

REPRESENTATIVE FOR PETITIONER:
Ronald D. Fetters, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Jennifer Becker, Indiana Assessment Service (IAS), Consultant on Behalf of Bolivar
Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

JACO LLC)	Petition No.: 04-001-02-3-4-00013
)	Parcel: 001-00321-00 / 12-22-600-005000-01
Petitioner,)	
)	
v.)	County: Benton
)	Township: Bolivar
BOLIVAR TOWNSHIP)	
ASSESSOR)	
)	Assessment Year: 2002
Respondent.)	

Appeal from the Final Determination of
Benton Property Tax Assessment Board of Appeals

August 18, 2006

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. The parties raised several issues at the hearing, which the Board consolidates and restates as:
 - (1) *Whether the Petitioner's claim that the Respondent did not correctly apply the Standpipes and Surface Reservoirs cost schedule to the physical features of the subject improvements in assessing those improvements is an error that may be corrected pursuant to a Form 133 Petition for Correction of an Error; and*
 - (2) *Whether the Respondent correctly applied the Standpipes and Surface Reservoirs cost schedule to the physical features of the subject improvements.*

PROCEDURAL HISTORY

2. On or about July 15, 2004, the Petitioner filed a Form 133 Petition for Correction of an Error with the Benton County Assessor. The Benton County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the relief sought by the Petitioner on August 24, 2004. On September 23, 2004, pursuant to Ind. Code § 6-1.1-15-12, the Petitioner filed its Petition to the Indiana Board of Tax Review for Correction of Error ("Form 133 Petition to the Board") requesting that the Board conduct an administrative review of the PTABOA's determination.¹

¹ September 23, 2004, is the date the Petitioner's certified tax representative signed the Form 133 Petition to the Board, and the petition contains the notation "Please Note: Petition Mailed 09-23-04." *Board Ex. A.* The petition does not contain a date stamp from the Benton County Auditor indicating the date the Petitioner filed the petition or the date that the Benton County Auditor mailed the petition to the Board. *See id.* The Board received the Form 133 Petition to the Board on September 29, 2004. *Id.* On its face, the Form 133 Petition to the Board requires that the form be filed with county auditor within thirty (30) days of the date of the PTABOA's determination. *Id.* The Respondent, however, does not raise any issue with regard to the date of filing, and the Board therefore accepts the date listed on the petition as the filing date.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on February 22, 2006, in Fowler, Indiana before Joan Rennick, the duly designated Administrative Law Judge (“ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner:
 - Ronald D. Fetters, Certified Tax Representative
 - Kevin P. Benner, Comptroller, JACO LLC

 - For the Respondent:
 - Jennifer Becker, Consultant on Behalf of Bolivar Township and Benton County

 - Janet Guimond, Benton County Assessor and Kelly Rose, Benton County Deputy Assessor were present at the hearing, but did not testify.

5. The following exhibits were presented for the Petitioner:
 - Petitioner’s Exhibit 1 – Cover letter dated February 22, 2006; Form 133 attachment; Standpipes and Surface Reservoirs Cost Schedule; computer generated printout regarding costs of improvements; Form 130 filed 11/15/03 for year 2002 for parcel# 122260000500001; Form 115 dated 4/14/03; Copy of property record card (PRC) of parcel# 08-15-200-037000-04; Pictures of parcel# 08-15-200-037000-04; Form 115 dated 6/24/05; authorized uses of Form 133;3 photographs of subject property; 7 photographs of a property owned by the Petitioner’s competitor (Senesac).²

6. Subsequent to the hearing, the Petitioner submitted the following documents to the ALJ: (1) a cover letter dated February 23, 2006, from Ronald D. Fetters to the ALJ; (2) an unsigned letter dated February 16, 2006, from Mr. Fetters to the Benton County PTABOA and the Benton County Assessor; (3) STB Instructional Bulletin 94-7; (4) STB Instructional Bulletin 99-2; (5) a photocopy of an unsigned letter dated February 16,

² The Petitioner did not separately label any of its exhibits. The Board therefore cites to individual documents within Petitioner’s Exhibit 1 by providing a description of the document to which it cites.

2006, from Mr. Fetters to the Benton County PTABOA and the Benton County Assessor; and (6) Bolivar Township Assessor Witness and Exhibit List. The Board did not request the documents submitted by Mr. Fetters, and Mr. Fetters did not show good cause for the Board to accept those documents as evidence after the close of the hearing. *See* Ind. Admin. Code, tit. 52, r. 2-8-8. The Petitioner had ample opportunity at the hearing to present evidence in support of its case or in rebuttal to the Respondent's evidence. Mr. Fetters did not explain why he was unable to present the documents in question at the hearing. The Board therefore does not consider the documents submitted by Mr. Fetters after the hearing as evidence in issuing its determination in this matter.

