

REPRESENTATIVES FOR PETITIONER:
Fred McCarter, C.M.I.
Paul Kropp, Kropp & Associates

REPRESENTATIVES FOR RESPONDENT:
Jennifer L. Becker, Scipio Township
Carol McDaniels, LaPorte County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

PEARSON EDUCATION, INC.,)	
)	Petition Nos.: 46-046-97-3-4-00001
Petitioner)	46-046-98-3-3-00001
)	46-046-99-3-3-00001
v.)	46-046-00-3-3-00001
)	
)	County: LaPorte
SCIPIO TOWNSHIP ASSESSOR,)	
)	Township: Scipio
Respondent)	
)	Parcel No.: 62-10-05-300-007
)	
)	Assessment Years: 1997, 1998, 1999, 2000

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

February 6, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (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

Issues

1. The issues presented for consideration on the petitions were:

Issue 1 – *Whether a negative base rate adjustment should be made to the base rates to account for the lack of partitioning through out the facility.*

Issue 2 – *Whether an effective age of 1971 should be assigned to the entire facility.*

Issue 3 – *Whether the buildings measuring 135,000 square feet, 10,500 square feet, and 107,250 square feet should be valued using the General Commercial Kit (GCK) Schedule rather than the General Commercial Industrial (GCI) Schedule.*

Issue 4 – *Whether the physical depreciation applied to the buildings measuring 135,000 square feet, 10,500 square feet, and 107,250 square feet should be determined using the thirty-year life expectancy table rather than the forty-year life expectancy table.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12, Fred McCarter of C.M.I. filed Form 133 petitions on behalf of Pearson Education, Inc. petitioning the Board to conduct an administrative review of these petitions. The Form 133 petitions were filed with the Board on June 27, 2002. The LaPorte County Property Tax Assessment Board of Appeals (PTABOA) issued determinations on May 24, 2002. The Form 133 petitions were filed May 10, 2001.
3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on October 15, 2003 in LaPorte, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner: Fred McCarter, C.M.I.
Paul Kropp, Kropp & Associates

For the Respondent: Jennifer L. Becker
Carol McDaniels, LaPorte County Assessor

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

For the Petitioner: Fred McCarter
Paul Kropp

For the Respondent: Jennifer L. Becker
Carol McDaniels

6. The following items are officially recognized as part of the record of proceedings:

Board Exhibit A – The Form 133 Petition.

Board Exhibit B – The Notice of Hearing.

7. Prior to the hearing, the parties agreed and stipulated to the resolution of the following issues:

[A] A negative base rate adjustment should be made to the base rates to account for a lack of partitioning through out the facility.

[B] An effective age of 1971 should be assigned to the entire facility.

[C] The cost adjustment for the sprinkler system should be based on the total square footage of the facility.¹

8. On August 19, 2003, the Board, via U.S. Mail, contacted Mr. McCarter regarding the status of the Petitioner's Form 133 petitions in light of *O'Neal Steel v. Vanderburgh County Property Tax Assessment Board of Appeals, the Vanderburgh County Assessor, and the Center Township Assessor*, 791 N.E. 2d 857 (Ind. Tax 2003)². Specifically, the Board informed Mr. McCarter that, in light of *O'Neal Steel*, the Petitioner would be denied relief unless Mr. McCarter provided cause why *O'Neal Steel* does not summarily resolve the issues raised. Mr. McCarter was given thirty (30) days to provide a response in writing.
9. On August 26, 2003, Mr. McCarter responded via facsimile. Mr. McCarter indicated agreement that the decision in *O'Neal Steel* effectively decided the issues of schedule selection and life expectancy table selection. Mr. McCarter informed the Board that the issues of a negative base rate adjustment and effective age also raised on the Form 133 petitions remain to be resolved.
7. The subject property is a large publishing facility located at 4747 W. State Road 2 in LaPorte, Indiana. The assessment years under appeal are 1997, 1998, 1999, and 2000. The assessed value established by PTABOA is:

Land: \$51,900

Improvements: \$4,266,000.

¹ The issue of sprinkler cost was not an issue originally raised on the Form 133 petition. The issue of sprinkler cost was raised by the parties as part of their stipulation and, therefore, is included in these findings of fact and conclusions of law.

