

REPRESENTATIVES FOR PETITIONER:

Steven R. Folz, Tax Representative, Harding Shymanski And Company P.C., Certified Accountants and Consultants

REPRESENTATIVES FOR RESPONDENT:

None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

)	
)	Petition No.: 26-002-01-1-3-00002
)	
BLACK BEAUTY COAL)	
COMPANY)	
)	
Petitioner)	County: Gibson
)	
v.)	Township: Center
)	
)	Parcel No.: 0020012100
)	
CENTER TOWNSHIP ASSESSOR)	
)	Assessment Year: 2001
Respondent)	

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

[December 4, 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 coal handling preparation plant should be classified as personal property.*
 - ISSUE 2 – *Whether the number of floors in the main building is overstated.*
 - ISSUE 3 – *Whether the main building should be valued from the General Commercial Kit (GCK) schedule.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Steven R. Folz, tax representative with Harding Shymanski and Company filed a Form 131 petition on behalf of Black Beauty Coal Company (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on March 11, 2002. The Gibson County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 petition is dated February 8, 2002.

Hearing Facts and Other Matters of Record

3. The Petitioner stated that witness lists and exhibit lists were exchanged at least 15 days prior to the hearing date. The Petitioner also stated that copies of the documentary evidence and summary of witness testimony, to be presented at the hearing, were exchanged at least 5 days prior to the hearing date.

4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on September 12, 2002 in the Gibson County Courthouse, 101 N. Main Street, Princeton, Indiana before Joan L. Rennick, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

5. The following persons were present at the hearing:

For the Petitioner:

Steven R. Folz, tax representative, Harding Shymanski And Company P.C.,

Certified Accountants and Consultants

Ezra Smith, Director of Operations, Black Beauty Coal Company

Lana Lis, Senior Accountant, Black Beauty Coal Company

Tom Peck, Head Engineer, Black Beauty Coal Company

Gregory A. Wing, VP of Finance & CFO, Black Beauty Coal Company

For the Respondent:

No one appeared

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

For the Petitioner:

Steven R. Folz

Ezra Smith

Lana Lis

Tom Peck

Gregory A. Wing

For the Respondent:

No one appeared to be sworn in as a witness or to give testimony

7. It should be noted that the Notice of Hearing on Petition sent to the County Assessor as secretary of the PTABOA was not returned as undeliverable nor did the County Assessor contact the Board or the ALJ to request a continuance. See Board's Exhibit E – Proof of Mailing.

8. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibits A1, A2, A3, and A4 – Exterior and interior photographs of the coal preparation facility

Petitioner's Exhibit B - A page from the Internet that demonstrates a coal preparation facility similar to the subject property without an exterior skin

Petitioner's Exhibit C - Business Tangible Personal Property Assessment Return (IN Form 103 Long Form), Form 104, Form 103 – N, Form 103 – P, and Form 106 for Center Township, Gibson County for 2001

Petitioner's Exhibit D – Indiana Tax Court decision dated March 28, 1990.

Amax Coal Company (Amax Inc.) v. State Board of Tax Commissioners, 552 N.E. 2d 850 (Ind. Tax Ct. 1990) with portions of Page 1 and Page 4 highlighted

Petitioner's Exhibit E - Blueprints that show how a structure is assembled and integrated in a coal handling plant

Petitioner's Exhibit F – Photographs of the exterior and interior of the main building on Parcel #0020012100

Petitioner's Exhibit G - A brochure from A&S Building Systems that constructed the main building

Petitioner's Exhibit H – *King Industrial Corporation v. Indiana State Board of Tax Commissioners*, 741 N.E. 2d 815 (Ind. Tax 2000)

Petitioner's Exhibit I – State Board Final Determination of B & M Plastics Posey County Warehouse of GCK pricing schedule issue as a comparable property

For the Respondent:

No exhibits were presented

For the Board:

