REPRESENTATIVES FOR PETITIONER: Stephen DeVoe, HENDERSON, DAILY, WITHROW, & DEVOE

REPRESENTATIVES FOR RESPONDENT: Dan Spiker, Lawrence Township Deputy Assessor.

BEFORE THE INDIANA BOARD OF TAX REVIEW

In the matter of:	)	
	)	Petition for Correction of Error, Form 133
	)	and Petitions for Review of Assessment,
	)	Form 131s
INDIANAPOLIS RACQUET CLUB,	)	
	)	Petition Nos.: 49-407-89-1-4-00022R
	)	49-407-91-3-4-00001
Petitioner	)	49-407-95-1-4-00014
	)	County: Marion
v.	)	
	)	Township: Lawrence
LAWRENCE TOWNSHIP ASSESSOR,	)	Parcel No.: 4017437
	)	Assessment Years: 1989, 1991, & 1995
Respondent.	)	

On Remand from the Indiana Tax Court
Cause No. 49T10-9609-TA-00120
And
Appeal from the Final Determination of
Marion County Board of Review

November 6, 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 base rate and classification is correct for 1989.*

ISSUE 2 - *Whether the tennis court portion of the building should be priced as light warehouse for tax year 1989.*

ISSUE 3 - *Whether the tennis court portion of the building deserves certain base rate adjustments for 1989.*

ISSUE 4 - *Whether the tennis court portion of the building deserves a grade adjustment for 1989.*

ISSUE 5 - *Whether the tennis court portion of the building deserves a kit adjustment for 1991.*

ISSUE 6 - *Whether the land base rate classification is correct for 1995.*

ISSUE 7 - *Whether the tennis court portion of the building should be priced as GCK for 1995.*

ISSUE 8 - *Whether the lobby, pro-shop and locker rooms should be valued as GCM health club for 1995.*

ISSUE 9 - *Whether the tennis court portion of the building deserves certain base rate adjustments for 1995.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Stephen DeVoe of Henderson, Daily, Withrow, and DeVoe, filed a Form 131 (Petition No. 49-407-89-OCI-00022R) on behalf of Indianapolis Racquet Club (Petitioner) petitioning the Board to conduct an administrative review of this petition. The Form 131 was filed on October 1, 1990. The Marion County Board of Review's (BOR) Assessment Determination was dated August 31, 1990.

3. The Board subsequently held an administrative hearing on the Form 131 petition on September 27, 1995, and issued its Final Assessment Determination on August 7, 1996. The Petitioner, on September 23, 1996, filed a Petition for Original Tax Appeal in the Indiana Tax Court.

4. On November 28, 2001, the parties agreed to a remand from the Indiana Tax Court. (The petition number was changed from 49-407-89-OCI-00022R to 49-407-89-1-4-00022R).

Hearing Facts and Other Matters of Record

5. Prior to the remand from Tax Court, the Petitioner on November 12, 1996, filed a Form 133 petition (Petition No. 49-400-91-3-4-00001) with the Marion County Auditor for tax year 1991 on the subject property. However, because this petition was misplaced, the BOR had not held a hearing. On July 23, 2002, the Petitioner presented another Form 133 petition to the Marion County Auditor, with the original file stamp of November 12, 1996 on it. This Form 133 was subsequently forwarded to the Board.

6. With regard to the Form 133 process, it should be noted that a taxpayer can file a Form 133 at anytime and for as many years the taxpayer wishes. However, under Ind. Code § 6-1.1-26-1, a claim must be filed within three (3) years that the taxes were first due. This section of the Code will govern the actual refund the Petitioner is entitled to.

7. Also, the Petitioner, on March 27, 1998, filed a Form 131 for the tax year 1995 (Petition No. 49-407-95-1-4-00014) on the subject property. The BOR's Assessment Determination is dated February 27, 1998. The petition was forwarded to the Board for review on May 21, 1998.

8. Pursuant to Ind. Code § 6-1.1-15-4, hearings on the Form 131 petitions (Petition Nos. 49-407-89-1-4-00022R and 49-407-95-1-4-00014) were held on September 17, 2002, in Indianapolis, Indiana before Brian McKinney, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2. See Board's Exhibit C.

9. At this hearing, the parties agreed that the Form 133 petition should also be considered for review with the two (2) Form 131 petitions. The remanded Form 131 petition (Petition No. 49-407-89-1-4-00022R) along with the Petitioner's 1995 appeal, Form 131 (Petition No. 49-407-95-1-4-00014) and the Petitioner's 1991 appeal, Form 133 (Petition No. 49-407-91-3-4-00001) were consolidated into a single administrative hearing.

10. The parties agreed that all the evidence pertinent to the issues raised by the Form 131s and the Form 133 were submitted at this hearing.

