

**STATE OF INDIANA  
Board of Tax Review**

DAVID WILCOX, TRUSTEE	)	On Appeal from the Lake County Property
	)	Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petition for Review of Assessment, Form 131
v.	)	Petition No. 45-018-97-1-4-10000
	)	Parcel No. 141900090049
LAKE COUNTY PROPERTY TAX	)	
ASSESSMENT BOARD OF APPEALS	)	
And	)	
HOBART TOWNSHIP ASSESSOR	)	
	)	
Respondents.	)	

**Findings of Fact and Conclusions of Law**

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**Issue**

1. Whether buildings shown on property record cards (cards 2 through 5 of 7) should be priced from the GCK schedule and graded "D", or in the alternative, have the existing grades reduced to an "E-1".

## Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
  
2. Pursuant to Ind. Code § 6-1.1-15-3, Rex D. Hume of Uzelac & Associates, Inc. on behalf of David Wilcox, Trustee (Petitioner) filed a Form 131 petition requesting a review by the State. The Form 131 was filed on September 12, 2001. The Lake County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated September 4, 2001.
  
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 27, 2002 before Administrative Law Judge (ALJ) Joan L. Rennick. Testimony and exhibits were received into evidence. Mr. Hume and Ramon Flatt, owner and manager of the subject property, represented the Petitioner. Julia Wolek, Hobart Township Assessor, and Edith I. Chudzicki, Hobart Deputy Assessor, represented Hobart Township. Karen Delgado was an observer from the Lake County Assessor's Office. No one appeared to represent the PTABOA.
  
4. At the hearing, the subject Form 131 petition (with attachments) was made a part of the record and labeled as Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted:  
Board Exhibit C – Disclosure by Property Tax Representative  
Board Exhibit D - Documentary evidence of witness list and exhibit list submitted  
by Petitioner

Petitioner's Exhibit 1 – Issues, arguments, and case law evidence

Petitioner's Exhibit 2 – Photographs of comparable property with property record card (PRC) attached

Petitioner's Exhibit 3 – Photograph of comparable property with PRC attached

Petitioner's Exhibit 4 – Photograph of comparable property with PRC attached  
Respondent's Exhibit 1, 2, 3, and 4 - Photographs of subject property  
Respondent's Exhibit 5 – Copy of subject PRC

5. At the hearing, all parties agreed the year under appeal is 1997 and the assessed values of record are: Land - \$4,970, Improvements - \$100,790 for a total assessed value of \$105,760.
6. The subject property is a mini-warehouse storage facility located at 2200 Central Ave., Lake Station, Hobart Township, Lake County.
7. The ALJ did not view the subject property.
8. Prior to the hearing Mr. Hume and the Hobart Township officials met and exchanged evidence and witness lists.

**Whether buildings shown on property record cards (cards 2 through 5 of 7) should be priced from the GCK schedule and graded "D", or in the alternative, have the existing grades reduced to an "E-1".**

9. The Petitioner contends that the buildings under appeal are wood framed, post and beam, pole-constructed structures used as mini-warehouses. The siding is 26-gauge and the roof is a typical wood truss. The structures are currently priced from the GCI Mini-Warehouse schedule with a grade factor of "C-1" and a condition rating of "fair" applied. However, the structures should either be valued from the GCK pricing schedule with a grade of "D" applied or the structures should maintain their present assessment but with a grade of "E-1" applied.  
*Hume testimony.*
10. The Petitioner testified that the foundation for these buildings is poured on top of the ground with no footings. A 2-inch x 6-inch wood plate is nailed to 4 x 4's and

the concrete floor is poured inside the form on top of the ground. Nothing sits on the floor. The entire building rests on the posts that are 10 inch on center and are 42 inches deep in a 6-inch post-hole poured with concrete. The walls are 2 X 4 purlins nailed onto the post. The light gauge steel sheets are nailed to the purlins. The partitions are unfinished OSB wafer particleboard nailed to a 2 x 3 stud spaced 2-feet on center and set on a 2 x 4 bottom plate for a wall height of 8-feet. The concrete floors are broom finished and not sealed. *Flatt testimony.*