7. The following exhibits were presented for the Respondent:

- Respondent's Exhibit 1 – Response to Petitioner's Form 133 Petition for Correction of Error; Notice of Appearance of Consultant on Behalf of Assessor
- Respondent's Exhibit 2 - Copy of 2002 PRC for the subject property
- Respondent's Exhibit 3 - Copy of *Bender v. State Board of Tax Commissioners*

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

- Board Exhibit A – The Form 133 Petition
- Board Exhibit B – Notice of Hearing dated December 21, 2005
- Board Exhibit C – Hearing Sign In Sheet

9. The subject property consists of land containing, among other things, commercial yard improvements assessed as reservoirs. For purposes of this decision, the Board will refer to the commercial yard improvements assessed as reservoirs as the "subject improvements." These reservoirs store 28% nitrogen fertilizer. The subject property is located at 6221 E. Old US Hwy 52, Fowler, IN and is a part of the Jasper County Co-op.

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

11. The PTABOA determined that the assessed value of the subject property is \$82,600 for the land and \$893,400 for the improvements for a total assessed value of \$976,000.

12. The Petitioner requests a value of \$82,600 for the land and \$376,400 for the improvements for a total value of \$459,000.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana 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.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A petitioner seeking review of a determination of a county property tax assessment board of appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
16. Once the petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

17. The Petitioner contends that the Respondent did not correctly apply the cost schedules set forth in Real Property Assessment Guidelines for 2002- Version A (“Guidelines”) to the physical features of the subject improvements. *Fetters argument*. More specifically, the Petitioner contends that the Respondent applied the wrong portion of the cost schedule for Standpipes and Surface Reservoirs in assessing the subject improvements. The Petitioner further contends that such error is objective in nature and therefore correctible pursuant to a Form 133 Petition for Correction of an Error (“Form 133 petition”). *Id.*
18. The Respondent contends that the error claimed by the Petitioner is subjective and therefore not correctible pursuant to a Form 133 petition. *Becker argument*.
19. The Petitioner presented the following evidence and argument in support of its position:
 - A. The subject improvements consist of two 500,000 gallon cut and fill reservoirs with no flooring, a roof of wood trusses, wood decking and asphalt shingles. *Fetters testimony; Pet’r Ex. 1 at cover letter*. The base of the floor of each reservoir is stone with two (2) hypalon liners. *Id.* The primary liner holds the liquid and the secondary liner is used for testing equipment and for leakage. *Id.*
 - B. The Petitioner agrees that the Respondent used the correct cost schedule (Standpipes and Surface Reservoirs) to assess the subject improvements. That schedule, however, lists three (3) types of improvements: welded steel standpipe (height exceeds diameter); concrete tanks (surface reservoirs); and “cut and fill reservoirs with concrete or asphalt linings and wood roof structures.” *Fetters testimony; Pet’r Ex. 1 at cover letter, cost schedule*. The Petitioner contends that the subject improvements fall under the third category – “cut and fill reservoirs.” *Fetters argument*. The cost schedule indicates that cut and fill reservoirs should be assessed at the rate of \$.20 per gallon or \$65,200 per acre foot. *Fetters argument; Pet’r Ex. 1 at cost schedule*.

Thus, each reservoir should be assessed for \$100,000 (500,000 x \$.20/gallon). For the assessment years at issue, however, the Respondent assessed the subject improvements as concrete tanks and valued them at \$358,500 each. *Fetters testimony; Pet'r Ex. 1 at cover letter.*