Board's Exhibit A - Subject Form 131 petitions

Board's Exhibit B – Notices on Hearing of Petitions

Board's Exhibit C – A request dated September 16, 2002 from the ALJ to Billie Jean Barnett, Gibson County Assessor for a property record card (PRC) reflecting PTABOA Final Determination values found on the Form 115 for Parcel # 0020012100

Board's Exhibit C-1 – Letter dated October 3, 2002 sent to Mr. Folz from the ALJ regarding copies of correspondence received from the Gibson County Assessor

Board's Exhibit D – Disclosure Statement

9. At the hearing, the following exhibits were requested by the ALJ from the Petitioner and were received in a timely manner. The exhibits are entered into the record and labeled accordingly:

Petitioner's Exhibit J – Duplicate copy (Exhibit E) of blueprints of coal handling facility at Francisco Mine

Petitioner's Exhibit K - Business Tangible Personal Property Assessment Return (IN Form 103 Long Form), Form 104, Form 103 – N, Form 103 – P, Form 103 – W, and Form 106 for Barton Township, Gibson County for 2001

Petitioner's Exhibit L – Request dated May 9, 2001 to Barton Township Assessor for an extension on personal property tax filing and extension grant until June 14, 2001 from the Gibson County Assessor

Petitioner's Exhibit M – Copies of certified mail receipts to Center and Barton Township Assessors

Petitioner's Exhibit N – Request dated May 9, 2001 to Center Township Assessor for an extension on personal property tax filing and extension grant until June 14, 2001 from Center Township Deputy Assessor

Petitioner's Exhibit O – Request dated May 15, 2001 to Indiana Department of

Environmental Management for an exemption from personal property tax on machinery listed on 103-P. Attached to the correspondence is the proof of mailing **Petitioner's Exhibit P** – Request dated May 15, 2001 to Indiana Department of Environmental Management for an exemption from personal property tax for reclamation equipment on letterhead from United Minerals Company, LLC.

Attached to the correspondence is the proof of mailing

Petitioner's Exhibit Q - Business Tangible Personal Property Assessment Return from United Minerals Co. LLC (IN Form 103 Long Form), Form 104, Form 103 – N, Form 103 – P, Form 103 – W, and Form 106 for Columbia Township, Gibson County for 2001

Petitioner's Exhibit R – PRC with GCK pricing for the main building

10. At the hearing, it was determined that the assessed value shown on the Form 115 and the assessed value shown on the PRC for the land, differed. Because of this discrepancy, after the hearing the ALJ requested the following information from Billie Jean Barnett, Gibson County Assessor. The information was received in a timely manner. The information is entered into the record and labeled as Respondent exhibits:

Respondent's Exhibit A – Correspondence dated September 18, 2002 containing: cover letter, Real Property Maintenance Report, hand written worksheet for the subject parcel, 2000 PRC and 2001 PRC for subject parcel

Respondent's Exhibit B – Correspondence dated September 24, 2002 containing: cover letter, Form 133 for subject parcel, PRC for subject parcel reflecting corrected Form 115 values

11. The parties at the hearing agreed that the year under appeal is 2001.
12. The subject property is located at 850 E., Francisco, Center Township, Gibson County.
13. The ALJ did not conduct an on-site inspection of the subject property.

14. Mr. Folz testified that he is a Level I and Level II certified tax representative and a member of the IAAO and IMA. Mr. Folz stated that his fee arrangement with his client is based on an hourly wage.

Jurisdictional Framework

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

Indiana's Property Tax System

17. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
18. 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.
19. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
20. 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 V*, 702 N.E. 2d 1034, 1038 (Ind. Tax 1998)(*Town of St. John V*).
21. 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.

22. 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.
23. 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

24. 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 (Ind. Tax 1998).
25. 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.]
26. 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.]

