

REPRESENTATIVES FOR PETITIONER: Fred Monschein, Fred Monschein & Associates, Inc.

REPRESENTATIVES FOR RESPONDENT: Sandy Mundy, Deputy Monroe County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

In the matter of:

EVIND CORPORATION,	)	Petition No.: 53-015-95-3-3-00007
	)	
Petitioner	)	County: Monroe
	)	
v.	)	Township: Van Buren
	)	
MONROE COUNTY BOARD OF	)	Parcel No.: 0162999003
REVIEW AND VAN BUREN	)	
TOWNSHIP ASSESSOR,	)	
	)	
Respondents.	)	Assessment Year: 1995
	)	

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Appeal from the Final Determination of  
Monroe County Board of Review

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**August 22, 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**

### **Procedural History**

1. Pursuant to Ind. Code § 6-1.1-15-12(d), Fred Monschein of Fred Monschein & Associates Corporation filed a Form 133 on behalf of Evind Corporation petitioning the Board to conduct an administrative review of the above petition. The Form 133 was filed on June 10, 1996. The determination of the Monroe County Board of Review was issued on June 3, 1996.

### **Hearing Facts and Other Matters of Record**

2. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on May 14, 1998 in Bloomington before Carolyn Ives, the duly designated Hearing Officer authorized by the Board under Ind. Code § 6-1.1-30-11.
3. The following persons were present at the hearing:
  - For the Petitioner:
    - Mr. Fred Monschein
  - For the Respondent:
    - No one appeared on behalf of the Respondent
4. The following persons were sworn in as witnesses and presented testimony:
  - For the Petitioner:
    - Mr. Fred Monschein
  - For the Respondent:
    - None
5. The following exhibits were presented:
  - For the Petitioner:

Petitioner's Exhibit 1 – A Property Tax Analysis containing the following:

- (a) Calculations regarding assessment as a GCK building.
- (b) State training information regarding GCK characteristics.
- (c) A partial copy of a property record card showing TTV of \$517,470.
- (d) A partial copy of a property record card showing TTV of \$571,600.
- (e) Information regarding land classification.

For the Respondent:

Respondent's Exhibit 1 – A copy of a Summary Report page for Park 37 Area, Van Buren District, Monroe County Land Valuation Order.

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

Hearing Officer Carolyn Ives viewed the property on September 23, 1998. Debbie Anderson, manager of the facility, was present at the viewing.

7. The subject, located on W. State Road 45, Van Buren Township, Monroe County, is assessed as industrial office and light warehouse.

### **Issues**

8. The issues presented for consideration by the Board were:

ISSUE 1 – *Whether the building should be assessed using the GCK schedule.*

ISSUE 2 – *Whether the square footage of the building and paving is overstated.*

ISSUE 3 – *Whether the land is correctly classified.*

## **Jurisdictional Framework**

9. 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.
10. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

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

11. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
12. 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.
13. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
14. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *Town of St. John V*, 702 N.E. 2d.
15. 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.

16. 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.
17. 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**

18. 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).
19. 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.]
20. 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.]
21. 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.]

22. 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).
23. 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 building should be assessed using the GCK schedule.*

24. The Petitioner contends the subject building should be priced using the GCK schedule.
25. The Respondent was not present at the hearing to rebut the Petitioner's contentions.
26. The applicable rules governing Issue 1 are:

**50 IAC 2.2-10-6.1(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.

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**50 IAC 2.2-11-6**

[This section contains the commercial and industrial cost schedules.]

**50 IAC 2.2-11-4**

[This section contains graded photographs of various commercial and industrial buildings. *See* page 76 for pre-engineered kit structure.]

**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” referred to as “GCM” is used for use types generally associated with mercantile districts.
- (B) “General Commercial Industrial” referred to as “GCI” includes those use types generally associated with industrial related operations.
- (C) “General Commercial Residential” referred to as “GCR” includes those use types generally associated with commercially operated residential accommodations.
- (D) “General Commercial Kit” referred to as “GCK” does not include use type descriptions. This schedule is used 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 area ratio basis and adjust the value based on the various individual components of the building. Buildings classified as special purpose design are not valued using the GCK pricing schedule.

27. Evidence and testimony considered particularly relevant to this determination includes the following:
- A. The subject building is currently assessed using the GCI “General Commercial Industrial” schedules.
  - B. The Petitioner contends that the subject building has several features listed in the manual that would qualify it as a GCK “General Commercial Kit” building.
  - C. The Petitioner submitted calculations, which reflect the subject building’s pricing as a GCK structure.
  - D. The Petitioner submitted a copy of information used by the State for assessment training regarding GCK features.
  - E. The Petitioner contends that the building’s grade should be lowered to “D” or less if the assessment is determined using the GCI schedule.<sup>1</sup>

#### Analysis of ISSUE 1

28. The Petitioner argues that the GCK schedule is the appropriate schedule to be used for pricing the subject building. In support of their argument, the Petitioner presented calculations for the subject building using the GCK schedule. In addition, the Petitioner submitted a handout from a 1996 State sponsored training class regarding GCK building features.

