

**STATE OF INDIANA  
Board of Tax Review**

DAVID R. WEBB COMPANY INC.	)	On Appeal from the Johnson County
	)	Property Tax Assessment Board of Appeals
Petitioner,	)	
	)	Petition for Correction of Error, Form 133
v.	)	Petition Nos. 41-002-97-3-3-00014
	)	41-002-98-3-3-00015
JOHNSON COUNTY PROPERTY TAX	)	41-002-99-3-3-00016
ASSESSMENT BOARD OF APPEALS	)	41-002-00-3-3-00017
And BLUE RIVER TOWNSHIP	)	Parcel No. 91003443065/00
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

Whether the Johnson County Property Tax Assessment Board of Appeals (PTABOA) can remove obsolescence depreciation by way of a Form 133 Petition.

## 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, Mr. Fred McCarter with C.M.I. on behalf of David R. Webb Company, Inc. (Petitioner), filed Form 133 petitions (Correction of Error) requesting a review by the State. The Form 133 petitions were filed with the State on January 16, 2002. The PTABOA denied the Form 133 petitions on December 18, 2001.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 21, 2002 before Administrative Law Judge Paul Stultz. Testimony and exhibits were received into evidence. Mr. McCarter represented the Petitioner and Mr. Tim Barry appeared as a witness for the Petitioner. Mr. Mark Alexander and Ms. Sandra Pendleton, Blue River Township Assessor, represented Johnson County.
4. At the hearing, the subject Form 133 petitions were made a part of the record and labeled as Board's Exhibits A. Notices of Hearings on Petitions are labeled as Board's Exhibits B.
5. The subject property is located at South Holland Street, Edinburgh, Blue River Township, Johnson County.
6. The Administrative Law Judge did not view the subject property.

7. At the hearing, the parties agreed the years under appeal, reflected in the Form 133 petitions, were for 1997, 1998, 1999, and 2000 and the values of record for all four (4) years are:

Land	\$3,730
Improvements	\$93,500

8. On May 23, 2002, Mr. McCarter sent to the State by facsimile, a Property Tax Representative Disclosure (Disclosure Statement). This Disclosure Statement was entered into the record and labeled as Petitioner's Exhibit 1.

9. On June 3, 2002, the State received in the mail a copy of the subject's property record card (PRC). The PRC was entered into the record and labeled as Respondent's Exhibit 1.

10. A review of Respondent's Exhibit 1 (PRC) shows the value of the improvements to be \$97,130. It should be noted, this is the value for the improvements prior to any action taken by the PTABOA as it pertained to the subject Form 133 petitions. As a result, the improvement value per the PRC does not agree with the improvement value of record agreed to by the parties at the hearing, which is \$93,500. The difference between the two (2) values, are the changes made by the PTABOA as a result of these filings. Those changes consisted of the following:

- a. 5,300 square feet (SF) of the subject building was deficient of interior features consistent with the general office cost schedule that was applied. This area was re-priced using the small shop cost schedule;
- b. Obsolescence depreciation (20%), previously applied to adjust the building assessment, was removed;
- c. 2,100 SF of the office lacked partitioning. A negative adjustment of \$2.66 was applied to this area; and
- d. The wall height was determined to be 12 feet and an adjustment was made accordingly.

**Whether the Johnson County Property Tax Assessment Board of Appeals (PTABOA) can remove obsolescence depreciation by way of a Form 133 Petition.**

11. The Petitioner contends it was satisfied with the 20% obsolescence depreciation applied to the subject structure and did not raise this issue for review at the PTABOA 133 hearings. *McCarter testimony & Board Exhibit A.*
12. The Respondent contends that the Petitioner by making a general statement that the 20% obsolescence was warranted on this property along with the three (3) other parcels being appealed, the Petitioner therefore raised the issue of obsolescence at the PTABOA 133 hearings. *Alexander testimony.*
13. Obsolescence depreciation is a subjective judgmental factor that can only be corrected in the current assessment year and is not correctable on a Form 133 petition. The PTABOA could not change obsolescence using the Form 133 petition. *McCarter testimony.*
14. The PTABOA changed the pricing of the subject structure based on the testimony given by the Petitioner and that the filing of these appeals had subjected the structure property to a reassessment. *Alexander testimony.*
15. No information could be found concerning the application of the 20% obsolescence depreciation for the 1995 reassessment. The PTABOA did not find anything that would warrant a 20% obsolescence adjustment to the subject structure. The PTABOA had assumed the 20% obsolescence depreciation given to the subject structure was due to correctable errors that had now been corrected by the Form 133 petitions presently under review. *Alexander testimony.*
16. Abnormal obsolescence is a subjective judgment that is not correctable on a 133 petition. *Alexander testimony.*

