

REPRESENTATIVES FOR PETITIONER: Rex D. Hume, Property Tax Consultant, Uzelac & Associates, Inc.

REPRESENTATIVES FOR RESPONDENT: Hank Adams, St. John Township Assessor;
Jacqueline Rokosz, St. John Township Deputy Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

George & Joyce L. Klawinski, TR)	Petition No.: 45-036-01-1-4-00001
)	
Petitioner)	County: Lake
)	
v.)	Township: St. John
)	
Lake County Property Tax)	Parcel No.: 009-20-13-0118-0006
Assessment Board of Appeals and)	
St. John Township Assessor)	
)	
Respondents)	Assessment Year: 2001
)	

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

[DATE OF ISSUANCE]

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

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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 eight mini-warehouse buildings should be priced from the GCK schedule.*
 - ISSUE 2 – *Whether the buildings should be graded E-1, if they are priced from the GCI schedule.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Rex D. Hume with Uzelac & Associates, Inc. filed a Form 131 on behalf of George and Joyce L. Klawinski, Trust petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on December 28, 2001. The determination of the Lake County Property Tax Assessment Board of Appeals (PTABOA) was issued on December 4, 2001.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 26, 2002 at the Lake County Administration Building in Crown Point, Indiana before Ellen Yuhan, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:
 - For the Petitioner: Rex D. Hume, Property Tax Consultant, Uzelac & Associates, Inc.

For the Respondent: Hank Adams, St. John Township Assessor and Jacqueline
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5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner: Rex D. Hume

For the Respondent: Hank Adams and Jacqueline Rokosz

6. The following exhibits were presented:

For the Petitioner: Petitioner's Exhibit 1– Affidavit of Rex Hume

Petitioner's Exhibit 2– Construction costs

Petitioner's Exhibit 3 – Comparison of construction costs to
assessment

Petitioner's Exhibit 4 – GCI Mini-Warehouse model

Petitioner's Exhibit 5 – Revised property record card (PRC) for
the subject property

For the Respondent:

Respondent's Exhibit 1 – Four (4) photographs of the subject
property

Respondent's Exhibit 2 – Subject's PRC

7. During the hearing, Mr. Adams requested that Petitioner's Exhibits 2, 3, and 5 be excluded, as they were not timely served. Mr. Hume stated that there were extenuating circumstances, such as a recent Board determination and the fact that his client was moving and had just located the construction costs, which caused him to change the focus of the appeal from a schedule change to a grade change. It is because of these extenuating circumstances that Mr. Hume believes the evidence should be considered.
8. Mr. Hume could have requested a continuance if he wanted to be absolutely sure his evidence would be considered. Mr. Hume did not request a continuance. Pursuant to the Procedural Rules, 50 IAC 17-7-1, Petitioner's Exhibit 2, 3, and 5 are excluded.

9. The following additional items are officially recognized as part of the record of proceedings:
 - Board Exhibit A – Form 131 petition with attachments
 - Board Exhibit B – Notice of Hearing on Petition

10. The subject of this appeal is the real estate improvements (mini-warehouse facility) owned by George & Joyce Klawinski, located at 5048 W. 81st Avenue, Merrillville, St. John Township, Lake County. The assessed value for 2001 as determined by the PTABOA is Land: \$327,300 Improvements: \$430,500

11. Mr. Hume testified that he was a Level II Assessor/Appraiser and certified as a tax representative as required by 50 IAC 15.5.2(c). Mr. Hume also testified that he was compensated on a contingency basis.

Jurisdictional Framework

12. 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.

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

Indiana's Property Tax System

14. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

15. 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.
16. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
17. 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.
18. 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.
19. 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.
20. 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

21. 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).

22. 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.]
23. 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.]
24. 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.]
25. 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).
26. 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.]

Credibility of Certain Evidence

27. 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 Comm'rs*, 613 N.E. 2d 874 (Ind. Tax 1993).

Discussion of Issues

ISSUE 1: Whether the eight mini-warehouse buildings should be priced from the GCK schedule.

28. The Petitioner contends the subject buildings should be valued from the GCK pricing schedule for the following reasons:
- a. The structures are pre-engineered, pole-type buildings;

- b. The structures shown on Cards 2 of 7, 4 of 7, 5 of 7, 6 of 7, & 7 of 7 are FBI brand kit structures;
 - c. The structures have ribbed steel siding and asphalt shingled roofs;
 - d. The structures have unfinished wood pressed board ceiling liners;
 - e. The framing of the structures consists of posts of doubled wood 2 x 4's;
 - f. The portioning consists of pressed board on 1 x 4 girts supported by 2 x 4's on 4-foot centers;
 - g. The structures have no heating or lighting;
 - h. The flooring consists of 4-inch ground slab; and
 - i. The overhead doors for the individual storage units are of vinyl roll-up doors on aluminum tracks.

