



## **Findings of Fact and Conclusions of Law**

### **Issues**

1. The issues presented for consideration by the Board are:
  - Issue 1 – *Whether the Form 133 process is the appropriate appeal method for challenging schedule selection.*
  - 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 with Property Valuation Services, Inc. filed a Form 133 petition on behalf of Ralph and Linda Wendel (Petitioners). The Form 133 was filed October 9, 2001. The determination of the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) was issued on December 11, 2001.

### **Hearing Facts and Other Matters of Record**

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on July 10, 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 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
    - Jerolyn Ogle, Washington Township Assessor

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Ralph Campbell<sup>1</sup>

For the Respondent:

Lori Harmon

Jerolyn Ogle

6. The following exhibits were presented:

For the Petitioner:

**Petitioner's Ex. 1** – A packet of documents containing the following:

1. Two (2) exterior photographs of the subject structure.
2. A copy of the building specifications dated March 22, 2000, for the subject building.
3. Property Valuation Services' proposed valuation for the subject property.

For the Respondent:

**Respondent's Ex. 1** – A packet of documents containing the following:

1. A copy of a letter from Washington Township Assessor to the PTABOA dated November 15, 2001.
2. A copy of the Board's Instructional Bulletin 99-2.
3. A copy of *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113 (Ind. Tax 1997).
4. A copy of a Notice of Defect sent to Prine Realty issued by the Board on August 22, 2001.

**Respondent's Ex. 2** – A copy of the 2001 property record card for the subject property.

---

<sup>1</sup> Mr. Campbell testified that he is paid on a contingency fee basis. Because a contingent fee arrangement can improperly motivate and adversely affect the objectivity of the witness's testimony, the Board will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues about which he is testifying. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998); *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

**Respondent's Ex. 3** – Excerpts from court opinions regarding the use of a Form 133 petition and schedule selection along with copies of the particular Tax Court cases as follows:

1. *Rinker Boat v. State Board of Tax Commissioners*, 722 N.E. 2d 919 (Ind. Tax 1999).
2. *Barth, Inc. v. State Board of Tax Commissioners*, 705 N.E. 2d 1084 (Ind. Tax 1998)
3. *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax 1998).
4. *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113 (Ind. Tax 1997).

For the Board:

**Board Ex. A** – The subject Form 133 petition.

**Board Ex. B** – Notice of Hearing on Petition (Form 117), dated May 29, 2002.

### **Jurisdictional Framework**

7. 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.
8. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

### **Indiana's Property Tax System**

9. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, § 1.

10. 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.
11. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
12. 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*).
13. 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.
14. 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.
15. 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**

16. 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).

17. 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.]
18. 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.]
19. 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.]
20. 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).
21. 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 Issues**

#### Issue 1 – Whether the Form 133 process is the appropriate appeal method for challenging schedule selection.

22. The Petitioner contends that the Form 133 appeal method is an appropriate method to challenge the selection of the GCI pricing schedule rather than the GCK pricing schedule.
23. The Respondent contends that the Form 133 appeal method is not the proper method to challenge the selection of the GCI pricing schedule rather than the GCK pricing schedule.
24. This issue is governed by Ind. Code § 6-1.1-15-12 which provides that the county auditor shall correct the tax duplicate, subject to certain limitations, for any of the following reasons:
  - (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.

25. Evidence and legal authority considered particularly relevant to this determination include the following:

[A] *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113 (Ind. Tax 1997).

[B] The subject Form 133 petition.

#### Analysis of Issue 1

26. The Petitioners argue that the issue of whether a building should be valued using the GCK pricing schedule rather than the GCI pricing schedule is an objective determination appropriate for the Form 133 appeal method. The Petitioners make reference to excerpts from both of the *Barth* decisions and to the description given for the GCK schedule in 50 IAC 2.2-10-6.1 as support for their position. See *Barth v. State Board of Tax Commissioners*, 705 N.E. 2d 1084 (Ind. Tax 1998)(Barth II); *Barth v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax 1998)(Barth I).

27. The issue of whether the Form 133 process is appropriate for challenging schedule selection has been specifically addressed in *Bender v. State Board of Tax Commissioners*, 676 N.E. 1113 (Ind. Tax 1997). The Court held that the Form 133 process was limited to those errors correctable without resorting to judgment. The Court found that, as with model selection, the assessing official is charged with the responsibility of choosing the pricing schedule that most closely represents the building being valued. The Court noted that, while the call might be closer at times, the selection of the appropriate pricing schedule is a matter left to the discretion of the assessing official. Thus, the Court



concluded that schedule selection is a subjective matter inappropriate for review under the Form 133 process. The Board found the case law established in *Bender* compelling because the facts surrounding the *Bender* decision are reflected in the case at hand.

28. Following the law established in *Bender*, schedule selection is a subjective issue and is not appropriate for review under the Form 133 process. Therefore, the Petitioners' Form 133 petition is denied as procedurally improper.

Issue 2 – Whether the subject structure should be valued from the GCK pricing schedule rather than the GCI pricing schedule.

29. As stated above, the issue of schedule selection is a subjective matter inappropriate for review under the Form 133 process. The Petitioners' Form 133 petition is denied for procedural improprieties.

**Summary of Final Determination**

Determination of Issue 1 – Whether the Form 133 is the appropriate appeal method for challenging schedule selection.

Determination of Issue 2 – Whether the subject structure should be valued from the GCK pricing schedule rather than the GCI pricing schedule.

30. Selection of schedule is a subjective issue and is not appropriate for review under the Form 133 process. The Petitioners' Form 133 petition is denied as procedurally improper.

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 -**

**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.**