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<sup>1</sup> Petitioner did not support its contentions regarding grade with any probative evidence. The determination of the proper grade involves subjective judgment and is not an error that can be corrected via a Form 133 Petition. See ¶ 30.



29. A Form 133 petition is available only for those errors that can be corrected without resort to subjective judgment. *Reams v. State Board of Tax Commissioners*, 620 N.E. 2d 758 (Ind. Tax 1993).
30. Schedule and model selection involves subjective judgment. Therefore, a Form 133 Petition is not the appropriate petition with which to challenge an alleged error made in the selection of schedules or models. In *Bender v. State Board of Tax Commissioners*, 676 N.E. 2d 1113,1116 (Ind. Tax 1997), the Tax Court held:

“Clearly, the assessor must use his judgment in determining which schedule to use. It is not a decision automatically mandated by a straightforward finding of fact. The assessor must consider the property in question, including its physical attributes and predominant use, and make a judgment as to which schedule is most appropriate. Just as the assessor must use subjective judgment to determine which base price model to employ within these schedules, so too the assessor must exercise his or her discretion to determine which schedule to use. In some cases, this decision will be a closer call than in others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor. (Citations omitted).”

31. Petitioner’s evidence may demonstrate errors in the assessment. However, because this issue is subjective and was improperly raised on a Form 133 Petition, the Board will not address the merits of this issue. Accordingly, no change is made to the assessment.

ISSUE 2: Whether the square footage of the building and the paving is overstated

32. The Petitioner contends the assessment of the subject building should be based on 32,395 square feet. The square footage is listed as 32,707 on the property record card.

33. In addition, the Petitioner contends the square footage of the paving is also incorrect.<sup>2</sup>

34. The Respondent was not present at the hearing to rebut the Petitioner's contentions.

35. The applicable rules governing this issue are:

**50 IAC 2.2-10-5(a)** instructs assessors to draw the building to the approximate scale and determine the outside dimensions of the building to compute the gross square foot ground area.

**50 IAC 2.2-12-2(b)(12)** instructs assessors to enter the size or area of commercial and industrial yard improvements.

**50 IAC 2.2-10-5(d)(12)**

"Size or area" means the dimensions of the item (length and width, or diameter and height). "Area" means the square foot ground area.

36. Evidence and testimony considered particularly relevant to this determination includes the following:

- A. The dimensions recorded on the 1995 property record card for the subject building are 155 feet by 211 feet, or 32,705 square feet.
- B. The Petitioner submitted partial copies of a two prior property record cards, in which the building area was listed as 32,395 square feet.
- C. The square footage area recorded on the 1995 property record card for the subject paving is 38,600.
- D. The square footage area recorded on the prior property record cards for paving is 78,000.
- E. The Petitioner indicated an area of 32,395 square feet for the building and 78,000 square feet for the paving on the calculations they submitted of the purported correct assessment.

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<sup>2</sup> On the Form 133, the Petitioner contended that the paving measurement was overstated. However, at the hearing the Petitioner's witness acknowledged the paving area is larger than shown on the Assessor's property record card.

## Analysis of ISSUE 2

37. The Petitioner contends that the correct area for the subject building is 32,395 square feet. In support of their contention, the Petitioner submitted partial copies of two property record cards, one, which is from a prior appeal with the State, as well as their purported calculations showing an area of 32,395 square feet.
38. The Petitioner contends that the paving area measurement is incorrect. On the Form 133, the Petitioner opined that the square footage listed on the assessment at appeal (38,600 square feet) was overstated. However, at the appeal hearing, the Petitioner's witness indicated that the paving area is actually larger than shown on the assessment at appeal. The Petitioner did not provide the exact dimensions of the paving area, but listed the area as 78,000 square feet on their proposed calculations.
39. The Petitioner submitted a property record from a prior appeal and an additional property record card from a prior assessment that listed the square footage of the paving area as 78,000 square feet. To meet its burden of what the correct assessment should be the Petitioner also submitted proposed calculations. Although, the Petitioner offered little testimony or evidence regarding its contentions, the evidence submitted is highly persuasive that an error does exist on the 1995 assessment.
40. Although the Petitioner's calculations indicate a measurement of 78,000 square feet for the paving, those calculations are unsupported by any type of substantial evidence or testimony. In fact the Petitioner's ambiguity regarding whether the paving measurement was overstated or understated further undermines the possibility of developing a prima facie case regarding the paving area. See ¶ 21.
41. It was a past practice for the State to conduct on-site inspections for properties at appeal. At the on-site inspection, the hearing officer determined the assessment for the building should be based on 32,395 square feet and the assessment for the paving should be based on 98,239 square feet.

42. In this case, the evidence presented by the Petitioner is insufficient to develop a prima facie case. However, the onsite inspection by the Hearing Officer confirmed that there is an error in the assessment. The Hearing Officer, in the presence of Petitioner's company manager, determined the correct area of the building to be 155 feet by 209 feet, or 32,395 square feet and the appropriate area of paving to be 98,239 square feet.
43. The square footage determined by the onsite inspection is slightly less than listed on the 1995 property record card and will lower the assessment. The paving area is greater than the square footage shown on the property record card. The Petitioner is in agreement that this calculation will cause an increase.
44. For the above reasons, the Board, through matters "officially noticed", in accordance with the Hearing Officer's onsite inspection and exterior measurements of the subject building and paving will make a change to the assessment.

