

REPRESENTATIVE FOR PETITIONER:
John L. Johantges, Property Tax Group 1, Inc.

REPRESENTATIVES FOR RESPONDENT:
Terry McAbee, Delaware Township Assessor's Office

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

First Indiana Bank	)	Petition No.:	29-006-02-3-4-00087
	)	Parcel:	15-10-35-00-05-002.000
Petitioner,)		
)		
v.)		
	)	County:	Hamilton
Marilyn Schenkel,	)	Township:	Delaware
Delaware Township Assessor	)	Assessment Year:	2002
)		
Respondent.)		

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

May 4, 2005

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 issues presented for consideration by the Board are:

- (1) *Whether the Respondent's selection of the General Commercial Mercantile (GCM) cost schedule to assess a one-story wood joist bank is an error that may be corrected pursuant to a Form 133 Petition for Correction of Error; and*
- (2) *Whether the Respondent incorrectly assessed the subject property under the GCM cost schedule rather than the General Commercial Residential (GCR) cost schedule.*¹

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-12, Petitioner, First Indiana Bank (Petitioner) filed a Form 133 Petition for Correction of Error (Form 133 petition), petitioning the Board to conduct an administrative review of the claims presented in such petition. The Form 133 petition was filed with the Board on July 9, 2004. The determination of the Hamilton County Property Tax Assessment Board of Appeals (the "PTABOA") was issued on June 28, 2004.

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 November 10, 2004, in Noblesville, Indiana before Debra Eads, the duly designated Administrative Law Judge (the "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:²

For the Petitioner:

John Johantges, Property Tax Group 1, Inc., CEO
Kevin Fasick, Property Tax Group 1, Inc., Associate

For the Respondent:

Terry McAbee, Delaware Township Assessor's Office
Debbie Folkerts, Hamilton County Assessor

¹ The Form 133 petition also alleges that "[t]he bank vault should not be assessed as real estate, but rather as personal property." *Board Ex. A*. However, the Petitioner withdrew that contention at the hearing. *Johantges testimony*.

² The Petitioner's representative indicated that he did not receive notice of the hearing. However, the Petitioner agreed to waive any objection based upon the lack of timely notice of the hearing. *Johantges testimony*.

Kim Powell of the Hamilton County Assessor's Office was present at the hearing but did not testify.

5. The following exhibits were presented for the Petitioner:

Petitioner Exhibit 1 – Cover letter dated November 10, 2004; Copy of Real Property Assessment Guidelines for 2002 - Version A, Appendix G, at 3; Form 133 petition, property record card, and Form 17T for parcel 4037022 in Marion County, Lawrence Township; Form 133 petition (2002 and 2003), property record cards, and Form 17T for parcel 7034820 in Marion County, Warren Township.

6. The following exhibits were presented for the Respondent:

Respondent Exhibit 1 – Subject Property Record
Respondent Exhibit 2 – STB Instructional Bulletin 99-2
Respondent Exhibit 3 – *O'Neal Steel v. Vanderburgh County PTABOA*
Respondent Exhibit 4 – *Bender v. Indiana State Board of Tax Commissioners*

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

Board Exhibit A – Form 133 Petition
Board Exhibit B – Notice of Hearing dated October 5, 2004

8. The subject property consists of land and a commercial building used as bank. It is located at 1199 Fishers Crossing in Fishers, Indiana.

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

10. For 2002, the PTABOA determined the assessed value of the property to be:

Land: \$335,700 Improvement: \$311,700

11. For 2002 the Petitioner contends the assessed value of the property should be:

Land: \$335,700 Improvement: not specified

JURISDICTIONAL FRAMEWORK

12. 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.

ANALYSIS

Whether the Respondent's selection of the General Commercial Mercantile (GCM) cost schedule³ to assess a one-story wood joist bank is an error that may be corrected pursuant to a Form 133 Petition for Correction of Error

Parties' Contentions

13. The Petitioner contends the subject improvement is a one-story wood joist bank building and should be priced from the GCR Bank cost schedule instead of the GCM Bank cost schedule utilized by the Respondent. The Petitioner further contends that the choice of the appropriate cost schedule in this case is not subjective, but rather is clearly mandated by the Real Property Assessment Guideline for 2002 – Version A (hereinafter “Assessment Guidelines”).
14. The Respondent agrees that the subject improvement is a one-story wood joist bank building. However, the Respondent maintains that the use of the GCM Bank cost schedule rather than the GCR Bank cost schedule is a subjective decision by the assessor, which is not correctable pursuant to a Form 133 petition.
15. The Petitioner presented the following evidence and argument in regard to this issue:

³ For purposes of this decision, the terms “pricing schedule” and “cost schedule” are used interchangeably.