- C. The Petitioner also submitted a property record card (PRC) for a property owned by Senesac, one of the Petitioner's competitors. *Pet'r Ex. 1 at Senesac PRC.* The Senesac property contains a 319,000 gallon reservoir priced from the concrete water tank (surface reservoir) portion of the Standpipes and Surface Reservoirs schedule. *Id.* Senesac's reservoir was built in 1995 and receives 12% depreciation and an E+2 grade. *Id.* Senesac's reservoir is assessed for \$141,300. *Id.*
- D. The Petitioner contends that its claimed error may be corrected pursuant to a Form 133 petition. Kevin Benner, the Petitioner's comptroller, originally approached assessing officials and filed a Form 130 petition based upon the 2002 assessment of the subject property. *Fetters testimony; Pet'r Ex. 1.* The Petitioner based its claims on the fact that it constructed the subject improvements in 2000 at a total cost of \$449,723, but that the Respondent assessed the improvements at \$358,500 each. *Id.* Moreover, the original cost of construction includes costs associated with personal property. *Fetters testimony; Pet'r Ex. 1 at Form 130 petition, computer generated printout regarding costs of improvements.* The PTABOA issued a Form 115 Notification of Final Assessment Determination upholding the Respondent's assessment. *Fetters testimony; Pet'r Ex. 1 at Form 115 (2002 assessment).* Mr. Benner testified that he received the PTABOA's determination in the middle of tax season, and that he was too busy to address the matter at that time. *Benner testimony.* When Mr. Benner finally turned his attention to the matter, the deadline for appealing the PTABOA's determination had lapsed. *Id.* At that point, the Petitioner hired Mr. Fetters and filed its Form 133 petition. *Id.*
- E. The Petitioner contends that the Respondent's error in applying the Standpipes and Surface Reservoirs cost schedules is objective and therefore correctible pursuant to a

Form 133 petition. *Fetters argument*. According to the Petitioner, assessing officials bear the responsibility of looking at the improvements and choosing the best schedule or the schedule that most closely resembles the improvements. *Fetters testimony*.

- F. The Petitioner also highlighted a portion of an excerpt from what it identified as either bulletin 99.1 or 99.2 issued by the State Board of Tax Commissioners (“State Board”).³ *Fetters testimony; Pet’r Ex. 1 at bulletin excerpt*. The highlighted portion provides the following example of an error correctible pursuant to a Form 133 petition, “[a]n exterior feature was incorrectly charged or incorrectly classified.” *Id.*
- G. Finally, the Petitioner points to the fact that the parties subsequently agreed to change the assessment of the subject improvements for 2005. *Fetters testimony; Pet’r Ex. 1 at Form 115 (2005 assessment)*. Pursuant to that agreement, the PTABOA issued a Form 115 Notification of Final Assessment Determination changing the assessment of the subject improvements to a value based upon a rate of \$.20 per gallon and a quality grade of “A.” *Id.*

20. The Respondent presented the following evidence and argument in support of the assessment:

- A. The Respondent contends the Form 130 petition regarding the 2002 assessment of the subject property is irrelevant to the present appeal. *Becker argument*. The issue on the Form 130 petition centered on the actual costs of constructing the subject improvements, rather than on the selection of the cost schedule used to assess those improvements. *Id.*

³ The Indiana General Assembly abolished the State Board of Tax Commissioners as of December 31, 2001. P.L. 198-2001 SEC. 119(b)(2). Effective January 1, 2002, the General Assembly created the Board and the Department of Local Government Finance (“DLGF”). See P.L. 198-2001, SEC. 66; P.L. 198-2001, SEC. 95; Ind. Code § 6-1.1-1-30-1.1(2001); Ind. Code § 6-1.5-1-3(2001). Between them, the DLGF and the Board perform functions previously performed by the State Board.

- B. The Respondent cites to *Bender v. State Bd. of Tax Comm'rs*, 676 N.E.2d 1113, 1114 (Ind. Tax Ct. 1997) for the proposition that only objective errors may be corrected pursuant to a Form 133 petition. The assessor had to exercise subjective judgment in choosing the portion of the cost schedule to use in pricing the subject improvements. *Id.* Consequently, a Form 133 petition is not the appropriate vehicle for challenging the propriety of the assessor's decision. *Id.*

Discussion

Issue I

Whether the Petitioner's claim that the Respondent did not correctly apply the Standpipes and Surface Reservoirs cost schedule to the physical features of the subject improvements in assessing those improvements is an error that may be corrected pursuant to a Form 133 Petition for Correction of an Error

21. Before the Board considers the merits of the Petitioner's claim that the Respondent assessed the subject improvement using the wrong portion of the Standpipes and Surface Reservoirs cost schedule, the Board must first determine whether a Form 133 petition is an appropriate vehicle by which to raise such a claim.
22. Form 133 petitions are governed by Ind. Code § 6-1.1-15-12. *Bender v. State Bd. of Tax Comm'rs*, 676 N.E.2d 1113, 1114 (Ind. Tax. Ct. 1997). That statute provides, in relevant part:
- (a) Subject to the limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) of the following reasons:
 - (1) The description of the real property was in error.
 - (2) The assessment was against the wrong person.
 - (3) Taxes on the same property were charged more than one (1) time in the same year.
 - (4) There was a mathematical error in computing the taxes or penalties on the taxes.
 - (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
 - (6) The taxes, as a matter of law, were illegal.
 - (7) There was a mathematical error in computing an assessment.

