

REPRESENTATIVES FOR PETITIONER:

Robert G. White, Uzelac & Associates

REPRESENTATIVES FOR RESPONDENT:

Hank Adams, St. John Township Assessor
Jacqueline Rokosz, St. John Township Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

American Savings, F.S.B.,)	Petitions for Correction of Error
)	Form 133s
Petitioner,)	
)	
v.)	Petition Nos.: 45-034-99-3-4-00177
)	45-034-00-3-4-00178
)	45-034-01-3-4-00179
)	County: Lake
)	
St. John Township Assessor,)	Township: St. John
)	
Respondent.)	Parcel No.: 009-12-14-0222-0001
)	
)	Assessment Years: 1999, 2000, 2001
)	

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

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) has reviewed the facts and the evidence. After having considered the issues, the Board now finds and concludes as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The issues presented for consideration:

Issue 1 – Should the auto tellers be assessed as real or personal property?

Issue 2 – Should the second floor have finish and partitioning adjustments?

Issue 3 – Should the third floor have finish and partitioning adjustments?

Issue 4 – Should the special features be changed to “B” grade?

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12, on October 30, 2003, Robert G. White, Uzelac & Associates, filed Form 133 Petitions For Correction of Error on behalf of American Savings, F.S.B. (Petitioner) seeking an administrative review of the above petitions. The Lake County PTABOA disapproved the petitions, which were forwarded to the Board for review on April 16, 2004.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, the Board's designated Administrative Law Judge (ALJ), Ellen Yuhan, held the hearing in Crown Point on February 23, 2005.
4. Robert G. White (Uzelac & Associates), Hank Adams (St. John Township Assessor), and Jacqueline Rokosz (St. John Township Deputy Assessor) were present and sworn as witnesses at the hearing.
5. The official record for this matter contains:
 - a. The Petition,
 - b. The tape recording of the hearing labeled 5973,
 - c. Petitioner Exhibit 1 — Issues,
Petitioner Exhibit 2 — Pages 1 and 4 from Form 133 petitions,
Petitioner Exhibit 3 — Page 2 from original 133 filed 10/28/04,

- Petitioner Exhibit 4 — Six Photographs,
 - Petitioner Exhibit 5 — Property record card (PRC) for prior to reassessment,
 - Petitioner Exhibit 6 — CLT hearing issues,
 - Petitioner Exhibit 7 — Current PRC (back of card only),
 - Petitioner Exhibit 8 — Real Property Assessment Guidelines for 2002–Version A,
chapter 6, pages 52 and 54, and Rule 10 (old rule) page 22,
 - Petitioner Exhibit 9 — PTABOA hearing notes,
 - Petitioner Exhibit 10 — PTABOA Final Determination,
 - Petitioner Exhibit 11 — Client POA and Statement of Disclosure,
 - Respondent Exhibit 1 — Letter disapproving the Form 133 petitions,
 - Respondent Exhibit 2 — Subject property record card for 1991-2002,
 - Board Exhibit A — Form 133 petition,
 - Board Exhibit B — Notice of Hearing,
 - Board Exhibit C — Sign-in sheet,
- d. These Findings and Conclusions.

6. The current assessed value for 1999 and 2000 is:

Land \$20,800	Improvements \$274,610	Total \$295,410.
---------------	------------------------	------------------

The current assessed value for 2001 is:

Land \$62,400	Improvements \$823,900	Total \$886,300.
---------------	------------------------	------------------

7. The assessed value requested by the Petitioner for 1999 and 2000 is:

Land \$20,800	Improvements \$249,930	Total \$270,730.
---------------	------------------------	------------------

The assessed value requested by the Petitioner for 2001 is:

Land \$62,400	Improvements \$749,800	Total \$812,200.
---------------	------------------------	------------------

8. The subject structure is a bank and general office building located at 1001 Main Street, Dyer.

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

Jurisdictional Framework

10. The provisions of Ind. Code § 6-1.1, 6-1.5 and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment and matters of administrative law and process, govern this matter. In particular, the process and procedures for correction of error as sought by the Petitioner are governed by Ind. Code § 6-1.1-15-12.
11. The Board is authorized by Ind. Code § 6-1.1-15-4 and Ind. Code § 6-1.5-4-1 to issue this final determination.

