

REPRESENTATIVE FOR PETITIONER: Milo E. Smith, Tax Consultants, Inc.

REPRESENTATIVE FOR RESPONDENT: Gary T. Strange, Perry Township Assessor's Office.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

HUBLER REALTY COMPANY,)	
Petitioner,)	Petition No.: 49-500-95-1-4-00145
)	
)	County: Marion
)	
v.)	Township: Perry
)	
)	Parcel No.: 5031630
MARION COUNTY BOARD OF)	
REVIEW and PERRY TOWNSHIP)	Assessment Year: 1995
ASSESSOR,)	
Respondents.)	

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

July 14, 2003

FINAL DETERMINATION

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

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issues

1. The issues presented for consideration by the Board were:
 - ISSUE 1 – *Whether the land classification is correct.*
 - ISSUE 2 – *Whether the subject building consisting of 3,185 square feet should be valued as utility/storage rather than auto service.*
 - ISSUE 3 – *Whether the service area, parts area, and body shop are air-conditioned.*
 - ISSUE 4 – *Whether the subject building should be priced from the General Commercial Kit (GCK) schedule or have the grade lowered to account for deviations from the model.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Milo Smith of Tax Consultants, Inc. filed a Form 131 petition on behalf of Hubler Realty Company (Hubler) petitioning the Board to conduct an administrative review of the above petition. The determination of the Board of Review (BOR) was issued on April 23, 1999. The Form 131 was filed on May 20, 1999.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on September 14, 1999 in Indianapolis before Hearing Officer Joan Rennick.
4. The following persons were present at the hearing:
 - For the Petitioner:
 - Milo E. Smith, Tax Consultants, Inc.
 - For the Respondent:
 - Gary T. Strange, Perry Township Assessor's Office.

5. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1-Outline of the issues and arguments.

Petitioner's Exhibit 2 -Property record card (PRC) for the 1994 State Board determination concerning land classification.

Petitioner's Exhibit 3-Page from 50 IAC 2.2-4-1, Primary Definitions.

Petitioner's Exhibit 4-Copy of a picture of the auto service department (Picture #6).

Petitioner's Exhibit 5 -Page from 50 IAC 2.2-11, Schedule C.

Petitioner's Exhibit 6-Copy of the assessor's sketch.

Petitioner's Exhibit 7-Pages 1 and 10 from *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax 1998).

Petitioner's Exhibit 8-Pages 1 and 8 from *Barth Inc. v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax 1998).

Petitioner's Exhibit 9-Page from 50 IAC 2.2-10-6-1, Pricing.

Petitioner's Exhibit 10-STB Instructional Bulletin 91-8.

Petitioner's Exhibit 11-Sketch of the building indicating components.

Petitioner's Exhibit 12-A copy of *Donald Morris v. State Board of Tax Commissioners*, 705 N.E. 2d 1120 (Ind. Tax 1999).

Petitioner's Exhibit 13-Thirteen photographs of Hubler Realty.

Petitioner's Exhibit 14-Requested PRC showing the proposed GCK schedule pricing.

For the Respondent:

Respondent's Exhibit 1-Aerial map of the subject property.

Respondent's Exhibit 2-1995 PRC.

Respondent's Exhibit 3-1996 PRC.

Respondent's Exhibit 4-Sketch of the subject property.

Respondent's Exhibit 5-1995 BOR determination.

Respondent's Exhibit 6-Copies of photographs of the buildings.

Respondent's Exhibit 7-Changes made to the PRC in 1996.

6. The following additional items are officially recognized as part of the record of proceedings:
 - Board's Exhibit A - Form 131 petition.
 - Board's Exhibit B - Notice of Hearing on Petition.
7. The property is an auto service center located at 8220 S. US 31, Indianapolis, Perry Township, Marion County.
8. The Hearing Officer did not view the property.