17. Mr. Alexander acknowledged that the PTABOA did not know the reasons why the 20% obsolescence was applied for the 1995 reassessment. *McCarter 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 PTABOA or issues that are raised as a result of the PTABOA's action on the Form 133 petition. Ind. Code §§ 6-1.1-15-1, 2.1, and 4 (Statutes were amended in 2001 but amendments do not apply). See also the Form 133 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. Tax 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 133 process, the levels of review are clearly outlined by statute. First, the county auditor may correct an error described under subsection (a)(6), (a)(7), or (a)(8) only if the correction is first approved by at least two of the following officials: (1) the township assessor, (2) the county auditor, (3) the county assessor. If two of these officials do not approve such a correction, the county auditor shall refer the matter to the county PTABOA for determination. If the taxpayer disagrees with the PTABOA's decision on the Form 133, then he may appeal to the State for a final administrative determination. Ind. Code § 6-1.1-12. 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, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 133 petition filed with the County Auditor.

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.

### **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.

### **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. “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) the taxpayer must 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.

### **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.

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18. The Petitioner filed Form 133 petitions with the Johnson County Auditor on May 10, 2001 for the subject property. The Petitioner submitted the following issues for review: use, lack of partitioning, and wall height. The PTABOA reviewed the Petitioner's petitions and made the following changes:
  - a. 5,300 square feet (SF) of the subject building was determined to be deficient of interior features consistent with the general office cost schedule. This area was re-priced using the small shop cost schedule;
  - b. 2,100 SF of the office area was determined to lack partitioning. A negative adjustment of \$2.66 for the lack of partitioning was applied to this area; and
  - c. The wall height was determined to be 12 feet and an adjustment was made accordingly.
19. In addition to the changes stated above made by the PTABOA, the PTABOA also removed the obsolescence depreciation (20%) previously applied to the subject structure.
20. The Petitioner contends that obsolescence depreciation was never an issue presented at the PTABOA hearing for review. That obsolescence is subjective and is not correctable on a Form 133 petition.

21. The Respondent contends that by the Petitioner making general statements at the PTABOA hearing regarding obsolescence, that the Petitioner opened the issue of obsolescence for additional review. Also the filing of these appeals opened the subject property for reassessment that would include a review of obsolescence.
22. At the hearing, Mr. Alexander admitted that no information was available to determine why obsolescence depreciation was applied to the subject structure for the 1995 reassessment. That the PTABOA assumed the 20% obsolescence was given due to correctable errors that have now been corrected by the changes made by the PTABOA as a result of the subject Form 133 petitions.
23. Though the PTABOA may be correct in using their discretion to review additional issues once a taxpayer has filed an appeal, the PTABOA is limited in that review to those issues that qualify for review based on the type of appeal that is filed. In the case at bar, the petitions under review are 133s.
24. Since obsolescence requires subjective determination it would not qualify as a correctable error under Ind. Code § 6-1.1- 15-12.
25. Errors arising from an assessor's subjective judgment are not the type of errors that can be corrected by way of a Form 133 petition. *Hatcher v. State Board of tax Commissioner*, 561 N.E. 2d 852 (Ind. Tax 1990).
26. 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).
27. It should to be noted, that Mr. Alexander in his testimony agreed that obsolescence is a subjective judgment and is not correctable on a Form 133 petition. See Findings of Fact ¶16.
28. For all the reasons set forth above, it is determined that obsolescence depreciation

is a subjective issue that does not qualify for review on a Form 133 petition. The State further determines that the PTABOA could not remove the obsolescence depreciation and the obsolescence depreciation be reinstated for the tax years under review in the Form 133 petitions: 1997, 1998, 1999, and 2000. A change in the assessment is made as a result of this issue.

### **SUMMARY OF STATE DETERMINATION**

#### **Whether the Johnson County Property Tax Assessment Board of Appeals (PTABOA) can remove obsolescence depreciation by way of a Form 133 Petition.**

The 20% obsolescence depreciation removed by the PTABOA on the Form 133 petitions filed by the Petitioner for the tax years 1997, 1998, 1999, and 2000, is reinstated.

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.

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Chairman, Indiana Board of Tax Review