

REPRESENTATIVES FOR PETITIONER:

Carla Delaney, Meritax LLC

REPRESENTATIVES FOR RESPONDENT:

Teresa Rigsby, Scott County Assessor

Richard Schultz, Consultant for County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

VESOW REALTY,	)	Petitions for Correction of Error
	)	Form 133s
Petitioner	)	
	)	Petition Nos.: 72-008-98-3-4-00002
v.	)	72-008-99-3-4-00002
	)	72-008-00-3-4-00002
	)	72-008-01-3-4-00002
	)	County: Scott
	)	
VIENNA TOWNSHIP ASSESSOR,	)	Township: Vienna
	)	
Respondent	)	Parcel No.: 052932000100007
	)	
	)	Assessment Years: 1998, 1999, 2000, and 2001
	)	

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

**September 18, 2003**

**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 by the Board, restated for clarity, were:
  - ISSUE 1 – *Whether a Form 133 can be used to change the pricing schedule of a structure.*
  - 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, Carla Delaney, Meritax, LLC filed Form 133s (Correction of Errors) on behalf of Vesow Realty (Petitioner) petitioning the Board to conduct an administrative review of the above petitions. The Form 133s were filed on May 6, 2002. The final determinations of the Scott County Property Tax Assessment Board of Appeals (PTABOA) were mailed on December 13, 2002. The Form 133s were subsequently forwarded to the Board for review on January 9, 2003.

### Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 25, 2003 in Scottsburg, Indiana before Paul Stultz, 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:
    - Carla Delaney, Meritax. LLC.
  - For the Respondent:
    - Teresa Rigsby, Scott County Assessor
    - Richard Schultz, Consultant for County Assessor

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

For the Petitioner:

Carla Delaney

For the Respondent:

Teresa Rigsby

Richard Schultz

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1- a seven (7)-page summary of issues containing the following:

- a. Four (4) page statement of issues
- b. Copy of directions form Indianapolis to Scottsburg
- c. One (1) interior photographs
- d. Two (2) exterior photographs

For the Respondent:

Respondent's Exhibit 1 – copy of the subject's property record card (PRC)

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

For the Board:

Board's Exhibit A – Form 133 petitions

Board's Exhibit B – Notices of Hearing on Petitions

8. At the hearing, the ALJ requested from Ms. Delaney a Disclosure Statement. Ms. Delaney was given until June 30, 2003 to submit the Disclosure Statement. Ms. Delaney responded by facsimile and by mail in a timely manner. The ALJ's Request for Additional Evidence and Ms. Delaney's responses are entered into the record and labeled as Board's Exhibit C and Petitioner's Exhibit 2 and 3 respectively.

9. At the hearing, the ALJ requested from Ms. Rigsby written authorization from the Vienna Township Assessor allowing Ms. Rigsby and Mr. Schultz to represent Vienna Township in these proceedings. Ms. Rigsby was given until June 30, 2003 to submit the written authorization. The ALJ received a letter of authorization from Mary Jo Craig-Neal, Vienna Township Assessor, in a timely manner. The ALJ's Request for Additional Evidence and Ms. Craig-Neal's letter are entered into the record and labeled as Board's Exhibit D and Respondent's Exhibit 2 respectively.
  
10. At the hearing, the parties agreed that the assessment dates and the assessed values under review are as follows:  
For March 1, 1998, March 1, 1999, and March 1, 2000:  
Land - \$ 9,130  
Improvements - \$358,230  
  
For March 1, 2001:  
Land \$27,400  
Improvements \$1,074,700
  
11. The subject structure is a light industrial manufacturing and assembly facility located at 1250 South Bond Street, Scottsburg, Vienna Township, Scott County.
  
12. The ALJ did not conduct an on-site inspection of the subject property.

### **Jurisdictional Framework**

13. 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.
  
14. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-12.

## Indiana's Property Tax System

15. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
16. 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.
17. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
18. 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*).
19. 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.
20. 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 effect.
21. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

## State Review and Petitioner's Burden

22. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board 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).
23. 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*, 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.]
24. 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.]
25. 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.]
26. 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., 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance*, 765 N.E.2d 711 (Ind. Tax, 2002).

27. 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 Issues**

ISSUE 1: *Whether a Form 133 can be used to change the pricing schedule of a structure.*

ISSUE 2 – *Whether the subject structure should be valued from the GCK pricing schedule.*

28. The Petitioner claims that the determination of whether a structure should be valued from the GCK pricing schedule (selection of schedule) is an objective error and therefore correctable via a Form 133 petition.
29. The Respondent contends that the issue under review is subjective and does not qualify for review via a Form 133 petition.