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 *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
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 at 1039 – 40.
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 land classification is correct.*

24. The Petitioner contended that the land should be classified as follows: 122,848 square feet of primary land; 184,272 square feet of secondary land; 2.286 acres of usable/undeveloped land; .072 acres of public road; and .981 acres of legal drainage ditch. *Petitioner's Exhibit 1.*

25. The Respondent contended that the land is classified correctly as follows: 406,688 square feet of primary land; .072 acres of public road; and .981 acres of legal drainage ditch. *Respondent's Exhibit 2.*

26. The applicable rules governing Issue 1 are:
50 IAC 2.2- 4-1(18)
"Primary commercial or industrial land' refers to the primary building or plant site."

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."

50 IAC 2.2-4-1(24)
"Usable undeveloped commercial and industrial land' means vacant land that is held for future commercial or industrial development."

27. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) For the 1994 assessment, the State Board issued a determination concerning the land classification of the subject property as shown on the PRC designated as Petitioner's Exhibit 2. There have been no changes to the parcel since the 1994 determination that would affect the land classification. *Smith testimony.*
 - (b) All the land at auto dealerships in Marion County is classified as primary and the Petitioner is contesting that practice. *Smith testimony.*
 - (c) Marion County has a standardization committee and that committee has classified all auto dealership land as primary land. *Strange testimony.*
 - (d) The Petitioner and the Respondent agreed that the County officials viewed auto dealerships on an equal and uniform basis. *Smith testimony; Strange testimony.*
 - (e) The aerial map shows that all of the subject land is either located under the building or paved with automobiles parked on it. *Strange testimony; Respondent's Exhibit 1.*

Analysis of ISSUE 1

28. The Petitioner argued for a change in the land classification based largely on a 1994 appeal before the State Board. The Petitioner alleged that nothing had changed since the 1994 State Board determination that would affect the land classification.
29. In Indiana, however, each tax year is separate and distinct. Evidence of a prior year's assessment is not probative in this appeal. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E 2d 713 (Ind. Tax 1995).
30. The Board further observes that changes were made in land classification definitions, including the addition of necessary support land to the primary land category, when 50 IAC 2.2 replaced 50 IAC 2.1.

31. The Petitioner failed to present any evidence that would establish the use of land on the assessment date of March 1, 1995. The Petitioner, therefore, did not demonstrate that any part of the current land classification is incorrect.
32. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

ISSUE 2: Whether the subject building consisting of 3,185 square feet should be valued as utility/storage rather than auto service.

33. The Petitioner contends that 3,185 square feet of the auto service area should be priced as GCM-Utility Storage “according to its use.” *Petitioner’s Exhibit 1.*
34. The County officials assessed this area using the GCM-Auto Service Center model.
35. The applicable rules governing this issue are:

50 IAC 2.2-11-1(4)

Model: GCM-Auto Service Center

Foundation: 12” reinforced concrete perimeter grade walls to 2’6” high on 12” x 18” strip footings including trench excavation and back-fill.

Walls

Type 1: Concrete block with painted exterior for 14’ high walls.

Type 2: Average cost face brick with block back-up for 14’ high walls.

Openings: 3% 1³/₄” hollow metal door, 20% overhead, 5% vented steel sash windows.

Mechanical and Interior Components

Type: Semifinished, 14’ floor height.

Interior Finish

Walls: Masonry paint, 2 coats.

Floors: 10% vinyl asbestos flooring, 90% concrete hardener.
Ceiling: 10% suspended mineral fiber, 90% paint on underside of roof structure.
Partitions: 8" concrete block partitions painted 2 sides, and hollow metal doors.
Lighting: Average cost for typical lighting found in semifinished service centers.
AC Add: Add for package air conditioning.
HTG. Only: Suspended gas fired unit heaters.

50 IAC 2.2-11-1(46)

Model: GCM-Utility Storage-First

Foundation: 12" reinforced concrete perimeter grade walls 2'6" high on 12" x 18" strip footings, including trench excavation and back-fill.

Walls

Type 1: Reinforced concrete block with 2 coats masonry paint for a wall height of 14'.

Type 2: Face brick with concrete block back-up for a wall height of 14'.

Openings: 1% ¾" hollow metal service doors.

