

REPRESENTATIVES FOR PETITIONER: No one appeared on behalf of the Petitioner at the current Board remand hearing.¹

REPRESENTATIVES FOR RESPONDENT: Larry May, Steuben County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

BCD INVESTMENTS,)	Petitions for Correction of Error, Form 133
)	Petition No.: 76-004-89-3-4-01079R
)	76-004-90-3-4-00396R
Petitioner)	76-004-91-3-4-00255R
)	
v.)	
)	County: Steuben
DEPARTMENT OF LOCAL)	
GOVERNMENT FINANCE,)	Township: Fremont
)	
Respondent)	Parcel No.: 02-28-240-111.000-34
)	
)	Assessment Years: 1989, 1990, and 1991

On Remand from the Indiana Tax Court
Cause No. 49T10-9701-TA-82

October 16, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

¹ David L. Pippen, served as Attorney for the Petitioner before the IN Tax Court and M. Drew Miller, Petitioner's Representative, was present at the prior Board hearings and provided oral argument in Tax Court.

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Statement of the Case and Issues

This case initially came before the Board on three (3) Petitions for Correction of Error, Forms 133, filed in December 1992 by Landmark Appraisals on behalf of BCD Investments (BCD) for the March 1, 1989-1991 assessment years. BCD challenged the base rate applied to its assessments on its three (3) Form 133 petitions. The Board issued its decision on all three Form 133 appeals on November 22, 1996, denying relief to BCD.

Following the Board's Final Determination, BCD initiated suit in the Indiana Tax Court on January 6, 1997. The appeal challenged four (4) separate final determinations made by the Board regarding the property. The Board's final determinations addressed one (1) Form 131 petition and (3) Form 133 petitions. These findings and conclusions pertain only to the three (3) Form 133 petitions filed for the March 1, 1989, 1990, and 1991 assessment years.

The Tax Court, on the Board's motion, remanded the cases on September 8, 1998, for further action. On November 18, 1998, the Board conducted a remand hearing on BCD's petitions. The Board's final determination denied any relief to BCD on its Form 133 petitions.

BCD filed an amended original tax appeal on February 3, 1999. Both parties requested to have the matter resolved based on the evidence stipulated into the record as well as on their briefs. The Court did not conduct a trial, but heard oral argument on July 17, 1999. On April 28, 2003, the Tax Court remanded the issue of base rate to the Board with instructions to recalculate the building's perimeter and base rate for the 1989-1991 assessment years.

Background of Administrative Appeal and Litigation

1. BCD owns a small manufacturing plant in Steuben County, Indiana. The building's core, approximately 19,200 square feet was constructed in 1974 and was used for manufacturing on the assessment date. Since 1974, BCD has added several additions to the building's core, including: a 2,380 square foot office and a 6,400 square foot warehouse, and a 31,600 square foot warehouse. In 1991, BCD added an additional 21,600 square foot warehouse addition, which is not subject to the 133 appeals.

2. Originally, the Fremont Township Assessor assessed the BCD property for the March 1, 1989 reassessment date and assessed the new 31,600 square foot warehouse addition for March 1, 1990. For the 1989 assessment year, the structure consisted of approximately 27,980 square feet with a total assessed value of \$204,680. The 31,600 square foot addition increased the square footage total to 59,580 for the March 1, 1990 assessment year with a total assessed value of \$364,840. The subject structure was assessed with mixed use-types as light manufacturing, light warehouse, and industrial office. *See*, Respondent's Exhibit 1; subject property record card.
3. Pursuant to Ind. Code § 6-1.1-15-12, BCD filed Forms 133 for the 1989, 1990, and 1991 assessment years in December of 1992, petitioning the Board to conduct an administrative review of the above petitions. BCD asserted on its 133 petitions that an incorrect base rate was used due to an error in the regulations for failure to provide reproduction cost for metal buildings.
4. After proper notice, the Board conducted an administrative hearing. On November 22, 1996, the Board issued its final determinations on the BCD appeals. The Board's final determination upheld the local official's assessment and denied relief to BCD on its Forms 133.
5. BCD filed an original tax appeal petition with the Tax Court. The Tax Court, on the Board's motion, remanded the case on September 8, 1998, for further action.
6. A Board remand hearing was held on November 18, 1998. The Board issued a new final determination, once again, refusing relief to BCD on its Form 133 petitions.
7. BCD filed an amended original tax appeal on February 3, 1999. Because both parties requested to have the matter resolved based on the evidence stipulated into the record as well as on their briefs, the Court did not conduct a trial, but heard oral argument on July 17, 1999.