30. The applicable rule governing this Issue is:  
**Indiana Code 6-1.1-15-12 – Tax Duplicates; correction of errors; reasons;**  
Sec. 12 (a) Subject to limitations in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more 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.

**Form 133 Petition**

Ind. Code 6-1.1-15-12 limits the use of this form to correct only the following types of errors:

- The taxes are illegal as a matter of law
- There is a math error in the assessment
- 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

Analysis of the ISSUES

31. Reproduction Cost minus Depreciation equals True Tax Value. Prior to the 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.
32. In addition, the Board introduced Instructional Bulletins 91-8 and 92-1. Instructional Bulletin 91-8 provided for a 50% reduction in the base rate for qualifying kit buildings. Instructional Bulletin 91-8 stated, “These amendments allowed for a fifty percent (50%) reduction in the base rate of qualifying structures priced from the General Commercial Mercantile, General Commercial Industrial and the Poultry Confinement Building Pricing Schedules.”

33. Board's Instructional Bulletin 92-1 provided local officials instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as required in the Board's Instructional Bulletin 91-8. Instructional Bulletin 92-1 gave a more detailed method to use to assess structures qualifying for the 50% reduction in the base rate.
34. In summary, for appeals prior to the 1995 assessment date, the methodology used (in Instructional Bulletins 91-8 and 92-1) to make this type of adjustment entailed making a 50% reduction to the base rate of the existing pricing schedule that 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.
35. As cited in the *Indiana Administrative Code* (2001) 50 IAC 2.1, "real property assessment" was repealed by the State Board of Tax Commissioners, filed September 14, 1992 (16 IR 662) effective March 1, 1995 and replaced by the "real property assessment" 50 IAC 2.2. The Board's 1995 Regulation 50 IAC 2.2, eliminated the "kit" building adjustments described in the Board's Instructional Bulletins 91-8 and 92-1 for assessment years and thereafter.
36. Under the current regulation (50 IAC 2.2), the reproduction cost for commercial and industrial property is the base rate for the selected association grouping less adjustments. 50 IAC 2.2-10-6.1 and 2.2-11-6. (As previously noted, the term "association grouping" was introduced by the 1995 Regulation. Prior to that time, the term "model" was the commonly used descriptive term.)
37. 50 IAC 2.2-10-6.1 identifies four (4) association groupings to be used for the selection of the appropriate base rate. These four (4) groupings are: (1) General Commercial Mercantile (GCM), (2) General Commercial Industrial (GCI), (3) General Commercial Residential (GCR), and (4) General Commercial Kit (GCK).
38. The GCK association grouping was added to the 1995 Regulation to value pre-engineered and pole framed buildings used for commercial and industrial purposes that were not

special purpose designed structures. 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 necessarily 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.

39. Errors arising from an assessor's 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).
40. 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 Commissions*, 620 N.E. 2d 758 (Ind. Tax 1993).
41. 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 in others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citations omitted).

42. In more recent Tax Court decisions, the Tax Court held “that a taxpayer may file a 133 Petition to correct only objective errors in assessment; accordingly, a taxpayer is prohibited from using a 133 Petition to challenge any part of an assessment that implicates a tax official’s lawful exercise of subjective discretion.” *U.S. Steel Corp v. Lake County PTABOA et al.*, 785 N.E. 2d 1209, 1215 (Ind. Tax 2003). In *O’Neal Steel Corp. v. Vanderburgh County PTABOA et al.*, 791 N.E. 2d 857 (Ind. Tax 2003), the Court held that the decision to apply pricing schedules, including the GCK pricing schedules, “ultimately turns on judgment calls.” See also *Jeffery Southworth v. Grant County PTABOA et al.*, 791 N.E. 2d 862 (Ind. Tax 2003).
43. For all reasons set forth above, the selection of schedule does not qualify for a review on a Form 133 petition. No changes in the assessment are made as a result of these issues.

### **Summary of Final Determinations**

Determination of ISSUE 1: *Whether a Form 133 can be used to change the pricing schedule of a structure.*

Determination of ISSUE 2 – *Whether the subject structure should be valued from the GCK pricing schedule.*

44. Selection of schedules does not qualify for review on a Form 133 petition. As a result of these issues the Form 133 petitions are denied and there are no changes in the assessments.

The above stated findings of fact and conclusions of law are issued in conjunction with, and serve as the basis for, the Final Determinations in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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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.**