27. 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.]
28. 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).
29. 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 coal handling preparation plant should be classified as personal property.*

30. A review of the current PRC shows that the coal handling preparation plant under review is being assessed as real property with a True Tax Value of \$353,600.
31. The Petitioner contends the coal handling preparation facility is personal property and should not be assessed as real property.
32. The applicable rules governing this Issue 1 are:

Indiana Code 6-1.1-1-19 “Tangible property” defined

“Tangible property” means real property and personal property as those terms are defined in this chapter.

Indiana Code 6-1.1-1-15 “Real property” defined

“Real property” means:

- (1) land located within the state;
- (2) a building or fixture situated on land located within the state;
- (3) an appurtenance to land located within this state; and
- (4) an estate in land located within the state, or an estate, right, or privilege in mines located on or minerals, including but not limited to oil or gas, located in the land, if the estate, right or privilege is distinct from the ownership of the surface of the land.

Indiana Code 6-1.1-1-11 “Personal property” defined

States in pertinent part:

- (a)(5) foundations (other than foundations which support a building or structure) on which machinery or equipment is installed

Indiana Code 6-1.1-3-7 Filing returns, extension of time; consolidated returns; providing information to township assessor; notice

States in pertinent part:

- (a) Except as provided in subsections (b) and (d), a taxpayer shall, on or before the filing date of each year, file a personal property return with the assessor of

each township in which the taxpayer's personal property is subject to assessment.

50 IAC 4.2-4-10 Determination of property as real or personal

States in pertinent part:

- (a) **Real and personal property guide.** The following guide is intended to assist in the identification of property as either real or personal.

The use of a unit of machinery, equipment or a structure determines its classification as real or personal property. If the unit is directly used for manufacturing or a process of manufacturing, it is considered as personal property. If the unit is a land or building improvement, it is considered as real property.

(d) **Miscellaneous**

Coal, handling system – Personal

33. Evidence and testimony considered particularly relevant to this determination includes the following:
- (a) The coal preparation facility, though personal property, has been assessed as real property as evidenced by the Form 11s. Coal handling preparation facilities have been reported on personal property tax forms throughout Indiana and on federal tax returns. *Lis testimony.*
 - (b) A coal handling preparation facility is designed to process the type of coal being mined, to meet customer needs and to prepare the coal to remove sulfur and improve the ash to help control pollution. *Smith testimony.*
 - (c) The Petitioner explained how the steel framing in the subject structure is constructed and how it becomes an integral part of the operation by supporting the machinery used in the operation. If any section of the steel structure were to be removed, the entire structure would collapse. In addition, the insulated metal exterior skin is there to protect the machinery from freezing temperatures because

water is used in the process. In warmer climates the exterior skin is not necessary. *Smith testimony.*

(d) The subject structure is a single piece of machinery with skin on it. *Folz testimony.*

(e) The subject structure appears on the Form 103 and Form 103-P Personal Property returns. *Petitioner's Exhibits C and K.*

34. Because no one appeared to represent the Respondent in this appeal, we assume that the Respondent's position on this issue is the same as that of the PTABOA shown on the Form 115s. The position of the PTABOA on this issue is as follows:

(a) All the information regarding the subject buildings is based on the blue prints submitted by the Petitioner;

(b) The Prep Plant is listed at \$7,500,000 on the 103-P and exempt on the same return;

(c) It is the desire of the Petitioner not to pay taxes on any coal handling preparation;

(d) Though the Petitioner states that the plant has been turned in as personal property, it did not state that a 103-P was filed to remove it as taxable property; and

(e) It is the Petitioner's intention not to pay any taxes on a structure they value at between \$5 and 7 million dollars.

35. The Petitioner presented copies of personal property returns and extensions for the March 1, 2001 assessment. The coal handling preparation facility is listed on the personal property returns along with other personal property. *Petitioner's Exhibits C, K, L, M, N, and Q.*

36. Petitioner Exhibit B demonstrates that the steel structure holding the machinery in place is an integral part of the whole coal preparation process. The Petitioner stated the insulated metal exterior skin is there for the purpose of keeping the water from freezing in the process of cleaning the coal. The coal handling preparation facility may resemble a metal building from the outside, but the exterior skin is there to protect the machinery. *Folz testimony.*

Analysis of ISSUE 1

37. The Petitioner submits interior and exterior photographs (Petitioner Exhibits A1 – A4) of the subject structure. The photographs show the structure to be a metal-sided building with metal framing. The interior photographs along with blueprints (Petitioner’s Exhibit E) of the subject structure show how the structure itself is assembled and how the structural framing is integrated into the machinery of the coal handling plant. In essence the structure becomes a single piece of equipment.