Mechanical and Interior Components

Type: Unfinished 14' wall height.

Interior Finish

Partitions: 6" hollow concrete block with 1% density.

Lighting: Average cost, non-metallic fixtures typical of minimal illumination in unfinished areas.

HTG. Only: Gas space heaters with fan.

AC Add: Add for air conditioning.

36. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The area under contention is a 3,185 square foot drive-through area with no interior finish, ceiling, partitions, or air conditioning. *Smith testimony*.
 - b. Two overhead doors define the area. *Petitioner's Exhibit 4*.

Analysis of ISSUE 2

37. The Petitioner contended that the subject area should be assessed using the GCM-Utility Storage model "according to its use." *Petitioner's Exhibit 1*. In support of this position, the Petitioner further asserted that the building "is just a drive through...without any ceiling finish or interior partitions." *Id.*
38. 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 uses and finish types. Models are provided as conceptual tools to use to replicate reproduction costs 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.
39. The actual use of an improvement "is not a determinative factor in selecting the appropriate model, but merely a starting point [Citation omitted] and the model whose physical features most closely resemble the improvements being assessed is the correct model to be used regardless of the model's name... the petitioners must present probative evidence to demonstrate that the [proposed] model is the model that most closely resembles the subject improvements with respect to the subject improvements' physical features." *CGC Enterprises v. State Bd. of Tax Comm'rs*, 714 N.E.2d 801, 804 (Ind. Tax 1999).

40. The Tax Court has further defined the Petitioner’s burden in appeals such as this:
“[The Petitioner] was responsible for comparing the GCM models with the Center’s features and making a ‘logical, well-reasoned argument supporting its position based upon the evidence submitted.’ [Citation omitted]. ‘A taxpayer (or counsel or witness for the taxpayer) cannot simply point to alleged deficiencies in a building and expect to make a prima facie case as to grade or any other issue.’ [Footnote and citations omitted]. Because [the Petitioner] presented neither probative evidence nor a sound argument comparing its improvement to the GCM model, it did not satisfy its burden.” *Deer Creek Developers, Ltd. v. Dep't of Local Gov't Fin.*, 769 N.E.2d 259, 266 (Ind. Tax 2002).
41. In this appeal, the Petitioner presented no detailed comparison between its improvement and the features of the GCM-Utility Storage model. For example, the Petitioner offered no discussion concerning features such as the foundation, wall type, or flooring to indicate which model more closely resembles the structure under appeal.
42. Additionally, the Petitioner presented no evidence of any comparable properties that have been assessed using the GCM-Utility Storage model.
43. Instead, the Petitioner identified only two components purportedly absent from its building.
44. However, despite arguing that the incorrect model was used because interior components are absent, the Petitioner presented only a single exterior photograph of the area in question. *Petitioner’s Exhibit 4*. This photograph provides no assistance in determining whether interior features such as partitioning or ceiling finish are present or which model the building under appeal most closely resembles. The Petitioner’s unsubstantiated conclusions concerning the selection of the correct model do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
45. Summarizing, the Petitioner did not offer any detailed comparison of features present in its building to the features contained in either the GCM-Auto Service Center model or the

GCM-Utility Storage model. The single exterior photograph submitted by the Petitioner does not support its contention that features identified in the GCM-Auto Service Center model are absent in the property under appeal. The Petitioner has therefore failed to establish that the incorrect model was used to assess the property or that the GCM-Utility Storage model best matches the features of the structure under appeal.

46. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

ISSUE 3: *Whether the service area, parts area, and body shop are air-conditioned.*

47. The parties agreed that these areas have no air conditioning and, accordingly, there should be no positive adjustment for air conditioning in these areas.
48. The Board accepts the parties' stipulation and agreement identified immediately above. In doing so, the Board does not decide the propriety of this agreement, either explicitly or implicitly.
49. There is a change in the assessment as a result of this issue.