29. The Respondent contends that mini-warehouses are "special purpose" buildings and should be valued from the GCI pricing schedule.

30. The applicable rules and case law governing Issue 1 are:
 - a. 50 IAC 2.2-10-6.1(a)(1), which describes the association groupings;
 - b. 50 IAC 2.2-11-5(a), which is an alphabetical list of various commercial and industrial improvements showing the use-type from Schedule A; and
 - c. *LDI Manufacturing v. State Board of Tax Comm'rs*, 759 N.E. 2d 685 (Ind. Tax 2001).

31. Evidence and testimony considered particularly relevant to this determination include the following:
 - a. The subject buildings are mini-warehouses with some characteristics of the type of structures that may qualify to be valued from the GCK pricing schedule;
 - b. At the PTABOA hearing, the Petitioner submitted a list of these characteristics, photographs, and a calculation of the base rate, if priced from the GCK schedule See attachments to Board Exhibit A; and

- c. The Respondent testified that the Regulation states that mini-warehouses are to be priced as GCI Mini-Warehouse and that the subject buildings are special purpose buildings.

Analysis of ISSUE 1

32. The Petitioner opines that the GCK pricing schedule is the appropriate schedule for valuing the subject buildings. In support of this argument, the Petitioner listed construction features of the buildings and submitted three (3) photographs of the buildings.
33. A review of the photographs and the construction features indicates that the subject buildings have some characteristics that are found in GCK structures.
34. The Respondent contends that the buildings are special purpose buildings and, as such, cannot be priced from the GCK schedule. Furthermore, the Regulation states in the Selection of Schedules (50 IAC 2.2-11-5(a)(81)) that the pricing to be used for mini-warehouses is GCI Mini-Warehouse.
35. 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.
36. 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.

37. “[G]CK does not include use type descriptions. This schedule is utilized for valuing pre-engineered and pole-framed buildings, which are used for commercial and industrial purposes. A format has been developed to value the base building on a perimeter to area ratio basis and to adjust the value based on various individual components of the building. Buildings classified as a special purpose design are not valued using the GCK pricing schedule.” 50 IAC 2.2-10-6.1(a)(1)(D).
38. In sum, when selecting the appropriate pricing schedule, there are only four (4) factors to be considered in determining whether the GCK schedule is appropriate for valuing a structure are (1) whether the structure is pole framed; (2) whether the structure is pre-engineered; (3) whether the structure is for commercial or industrial use; and (4) whether the structure is a special purpose design building. Therefore, if a building is a pre-engineered pole framed or light metal building used for commercial or industrial purposes, and is not a special purpose design building, the GCK schedule is the appropriate schedule for valuing the building.
39. 50 IAC 2.2-10-6.1 directs assessing officials to select and use the pricing schedule and model that best represents the structure being assessed. Therefore, in this appeal, the Petitioner has the burden of proving that the subject building qualifies to be valued from the GCK schedule, and that the GCK schedule best represents the subject building.
40. In the case at bar, the Petitioner has shown that the structure is pole-framed, pre-engineered and used for commercial purposes. Though the Petitioner may have shown that the subject structures fit some of the criteria necessary for those structures to qualify for the GCK pricing, the Petitioner has not shown that the structures meet all the criteria which includes whether the structures are special purpose design or not.
41. The fact that a structure(s) under review may meet one, two or three of the provisions necessary for the application of the GCK pricing schedule, in the final analysis the structure(s) *must* meet all four criteria. See ¶37 and 38.

42. 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 Comm'rs*, 759 N.E. 2d 685 (Ind. Tax 2001) referred to technical, appraisal terms to define it. The Tax Court defined “special-purpose property” or “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 (12th ed. 2001).
43. 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.
44. For the subject structures to be used for any other purpose than what they were built for would require numerous changes or modifications to their present configurations. Some of the changes for consideration would be:
- a. Lighting – presently none or limited
 - b. Plumbing – presently there is none
 - c. Air conditioning and heating – presently there is none
 - d. Entryways – presently numerous overhead doors and entry door types
 - e. Interior partitioning – presently particle board or plywood
 - f. Ceiling height – relatively low at 10 and 12 feet
 - g. Insulation – presently none
 - h. Ceiling finish – presently particle board or plywood
 - i. Flooring – presently concrete slab. Does the load capacity restrict the usages?
 - j. Potential lack of parking facilities for the new use
45. Due to the amount of changes or modifications that would be required to convert the subject structures to something else other than storage facilities, 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.

46. For all the reasons set forth above, the Petitioner failed to prove that the subject structures met all the criteria necessary to be valued from the GCK pricing schedule. Accordingly, there is no change in the assessment as a result of this issue.

