REPRESENTATIVES FOR PETITIONER: Ralph Campbell, Property Valuation Services, Inc.

REPRESENTATIVES FOR RESPONDENT: Marilyn S. Meighen, MEIGHEN & ASSOCIATES, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

In the matter of:

JEFFREY SOUTHWORTH,	)	Petition Nos: 27-016-97-1-4-10000
	)	27-016-98-1-4-10000
Petitioner	)	27-016-99-1-4-10000
	)	27-016-00-1-4-10000
v.	)	27-016-01-1-4-10000
	)	
GRANT COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS & CENTER TOWNSHIP ASSESSOR,	)	Parcel No.: 0163502131
	)	County: Grant
	)	Township: Center
	)	Assessment Years: 1997- 2001
Respondents.	)	

Appeal from the Final Determination of
Grant County Property Tax Assessment Board of Appeals

O R D E R

This Order is made regarding the Motion for Summary Judgment ("the Motion") filed on August 20, 2002 on behalf of the Respondents and the Motion for Stay filed by the Petitioner. The Indiana Board of Tax Review (the "IBTR") being duly advised in the premises now finds the following:

Background and Procedural History

On May 8, 2001, by certified mail, Ralph Campbell filed five (5) Petitions for the Correction of Error (Form 133) with the Grant County Auditor for tax years 1997, 1998, 1999,

2000, and 2001 on behalf of Jeffrey Southworth (the "taxpayer"). All of these Form 133 petitions have been consolidated into this matter.

The taxpayer's petitions state that the one structure on the subject parcel is a light pre-engineered kit building and should be priced from the GCK schedule, and depreciated from the 30-year life depreciation schedule.

The Grant County Property Tax Assessment Board of Appeals (the "PTABOA") denied the Form 133 petitions on January 25, 2002. This notice was sent on a Form 115, which states appeals should be filed on a Form 131 petition. On February 19, 2002, Mr. Campbell appealed the decision of the PTABOA by completing the appeal section of the Forms 133 and sending the Forms 133 to the Grant County Auditor. On February 22, 2002, Mr. Campbell received a phone call from the Grant County Assessor's office stating that he filed on the wrong forms and the petitions should be filed on a Form 131. On February 22, 2002, Mr. Campbell filed, by certified mail, Form 131 petitions with the Grant County Assessor. These petitions were received on February 25, 2002. These petitions were originally filed as Form 133 petitions, and will be viewed as such.[1]

On August 20, 2002, the local officials filed a Motion for Summary Judgment with the IBTR, asserting: "The error attributed to the assessment – improper pricing schedule selection – is subjective and not the 'type' of error that can be corrected by way of a Form 133 petition." The Petitioner filed a response to the Motion for Summary Judgment, in a timely manner, on October 30, 2002. In his response, the Petitioner seeks to have the proceedings in this case Stayed pending the outcome of a similar case in the Indiana Tax Court, *Waterford Development Co. v. Noblesville Township Assessor (Hamilton County),* No 49T10-0205-TA-47. The Petitioner also included a response should the Board decide to deny the Motion for Stay.

Standard of Review

Pursuant to 50 IAC 17-8-4, taxpayers are permitted to file motions with the IBTR. A summary judgment motion is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); see also *W.H. Paige & Co. v. State Board of Tax Commissioners,* 732 N.E. 2d 269, 270 (Ind. Tax 2000);

[1] The Petitioner correctly filed the appeal of the Form 133 petition by completing the appeal sections. The Petitioner was only following the direction of the County Assessor when the Form 131 petitions were filed.

Pedcor Investments-1990-XIII, L.P. v. State Board of Tax Commissioners, 715 N.E. 2d 432, 435 (Ind. Tax 1999); *Dana Corp. v. State Board of Tax Commissioners,* 694 N.E. 2d 1244, 1246 (Ind. Tax 1998).

Facts and inferences must be construed in the light most favorable to the non-moving party. *Progressive Ins. Co. v. General Motors Corp.,* 749 N.E. 2d 484, 487 (Ind. 2001); *Rheem Mfg. Co. v. Phelps Heating and Air Conditioning,* 746 N.E. 2d 941, 946 (Ind. 2001). The moving party bears the burden of proving that no genuine issue of material fact exists, and the non-moving party is not required to produce contrary evidence until the movant has met this burden. See *Butler v. City of Peru*, 733 N.E. 2d 912, 915 (Ind. 2000); *Cavinder Elevators, Inc. v. Hall,* 726 N.E. 2d 285, 290 (Ind. 2000); *Jarboe v. Landmark Community Newspapers of Indiana, Inc.,* 644 N.E. 2d 118, 123 (Ind. 1994). If the moving party has met its burden, the non-moving party must then produce contrary evidence to show that a material factual dispute exists. See *USA Life One Insurance Co. v. Nuckolls*, 682 N.E. 2d 534, 541 (Ind. 1997); *Jarboe*, 644 N.E. 2d at 123.

