

REPRESENTATIVE FOR PETITIONER:

Ralph Campbell, Property Valuation Services, Inc.

REPRESENTATIVE FOR RESPONDENT:

Kevin Poore, Deputy Assessor Clay Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

CARMEL RACQUET CLUB INC.,)	
)	
Petitioner	)	Petitions for Correction of Error,
	)	Form 133s
	)	Petition Nos: 29-018-97-3-4-07038
	)	29-018-98-3-4-00059
v.	)	29-018-99-3-4-00036
	)	29-018-00-3-4-00003
	)	29-018-01-3-4-00001
	)	County: Hamilton
	)	Township: Clay
CLAY TOWNSHIP ASSESSOR)	
	)	Parcel No. 16-10-31-00-00-027.000
)	
Respondent	)	Assessment Years: 1997, 1998, 1999,
	)	2000 & 2001

Appeal from the Final Determinations of the
Hamilton County Property Tax Assessment Board of Appeals

November 27, 2002

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”.

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

Issues

1. The issues presented for consideration by the Board were:

Issue 1 – *Whether a Form 133 can be used to change the pricing schedule of a structure (selection of schedule).*

Issue 2 – *Whether the subject structure should be valued from the GCK pricing schedule.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12 Ralph Campbell, Property Valuation Services, Inc. filed Form 133 (Correction of Error) petitions on behalf of Carmel Racquet Club Inc. (Petitioner). The Form 133 petitions were filed on May 8, 2001. The Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued their Final Determinations on February 6, 2002. The Form 133s were subsequently forwarded to the Board for review on February 25, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on September 5, 2002 in Noblesville, Indiana before Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The subject property is a commercial building located at 225 East Carmel Drive, Carmel, Clay Township, Hamilton County.
5. At the hearing, the parties agreed that the subject property's assessed values under review in these appeals, 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: \$214,270	Improvements: \$523,500	Total: \$737,770
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And for the assessment date as of March 1, 2001, the assessed values under review are:

Land: \$642,800	Improvements: \$1,570,500	Total: \$2,213,300
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6. The ALJ did not conduct an on-site inspection of the subject property.
7. The following persons were present at the hearing:
 - For the Petitioner:
Ralph Campbell, Property Valuation Services, Inc.

 - For the Respondent:
Lori Harmon, Deputy Assessor, Hamilton County
Kevin Poore, Deputy Assessor, Clay Township
8. The following persons were sworn in as witnesses and presented testimony:
 - For the Petitioner:
Ralph Campbell

For the Respondent:

Lori Harmon

Kevin Poore

9. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A comparison of the subject building to the Indianapolis Racquet Club; a copy of *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 253 (Ind. Tax 2001); a copy of Indianapolis Racquet Club's property record card (PRC); two (2) photographs of the Indianapolis Racquet Club; nine (9) photographs of the Carmel Racquet Club; and Property Valuation Service's proposed pricing on the subject structure

For the Respondent:

Respondent's Exhibit 1 – Copies of the following Tax Court cases; *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

For the Board:

Board's Exhibit A – Subject Form 133 (Correction of Error) petitions, dated February 25, 2002

Board's Exhibit B – Notices of Hearing on Petitions (Form 117), dated August 2, 2002

10. At the hearing, the parties agreed that a procedural issue should be determined first. In doing so, the parties agreed to temporarily table all other issues for review. The procedural issue the parties agreed to review is whether a Form 133 petition can be used to change the pricing schedule of a structure (selection of schedule). The parties further agreed, that if it is determined a Form 133 petition is the proper form, then the parties

request the Form 133 petition be remanded back to the PTABOA to address the issue of whether the subject 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.

Jurisdictional Framework

11. 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 assessments or matters of administrative law and process.
12. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-12.

Indiana's Property Tax System

13. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, § 1.
14. 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.
15. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6 (c).

16. 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 V*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
17. 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.
18. 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 affect.
19. New assessment regulations have been promulgated, but are not in affect for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

20. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board's decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
21. 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*

Board of Tax Commissioners, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). [“Probative evidence” is evidence that serves to prove or disprove a fact.]