11. Evidence submitted at the PTABOA hearing and attached to the 131 petition, contains a table that compares the components of the GCI Mini-Warehouse model to the actual buildings. Mrs. Hume's testimony supported the description provided by Mr. Flatt and added that the structure had no lighting or heating. *Hume testimony & Board Exhibit A, Attachment 1.*
  
12. Petitioner submitted several Tax Court cases in support of his position: *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax Ct. 1995); *Zakutansky v. State Board of Tax Commissioners*, 696 N.E. 2d 494, 497 (Ind. Tax Ct. 1998); *Racquet Club, Inc. V. State Board of Tax Commissioners*, 722 N.E. 2d 926 (Ind. Tax Ct. 2000). All the cases were pre-1995 appeals and all ultimately dealt with selection of schedule. *Hume testimony & Petitioner' Exhibit 1.*
  
13. The Petitioner's representative opined that these cases determined that the taxpayer is entitled to have their property assessed using the correct cost schedule, and the actual use of the property is not the determining factor when selecting the appropriate model, but merely a starting point. As a result, the model that most closely resembles the subject improvement with respect to physical features is to be used, regardless of the model's name. No adjustment from the GCI Mini-Warehouse schedule would arrive at a fair and equitable assessment. *Hume testimony & Petitioner's Exhibit 1.*

14. Mr. Hume contends that in the appeal under review, the model is mini-warehouse, but the subject building has nothing in common physically with the model. The only model available in the Regulation that deals with wood post and beam structures with commercial and industrial occupancy is the GCK schedule. *Hume testimony & Board Exhibit A, Attachment 1.*
15. Mr. Hume contends that an alternative to changing the pricing schedule from GCI to GCK would be to make a change in the grade to the present pricing schedule. Attached to the original Form 131 petition is a construction estimate for one (1) of the subject buildings. The bid is for \$6,500 and included everything except the floor. This structure was the first one built and is identified on PRC 2. No documentation was available on the cost of the concrete floor. *Hume testimony & Board Exhibit A, Attachment 6.*
16. Referencing Board Exhibit A, Attachment A, "Miscellaneous," a cost estimate on the subject building, Mr. Hume testified the 3% inflation figure was taken from HUD published figures of commercial construction in that period. The 3% was not regionalized but was intended to approximate the cost a year later. That figure was discounted 15% to be on the same basis as the State's cost schedules. The \$2.00 per square foot (SF) is taken from the Unit-In-Place cost schedule (50 IAC 2.2-15-1, Cast-In-Place Concrete, page 10). The estimated production cost new from the calculation indicates a cost of \$8,900, which is 78% of the GCK pricing (Board Exhibit A, Attachment 4). Even if the 3% inflation figure were disputed, the rounding of another close number would amount to 80% or a "D" grade from the GCK schedule. *Hume testimony.*
17. Mr. Hume asserts that the selection of schedule for the subject structures is not changed from GCI to GCK, then the grade should be changed to account for these rather extreme deviations from the model. Such a grade would then be an "E-1", which would still constitute an overassessment. *Hume testimony.*

18. Mr. Hume submitted into evidence photographs and PRCs (Petitioner's Exhibits 2, 3, and 4) of properties that he deemed similar (in some ways) to the subject mini-warehouses. The properties submitted are as follows:
  - a. Petitioner's Exhibit 2 is a wood frame post and beam type mini-warehouse with a 6 x 6 post (measured by Mr. Hume). This building is priced from the GCI Mini-Warehouse schedule and graded "D-2" to compensate for deficiencies. This building differs from the subject property due to height, having wood lofts, and internal framing being 2 x 4's instead of 2 x 3's';
  - b. Petitioner's Exhibit 3 is steel framed conventional kit type that has become standard of mini-warehouses. Other than the steel post and beam framing, steel girts and purlins, and insulation, it is similar to the subject property and is priced from the GCK schedule and graded "C"; and
  - c. Petitioner's Exhibit 4 is mini-warehouses priced from the GCK schedule and graded "C". In this case they are wood framed similar to the subject property. Building O on this property is priced as a neighborhood shopping center because it was converted from mini-warehouse to retail and houses among other things a Greek grocery store and a dog grooming shop.
19. Respondent contends that one (1) of the comparable properties is from another county and two (2) are from other townships. All of the townships buildings are graded consistently. *Wolek testimony.*
20. Respondent contends that per Regulation 17, commercial buildings are priced according to their use, with use being the first thing the township considers. The subject buildings are being used as mini-warehouses and are not priced from the GCK schedule because the GCK schedule is used for pole construction. The structures are not of pole construction and are used as mini-warehouses and therefore are priced from the GCI schedule. All mini-warehouses have been assessed from that schedule. The GCK schedule is not appropriate for mini-warehouses because they are special purpose buildings. *Chudzicki testimony.*