ISSUE 4: *Whether the subject building should be priced from the GCK schedule or have the grade lowered to account for deviations from the model.*

50. The subject structure is currently graded "C+1" and valued from the GCM pricing schedule with the following usages: office, auto service, utility storage, and general retail. Also included in the assessment are a basement and an auto showroom, which are priced from the GCM schedule and are not being contested.
51. The Petitioner asserted that the contested areas of the building should be priced from the GCK schedule. Alternatively, the grade should be "C" as it was in the 1994 assessment.

52. The Respondent contended that the building is correctly assessed from the GCM schedule and does not qualify as a GCK, or “kit” building.

53. The applicable rules governing this rule are:

50 IAC 2.2-10-3

Grade classifications and descriptions

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

There are four association groupings, General Commercial Mercantile (GCM), General Commercial Industrial (GCI), General Commercial Residential (GCR), and General Commercial Kit (GCK). Buildings classified as a special purpose design are not valued using the GCK pricing schedule.

54. Evidence and testimony considered particularly relevant to this determination include the following:

- (a) In 1994 the grade of the subject building was "C"; during the 1995 reassessment, the grade was raised to "C+1". The Petitioner asserted that there is no reason for the grade being raised because, except for the showroom, the subject building is a "kit" type building and should be priced using the GCK schedule. If the building is not priced using the GCK schedule, then the grade should be lowered to “C”.
Smith testimony; Petitioner’s Exhibit 2.
- (b) The walls are metal, the concrete floor has a minimal tolerance, there is "X" bracing, and there are round steel columns. *Smith testimony; Petitioner’s Exhibit 1 and 13.*
- (c) The Indiana Tax Court has ruled that property similar to the subject qualified as a "kit" building. *Smith testimony.*
- (d) *Barth, Inc. v. State Board of Tax Commissioners*, 699 N. E. 2d 800 (Ind. Tax 1998) stated a building must be given a kit adjustment if it qualifies for that adjustment. *Smith testimony; Petitioner’s Exhibit 7.*
- (e) The policy in Instructional Bulletin 91-8 has not been superseded or withdrawn by any other Instructional Bulletin; therefore the qualifications/specifications

used to identify kit buildings are the only means to determine if a building should be priced from the GCK schedule. Assessors have told Mr. Smith that Instructional Bulletin 91-8 no longer applies because it was replaced with 50 IAC 2.2. *Smith testimony.*

- (f) There are characteristics present in the subject building that are indicative of a pre-engineered building. There are some concrete blocks at the base of the building in the rear. However, the concrete block walls are not load bearing. *Smith testimony; Petitioner's Exhibits 4 and 13.*
 - (g) In *Donald G. Morris v. State Board of Tax Commissioners*, 705 N.E. 2d 1120 (Ind. Tax 1999), the Court stated that modifications, such as concrete or brick walls and plate glass windows, do not disqualify a structure from the "kit" pricing. *Smith testimony; Petitioner's Exhibit 12.*
 - (h) The walls in the utility storage model for "C" grade buildings are reinforced concrete block and the walls of the subject building are metal, which is more economical. *Smith testimony.*
 - (i) Prior to the 1995 reassessment, there was no GCK schedule and, according to the Township officials' interpretation of the schedule, the subject building did not qualify as a "kit" because of the size and the four feet of concrete block that increased the cost. The "kit" adjustment was for less expensive buildings and the subject is clearly not a less expensive structure. *Strange testimony.*
 - (j) The sketch of the building shows this is a special use building and not a small generic building. The many walls and the many different uses within the building denote special use. *Strange testimony; Respondent's Exhibit 4.*
 - (k) Anything over 120 feet wide requires stronger steel supports. *Strange testimony.*
 - (l) The BOR decision sustained the Township pricing of the subject building. *Strange testimony; Respondent's Exhibit 5.*
55. In rebuttal, the Petitioner contended that the building involved in a recent remand from the Indiana Tax Court (*Barker v. State Board of Tax Commissioners*, 712 N. E. 2d 563 (Ind. Tax 1999)) has a span of over 240 feet wide.

