

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 89-030-03-1-3-00123  
**Petitioner:** Jon R. Odom Trust  
**Respondent:** Wayne Township Assessor (Wayne County)  
**Parcel:** 48-24-000-404.000-29  
**Assessment Year:** 2003

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Wayne County Property Tax Assessment Board of Appeals (PTABOA) by written document dated March 24, 2004.
2. The PTABOA issued notice of its decision on December 29, 2004.
3. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on January 28, 2005. The Petitioner elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated February 7, 2006.
5. The Board held an administrative hearing on April 19, 2006, before the duly appointed Administrative Law Judge Paul Stultz.
6. Persons present and sworn as witnesses at the hearing:
  - a. For Petitioner - Duane Zishka, Uzelac & Associates, Inc.,  
Jon R. Odom, property owner,
  - b. For Respondent - Marie Elstro (did not testify),  
Dan Williams (did not testify),  
Richard Lee (did not testify),  
Michael Statzer (did not testify),  
Betty Smith, Wayne Township Assessor,  
David Fradenburg, Industrial Commercial Specialist.
7. The Respondent was represented by counsel, Charles K. Todd, Jr.

## Facts

8. The property is located at 2302 Flatley Road, Richmond, Indiana.
9. The Administrative Law Judge did not conduct an inspection of the property.
10. The assessed value as determined by the PTABOA is:  
land \$237,300            improvements \$1,526,500    total \$1,763,800.
11. The assessed value requested by the Petitioner on the Form 131 petition is:  
land \$237,300            improvements \$945,300    total \$1,182,600.<sup>1</sup>

## Issue

12. Summary of the Petitioner's contentions in support of alleged error in the assessment:
  - a. The assessed value of one building is the only thing that is disputed on this assessment, not the land or the other improvements. The building under appeal is assessed using the General Commercial Industrial (GCI) models for light manufacturing and light warehouse. The General Commercial Kit (GCK) schedule should have been used to assess the structure. *Zishka testimony*.
  - b. The building is a pre-engineered Butler building with rigid tapered steel frame construction, 26 gauge steel wall panels, a minimum number of openings, and steel girts and purlins. The low profile roof is constructed of 24 gauge galvanized steel roof panels that have a total roof load of 23 pounds. *Zishka testimony; Pet'r Ex. 1*. All of these components are described in the GCK model. *Zishka testimony; Pet'r Ex. 4*.
  - c. The actual construction costs for the subject building were \$901,300 when trended to January 1, 1999. *Zishka testimony; Pet'r Ex. 7*. These actual costs are less than the GCI schedule costs and support the claim the GCK schedule is the correct model to use. *Id.*
  - d. The actual costs and the true tax value determined by using the GCK schedule are similar. *Zishka testimony*.

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<sup>1</sup> The only improvement under appeal is a 40,000 square foot steel framed building, currently assessed for \$1,383,400. *Resp't Ex. 1*. If the GCK schedule were used for it, the Petitioner contended the revised value for that building should be \$850,430 (\$760,230 + \$90,200). *Pet'r Ex. 5*.

13. Summary of the Respondent's contentions in support of the assessment:
- a. Buildings similar to the subject located in industrial parks are assessed using the GCI schedule with a wall type 3.<sup>2</sup> This was done to standardize the assessment of similar buildings in a similar environment. *Fradenburg testimony.*
  - b. The subject building's wall height is 24 feet. The GCK model calls for a 12 foot wall height. One can tell the difference between a GCK structure and a GCI structure by driving up to the building. The maximum size for a GCK building is 4,000 square feet. *Fradenburg testimony.*

### **Record**

14. The official record for this matter is made up of the following:
- a. The Petition,
  - b. A digital recording of the hearing,
  - c. Petitioner Exhibit 1 – Affidavit of Brett Roland,  
Petitioner Exhibit 2 – Whitewater Construction web page,  
Petitioner Exhibit 3 – Page from Assessment Guidelines regarding "Using the General Commercial Models",  
Petitioner Exhibit 4 – Two pages from Assessment Guidelines describing elements for the GCK model,  
Petitioner Exhibit 5 – Proposed values worksheet,  
Petitioner Exhibit 6 – Interior and exterior photographs of the building,  
Petitioner Exhibit 7 – Actual construction cost worksheet with comparative cost multipliers from Marshall & Swift, L.P.,  
Respondent Exhibit 1 – Subject property record card,  
Board Exhibit A – Form 131 Petition for Review of Assessment,  
Board Exhibit B – Notice of Hearing on Petition,
  - d. These Findings and Conclusions.

### **Analysis**

15. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax

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<sup>2</sup> Wall type option 3 indicates the wall is constructed of aluminum, metal, or steel siding on steel framing. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (hereafter GUIDELINES), ch. 6 at 13 (incorporated by reference at 50 IAC 2.3-1-2).

Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
  - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
16. The Petitioner provided sufficient evidence to support its contentions. This conclusion was arrived at because:
- a. Real property is assessed on its "true tax value," which does not mean fair market value. It means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A* (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
  - b. The assessment is to reflect the value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values relate to the value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
  - c. Both parties presented arguments regarding the selection of the appropriate pricing schedule (i.e., GCI or GCK). Nevertheless, strict application of the Guidelines may not be the best way to determine an assessment where the record contains other evidence that more accurately reflects market value-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-678 (Ind. Tax Ct. 2006).

This case presents that kind of a record. Therefore, the assessment can not be determined merely by whether the building more closely resembles a GCI or a GCK model as described by the Guidelines.

- d. The Petitioner presented undisputed evidence that the actual construction costs of the subject building were \$901,300 when trended to January 1, 1999. This evidence is sufficient to make a prima facie case. The fact that this value is close to the value that would result from use of the GCK schedule adds to its credibility.
- e. The Respondent established that there are some differences between the subject building and the GCK model and offered testimony that use of the GCI schedule is appropriate for the subject building. The Respondent offered conclusory testimony regarding the maximum size for a GCK building, but failed to support this position with probative facts or authority. The Respondent also offered testimony that similar buildings in similar environment (industrial park) were assessed from the GCI schedule to standardize the assessments. This testimony, however, is conclusory and has no probative value. *See Long*, 821 N.E.2d at 470.
- f. The Respondent introduced no probative evidence that rebutted or impeached the Petitioner's evidence of the construction costs or the relationship of those costs to value as of January 1, 1999. Furthermore, even if the testimony the Respondent presented has a modicum of probative value, it is substantially outweighed by the evidence of actual construction costs.

### **Conclusion**

- 17. The Petitioner made a prima facie case that the current assessment is too high and that actual construction costs trended to January 1, 1999, are the best evidence of the value-in-use of the building in question. The Respondent did not rebut the Petitioner's evidence. Therefore, the Board finds in favor of the Petitioner. The assessed value for the 40,000 square foot steel framed building should be changed to \$901,300.

### **Final Determination**

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

## 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.** 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](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>.