22. 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 Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). [“De minimis” means only a minimal amount.]
23. 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 Board in its evaluation of the evidence. See *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). [“Conclusory statements” are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
24. 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 Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 253 (Ind. Tax 2001), and *Blackbird Farms Apartments, LP v. Department Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002).
25. The Board 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 Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 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 to the Board (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 Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Discussion of the Issue

ISSUE 1: *Whether a Form 133 can be used to change the pricing schedule of a structure (selection of schedule)*

26. As previously stated in ¶10, the parties to these appeals agreed at the hearing, that a procedural issue should be determined first thus temporarily tabling the issue as to whether the subject building qualifies to be valued from the General Commercial Kit (GCK) pricing schedule rather than the General Commercial Mercantile (GCM) pricing schedule. 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).
27. The Petitioner claims that the determination of whether a building is a “kit” building and thus should be valued from the GCK pricing schedule, is an objective error and therefore correctable on a Form 133 petition.
28. The applicable rule governing this issue is:
Indiana Code 6-1.1-15-12 – Tax Duplicates; correction of errors; reasons; appeal
The Form 133 petition is used to correct objective errors specified in the above code. Those correctable errors are:
 - (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 any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.

29. Evidence and testimony considered particularly relevant to this determination includes the following:

- a. In 50 IAC 2.2-10-6.1, GCK does not include use type descriptions or economy or low cost. The schedule is used to value pre-engineered, pre-designed pole buildings used for commercial and industrial purposes, therefore the building description is a finding of fact not a subjective decision that would be correctable by way of a Form 133. *Campbell testimony.*
- b. In the two (2) *Barth, Inc.* Tax Court cases, Judge Fisher makes it clear that a building either is or is not a kit building. Also, that where an improvement qualifies for a kit adjustment the application of the kit adjustment is mandatory not discretionary. *Campbell testimony.*
- c. The schedule for pricing a GCK building is based on the type of construction within the structure, not on the usage of the structure as in the GCM, GCI and GCR pricing schedules. *Campbell testimony.*
- d. Prior to the 1995 Manual, GCK request were made on a Form 133 because that was the procedure established by the Board to make adjustments to the GCM pricing schedule. However in 1995, a separate pricing schedule was established in the Manual for GCK structures. *Poore & Harmon testimonies.*
- e. In *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113, Judge Fisher stated, “the choice between pricing schedules is not objective.” Therefore

selection of pricing schedules is not correctable by way of a Form 133. *Harmon testimony & Respondent's Exhibit 1.*

Analysis of ISSUE 1

30. Reproduction Cost minus Depreciation equals True Tax Value. For the 1989 statewide general reassessment, 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.
31. As an addendum to the rules and regulations promulgated by the Board for the 1989 statewide general reassessment, the Board introduced Instructional Bulletins 91-8 (October 1, 1991) and 92-1 (August 22, 1992). Instructional Bulletin 91-8 provided a 50% reduction in the base rate for qualifying kit buildings. 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."
32. Board's Instructional Bulletin 92-1 provided local officials instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as required in the Board's Instructional Bulletin 91-8. Instructional Bulletin 92-1 gave more detailed method to use to assess structures qualifying for the 50% reduction in the base rate.
33. In summary, for appeals prior to the 1995 statewide general reassessment date, the methodology used (in Instructional Bulletin 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.
34. 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 Board’s 1995 Regulation, 50 IAC 2.2, eliminated the “kit” building adjustments described in the Board’s Instructional Bulletins 91-8 and 92-1 for assessment years 1995 and thereafter.

35. Under the current regulation (50 IAC 2.2), 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. Prior to that, the term “model” was the commonly used descriptive term.
36. 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).
37. The GCK association grouping was added to the rules and regulations promulgated by the Board for the 1995 statewide general reassessment in order 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.
38. 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).

39. 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).
40. 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 other, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citations omitted).

41. For all the reasons set forth above, a selection of schedule issue does not qualify for a review on a Form 133 petition. No changes in the assessments are made as a result of this issue.

Summary of Final Determination

42. As stated in ¶10 and ¶26, the parties to these appeals agreed at the hearing, that a procedural issue should be determined first thus temporarily tabling the issue as to whether the subject building qualifies to be valued from the GCK pricing schedule rather

than the GCM pricing schedule. 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).

Determination of ISSUE 1: *Whether a Form 133 can be used to change the pricing schedule of a structure (selection of schedule).*

43. It is determined the issue of whether a structure should be valued using one pricing schedule rather than another, is a subjective determination and therefore does not qualify for review on a Form 133 petition. As a result of this determination the Form 133 petitions are denied. No changes in the assessments are made as a result.

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

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.