Analysis of Issue 4

56. As discussed, models are provided as conceptual tools to use to replicate reproduction costs 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. Because of the numerous models provided, the base rates are into four association groupings namely: (1) General Commercial Mercantile (GCM); (2) General Commercial Industrial (GCI); (3) General Commercial Residential (GCR); and 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.
57. "... 'GCK' does not include use type descriptions. This schedule is utilized for valuing preengineered and predesigned 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 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).
58. In support of its position, the Petitioner presented interior photographs of portions of the building; however, these photographs did not include the 3,185 square feet of auto service center area discussed in Issue 2 or the office area. The Petitioner did not present any additional evidence to demonstrate that these areas should be priced from the GCK schedule.
59. The County PRC shows that these sections have brick exterior walls. Petitioner's Exhibits 4 and 13 also indicate that these sections have brick walls. Without any interior photographs or construction specifications, the Board cannot conclude that these areas qualify for GCK pricing.
60. Additionally, the Petitioner contended that the grade of the auto service center and office areas should be reduced from "C+1" to "C". The Petitioner asserted that these areas

received a grade of “C” during the 1994 assessment and lacked partitioning and ceiling finish.

61. As discussed, in Indiana each tax year is separate and distinct. Evidence of a prior year’s assessment is not probative in this appeal. *Williams Industries v. State Board of Tax Commissioners*, 648 N.E 2d 713 (Ind. Tax 1995).
62. Further, no cost data concerning the structure was introduced. The Petitioner therefore failed to calculate the value of the model’s features not present in the property under appeal and then translate that lack of value into a grade adjustment. *State Board of Tax Commissioners v. Garcia*, 766 N.E. 2d 341, 347 (Ind. 2002); *Quality Farm & Fleet, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 88 (Ind. Tax 2001).
63. Additionally, the Petitioner presented no evidence of any comparable properties that have been assessed with a grade of “C”. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax 1998).
64. Summarizing, the parties agree that the auto service center and office portions of the building have brick, rather than metal, walls. The Petitioner provided only one exterior photograph in support of its contention that the auto service center lacked partitioning and a finished ceiling. Assuming, arguendo, that this contention is correct does not assist the Petitioner’s argument. The Petitioner failed to offer any evidence, such as comparable properties or cost data, to establish that the lack of these features would result in a “C” grade for this section. “A taxpayer’s conclusory statements do not constitute probative evidence concerning the grading of the subject improvement.” *Sterling Mgmt.- Orchard Ridge Apartments v. State Bd. of Tax Comm’rs*, 730 N.E.2d 828, 838 (Ind. Tax Ct. 2000).¹

¹ Deviations from the model may also be expressed as adjustments to the base rate. *Whitley Prods. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 117 (Ind. Tax 1998). The Petitioner did not include adjustments to the base rate as an issue on its Form 131 petition or make an argument for adjustments to the base rate at the administrative hearing. Therefore, the Board will not consider the propriety of base rate adjustments in this appeal.

65. The Petitioner has failed to establish that the 3,185 square foot area described as auto service center and the 1,911 square foot area described as office meet the criteria to be valued from the GCK pricing schedule, or are entitled to a reduction in grade.
66. The Petitioner's evidence concerning the other portions of the building is more persuasive. The Petitioner presented evidence that the rest of the building has metal exterior walls (with some concrete block at the base), round steel columns, tapered columns, steel girts and purlins, "X" bracing and a low-pitched roof. All of these features are characteristics of GCK buildings. *Componx, Inc. v. State Bd. of Tax Comm'rs*, 683 N.E.2d 1372 (Ind. Tax 1997).
67. The Petitioner has therefore made a prima facie case that the contested portion of its building (except the auto service center and office areas) should have been assessed under the GCK pricing schedule.
68. Because the Petitioner has presented a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence and support its decision with substantial evidence. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax 1998).
69. The Respondent did not contest the Petitioner's description of key elements such as columns and roof beam support. Instead, the Respondent argued that the building is not eligible for the GCK schedule because of its large size, the concrete block at the base, and because it qualified as a special use type building. The Respondent further testified that the grade was increased in the 1995 assessment because of the building's additional components, such as extra walls. *Strange testimony*.
70. The size of a building does not automatically disqualify it from being assessed from the GCK schedule. *Barker v. State Board of Tax Commissioners*, 712 N. E. 2d 563, 569 (Ind. Tax 1999). The Respondent offered no evidence to demonstrate that the size rendered the building uneconomical.

