

REPRESENTATIVES FOR PETITIONER: Rob Pharr, Mellander & Associates

REPRESENTATIVES FOR RESPONDENT: Rita J. Sherretz, Posey County Assessor and Margie N. Grabert, Black Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ADM MILLING,)	Petition No.: 65-018-98-1-4-00003
)	
Petitioner)	County: Posey
)	
v.)	Township: Black
)	
POSEY COUNTY BOARD OF)	Parcel No.: 0090090500
REVIEW AND BLACK)	
TOWNSHIP ASSESSOR,)	Assessment Year: 1998
)	
Respondents.)	

Appeal from the Final Determination of the
Posey County Board of Review

November 21, 2002

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the “Board”.

The 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 were:
 - ISSUE 1 – *Whether the Form 131 petition was filed within the statutory time limitations.*
 - ISSUE 2 – *Whether the buildings are pre-engineered structures that should be priced utilizing the GCK cost schedule.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Rob Pharr on behalf of ADM Milling (Petitioner) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on October 5, 1998. The Form 115 determination of the Posey County Board of Review (County Board) was issued on September 4, 1998.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on January 19, 2000 in Mount Vernon, Indiana before Betsy Brand, the designated Hearing Officer authorized by the Board.
4. The following persons were present at the hearing:
 - For the Petitioner: Rob Pharr, Mellander & Associates
 - For the Respondent: Rita J. Sherretz, Posey County Assessor, and Margie N. Grabert, Black Township Assessor
5. The following persons were sworn in as witnesses and presented testimony:
 - For the Petitioner: Rob Pharr

For the Respondent: Rita J. Sherretz, and
Margie N. Grabert

6. The following exhibits were presented:

For the Petitioner: Petitioner's Exhibit 1 – Copy of Form 115 with proposed pricing from the GCK schedule.

Petitioner's Exhibit 2 – Photographs of the subject property.

For the Respondent: Respondent's Exhibit 1 - Copy of the subject property record card.

7. The following exhibits were requested by the Hearing Officer and received as post-hearing submissions regarding the timeliness of the Form 131 Petition. Both parties submitted their submissions prior to the designated deadline of January 25, 2000:

For the Petitioner: Petitioner's Exhibit 3 – Copy of Receipt for Certified Mail, copy of return receipt.

For the Respondent: Respondent's Exhibit 2 – Letter of Response

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

The Hearing Officer did not view the subject property, which are assessed as industrial buildings located at Second Street in Mount Vernon, Indiana.

9. Mr. Pharr testified that he is an affiliate member of the Appraisal Institute, a registered tax consultant in the state of Texas, and a certified Illinois assessing officer. Mr. Pharr testified that he prepared his presentation according to USPAP standards. Mr. Pharr also testified that he receives a flat fee from the client for his services.

Jurisdictional Framework

10. 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.
11. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
13. 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.
14. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
15. 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*).
16. 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.

17. 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.
18. 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

19. The State does not undertake to reassess property, or to make the case for the petitioner. The State's 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 (Ind. Tax 1998).
20. 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 Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
21. 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 Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
22. 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 Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory

statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

23. 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 Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).

24. The State 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 Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 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 State (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 State 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 the Form 131 petition was filed within the statutory time limitations.*

25. In this case, Hearing Officer Brand raised the issue of whether the Form 131 petition, which was stamp dated October 5, 1998 by the Posey County Auditor was timely filed. Post-hearing evidence regarding the issue of timely filing was requested from both the Petitioner and the Respondent.

26. The Petitioner contends the Form 131 petition was mailed on September 30, 1998, within the statutory time limit imposed by the State.
27. The Respondent did not rebut the Petitioner's statement that the Form 131 was timely mailed. The Respondent did contend however, that the County Board's determination (Form 115) was mailed September 4, 1998, on the day that it was filled out and signed.
28. The statute governing this Issue is:
Ind. Code § 6-1.1-15-3(c)
The Form 131 petition requesting the review of the County Board's decision must be filed within thirty (30) days after notice of the County Board's decision is given to the taxpayer.
29. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The County Board's final determination (Form 115) is dated September 4, 1998.
 - b. The County Assessor testified that they do not mail the County Board's final determinations by certified mail. However, the final determinations are mailed to the Petitioner on the same day they are dated and signed.
 - c. In compliance with the Hearing Officer's request for additional information regarding the filing date, the Petitioner presented proof of mailing that the Form 131 petition was sent via certified mail on September 30, 1998.
 - d. The Posey County Auditor received the subject Form 131 petition on Monday October 5, 1998.