21. The Respondent contends the subject buildings have been assessed with no heat from the beginning, but no deductions have been made for lighting. No access to the interior of these buildings was made available. The buildings have been graded “C-1” with a condition rating of “fair” applied. Photographs of the subject buildings were submitted into evidence. *Chudzicki testimony & Respondent Exhibits 1, 2, 3, and 4.*
  
22. Mr. Hume summarized the testimony and contention of the Petitioner as follows:
  - a. Based on the photographs submitted and testimony given, the Petitioner has shown that the subject buildings are in fact pole type structures;
  - b. The GCK schedule is to be used for pole type structures with commercial and industrial occupancies and not used for special purpose. The Regulation does not define special purpose in relation to the GCK schedule;
  - c. No other guidelines are available other than case law submitted by Petition. Case law states the taxpayer has a right of the use of the schedule that most nearly fits the construction standard of the building. The only model available that fits wood post structures is GCK;
  - d. Although the Regulation does not define special purpose buildings, the 2002 manual does define special purpose as the following:

“An improvement whose design is such that it limits its use to a narrow range of occupancies. Any building designed in such a way that it cannot easily be converted to another use can be considered a *special-purpose structure*.”

Examples are steel mills, theaters, auditoriums, and churches;
  - e. Essentially the same definition, using the same examples, is given on page 292 of The Appraisal of Real Estate, Eleventh Edition, Appraisal Institute, Chicago, 1996;
  - f. Conversion opportunities are available for this type of building. One such conversion was presented into evidence (Petitioner’s Exhibit 4) of a mini-warehouse converted to retail. The PRC shows pricing for a neighborhood shopping center for a structure previously assessed as a mini-warehouse; and

- g. Mr. Flatt mentioned a flea market as a conversion opportunity and the storage of equipment. The partitions could be removed and the space used as general storage.
23. Mr. Hume contends the State has not committed anything to writing about their position on this issue despite requests on numerous occasions. A formal request was made under the Public Records Law and found there was no written position. The services of a public access counselor could not find any written position on this issue. It must be the Board's position that there is no official position on the subject. *Hume testimony*.

### **Conclusions of Law**

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address



issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

### **A. Indiana's Property Tax System**

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause 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. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

## **B. Burden**

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “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)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing

*Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State's final determination merely because the taxpayer demonstrates flaws in it).

### **C. Review of Assessments After *Town of St. John V***

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

### **D. Credibility of Witness -- Contingent Fee**

18. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).

**Whether buildings shown on property record cards (cards 2 through 5 of 7) should be priced from the GCK schedule and graded “D”, or in the alternative, have the existing grades reduced to an “E-1”.**

19. In assessing the subject buildings, the County used the GCI pricing schedule (Mini-Warehouse), which includes those use types associated with industrial districts. The Petitioner maintains that the subject structures were incorrectly valued when the wrong pricing schedule was used. The Petitioner opines that even though the subject buildings make up a mini-warehouse storage facility, they are not close to the components for the GCI Mini-Warehouse model. The Petitioner contends the structures should be either valued from the GCK pricing schedule or the grade factor should be reduced as it applies to the GCI Mini-Warehouse pricing schedule.
20. The State 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.
21. 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.
22. "...(GCK) does not include use type descriptions. This schedule is utilized for valuing pre-engineered and 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 a special purpose design are not value using the GCK pricing schedule. " 50 IAC 2.2-10-6.1(a)(1)(D).