8. Accordingly, on April 28, 2003, the Tax Court remanded the issue to the Board with instructions to recalculate the building's perimeter and base rate consistent with the Court's opinion for the assessment years 1989, 1990, and 1991.

Remand Hearing Facts and Other Matters of Record

9. Pursuant to Ind. Code § 6-1.1-15-8, a second remand hearing was scheduled for June 26, 2003 in Fremont Indiana before Patti Kindler, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
10. No one appeared at the hearing on behalf of the Petitioner. Larry May, Steuben County Assessor, appeared on behalf of the County.
11. The following persons were sworn in as witnesses and presented testimony:
For the Respondent: Larry May
12. The following exhibits were presented:
For the Petitioner: None

For the Respondent:
Respondent's Exhibit 1 – Subject Property Record Card
Respondent's Exhibit 2 – Interior and exterior photographs of the subject property.
13. The following additional items are officially recognized as part of the record of proceedings:
Board Exhibit A – Remand Order
Board Exhibit B – Form 133 petition
Board Exhibit C – Notice of Hearing on Petition
Board Exhibit D – Proof of Mailing Notice of Hearing on Petition

14. There are three (3) Form 133 petitions and one (1) Form 131 petition on remand. The testimony and evidence presented at the Board hearings and in Tax Court pertain to 1989, 1990, and 1991 Forms 133 and also to some extent the Form 131 for 1992. These findings of fact and conclusions of law pertain *only* to the three (3) Form 133 petitions filed for the assessment years listed above.
15. The subject property is assessed as a small manufacturing plant located at 103 West Main Street, Fremont (Fremont Township, Steuben County) Indiana. The assessed values under appeal for 1989 were: Land - \$16,170, and Improvements - \$188,510. The assessed values for 1990 and 1991 were: Land - \$16,170, and Improvements - \$348,670. The Hearing Officer did not inspect the subject property.

Jurisdictional Framework

16. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
17. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-8.

Indiana's Property Tax System

18. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
19. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.

20. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
21. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
22. The Indiana Supreme Court has said that the Indiana Constitution “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”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
23. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State's regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
24. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

25. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).

26. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]
27. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
28. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
29. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm’rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
30. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has

presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issue

ISSUE: The Tax Court remands the issue of base rate with instructions to recalculate the building's perimeter and base rate for the 1989, 1990, and 1991 assessment years

31. BCD has three (3) Form 133 petitions for the assessment years 1989 to 1991, and one (1) Form 131 for the assessment year 1992 on remand. These findings of fact and conclusions of law pertain *only* to the Form 133 petitions filed for the assessment years listed above.

32. The applicable rules governing this Remand are:

50 IAC 2.1-4-1

The development of Schedule A of the Commercial and Industrial Pricing Schedules is based on three important elements. The elements are:

- 1) Horizontal costs;
- 2) Vertical costs; and
- 3) Perimeter Area Ratio.

50 IAC 2.1-4-1

The third element of the commercial cost is the perimeter to area ratio (PAR). The perimeter area ratio is defined as the total linear feet in the perimeter of a building divided by the corresponding square foot are and multiplied by 100 to covert to a whole number. The effective perimeter of the building is the total linear feet of exterior walls that are part of; and therefore, to be priced with a particular building or building section. This area is defined as the total square

foot surface of a building. The perimeter area ratio adjustment is necessary because a rectangular building requires a larger amount of perimeter walls than a square building to encompass the same amount of floor area.

50 IAC 2.1-4-1

Instructs assessors that when pricing a building with mixed use, fanning, or wall heights, the computation of PAR for the entire building should be performed; thereafter, adjustments to the pricing schedule should be made to reflect those variations.

Ind. Code § 6-1.1-15-12 specifically enumerates eight (8) reasons for correction of error. These reasons are as follows:

- a. The description of the real property was in error.
- b. The assessment was against the wrong person.
- c. Taxes on the same property were charged more than one (1) time in the same year.
- d. There was a mathematical error in computing the taxes or penalties on the taxes.
- e. There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
- f. The taxes, as a matter of law, were illegal.
- g. There was a mathematical error in computing the assessment.
- h. Through an error of omission by any state or county officer, the taxpayer was not given credit for an exemption or deduction permitted by law.