ISSUE 2 – Whether the buildings should be graded “E-1”, if they are priced from the GCI schedule.

47. The Petitioner suggests that an alternative method to valuing the subject structures from the GCK pricing schedule (Issue No. 1) would be to reduce the existing grade factor of the current assessment to “E+1” to adjust for deviations from the model and as well as for the economy grade materials and workmanship used. It should be noted the Petitioner originally requested an “E-1” grade. See Board Exhibit A.
48. The Respondent contends that mini-warehouses, with the type of construction as that of the subject building, should have the grade reduced. The Respondent opines that this was taken into consideration by grading the mini-warehouses at “D-2”. See Respondent Exhibit 2.
49. The applicable rules governing this issue are 50 IAC 2.2-10-3(a)(3)(4), which describes characteristics of “D” and “E” grade structures; 50 IAC 2.2-10-3(c), which describes intermediate grades; and 50 IAC 2.2-11-2(33), the model for GCI: Mini-Warehouse.
50. Evidence and testimony considered particularly relevant to this determination include the following:
 - a. The Petitioner testified the subject buildings are mini-warehouses that deviate from the model;
 - b. At the PTABOA hearing, the Petitioner submitted photographs, and a calculation

of the grade based on the differences between GCK pricing and the current GCI pricing. (See attachment to Board Exhibit A); and

- c. The Respondent testified that the type of construction of the subject structures (mini-warehouses) was taken into consideration with the application of a lower grade of “D-2”.

Analysis of ISSUE 2

- 51. “Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
- 52. Grade is used in the cost approach to account for the deviations from the norm or "C" grade. The quality and design of a building are the most significant variables in establishing grade.
- 53. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models and graded photographs (50 IAC 2.2-11-4), assist assessors in the selection of the proper grade factor.
- 54. The major grade classifications are “A” through “E”. 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the C grade standards of quality and design. The following factors (or multipliers) are assigned to each major grade classification:
 - “A” grade 160%
 - “B” grade 140%
 - “C” grade 100%
 - “D” grade 80%
 - “E” grade 40%.
- 55. Intermediate grade levels ranging from “A+10” through “E-1” also provided for in the

Manual to adequately account for quality and design factors between major classifications. 50 IAC 2.2-10-3(c).

56. The Petitioner submitted a calculation, which compared the pricing of a “C” grade GCK structure with the pricing for a “D-2” GCI structure. The Petitioner originally claimed the grade of the structures should be “E-1”; at the State administrative hearing, the Petitioner claimed the grade should be “E+1”.
57. The Petitioner’s calculation is not compelling for several reasons. The original calculation is incorrect because the Petitioner omitted \$1.55 for unfinished interior. This changes the wall height adjustment to a negative \$.38 and the new total would be \$9.22. The Petitioner also assumes the buildings would be graded “C”, even though there is additional cost in the numerous overhead doors. The model states in part under Walls – Openings: 30% hand-operated overhead doors. The photographs submitted indicate a much larger percentage of doors.
58. The Petitioner’s calculation is not evidence of an overstated grade. The Petitioner has merely presented a comparison of two (2) schedules contained within the 1995 Indiana Real Property Assessment Manual. Such a comparison that includes the GCK schedule will always result in a lower reproduction cost for the GCK calculation.
59. There are two methods to adjust an improvement’s assessment for deviations 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 official’s subjective judgment.” *Clark v. State Board of Tax Comm’rs*, 742 N.E. 2d 46, 49 (Ind. Tax 2001)(*Clark II*). See also *Whitley*, 704 N.E. 2d 1113.
60. “Under some circumstances, an improvement’s 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 Flee, Inc. v. State Board of Tax Comm'rs*, 747 N.E. 2d 88, 94 (Ind. Tax 2001).

61. 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.
62. 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 Comm'rs*, 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.
63. Though the Petitioner indicates that the subject structures deviate from the model, there is no analysis of the differences between the existing buildings and the model. Such comparisons might lend themselves to adjustments in the pricing ladder for the subject structures. In addition, the Petitioner does not explain whether the current grade of “D-2” took into consideration lower costs of construction due to those deviations.
64. For all the reasons set forth above, the Petitioner has failed to show that the grade applied by the local assessing officials is incorrect. Accordingly no change in the assessment is made as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether the eight mini-warehouse buildings should be priced from the GCK schedule.*

65. The Petitioner did not prove that the subject structures met all the qualifications to be valued from the GCK schedule. There is no change in the assessment as a result of this issue.

Determination of ISSUE 2: Whether the buildings should be graded "E-1", if they are priced from the GCI schedule.

66. The Petitioner did not prove that the current grade is incorrect. There is no change in the assessment as a result of this issue.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

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

required within forty-five (45) days of the date of this notice.