23. In a nutshell, when selecting the appropriate pricing schedule, there are only four 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 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.
24. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
25. The Petitioner testified about the components of the structures, submitted a table showing a comparison between the GCI Mini-Warehouse model specifications and the actual building components, submitted two (2) exterior and two (2) interior photographs of one of the subject buildings (Board Exhibit A, Attachments 1 and 2), provided an affidavit (Board Exhibit A, Attachment 6) to the components used in the construction and the way the buildings were constructed, submitted photographs and PRCs of purported comparables, and submitted copies of Tax Court cases.
26. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

## GCK Pricing

27. The Petitioner's testimony on the components of the subject structures (See Findings of Fact ¶¶10 and 11), the comparison of the components of the Mini-Warehouse model to those of the subject buildings (Board Exhibit A, Attachment 1), photographs of some of the subject structures (Board Exhibit A, Attachment 2), a construction bid for one (1) of the storage buildings measuring 20 feet by 80 feet (Board Exhibit 1, Attachment 5), comparable properties (Petitioner's Exhibit 2, 3, and 4), and an affidavit from Mr. Flatt (Board Exhibit A, Attachment 6), would seem to qualify the structures as potential candidates for GCK pricing.
  
28. Again, the Petitioner contends that the use of the property is a starting point and not a determining factor in selecting the appropriate model. The Petitioner contends that taxpayers are entitled to have their property assessed using the correct cost schedule. In the case at bar, the Petitioner opines that the subject structures meet the criteria established for the GCK pricing schedule because it is the only model that deals with pole framed buildings used for commercial occupancy and not used for a special purpose. The Petitioner further contends the Regulation does not define special purpose in relation to the GCK schedule.
  
29. Though the Petitioner may have shown that the subject structures fit some of the criteria necessary for the structures to qualify for the GCK pricing such as, the structures being pole framed, pre-engineered, and used for commercial and industrial purposes, the Petitioner failed to show whether the structures were structures are special purpose design or not.
  
30. The fact that a structure under review may meet one, two or even three of the provisions necessary for the application of the GCK pricing schedule, in the final analysis the structure *must* meet all four criteria. See Conclusions of Law ¶¶23.

31. To support its position on the special purpose issue, the Petitioner attempts to make two (2) arguments. Both arguments made by the Petitioner will be reviewed as one. The Petitioner's argues:
  - a. That the State has not defined what special purpose is; and
  - b. Since the structures can be easily converted to other uses, they are not special purpose buildings.
  
32. In the past, parties to appeals have argued the Regulation failed to define the meaning of special purpose design. This is no longer the case, the Indiana Tax Court in *LDI Manufacturing v. State Board of Tax Commissioners*, 759 N.E. 2d 685 (Ind. Tax 2001) referred to technical, appraisal terms to define it. The Tax Court defined a "special-purpose property" or a "special-design property" as "[a] limited-market property with unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built[.]" Appraisal Institute, *The Appraisal of Real Estate* 25 (12<sup>th</sup> ed. 2001).
  
33. Since the Tax Court has defined what a "special-purpose property" or a "special-design property" is, the State will use the Tax Court's definition as a basis for its determination of the GCK issue in the appeal under review.
  
34. Regarding the Petitioner's second argument the Petitioner testified that the subject structures can easily be converted to some other use and as a result are not special purpose structures. The Petitioner testifies to examples of converting mini-warehouses to things such as a neighborhood shopping center, flea markets and equipment and boat storage.
  
35. It is not enough for the Petitioner to simply state what other uses a mini-warehouse *could* be converted to. The Petitioner does not explain whether the modifications required, based on these new usages, would be extensive or not. However, if someone were to modify the subject structures for another use, these areas would need to be considered for conversion purposes:
  - a. Lighting – presently none