ISSUE 3: *Whether the land is correctly classified*

45. The Petitioner contends the commercial land is misclassified.
46. The Respondent was not present at the hearing but Sandy Mundy, Deputy County Assessor, submitted a copy of the Summary Report page from the Monroe County Land Valuation Order.
47. The applicable rules governing this issue are:  
**50 IAC 2.2-4-17(b)**  
"There are four (4) categories of commercial and industrial land. Those categories are primary, secondary, usable undeveloped and unusable undeveloped. The amount of acreage necessary to support the existing facility and its purposes is classified as primary. The acreage that is used in the enterprise, but not on a regular basis, is classified as secondary. The amount of

acreage that is vacant and held for future development is classified as usable undeveloped land. The amount of vacant acreage that is unusable for commercial or industrial purposes, and not used for agricultural purposes, is classified as unusable undeveloped. Normally, large acreage tracts are partitioned to indicate the various uses of the individual tract. Small acreage tracts of one (1) acre or less are often utilized as primary building site and require the primary land classification.”

**50 IAC 2.2-4-1(13)**

“Land Classification” means the classification of land based upon its capabilities for use.

**50 IAC 2.2-4-1(18)**

“Primary commercial or industrial land” refers to the primary building or plant site. The following are examples of primary land: (A) Land located under buildings, (B) Regularly used parking areas, (C) Roadways, (D) Regularly used yard storage, and (E) Necessary support land.

**50 IAC 2.2-4-1(19)**

“Secondary commercial or industrial land” refers to land utilized for purposes, which are secondary to the primary use of the land. The following are examples of secondary land: (A) Parking areas that are not used regularly, (B) Yard storage that is not used regularly.

**50 IAC 2.2-4-1(24)**

“Usable undeveloped commercial and industrial land” means vacant land that is held for future commercial and industrial development.

**50 IAC 2.2-4-1(23)**

“Unusable undeveloped commercial and industrial land” means vacant land that is unusable for commercial or industrial purposes.

### **Monroe County Land Valuation Order**

Establishes the base rate for residential, agricultural homesite, commercial and industrial land.

The relevant case law includes:

***State Board of Tax Commissioners v. Two Market Square Associates, 679 N.E. 2d 822 (Ind. Tax 1997)***

Paved parking areas owned by taxpayers could be assessed for tax purposes either as primary or secondary industrial/commercial land under regulation of State Board of Tax Commissioners, which required portions of land utilized as primary building site or plant site to be classified as primary and portions of land utilized for purposes secondary to primary use to be classified as secondary. Ind. Adm. Code title 50, r. 2.1-4-29(f).

48. Evidence and testimony considered particularly relevant to this determination includes the following:
- A. The property record card shows the subject 6.848-acre site was classified as 2 acres primary land, 1 acre secondary land, and the remaining 3.848 acres as undeveloped usable.

### Analysis of ISSUE 3

49. The Petitioner claims that the land value for the subject property has been increased by more than four (4) times since 1989.
50. In addition, the Petitioner argued that the subject industrial land is misclassified and should be reclassified as 2.60 acres of primary land and 4.24 acres of undeveloped usable. In support of their argument the Petitioner presented a copy of their purported land classifications.

51. Errors arising from an assessor's subjective judgment are not the type of errors that can be corrected by way of a Form 133 Petition. *Hatcher v. State Board of Tax Commissioners*, 562 N.E. 2d 852 (Ind. Tax 1990). *Reams v. State Board of Tax Commissioners*, 620 N.E. 2d 758 (Ind. Tax 1998).
52. It would be necessary to use subjective judgment to decide which classification of land use best fits the subject property.
53. Therefore, because the issue was improperly raised on a Form 133 petition, the State will not address the merits of this issue. Accordingly, no change is made to the assessment.

### **Summary of Final Determination**

#### Determination of ISSUE 1: *Whether the building should be assessed using the GCK schedule*

54. The Petitioner failed to meet its burden on this issue. This issue was improperly raised on a Form 133 Petition. Accordingly, the State declines to address the merits of this issue. No change is made to the assessment as a result of this issue.

#### Determination of ISSUE 2: *Whether the square footage of the building and the paving is overstated*

55. The Petitioner failed to meet its burden on this issue. However, changes were made to the building dimensions and paving area based on an onsite inspection by the Hearing Officer. The correct area of the building is 155 feet by 209 feet, or 32,395 square feet and the appropriate area of paving is 98,239 square feet. There is a change in the assessment as a result of this issue.

#### Determination of ISSUE 3: *Whether the land is correctly classified*

56. The Petitioner failed to meet its burden on this issue. This issue was improperly raised on a Form 133 Petition. Accordingly, the State declines to address the merits of this issue. No change is made to 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.

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Chairman, Indiana Board of Tax Review

### IMPORTANT NOTICE

#### - APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.