- A. It is undisputed that the subject improvement is a one-story wood joist bank building. *Johantges testimony*. The selection of the appropriate cost schedule for a one-story wood joist bank is not subjective. *Fasick argument; Pet'r Ex. 1*. Instead, the Assessment Guidelines clearly identify that such buildings are to be assessed under the GCR Bank cost schedule. *Id.*
 - B. The Petitioner filed a Form 130 petition for the subject property requesting a change in cost schedule from GCM Bank to GCR Bank for the 2003 assessment year, and the township made the change requested by the Petitioner. *Johantges testimony*.
 - C. Marion County has set precedent on the issue in question by making corrections through use of a Form 133 petition. *Id.; Pet'r Ex. 1*.
16. The Respondent presented the following evidence and argument in regard to this issue:
- A. Both the GCM and the GCR cost schedules allow for wood joist construction. *McAbee testimony*. Therefore, the selection of the appropriate cost schedule is subjective and cannot be corrected by utilizing a Form 133 petition. *Id.*
 - B. Indiana Tax Court decisions in *O'Neal Steel v. Vanderburgh County Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 857 (Ind. Tax Ct. 2003) and *Bender v. Indiana State Bd. of Tax Comm'rs*, 676 N.E.2d 1113 (Ind. Tax Ct. 1997) indicate that the selection of an appropriate pricing schedule is an error that cannot be corrected through use of a Form 133 petition. *McAbee argument; Resp't Exs. 3-4*.
 - C. Assessors in Hamilton County used the GCM Bank schedule to value one-story wood joist banks where the wall height of such banks did not conform to the GCR Bank model. *Folkerts testimony*.

Discussion

17. Form 133 petitions are governed by Indiana Code § 6-1.1-15-12. *Bender v. Indiana State Bd. of Tax Comm'rs*, 676 N.E.2d 1113, 1114 (Ind. Tax Ct. 1997). That statute provides eight reasons for which a county auditor “shall correct errors” appearing in a tax duplicate:

- (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.

Ind. Code § 6-1.1-15-12(a).

18. The Indiana Tax Court repeatedly has held that the only errors subject to correction pursuant to Form 133, “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)). The Petitioner alleges a claim under subparagraph (a)(7) that there was a “mathematical error in computing an assessment.” The Tax Court has held that the legislature intended the provision 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).
19. 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 Form 133. *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.

20. The Tax Court has had numerous occasions to apply the general rules concerning the use of Form 133 petitions to specific challenges alleging errors in the choice of pricing schedules by assessing officials. *See, e.g., Bender, supra; O’Neal Steel v. Vanderburgh County Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 857 (Ind. Tax Ct. 2003); *Southworth v. Grant County Property Tax Assessment Bd. of Appeals*, 791 N.E.2d 862 (Ind. Tax Ct. 2003). In each instance, the court has held that a Form 133 petition is an inappropriate vehicle for making such challenges. *Bender*, 676 N.E.2d at 1116; *O’Neal Steel*, 791 N.E.2d at 860; *Southworth*, 791 N.E.2d at 864.
21. 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 GCR pricing schedule rather than the residential pricing 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).

22. The Petitioner seeks to distinguish the present case from *Bender*, *O’Neal Steel* and like cases on grounds that the Assessment Guidelines do not allow for an assessor to exercise

any discretion regarding the choice of the appropriate cost schedule to value a one-story wood joist bank. *Johntegs argument; Pet'r Ex. 1*. The Petitioner points to Appendix G to the Assessment Guidelines, which under the heading of "Selection of Schedules" states:

The following is an alphabetical list of various commercial and industrial improvements. The list shows the use-type from schedule A or if schedule A does not apply, the proper schedule to be used in computing the replacement cost.

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. G at 2 (incorporated by reference at 50 IAC 2.3-1-2). The ensuing list indicates:

- Banks as follows:
 - One story wood joist framing – GCR bank.
 - Multi-story or fire resistant, reinforced concrete, or fire-proof steel framing – GCM bank.

Id. at 3. According to the Petitioner, once it is established that the building is used as a bank and consists of one-story with wood joist framing, the Assessment Guidelines mandate the use of the GCR cost schedule.