38. The Petitioner testified that from the outside the subject structure looks to be a metal-sided building, which is misleading. The Petitioner testified that the blueprints (Petitioner’s Exhibits E and J) show the construction and placement of machinery on each level of a coal handling preparation structure. The blueprints presented would have been considerably different if the building under review in this appeal was a warehouse. In addition, the Petitioner opined that the exterior skin (used only to protect the machinery from the weather) is not an integral part of the structure and the operation performed within the structure can be done without the metal skin (Petitioner’s Exhibit B) but could not be done without the integrated framing.

39. The Petitioner submitted a Tax Court case, *Amax Inc. v. State Board of Tax Commissioners*, 552 N.E. 2d 850 (Ind. Tax Ct. 1990)(Petitioner’s Exhibit D) in this case it was determined that “a coal company was exempt from property tax on washing equipment that was used to remove noncombustible materials from coal, because the subject equipment property constituted a tax-exempt air pollution control system under Sec. 6-1.1-10-12.”

40. Petitioner’s Exhibits C and O show that the Petitioner has included the entire structure on the Form 103 and has made application for such an exemption from the Indiana Department of Environmental Management on Form 103-P.

41. For all the reasons set forth above, the Petitioner has met his burden on this issue by submitting probative evidence to establish a prima facie case that the coal handling

preparation plant appears on their personal property return (Form 103 and 103-P) and therefore should not be assessed as real property. The Respondent failed to submit any evidence that supported their position and failed to appear at this hearing to rebut the evidence submitted by the Petitioner. A change in the assessment is made as a result of this issue.

ISSUE 2 – Whether the number of floors in the main building is overstated.

ISSUE 3 – Whether the main building should be valued from the GCK schedule.

42. Since the two (2) issues are interrelated, the issues will be reviewed as one (1) issue to determine if the subject structure qualifies to be valued from the GCK schedule and whether the existence of a second story would then disqualify it for such pricing.
43. The Petitioner contends the main building (13,500 square feet) should be priced from the GCK schedule because it meets the GCK criteria. The Petitioner further contends the “second story” is in fact a mezzanine and should be assessed as such.
44. Because no one appeared to represent the Respondent, we would assume that the Respondent’s position on this issue is the same as that of the PTABOA shown on the Form 115. The position expressed by the PTABOA on the Form 115 is that the Board’s Regulation does not provide a provision to price a second story in a GCK building therefore, the structure does not qualify for the GCK pricing.
45. Currently, the subject building is priced from the GCI schedule as a two (2) story steel building, built in 1997, with a “C+1” grade factor assigned, a condition rating of “average” and no physical depreciation applied.
46. The applicable rules governing Issues 2 and 3 are:
 - 50 IAC 2.2-10-6.1 Pricing**
 - (a) “Schedule A Base Prices” consists of base square foot unit rates by floor for various “Use” and “Finish” types for two (2) types of exterior walls. The rates are

for a range of perimeter to area ratios for a specified type of construction, and adjustments are provided to account for variations in wall heights and structural framing.