71. Further, the existence of minimal building feature options, such as small amounts of concrete, also does not disqualify a building from being considered a kit building. *Id.*
72. The Respondent also contended that the improvement qualified as a special use type building.
73. “A ‘special-purpose property’ or a ‘special-design property’ is ‘[a] limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built[.]’” *LDI Manufacturing Company, Inc. v. State Board of Tax Commissioners*, 759 N.E. 2d 685, 689 (Ind. Tax 2001).
74. The Respondent did not submit any testimony or evidence that the utility of the structure is restricted to its present uses. In addition, the Respondent offered no evidence that the building has a unique physical design or is constructed of special materials that would limit its use.
75. The Respondent has failed to rebut the Petitioner’s prima facie case that portions of the building should have been assessed from the GCK schedule.
76. Therefore, the 41,872 square foot area (shown on Petitioner’s Exhibit 14 on card 2 of 2 and on Respondent’s Exhibit 2 card 1 of 2 B) is best described by the GCK schedule and should be priced accordingly.
77. Because this portion of the property is now assessed from a different schedule, all appropriate adjustments should be made. These adjustments may include, but are not limited to, grade and depreciation.
78. For the reasons stated above, the following determinations are made:
 - (a) Through testimony and evidence, the Petitioner was able to establish a prima facie case showing that the 41,872 square foot area (shown on Petitioner’s Exhibit 14 on card 2 of 2 and on Respondent’s Exhibit 2 card 1 of 2 B) is best

described by the GCK schedule and should be priced accordingly. A change in the assessment is made for this area of the subject structure as a result of this issue.

- (b) Because this portion of the property is now assessed from a different schedule, all appropriate adjustments should be made. These adjustments may include, but are not limited to, grade and depreciation.
- (c) The Petitioner failed to establish that the 3,185 square foot area described as auto service center and the 1,911 square foot area described as office meet the criteria to be valued from the GCK pricing schedule. No change in the assessment is made for these areas of the subject building.
- (d) The Petitioner has not met the burden of proof concerning a change in grade for the auto service center and office areas. The grade for these sections of the building will remain at “C+1”.

Summary of Final Determination

Determination of ISSUE 1: *Whether the land classification is correct.*

79. The Petitioner did not meet its burden in this appeal. No change is made in the assessment as a result of this issue.

Determination of ISSUE 2: *Whether the subject building consisting of 3,185 square feet should be valued as utility/storage rather than auto service.*

80. The Petitioner did not meet its burden in this appeal. No change is made in the assessment as a result of this issue.

Determination of ISSUE 3: *Whether the service area, parts area, and body shop are air-conditioned.*

81. The Petitioner and Respondent agreed that these areas were not air-conditioned. A change in the assessment is made as a result of this issue.

Determination of ISSUE 4: *Whether the subject building should be priced from the GCK schedule or have the grade lowered to account for deviations from the model.*

82. The Petitioner established a prima facie case that certain sections of the building were qualified to be valued from the GCK schedule. The changes made are:
- a. The 41,872 square foot area shown on Petitioner's Exhibit 14 on card 2 of 2 and on Respondent's Exhibit 2, card 1 of 2B, is best described by the GCK schedule and should be priced accordingly. A change in the assessment is made for this section of the structure as a result of this issue.
 - b. Because this portion of the property is now assessed from a different schedule, all appropriate adjustments should be made. These adjustments may include, but are not limited to, grade and depreciation.
 - c. The Petitioner failed to establish that the 3,185 square foot area described as auto service and the 1,911 square foot area described as office meet the criteria to be valued from the GCK pricing schedule. The Petitioner further failed to establish that the grade of "C+1" for these areas was in error. No change in the assessment is made for these areas of the building.

This Final Determination of the above captioned matter is issued 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.