Year 2001. (Petitioner’s Exhibit 6). This exhibit shows the building was assessed in 2001 as a GCK structure.

33. In Indiana, however, each tax year is separate and distinct. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E. 2d 713 (Ind. Tax 1995). A Final Assessment Determination for the 2001 assessment does not constitute probative evidence in this appeal.
34. The Petitioner did not present any probative evidence regarding the features of the subject building. The Petitioner failed to meet the burden of making a prima facie case. Accordingly, there is no change in the assessment as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: Whether the Form 133 is a proper form with which to challenge whether the subject structure should be value from the GCK or GCI schedule.

35. The Form 133 is not the appropriate petition with which to challenge the selection of schedule, which is a subjective determination.

Determination of ISSUE 2: Whether the subject structure is a GCK structure.

36. The Petitioner did not make a prima facie case that the building is a GCK structure.

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