- b. Air conditioning – presently none
  - c. Heating – presently none
  - d. Plumbing – presently none
  - e. Doorways – numerous overhead and entry door types
  - f. Interior partitioning – presently OSB wafer particle board
  - g. Insulation – presently none
  - h. Concrete floor
  - i. Wall height – 8 feet
  - j. Size of structures – Two (2) structures 20 feet by 80 feet, one (1) 24 feet by 60 feet, one (1) 24 feet by 300 feet
  - k. Interior finish – presently none
  - l. Lack of parking facilities for the converted use
36. It is clear from the “modification” list above that a conversion of the subject structures would require substantial changes.
37. Even though the Petitioner may point to a mini-warehouse that has been converted to a neighborhood shopping center, such a structure would no longer be valued from the GCK pricing schedule but valued from the GCM pricing schedule (Petitioner’s Exhibit 4). Such a change from a mini-warehouse (GCK) to a shopping center (GCM) would require a substantial amount of modification to that structure and thus require a change to a different model and pricing schedule. As far as storage units for equipment, boats, cars or utility storage that the Petitioner points to, that is in fact the present use.
38. Due to the amount of modification that would have to be done to the subject structures to convert them to another use, it is determined the subject structures fit the Tax Court’s definition of a “special-purpose property” or a “special-design property“. The subject property’s design restricts its utility to the use for which it was built.

39. In addition, the Petitioner submitted portions of PRCs (cover sheets of Card 1 of 1 missing) of purported comparable mini-warehouse properties (Petitioner's Exhibits 2, 3, and 4) in support of the GCK pricing schedule as well as an attempt to show disparate treatment of the subject property. A review of this evidence shows that these structures were either valued from the GCK, GCM or GCI pricing schedules and that the properties are not located in the same township as the subject and in one (1) instance not within the same county. There was no explanation submitted as to why these structures, purported to be similar, were valued or graded differently.

### Grade

40. At the same time that the Petitioner requested a change to the GCK pricing schedule, the Petitioner suggests, as an alternative solution, the lowering of the grade factor as it relates to the current (GCI) pricing schedule to account for "extreme deviations" from the model. To this end the Petitioner submitted a calculation of cost for one (1) of the buildings built in 1990 (Board Exhibit A, Attachment 5). The Petitioner supports this calculation of cost with a copy of the Petitioner's acceptance of a bid by B & E Construction Co. (Board Exhibit A, Attachment 5) of \$6,500 for the building only. The Petitioner contends that the design and materials in this building are the same as that found in the remaining buildings under review in this appeal, except for concrete block structure.
41. The Petitioner's calculation takes the cost of the building (\$6,500), applies an inflation factor of 3%, discounts this value by 15% in order to equate to the cost schedules in the Regulation, adds in \$3,200 for the concrete slab (1,600 square feet x \$2.00 per square foot) from 50 IAC 2.2-15-2.11, which was not a part of the cost of the building, and comes to a Reproduction Cost New (RCN) of \$8,900.
42. The Petitioner then compares this value to the value the Petitioner determined in their pricing ladder for a GCK building (Board Exhibit A, Attachment 3) and to the

value shown on the current PRC. The Petitioner determines the grade should be a “D” if the structure is valued from the GCK schedule or an “E-1” (and considered an over assessment) when compared to the current pricing schedule.

43. True tax value does not equal market value. Ind. Code § 6-1.1-31-6(e). The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034,1038 (Ind. Tax 1998)(*Town of St. John V*). True tax value does not attempt to determine the actual market value for which property would sell if it were offered in the open market. Any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail. Nevertheless, true tax value’s method for valuing is the same as one of the well-accepted methods for determining fair market value – reproduction cost less depreciation.
44. The cost schedules in the Regulation, 50 IAC 2.2-11-6, are at the heart of true tax value’s method for determining value. The cost schedules effective for the 1995 general reassessment reflect 1991 reproduction costs (based on market information derived from Marshall Valuation Services price tables) that were then reduced across the board. The overall purpose of these cost schedules was to approximate prevailing construction costs in 1991 less 15%.
45. The Petitioner’s calculation is flawed. The Petitioner uses a cost of \$6,500. The bid clearly and specifically states that the contractor will provide all the materials and labor to construct an 80-foot by 20-foot storage building. In addition the supplemental provisions call for 8-foot eave, black fiberglass shingles, #15 felt, and blue steel siding with white trim. Such a bid constitutes the shell of the building only. It should be noted that the cost of the building did not include any costs for the overhead doors, entry doors, concrete flooring, windows or interior framing for separating the individual units. The \$6,500 submitted as the cost of the structure is incomplete.