State Review and Petitioner's Burden

12. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1118-1119 (Ind. Tax Ct. 1998).
13. A petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, are not sufficient to establish an error. *See Whitley Products*, 704 N.E. 2d at 1119; *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 890, 893 (Ind. Tax Ct. 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
14. 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, 1024-1025 (Ind. Tax Ct. 1999). ['De minimis' means only a minimal amount.]
15. 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 generally*,

Heart City Chrysler v. State Bd. of Tax Comm'rs, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

16. 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 the assessment should be. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax Ct. 1997).
17. A Form 133 petition can be used in very limited circumstances. Indiana Code § 6-1.1-15-12 describes the procedures and specific types of errors that are correctable using the Form 133 petition for correction of error. It is available only for those errors that can be corrected without resort to subjective judgment. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990); *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993).

Discussion of the Issues

Issue 1 – Should the auto tellers be assessed as real or personal property?

18. The Petitioner contends that the auto tellers should be valued as personal property and removed from the real property assessment because the pneumatic tubes for them are located above ground. The Respondent offered no evidence or argument to the contrary. In fact, the Respondent agreed that the auto tellers should be removed as long as they were added to the personal property forms.
19. The evidence established that these auto tellers have aboveground pneumatic tubes. *White testimony; Petitioner Exhibit 4/1*. Pursuant to the agreement of the parties, they

should be assessed as personal property, but the Petitioner's personal property tax assessment is not currently before the Board. The assessment should be changed to remove the auto tellers from the real property assessment.

Issue 2 – Should the second floor have finish and partitioning adjustments?

20. The Petitioner contends that 3,010 square feet of the second floor was not finished or occupied during the years 1999, 2000, or 2001, and requests that it be priced as utility/storage or finish adjustments made to account for missing flooring, partitions, and a partial ceiling. This area was not finished until January 4, 2004. The Petitioner submitted photographs showing the lack of interior finish of the second floor to support this contention. *Petitioner Exhibits 1, 4; White testimony.*
21. The Respondent testified that the second floor was occupied by the Federal Prosecutor's office for the years under appeal. The Federal Prosecutor refused to allow entrance, claiming it was a secure area. The pictures the Petitioner submitted are pictures of the building after the Federal Prosecutor moved out of the building. Building permits were issued in 2002 and 2003 to change the building back to general office. *Respondent Exhibit 1; Adams testimony.*
22. The Petitioner testified that he was in the building in October 2003, but not in the years under appeal. The Petitioner verbally withdrew the request for an adjustment for the second floor. *White testimony.*
23. The Petitioner did not make a prima facie case for any change regarding the assessment for the second floor and ultimately withdrew that part of its petition during the course of the hearing.¹ There will be no change to the second floor part of the assessment.

¹ Had the Petitioner not withdrawn this claim, the Board would deny it for all of the reasons set forth in the discussion of issue three that follows.

Issue 3 – Should the third floor have finish and partitioning adjustments?

24. The Petitioner contends that 3,010 square feet of the third floor is assessed as finished divided office. This area is finished open and a partition adjustment should be applied, the same as it was applied for the 2002 reassessment. The Petitioner submitted photographs showing the interior finish of the third floor to support his contention and testified that the current tenants, shown in the photographs, occupied that space during the years under appeal. *Petitioner Exhibits 1, 4; White testimony.*
25. The Respondent testified that they were denied access to all but the first floor during the time the Federal government leased space. They were told the Federal government was leasing all other areas of the building. They were told it was totally finished and it was a secure area. The pictures the Petitioner submitted are pictures of the building after the Federal Prosecutor moved out of the building. Building permits were issued in 2002 and 2003 to change the building back to general office. *Respondent Exhibit 1; Adams testimony.*
26. The Petitioner requests a partitioning adjustment for 1999, 2000, and 2001 because one was applied for the 2002 reassessment. That fact, however, does not make the Petitioner's case. Each tax year stands alone. *See Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998); *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991). Consequently, a 2002 assessment will not be considered probative evidence of the proper tax assessment for an earlier year. *Id.*
27. Matters that require subjective judgment cannot be changed on a 133 petition. *Barth*, 756 N.E.2d at 1128-1129. To get finish and partitioning adjustments on such a petition, a taxpayer must submit probative evidence that its building does not contain components listed in the models or that its building contains components not listed in the models. Then a taxpayer must also prove the cost of each component based on the regulations

without exercising any subjective judgment. *Id.* at 1129. In this case, the Petitioner failed to meet these requirements and consequently failed to make a prima facie case.