Analysis of ISSUE 1

30. The Petitioner asserts that the Form 131 petition was timely mailed via certified mail on September 30, 1998. The Petitioner presented a copy of the Receipt for Certified Mail, which is postmarked on September 30, 1998 to support their assertions. In addition, the Petitioner submitted the Return Receipt signed by the Posey County Auditor as received on October 5, 1998. *See* Petitioner's Ex. 3.

31. The Petitioner has presented sufficient proof to establish that the subject Form 131 petition was mailed within thirty (30) days of the date reported on the County Board's determination. The Return Receipt indicates the Posey County Auditor did not receive the petition until October 5, 1998; this is because October 4, 1998 was a Sunday. The Petitioner has presented a prima facie case that the Form 131 petition was filed within the statutory time limitations.
32. The Respondent did not present evidence sufficient to rebut the evidence presented by the Petitioner. The Respondent simply stated that the Form 115 was mailed on September 4, 2002.
33. By the preponderance of the evidence, it is determined that the Form 131 petition was mailed within the statutory time limitations and the issues before the State will be considered.

ISSUE 2: Whether the buildings are pre-engineered structures that should be priced utilizing the GCK cost schedule.

34. The Petitioner contends that the subject buildings are pre-engineered structures that should be priced from the GCK cost schedule.
35. The Respondent has priced the buildings from the GCI cost schedule. The Posey County Board of Review reduced the grade of the buildings at the County hearing, but no changes were made to the cost schedule.
36. The applicable rules governing this issue are:
 - a. 50 IAC 2.2-10-6.1(a)(1), which describes the base rate association groupings;
 - b. 50 IAC 2.2-11-5(a), which is an alphabetical list of various commercial and industrial improvements showing the use-type from Schedule A;
 - c. 50 IAC 2.2-11-6, which contains the commercial and industrial cost schedules;

- d. 50 IAC 2.2-11-4, which contains graded photographs of various commercial and industrial buildings. See page 76 for pre-engineered kit structure; and
 - e. *LDI Manufacturing v. State Board of Tax Commissioners*, 759 N.E. 2d 685 (Ind. Tax 2001).
37. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The subject buildings are used for commercial/industrial purposes.
 - b. The buildings are small with Cee channel supports.
 - c. The warehouse is an unfinished shell with dock doors and no windows or masonry.
 - d. The interior of the office is less than average with some carpet, acoustic ceiling tile and drywall.
 - e. The office building has some windows, an entry door, and decorative brick on the exterior.

Analysis of ISSUE 2

38. The Petitioner asserts that the GCK cost schedule is the appropriate schedule for valuing the subject buildings. In support of this contention, the Petitioner presented exterior photographs of the structures, the subject Form 115, and a proposed pricing grid for the subject buildings as priced from the GCK cost schedule.
39. A review of the photographs and the Petitioner's testimony indicates that the subject has some of the characteristics that are found in GCK structures such as metal exterior.
40. The Board's Regulation, 50 IAC 2.2-10-6.1, provides an explanation of how to determine a base rate. Specifically, base rates are given for a range of perimeter to area ratios for specific construction types for various use and finish types. Models are provided as conceptual tools to use to replicate reproduction cost of a structure using typical construction materials assumed to exist for a given use type. Use type represents the model that best describes the structure.