46. If the State was to compare the construction cost information of a structure to the Regulation's cost schedules for purposes of the grade issue raised in this appeal, the State could not compare 1990 construction cost information with construction cost information based on 1991 dollars. Accordingly, the State would have to inflate the 1990 cost information to 1991 true tax value.
47. To determine the inflation factor, the State would use the Marshall Valuation Services 2002 Handbook. This book is a nationally recognized publication of assessment/appraisal theory and cost data. It provides comparative cost multipliers by region and also provides a formula to take an established cost to a current date. By using the Marshall Valuation Services cost multipliers for the Central District - Great Lakes Cities and their cost formula, the structure under appeal that was built in 1990 can be trended upward in time to equal 1991 construction costs.
48. To bring an established cost to a current date the formula would be as follows:  
Multiplier (for Known Date) x Known Cost = Present Cost
49. Assuming *arguendo* that the Petitioner's construction cost information was complete and accurate, the calculation would be as follows:
- 1.405 x \$6,500 = \$9,133
50. Trending the construction cost information upward still does not end the calculation because the 1991 cost schedules found in the Regulation were reduced by 15%. Accordingly, the inflated construction costs must be further reduced by 15% for proper comparison. This adjustment yields the following result: \$9,133 x .85 = \$7,763.
51. To this adjusted construction cost the cost for the concrete flooring (\$3,200) would be added resulting in an amount of \$10,963 (\$7,763 + \$3,200). The

Petitioner on the other hand calculated their total cost to be \$8,900 using a 3% inflation rate which was not supported by any documentation submitted by the Petitioner.

52. Any additional comparisons of these values would be meaningless and speculative when the information it is based upon is incomplete.
53. There are two methods to adjust an improvement's assessment for deviation from the model. The first is to adjust the grade of the subject. "Where possible, this type of an adjustment should be avoided because it requires an assessing officials subjective judgment." *Clark v. State Board of Tax Commissioners*, 742 N.E. 2d 46, 49 (Ind. Tax 2001)(*Clark II*). See also *Whitley*, 704 N.E. 2d 1113.
54. "Under some circumstances, an improvements deviation from the model used to assess it may be accounted for via a grade adjustment." However, the evidence presented must explain how and to what extent the subject deviates from the model, why those deviations deserve an adjustment, and why a subjective (as opposed to objective) adjustment is appropriate. *Quality Farm and Fleet, Inc. v. State Board of Tax Commissioners*, 747 N.E. 2d 88, 94 (Ind. Tax 2001).
55. The second and preferred method "is to use separate schedules that show the cost of certain components and features present in the model. This method allows an assessing official to make an objective adjustment to improvement's base rate. *Clark II*, 742 N.E. 2d at 49. See also *Whitley*, 704 N.E. 2d 1113.
56. The Petitioner must identify the model used to assess the improvement. The Petitioner must also demonstrate whether the current grade does not already account for lower construction costs due to these features. *Miller Structures v. State Board of Tax Commissioners*, 748 N.E. 2d 943, 953 (Ind. Tax 2001). Accordingly, the Petitioner must show how the subject deviates from the model, and quantify how the alleged deviations affect the subject's assessment.

57. The Petitioner does submit a comparison of the GCI Mini-Warehouse model to the actual structures. But other than a comparison to support the GCK issue, the Petitioner does not attempt to compare the costs of existing components or lack of components to those found in the GCI model. Such comparisons would allow for adjustments to the pricing ladder. In addition, the Petitioner does not explain whether the current grade of "C-1" took into consideration lower costs of construction due to those features.
58. For all the reasons set forth above, the Petitioner failed to show that the subject property met all the qualifications to be valued from the GCK pricing schedule or that the current grade factor should be reduced. No change in the assessment is made as a result of this issue.

## **SUMMARY OF STATE DETERMINATIONS**

**Whether buildings shown on property record cards (cards 2 through 5 of 7) should be priced from the GCK schedule and graded "D", or in the alternative, have the existing grades reduced to an "E-1".**

No change in the assessment is made.

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 this \_\_\_\_ day of \_\_\_\_\_, 2002.

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Chairman, Indiana Board of Tax Review