28. Although the Petitioner offered testimony that the pictures show the area as it was during the years under appeal, the witness testified that he was not in the building in 1999, 2000, or 2001. He was in the building in 2003. Accordingly, his testimony about what was or was not on the third floor in 1999, 2000, and 2001, as well as his verification of the photographs as showing the floor as it was at that time is not credible or relevant. Such conclusory statements are not probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
29. The Respondent testified that building permits were issued in 2002 and 2003. This information is included in a letter disapproving the Form 133 petitions and as a notation on a property record card, but Respondent failed to establish the relevance of those items to the prior years' assessments. This failure, however, has little significance because where the Petitioner fails to make a prima facie case, the assessor's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d at 1222.
30. Ultimately, the Petitioner's claim on this issue fails for at least three reasons. First, granting any change on this issue would require subjective judgment in order to determine how much adjustment to allow. Therefore, this is not a claim that can be addressed on a Form 133. Second, the Petitioner failed to provide anything more than conclusory evidence in support of its claim that the third floor had less finish and partitioning than was assessed. Third, the Petitioner failed to provide probative evidence to quantify any kind of adjustment that might have been appropriate for that floor. Therefore, no adjustment will be made.

Issue 4 – Should the special features be changed to “B” grade?

31. The special features were priced using a B+1 percentage (130%), while the structure is graded B (120%). The Petitioner requests the special features have the same grade percentage as the building. The Petitioner alleges use of the same grade for the building and special features is mandated by the Real Property Assessment Manual. *White testimony. Petitioner Exhibit 8.*
32. Normally grade is not an issue that can be addressed by a 133 petition, but the Petitioner contends that this particular case is not a judgmental issue because the special features (the drive-up windows, the night deposit boxes, and the tellers) could not possibly have a higher grade than the building itself. Furthermore, this discrepancy was corrected for the 2002 assessment. *White testimony.*
33. The Respondent contends that grade cannot be changed on a Form 133 and that there is no rule that the special features have to be the same as the building. If the grade is determined to be in error, then he requests that the building be changed to B+1, its previous grade. *Adams testimony.*
34. Each tax year stands alone. The grade for a prior assessment is not probative evidence in this case. Similarly, the 2002 assessment is not probative evidence of the proper assessment for previous years. *Glass Wholesalers*, 568 N.E.2d at 1124. Similarly, the steps for calculating the replacement cost for the 2002 reassessment (Petitioner's Exhibit 8) have no relevance or probative value in determining the assessments for 1999, 2000 or 2001.
35. Petitioner's Exhibit 8 also includes one page (Rule 10, page 22) from the prior version of those steps. These instructions do not specifically require the special features to have the same grade as the rest of the building. Nevertheless, steps 19-23 are as follows:
 - Step 19: Enter the total whole dollar value of the special features priced below the sketch area.

Step 20: Enter the whole dollar value of the exterior features shown in the sketch area.

Step 21: Enter the total base, which is equal to the sum of STEPS SEVENTEEN through TWENTY. If the base value applies to a building section, total the values for each building section to obtain the total building value.

Step 22: Enter the grade and design factor multiplier, which is applied to the total base value to account for variations in quality grade and design.

Step 23: Enter the “Reproduction Cost”, which is computed by multiplying the grade and design multiplier by the total base value obtained in STEP TWENTY-ONE and rounded to the nearest ten dollars (\$10).

36. The special features are included in the base cost before the grade and design multiplier is applied. This methodology would necessarily apply the same grade to the special features. This point is further reinforced by the pricing example included in rule 10 at 27. The example shows many of the same features as the subject and all are included in the base cost before the grade and design multiplier is applied.
37. Normally there can be no grade change based on a 133 petition. In this case, however, the correction is not so much a grade change as a correction of the mathematical process used to arrive at the correct reproduction cost.
38. In this case, the assessment for the special features did not follow the required steps. Making the grade change sought by the Petitioner does not require subjective judgment, but only requires following the proper calculation steps, which the 1999, 2000, and 2001 assessments failed to do for the special features. Consequently, the assessment of the special features must be changed to match the B grade used for the balance of the building.

Summary of Final Determination

39. The auto tellers should be removed from the real property assessment.

40. The assessment for the second floor should not be changed.
41. The assessment for the third floor should not be changed.
42. The assessment of the special features must be changed to B grade.

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.