50 IAC 2.2-10-6.1(1) – The model is a conceptual tool used to replicate reproduction cost of a given structure using typical construction materials. The model assumes that there are certain elements of construction for a given use type. The construction components for each use type model are included in 50 IAC 2.2-11. Because there are so many models included in Schedule A, the base rates are divided into four (4) association groupings. Each grouping appears as a separate schedule in order to facilitate selection. The following are the four (4) association groupings:

- (A) General Commercial Mercantile – GCM
- (B) General Commercial Industrial – GCI
- (C) General Commercial Residential – GCR
- (D) General Commercial Kit – GCK

50 IAC 2.2-10-6.1(a)(1)(D)

"General Commercial Kit" referred to as "GCK" does not include use type descriptions. This schedule is utilized for valuing pre-engineered and pre-designed pole buildings that are used for commercial and industrial purposes. A format has been developed to value the base building on a perimeter area ratio basis and adjust the value based on the various individual components of the building. Buildings classified as a special purpose design are not valued using the GCK pricing schedule.

50 IAC 2.2-11-6, Schedule A.4

GCK Base Prices

50 IAC 2.2-16-2(92) – Story

Means that portion of a building enclosed by a floor, a ceiling, and the exterior walls.

50 IAC 2.2-16-2(57) – Mezzanine”

Means a low story formed by placing a floor between what would ordinarily be the floor and ceiling of a high story. The mezzanine floor frequently has a smaller area than other floors and is usually between the first and second stories.

50 IAC 2.2-11-6, Schedule E – GC Special Features

Mezzanines – Per square foot, including, soffit, finish, lighting, heating and plumbing unless noted. Also based on the construction types described in Schedule A – wood joist, fire-resistant, reinforced concrete and fireproof steel.

47. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) The Petitioner testified that the PTABOA denied the GCK pricing because there is no provision in the Board’s Regulation to price a second floor in a GCK building, therefore the structure does not qualify for the GCK pricing. *Board’s Exhibit A.*
 - (b) The Petitioner submitted photographs of the exterior and interior of the subject building. *Petitioner’s Exhibit F.*
 - (c) The Petitioner submitted a brochure from A & S Building Systems that built the subject structure. *Petitioner’s Exhibit G.*
 - (d) The Petitioner testified that the walls were 26 gauge and the ceiling is 24 gauge. The office mezzanine is built with steel poles and decking with 2’ x 4’ wood joists on the office portion and particleboard on the utility storage portion. The mezzanine area only covers a portion of the entire square footage of the building. *Folz testimony.*
 - (e) The main building was constructed to work on trucks and the office and utility mezzanines were added at a later date. *Peck testimony.*
 - (f) The Petitioner submitted a revised property record card (PRC) with the GCK pricing for the subject building. *Petitioner’s Exhibit R.*
 - (g) The Petitioner submitted a previous Board Final Determination for B & M Plastics as a comparable. *Petitioner’s Exhibit I.*

Analysis of ISSUES 2 and 3

48. 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.
49. Because of numerous models provided, the base rates are divided into four (4) association groupings, namely: (1) General Commercial Mercantile, (2) General Commercial Industrial, (3) General Commercial Residential and (4) General Commercial Kit. Three (3) of the four (4) groupings contain use type descriptions in order to aid in selection. The GCK schedule is the exception.
50. "...[G]CK does not include use type descriptions. This schedule is utilized for valuing pre-engineered, pre-designed pole 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 special purpose design are not valued using the GCK pricing schedule." 50 IAC 2.2-10-6.1(a)(D).
51. To summarize, when selecting the appropriate pricing schedule, there are four (4) factors to be considered in determining whether or not the GCK schedule is appropriate for valuing a structure. These 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 designed building. Therefore, if a building is a pre-engineered pole framed building used for commercial or industrial purposes, and is not a special purpose designed structure, the GCK schedule is the appropriate schedule for valuing the building.