Discussion of the Issues

Reproduction Cost minus Depreciation equals True Tax Value. Prior to tax year 1995, 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. In addition, the State Board of Tax Commissioners introduced Instructional Bulletin 91-8 and 92-1. Instructional Bulletin 91-8 provided for a 50% reduction in the base rate for qualifying kit-buildings. Bulletin 91-8 stated that: "These amendments allowed for a 50 percent reduction in the base rate of qualifying structures priced from the General Commercial Mercantile [GCM], General Commercial Industrial [GCI] and the Poultry Confinement Buildings Pricing Schedules."

Instructional Bulletin 92-1 provided local officials instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as required by Bulletin 91-8. Bulletin 92-1 gave a more detailed method to use to assess qualifying structures for the 50% reduction in the base rate. In summary, for appeals prior to the 1995 reassessment date, the methodology used (in Instructional Bulletins 91-8 and 92-1) to make this type of reduction entailed making a 50% reduction to the existing pricing schedule, which 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.

50 IAC 2.1 was repealed by the State Board of Tax Commissioners, filed September 14, 1992 (16 IR 662), effective March 1, 1995. 50 IAC 2.1 was replaced with 50 IAC 2.2, the regulation for assessing real property during the 1995 reassessment. In the 1995 regulation, the kit-building adjustment described in Instructional Bulletins 91-8 and 92-1 was eliminated. Under the 1995 regulation, reproduction cost for commercial and industrial property is the base rate for the selected association grouping minus/plus adjustments. 50 IAC 2.2-10-6.1 and 2.2-11-5. The term association grouping was introduced in the 1995 regulation.

There are four (4) association groupings identified in the 1995 regulation: (1) GCM, (2) GCI, (3) General Commercial Residential (GCR), and (4) General Commercial Kit (GCK). The GCK grouping is used to value pre-engineered and pre-designed pole buildings.

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 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 A.4.

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 Commissioners,* 561 N.E. 2d 852 (Ind. Tax 1990). 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). 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 others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citations omitted).

The Petitioner argues that *Barth v. State Board of Tax Commissioners,* 699 N.E. 2d 800 (Ind. Tax 1998) controls. This is incorrect. *Barth* does not control for two reasons. First, *Barth* dealt with determining whether a subject building qualifies for a kit adjustment, not whether or not a building qualifies to be priced off a GCK schedule. In fact, as explained above, the 1989 assessment manual did not contain a GCK schedule. Instead, qualifying kit structures were given a 50% reduction in their base price beginning in 1991. Second, the *Barth* case determined that the State identified the Form 133 petition as the correct way to challenge the kit adjustment. Under the 1995 manual, there is no kit adjustment. Instead, buildings may qualify to be priced from the GCK schedule rather than the GCI or GCM schedules. Furthermore, the Petitioner argues that the 92-1 Instructional Bulletin has never been withdrawn, and is therefore, still a rule of the State. This contention is mistaken for two reasons. First, the code cited to by the Petitioner, 50 IAC 4.2-1-5, is a rule for personal property not real property. Second, if the Petitioner is correct, then buildings could still qualify for a 50% reduction in pricing if they are "kit" buildings.

The IBTR finds that the errors alleged on Petitioner's Form 133 petition are not straightforward findings of fact, and the assessor must use his or her subjective judgment in determining which association grouping to use.

Conclusion

For all the above reasons, the IBTR hereby DENIES Petitioner's Motion for Stay of Proceedings and hereby GRANTS the Respondent's Motion for Summary Judgment. The types of errors alleged by the Petitioner are not the type that can be raised by way of a Form 133 petition.

SO ORDERED this 2nd day of December, 2002

Annette Biesecker, Chairman
Indiana Board of Tax Review

_____
William Waltz, Commissioner
Indiana Board of Tax Review

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Betsy Brand, Commissioner
Indiana Board of Tax Review

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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.