- (8) Through an error of omission by and state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.

Ind. Code § 6-1.1-15-12 (2003).

23. As an initial matter, the Petitioner does not identify the specific statutory provision upon which it basis its claim. The only provision that appears even remotely applicable is set forth in subsection (a)(7) – that there was a mathematical error in computing the assessment.
24. The Indiana Tax Court repeatedly has held that the only errors subject to correction pursuant to Form 133 petition “are those which can be corrected without resort to subjective judgment.” *See, e.g., Bender*, 676 N.E.2d at 1114 (quoting *Hatcher v. State Bd. of Tax Comm’rs*, 561 N.E.2d 852, 857 (Ind. Tax. Ct. 1990)). Moreover, the Tax Court has held that the legislature intended Ind. Code § 6-1.1-15-12(a)(7) to apply only to errors “involving the incorrect use of numbers in determining the assessment” and “errors which can be corrected accurately, with precision, and with rigorous exactness.” *Bender*, 676 N.E.2d at 1114 (quoting *Hatcher*, 561 N.E.2d at 852).
25. Thus, where a decision under review is dictated automatically by a simple true or false finding of fact, it is considered objective and properly challenged via a Form 133 petition. *Bender*, 676 N.E.2d at 1115. For example, in *Hatcher*, the court pointed to the question of whether a dwelling has a fireplace as an example of an objective matter, because the answer can be “judged and corrected objectively through a visual inspection,” and the value of the non-existent item can be subtracted from the assessment computation. *Hatcher*, 561 N.E.2d at 857. In other words, the decision is objective “because the outcome [is] mandated by a single, relatively uncomplicated factual finding.” *Bender*, 676 N.E.2d at 1115.
26. The Tax Court has had numerous occasions to apply the general rules concerning the use of Form 133 petitions to specific challenges alleging that assessing officials applied

inappropriate cost schedules in assessing real property. *See, e.g., Bender, supra; O'Neal Steel v. Vanderburgh County Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 857, 860 (Ind. Tax Ct. 2003) ; *Southworth v. Grant County Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 862, 864 (Ind. Tax Ct. 2003). In each instance, the Court has held that a Form 133 petition is an inappropriate vehicle for making such a challenge. *Bender*, 676 N.E.2d at 1116; *O'Neal Steel*, 791 N.E.2d at 860 (holding that the taxpayer could not challenge the assessor's decision to use the General Commercial Industrial ("GCI") instead to the General Commercial Kit ("GCK") cost schedules to assess taxpayer's improvements); *Southworth*, 791 N.E.2d at 864 (holding that assessor decision regarding whether to use GCK cost schedule could not be challenged *via* a Form 133 petition).

27. In *Bender*, the court addressed a taxpayer's use of a Form 133 petition to assert a claim that his apartment building should have been assessed using the General Commercial Residential ("GCR") cost schedule rather than the residential cost schedule. *Bender*, 676 N.E. at 1116. The court provided the following explanation in support of its holding that a Form 133 petition could not be used for such a challenge:

Clearly, the assessor must use his or her 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 with these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. *See Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 894 (Ind. Tax Ct. 1995) ("Because a building may not conform perfectly with model specifications, a hearing officer must use subjective judgment to decide which model the building most closely resembles."). *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.*

Id. (emphasis added).

28. Here, the Petitioner's claim boils down to whether the Respondent should have assessed the subject improvements using the cost schedule for "cut and fill reservoirs" instead of the schedule for "concrete water tanks." *See REAL PROPERTY ASSESSMENT GUIDELINES*

FOR 2002 – VERSION A, app. G at 31 (incorporated by reference at 50 IAC 2.3-1-2)(setting forth three schedules for “Standpipes and Surface Reservoirs”). This is precisely the type of choice at issue in *Bender* and the other above-cited cases. In fact, the Petitioner’s representative virtually acknowledged the subjective nature of the assessor’s decision in this case when he testified: “As the Manual advises . . . it is [the] responsibility of [the] assessing official to look at the pictures or improvement and pick the best or closest schedule to them.” *Fetters testimony*.