41. Because of the numerous models provided, the base rates are divided into four association groupings, namely: (1) General Commercial Mercantile (“GCM”); (2) General Commercial Industrial (“GCI”); (3) General Commercial Residential (“GCR”); and, (4) General Commercial Kit (“GCK”). Three of the four groupings contain use type descriptions in order to aid in selection. The GCK schedule is the exception.
42. “[G]CK does not include use type descriptions. This schedule is utilized for valuing pre-engineered and pole-frames buildings, which are used for commercial and industrial purposes. A format has been developed to value the base building on a perimeter to area ratio basis and to adjust the value based on various individual components of the building. Buildings classified as a special purpose design are not valued using the GCK pricing schedule.” 50 IAC 2.2-10-6.1(a)(1)(D).
43. In sum, when selecting the appropriate pricing schedule, there are only four (4) factors to be considered in determining whether the GCK schedule is appropriate for valuing a structure. Those factors are: (1) whether the structure is pole framed; (2) whether the structure is pre-engineered; (3) whether the structure is for commercial or industrial use; and (4) whether the structure is a special purpose design building. Therefore, if a building is a pre-engineered pole framed or light metal building used for commercial or industrial purposes, and is not a special purpose design building, the GCK schedule is the appropriate schedule for valuing the building.
44. 50 IAC 2.2-10-6.1 directs assessing officials to select and use the pricing schedule and model that best represents the structure being assessed. Therefore, in this appeal, the Petitioner has the burden of proving that the subject buildings are pre-engineered pole framed structures that should be valued from the GCK schedule, and that the GCK schedule best represents the buildings.
45. In the case at bar, the Petitioner argues that the subject buildings should be priced from the GCK cost schedule. While, the Petitioner may have shown that the subject structures fit some of the criteria necessary to qualify for GCK pricing, the Petitioner has not shown

that the structures meet all the criteria, which includes whether the structures are pre-engineered pole framed buildings. The Petitioner testified the buildings “appear” to be pre-engineered, “kit” type structures, but the evidence submitted falls short of proving this allegation.

46. Petitioner’s Exhibit 1 is merely a copy of the Board of Review determination and a proposed pricing grid prepared by the Petitioner and is not indicative of whether the structures are pre-engineered “kit”-type buildings.
47. Exterior photographs of the subject office building and a storage warehouse were presented as Petitioner’s Exhibit 2. The photographs offer little support for the vague testimony given. The photographs are of the exterior of the subject buildings only and do not shed light on the internal factors existing in the structures. Making the distinction between a low cost economical pre-engineered building and any other pre-engineered building relies heavily on internal factors. See *Whitley*, 704 N.E. 2d at 1121.
48. The Petitioner did not submit sufficient evidence concerning the building’s structural components. Further, the Petitioner’s assertions fail to specifically describe why the improvements were improperly priced from the GCI cost schedule. The Petitioner’s submission of a proposed pricing grid using the GCK schedule simply does not establish that the buildings quality as pre-engineered, metal-sided structures used for commercial purposes.
49. While some testimony about the characteristics of the buildings was offered, the Petitioner testified that he did not have a lot of information on the two buildings and was unsure of the gauge of the metal walls. This statement undermines the credibility of the Petitioner’s proposed pricing grid because an adjustment for heavy gauge siding and roofing was made on his proposed calculations.
50. The Petitioner’s comments regarding the office building’s interior and exterior finish are immaterial in determining the appropriate pricing schedule for the building. The

Petitioner's description of the office components are typical of both GCI and GCK pricing, and does not delineate which pricing schedule is more appropriate.

51. The Petitioner's contentions in its exhibits and through testimony are conclusory because they do not specifically describe why the buildings better resemble GCK structures or why the buildings are incorrectly priced under the GCI pricing schedule. The Petitioner must sufficiently explain the connection between the evidence and his 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).
52. The Petitioner bears the responsibility of presenting probative evidence in order to establish a prima facie case. To establish a prima facie case, the Petitioner must present evidence and testimony sufficient to establish a given fact that if not contradicted will remain fact.
53. The Petitioner failed to present a prima facie case that there is an error in the assessment. Therefore, the Respondent's duty to support its assessment with substantial evidence is not triggered. See *Miller Structures, Inc.*, 748 N.E. 2d at 953.
54. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* "Allegations, unsupported by factual evidence, remain mere allegations." *Id.* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax 1995)).
55. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change was made to the assessment.

Summary of Final Determination

Determination of ISSUE 1: *Whether the Form 131 petition was filed within the statutory time limitations*

56. The Petitioner met their burden, by a preponderance of the evidence, and the Respondent did not present sufficient evidence to rebut. Accordingly, it is determined that the Form 131 petition was filed within the statutory time limits.

Determination of ISSUE 2: *Whether the buildings are pre-engineered structures that should be priced utilizing the GCK cost schedule*

57. The Petitioner did not meet their burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

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.