² In *O'Neal Steel v. Vanderburgh County Property Tax Assessment Board of Appeals, the Vanderburgh County Assessor, and the Center Township Assessor*, 791 N.E. 2d 857 (Ind. Tax 2003), the Court held that selection of pricing schedules, including GCK pricing, is a subjective decision that cannot be challenged by way of the Form 133 petition.

Jurisdictional Framework

8. 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 assessment or matters of administrative law and process.
9. The Board is authorized to issue this final determination of corrected assessment pursuant to Indiana Code § 6-1.1-15-8.

Indiana's Property Tax System

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

State Review and Petitioner's Burden

11. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
12. 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 890 (Ind. Tax 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
13. 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.]

14. 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 State 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.]
15. 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 of Local Government Finance* 765 N.E. 2d 711 (Ind. Tax, 2002).
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 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 for 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 a negative base rate adjustment should be made to the base rates to account for lack of partitioning through out the facility.*

17. The parties entered into an agreement and stipulated to the resolution of this issue. The Board accepts the parties’ stipulation and agreement. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change to the assessment as a result of the stipulation.

Issue 2 – *Whether an effective age of 1971 should be assigned to the entire facility.*

18. The parties entered into an agreement and stipulated to the resolution of this issue. The Board accepts the parties' stipulation and agreement. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change to the assessment as a result of the stipulation.

Additional issue raised by the parties – *Whether the cost of the sprinkler system should be based on total square footage of the facility.*

19. The parties entered into an agreement and stipulated to this issue. The Board accepts the parties' stipulation and agreement. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change to the assessment as a result of the stipulation.

Issue 3 – *Whether the buildings measuring 135,000 square feet, 10,500 square feet, and 107,250 square feet should be valued using the General Commercial Kit (GCK) Schedule rather than the General Commercial Industrial (GCI) Schedule.*

20. The Petitioner’s representatives agreed that, based on the decision made in *O’Neal Steel* prohibiting the use of the Form 133 petition to challenge schedule selection, this issue is summarily denied. There is no change to the assessment as a result of this issue.

Issue 4 – *Whether the physical depreciation applied to the buildings measuring 135,000 square feet, 10,500 square feet, and 107,250 square feet should be determined using the thirty-year life expectancy table rather than the forty-year life expectancy table.*

21. The Petitioner did not offer any testimony or discussion regarding the issue of life expectancy table selection. The Petitioner did not make a case regarding this issue. There is no change to the assessment as a result of this issue.

Summary of Final Determination

Determination of Issue 1: *Whether a negative base rate adjustment should be made to the base rates to account for the lack of partitioning through out the facility.*

22. The parties agreed and stipulated to the issue regarding a negative base rate adjustment. The Board accepts the parties' stipulation and agreement. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change in the assessment as a result of the stipulation.

Determination of Issue 2: *Whether an effective age of 1971 should be assigned to the entire facility.*

23. The parties agreed and stipulated to the issue of effective age. The Board accepts the parties' stipulation and agreement. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change in the assessment as a result of the stipulation.

Determination of additional issue: *Whether the cost of the sprinkler system should be based on total square footage of the facility.*

24. The parties agreed and stipulated to the issue of sprinkler cost. The Board accepts the parties' stipulation and agreement. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly. There is a change in the assessment as a result of the stipulation.

Determination of Issue 3 – *Whether the buildings measuring 135,000 square feet, 10,500 square feet, and 107,250 square feet should be valued using the General Commercial Kit (GCK) Schedule rather than the General Commercial Industrial (GCI) Schedule.*

25. The Petitioner's representatives agreed that the decision made in *O'Neal Steel* prohibiting the use of the Form 133 petition to challenge schedule selection effectively decided the outcome of Issue 3 prior to the hearing. There is no change as a result.

Determination of Issue 4 – *Whether the physical depreciation applied to the buildings measuring 135,000 square feet, 10,500 square feet, and 107,250 square feet should be determined using the thirty-year life expectancy table rather than the forty-year life expectancy table.*

26. The Petitioner did not offer any testimony or discussion regarding the issue of life expectancy table selection. The Petitioner did not make a case regarding this issue. There is no change to the assessment as a result of this issue.

The above stated findings of fact and conclusions of law 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 _____, 2004.

Commissioner, 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.