29. The Petitioner seeks to avoid the clear import of *Bender* by pointing to an excerpt from a bulletin issued by the State Board of Tax Commissioners (“State Board”) where the State Board gave the following example of an error that is correctible via a Form 133 petition: “An exterior feature was incorrectly charged or incorrectly classified.” *Fetters testimony; Pet’r Ex. 1 at bulletin*. The example highlighted by the Petitioner is one of several examples under the broader category of errors that the bulletin identifies as correctible pursuant to a Form 133 petition. In that regard, the bulletin provides the following description of correctible error: “An entry was made on the PRC with respect to a physical feature, and the fact that the entry was in error can be determined by a visual inspection or evidence that the error exists is submitted. *Grounds for a correction do not exist if the entry was in any way based on the judgment of the person who made the entry.*” *Id.* (emphasis added). Thus, if an assessor is required to use judgment in classifying an exterior feature, that classification would not be subject to attack *via* a Form 133 petition.
30. The assessor’s decision regarding the appropriate classification of the subject improvements cannot be viewed as objective given the brevity of the descriptions contained in each portion of the Standpipes and Surface Reservoirs cost schedule. For example, the Guidelines contain only the following notation to describe improvements to be assessed as a welded steel standpipe, “[h]eight exceeds width.” GUIDELINES, app. G at 31. The Guidelines provide even less help in identifying a concrete water tank, providing only the notation: “surface reservoir.” Mr. Fetters himself demonstrated the lack of clarity in the descriptions provided by the Guidelines, when in discussing concrete

water tanks he testified: “It says ‘surface reservoir.’ *I imagine [that] would be probably . . . a vertical tank above the surface.*” *Fetters testimony* (emphasis added).

31. Moreover, the Petitioner’s position is untenable in light of Indiana’s new system of assessment based upon the market value-in-use of real property. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).
32. A property’s market value-in-use, as ascertained through application of the Guidelines is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with [USPAP].”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
33. An assessor’s error in applying the Guidelines, however, will not necessarily invalidate an assessment, as long as the assessment accurately reflects a property’s market value-in-use. *See* Ind. Admin. Code tit. 50, r 2.3-1-1(d); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). In *Eckerling*, the taxpayers challenged an assessment on grounds that the assessor should have valued their improvement using the cost schedules associated with the General Commercial Retail (“GCR”) General Office

model rather than the cost schedules for residential improvements because they used the improvement as an office. *Eckerling*, 841 N.E.2d at 678. The Tax Court noted that the taxpayers did not present any of the types of market value-in-use evidence described by the Manual, but rather focused solely upon the assessor's methodology. *Id.* The taxpayers, however, did not present any evidence to show that the assessor's methodology failed to accurately reflect their property's market value-in-use. *Id.* Thus, the Court held that the taxpayers failed to present a prima facie case that their assessment was in error. *Id.*

34. The Petitioner's argument that the Respondent applied the incorrect portion of the Standpipes and Surface Reservoirs cost schedule is closely analogous to the taxpayers' claims in *Eckerling*. Thus, even if the Petitioner were correct in its claim that the Respondent should have applied the costs associated with "cut and fill reservoirs," that fact, by itself, would not be sufficient to establish an error in assessment.
35. Finally, the Board gives no weight to the Petitioner's evidence concerning the assessment of reservoirs owned by its competitor or the Respondent's subsequent agreement to assess the subject improvements as "cut and fill" reservoirs for the 2005 assessment date. The Petitioner did not explain how such evidence demonstrates that the Respondent's choice concerning the appropriate cost schedule to use in assessing the subject improvements was objective. At most, such evidence might be relevant to the question of whether the Respondent properly exercised its discretion in making that choice. As explained above, however, a Form 133 petition cannot be used to challenge an assessor's subjective judgment.
36. Based on the foregoing, the Board finds that error raised by the Petitioner in its Form 133 petition is a subjective error that cannot be raised pursuant to a Form 133 Petition to Correct Error.

Issue II

Whether the Respondent correctly applied the Standpipes and Surface Reservoirs cost schedule to the physical features of the subject improvements

37. The Board's finding that the error raised by the Petitioner may not be corrected through use of a Form 133 Petition to Correct an Error renders it unnecessary for the Board to address the merits of its claim that the Respondent erred in applying the Standpipes and Surface Reservoirs cost schedule to the subject improvements. Nonetheless, were the merits of the Petitioner's claim properly before the Board, the Board still would have denied the Petitioner's claim. As explained above, the Petitioner's claim is closely analogous to the taxpayers' claim in *Eckerling*, which the Tax Court found to be insufficient to raise a prima facie case of error.

SUMMARY OF FINAL DETERMINATION

38. The Petitioner's claim of error cannot be raised pursuant to a Form 133 Petition for Correction of an Error. Even if the merits of the Petitioner's claim were properly before the Board, the Petitioner failed to establish a prima facie case of error in assessment. The Board finds for the Respondent. There shall be no change to the assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.