23. In so arguing, the Petitioner misconstrues the Assessment Guidelines. The Petitioner points to a small portion of the Assessment Guidelines in isolation from a much larger discussion of the role played by the choice of models and cost schedules in assessing commercial and industrial improvements.
24. The Assessment Guidelines provide models of typical improvements in order to "facilitate the user in estimating the replacement cost new of the subject improvements as of the effective valuation date to serve as the *starting point* in the application of the cost approach to value for ad valorem tax purposes." GUIDELINES, app. D at 2 (emphasis added). The models are divided into three major categories, based upon occupancy type: GCM, General Commercial Industrial (GCI) and GCR. *Id.* Each major category has several use-specific models within it, such as banks, retail stores, and motels. *Id.* at 2-41. In some instances there are models within multiple categories for the same use-type. For

example, the GCR and GCM categories each contain models for banks and apartment buildings. *Id.* at 6, 8, 33, 38.

25. The foundation, framing and basic shell construction are category specific and reflect floor and roof loads, doors, fenestration and store fronts typical of the occupancy. *Id.* at 2. Floor heights, interior finish and mechanical features are specific to the individual models within the broader categories. *Id.* The purpose of the model descriptions is to assist assessors in determining whether adjustments are necessary to account for variations between the subject improvement and the model selected to compute its replacement cost new. *Id.*
26. Consequently, when an assessor chooses whether to apply the cost schedules associated with a GCM bank as opposed to those applicable to a GCR bank, he or she must decide which of the two model descriptions most closely resembles the subject improvement. This requires a comparison of the salient features of the subject improvement to the features associated with the respective models. Any significant deviations from the model descriptions must be accounted for through adjustments to the value derived from the cost schedule associated with that model.⁴ Therefore, any single construction feature, such as the wood framing relied upon by the Petitioner in this case, is not necessarily determinative of the appropriate schedule from which to value an improvement. *See* GUIDELINES, app. D at 2 (“[T]he test of the assessor’s estimate of replacement cost new is not contingent upon the valuation of any one construction component but rather in its approximation to the actual construction cost of the subject improvement.”). This is particularly true here, where wood framing fits within the basic shell descriptions of both GCR and GCM improvements. *Id.* at 2, 34.
27. Thus, the abbreviated language from Appendix G upon which the Petitioner relies should not be read as a mandate that all one-story wood joist banks be assessed from the GCR

⁴ In fact, the Respondent presented testimony that assessors within Hamilton County engaged in precisely this type of analysis when they determined that the GCR cost schedules did not provide sufficient adjustments to account for improvements with wall heights deviating from GCR Bank model and therefore chose to assess those improvements under the GCM Bank cost schedule. *Folkerts testimony.*

cost schedule. Instead, such language should be read merely as providing guidance to local assessing officials in the exercise of their discretion to choose the most appropriate cost schedule from which to assess a given improvement. Even if the assessor's choice to use the GCM schedule was an inappropriate exercise of discretion in this case, it was still an exercise of discretion. *See Bender*, 676 N.E.2d at 1116 (“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.”). The decision is a far cry from one mandated by a single, relatively uncomplicated factual finding such as the determination of whether an improvement actually contains a furnace. *Bender*, 676 N.E.2d at 1115; *Hatcher*, 561 N.E.2d at 857. Consequently, there is no reason to distinguish the instant case from the tax court's prior decisions holding that a Form 133 petition is unavailable to challenge an assessor's choice of pricing schedules.

28. The Petitioner also claims that townships within Marion County have accepted the Form 133 petition as an appropriate vehicle to make the change from GCM bank to the GCR bank cost schedule. However, whether or not local officials voluntarily accept such petitions has no bearing upon the correct interpretation of the relevant statute.
29. Based on the foregoing, the Board finds that a Form 133 petition cannot be used to correct the error asserted by the Petitioner.

Whether the Respondent incorrectly assessed the subject property under the GCM cost schedule rather than the GCR cost schedule

30. Because the Board finds that the Form 133 petition cannot be used to assert the error claimed by the Petitioner, it need not address whether the Respondent's use of the GCM Bank schedule to assess the subject property constituted error.

SUMMARY OF FINAL DETERMINATION

31. A Form 133 petition cannot be used to address the error claimed by the Petitioner in this case. The Board finds in favor of the Respondent.

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 _____ 2005.

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.