Analysis of ISSUE

33. BCD owns a manufacturing plant, which was constructed in 1974. Since 1974, BCD has made several additions to its building's core. Additions pertinent to this appeal include: a 2,380 square foot office, a 6,400 square foot warehouse added in 1984, and a 31,600

square foot addition of warehouse space added in 1989. BCD disagreed with the base rate used to assess the subject improvement.

34. BCD requested relief via Forms 133 for the 1989-1991 assessment years. BCD asserted on its Form 133 petitions that the base rate for the subject improvement was incorrect due to an error in the regulations for failure to provide reproduction cost for metal buildings. During the administrative hearing, however, BCD's tax representative, M. Drew Miller, testified that the base rate was incorrect because the calculation of the building's perimeter was improperly calculated.
35. The Board issued its final determinations on BCD's Form 133 petitions, denying relief to BCD on the basis that it presented no probative evidence to support its contention that a different base rate should have been applied. Further, the Board believed that the crux of BCD's argument, as listed on the Form 133 petitions, was that the base rate was incorrect and, thus, the reason *why* was not necessarily relevant, because a subjective issue can not be corrected via the Form 133 petitions.
36. BCD claimed in Tax Court that the Board erred in deciding its appeal because it interpreted BCD's issue too narrowly. The Tax Court's Remand Order states, "... [t]he Board initially believed BCD sought a kit building adjustment." However, the Tax Court asserted during the administrative hearing, that BCD argued the base rate was incorrect because the building's perimeter was improperly calculated, without objection from the Board.
37. According to the Remand Order, since BCD argued the perimeter issue at the administrative hearing without the Board's objection, their pleading was effectively amended to include the issue of the PAR. PAR is a mathematical issue that by regulation can be corrected via the Form 133 petition. *See*, Ind. Code § 6-1.1-15-12 on the proceeding page.

38. The Tax Court cited *Yunker v. Porter County Sheriff's Merit Board*, 178 Ind. App. 364, 382 N.E. 2d 977, 981 (Ind. Ct. App., 1978), which states that when an issue or the theory behind it is not raised in the administrative pleading but is actually litigated at the hearing, the failure to object at the hearing to the introduction of that issue has the same effect as amending the pleading to include that issue.
39. The Tax Court upheld BCD's argument and disagreed with the Board's interpretation of the base rate issue. On April 28, 2003, the Tax Court reversed the Board's Final Determination and, on remand ordered the Board to recalculate the subject's perimeter and, in conjunction, the base rates for the 1989, 1990, and 1991 assessment years.¹
40. The Petitioner was not present at the final remand hearing; therefore, no evidence was submitted into the record regarding the correct assessment for the subject property. Recalculating the improvement's perimeter will necessarily affect its PAR, and in conjunction the base rate for each separate use listed on the property record card. Therefore, the revised PAR calculation may result in a change to the improvement's use-type pricing ladders accordingly.
41. Since this calculation has been left up to the Board to determine, the Board will prepare a property record card based on the evidence entered into the record at prior administrative hearings. At a Board remand hearing held on November 19, 1998, the Petitioner's witness, M. Drew Miller asserted in 1989, the perimeter was 776 linear feet; the county used 941 linear feet. Also, in 1990 and 1991, the perimeter was 1,056 linear feet; the county used 1,501 linear feet.
42. Based on the above testimony, the Board will submit a copy of their proposed property record card showing the revised PAR and base rates to Mr. Miller for his review. Upon Mr. Miller's agreement with the revised pricing, the Board will issue its final determination on the subject appeals.

¹ The building's perimeter will be different for 1989 than for 1990 and 1991 due to a building addition built prior to 3/1/90. See ¶33 and Respondent's Exhibit 1 (subject property record card).

43. ***FINISH OFF DRAFT HERE WHEN INSPECTION OF PRC COMPLETE!!!!***

Summary of Final Determination

Determination of Issue on Remand

44. Pursuant to the Tax Court's instructions on remand, there is a change in the assessment. The improvement's PAR and base rate will be recalculated for the 1989, 1990, and 1991 assessment years, as instructed by the Court.

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

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS ON REMANDED CASE -

You may petition for judicial review of this final determination of corrected assessment pursuant to the provisions of Indiana Code § 6-1.1-15-9. 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.