52. Again, the Respondent's contention is that since the subject structure was determined to have a second story and the GCK pricing schedule does not include pricing for a second story, the subject structure would then fail to qualify to be valued from the GCK schedule. See Form 115, Board's Exhibit A.
53. The Petitioner agrees with the local assessing officials that there is no pricing for a second story in a GCK building from the GCK pricing schedule, however the Petitioner opines that the office and utility storage spaces above the main floor are mezzanine areas, not a second floor, and can be priced accordingly.
54. The Petitioner's burden on this issue is to submit probative evidence to show that an error in assessment exists. The Petitioner must establish a prima facie case through probative and material evidence to support its position.
55. The Petitioner submitted photographs of the subject structure (Petitioner's Exhibit F), submitted descriptions of characteristics of the subject structure (metal framed, 26 gauge walls, 24 gauge ceiling, metal sided) and the second story (steel poles, steel, wood joists, and particle board), presented testimony pertaining to the second story as a mezzanine and not a second story, and a brochure from A & S Building Systems who built the subject structure (Petitioner's Exhibit G).
56. As indicated in ¶51, there are only four (4) criteria that a structure has to meet to be considered for GCK pricing. In the case at bar, it is determined that the subject structure fits those criteria and is best described as a GCK structure and should be valued from the GCK schedule.
57. The Respondent did not submit any evidence or testimony that refuted the evidence and testimony presented by the Petitioner. Nor did the Respondent support its position to disqualify the structure from being valued from the GCK schedule.

58. Since it has been determined that the structure meets the criteria for GCK pricing, one must now consider whether the purported existence of a second floor would then disqualify it for the GCK pricing.
59. As stated in ¶46, a “story” is defined as “ a portion of a building enclosed by a floor, a ceiling, and the exterior walls”. Though the area in question is enclosed by a portion of a floor, a portion of the ceiling and some on the exterior walls, it does not cover the entire square footage of the subject structure. A “mezzanine”, as defined within the same paragraph, is a “low story formed by placing a floor between what would ordinarily be the floor and ceiling of a high story. The mezzanine floor frequently has a smaller area than other floors and is usually between the first and second stories”. In the case at bar there is no second story just a high ceiling and a concrete floor.
60. A review of the evidence and testimony submitted by the Petitioner indicates that the second story area fits the description of a mezzanine that is presently used for both office and utility storage. This area can be valued from 50 IAC 2.2-11-6, Schedule E – GC Special Features. This assessment is based on the square footage of the area, the finish, framing type and any necessary adjustment such as air conditioning or sprinkler system.
61. The Respondent did not submit any evidence or testimony that refuted the evidence and testimony presented by the Petitioner. Other than the PTABOA’s statement on the Form 115 that the structure under review is a second story, no other evidence or testimony was given that supported this position. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119 (Ind. Tax 1998).
62. The Petitioner also submitted a previous Board Final Determination for B & M Plastics in Posey County (Petitioner’s Exhibit I) as a purported comparable for the subject. Though the issue may have been similar to the appeal under review in this hearing, the Petitioner makes no analysis to show how the two (2) structures are in fact comparable. It is not enough for the Petitioner to say that the two (2) structures are comparable. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley*, 704 N.E. 2d 1113 (Ind. Tax 1998).

63. For all the reasons set forth above, it is determined that the structure under review be valued from the GCK schedule and the area described as a “second story” on the PRC, be valued as a mezzanine. A change in the assessment is made as a result of these issues.

Other Findings

64. The Board determines that the subject building should be assessed from the GCK pricing schedule. Because the property is now assessed from a different schedule, all appropriate adjustments should be made. These adjustments may include, but are not limited to, grade and physical depreciation.

Summary of Final Determination

ISSUE 1: *Whether the coal handling preparation plant should be classified as personal property.*

65. The Petitioner met its burden of proof in this appeal by submitting probative evidence to establish a prima facie case that the coal handling preparation plant appears on their personal property return (Form 103 and 103-P) and therefore should not be assessed as real property.

ISSUE 2 – *Whether the number of floors in the main building is overstated.*

ISSUE 3 – *Whether the main building should be valued from the GCK schedule.*

66. The Petitioner met its burden of proof in this appeal and it is determined that the subject structure should be valued from the GCK schedule with mezzanine pricing being applied to the area described as a “second story” on the PRC.

The above stated findings and conclusions 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 on this _____ day of _____, 2002.

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.