11. The following persons were present at the hearing:

For the Petitioner: Stephen DeVoe, HENDERSON DAILY WITHTROW & DEVOE (also President of Indianapolis Racquet Club, Inc.)

For the Respondent: Dan Spiker, Lawrence Township Deputy Assessor

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

For the Petitioner: Stephen DeVoe

For the Respondent: Dan Spiker

13. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit A – Supplemental written testimony of Stephen DeVoe

For the Respondent:

Respondent's Exhibit A – Supporting documentation for denial of GCK Classification

Respondent's Exhibit B – Two (2) photographs of the subject property and one (1) photograph of the Dean Road facility owned by Petitioner

Respondent's Exhibit C – Memorandum from State Board of Tax Commissioners dated September 21, 1995 (Questions &

Answers)

Respondent's Exhibit D – 50 IAC 2.2-11, page 76 from the Real Property Assessment Manual; photographs of Light Warehouses and Pre-Engineered Kit Structure

14. At the hearing, the ALJ requested that the parties submit a statement concerning the proposed floor adjustment. The Respondent's proposed adjustment was received on September 25, 2002 and was entered into the record and labeled as Respondent's Exhibit E. The Petitioner's proposed adjustment was received on October 10, 2002 and was entered into the record and labeled as Petitioner's Exhibit B.

15. On October 8, 2002, the Petitioner requested that the ALJ visit and the subject property as well as another property (located in Washington Township, Marion County) owned by the Petitioner. The Petitioner's request was entered into the record and labeled as Petitioner's Exhibit D. It should be noted that on October 9, 2002 the Board denied the Petitioner's request for an on-site inspection of the properties.

16. The parties were also given the opportunity to submit post hearing briefs or proposed conclusions of law and findings of fact. The Petitioner presented both a post hearing brief and proposed conclusions of law and findings of fact on October 22, 2002. These items are entered into the record and were labeled as Petitioner's Exhibit C. The Respondent did not present either a brief or proposed conclusions of law and findings of fact.

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

Board's Exhibit A – Remand Order of Tax Court, for 1989 Petition
Board's Exhibit B – Copies of the Form 131 (1989 & 1995) and Form 133
Board's Exhibit C – Notice of Hearing on Petition
Board's Exhibit D – Withdrawal of Issue Agreement
Board's Exhibit E – Request for Additional Evidence
Board's Exhibit F – Letter from Board to Mr. DeVoe, dated October 9, 2002

18. The following matters or facts were stipulated and agreed to by the parties:

A. For assessment years 1989 through 1994 the base rate to assess the subject improvements should be GCI light warehouse. (Issue No. 2)

B. For assessment year 1995, the lobby, pro-shop, and locker rooms should be valued using GCM health club. (Issue No. 8)

C. The parties submitted and agreed on base rate adjustments for partitioning, lighting, and floor for assessment years 1989 through 1994. (Issue No. 3)

D. The Petitioner withdrew the land issues associated with these petitions (Issues No. 1 and 6).

E. For assessment year 1995 the parties agreed on base rate adjustments for partitioning, lighting, and floor. (Issue No. 9).

F. The parties agreed to an adjustment in the valuation of the tennis courts for assessment year 1995.

Jurisdictional Framework

19. 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.

20. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3 and Ind. Code § 6-1.1-15-12.

Indiana's Property Tax System

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

22. 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.

23. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

24. 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*).

25. 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.

26. 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.

27. 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

28. 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 Board of Tax Commissioners,* 704 N.E. 2d 1113 (Ind. Tax 1998).

29. 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 Board of Tax Commissioners,* 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners, 656* N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]

30. 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 Board of Tax Commissioners,* 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]

31. 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 Board of Tax Commissioners,* 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

32. 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 Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance,* 765 N.E.2d 711 (Ind. Tax, 2002).

33. 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 Board of Tax Commissioners,* 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners,* 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 base rate and classification is correct for 1989.*
ISSUE 6: *Whether the land base rate and classification is correct for 1995.*

34. At the hearing, the Petitioner withdrew these issues from consideration by the Board (See Board's Exhibit D). The Respondent had no objection to these issues being withdrawn. As a result of the withdrawal of these issues, there is no change in the land assessment of the subject property.

ISSUE 2: *Whether the tennis court portion of the building should be priced as light warehouse for tax year 1989.*

35. At the hearing, the Petitioner and Respondent agreed the tennis court portion of the subject building should be priced as light warehouse for tax year 1989. As a result of this agreement, there is a change in the assessment of the subject property.

36. The agreement between the Township and the Petitioner is a decision among these parties and the Board will accept the agreement. The Board's acceptance of the agreement should not be construed as a determination regarding propriety of the pricing schedule used to value the tennis court portion of the subject building, agreed to by the parties.

ISSUE 3: *Whether the tennis court portion of the building deserves certain base rate adjustments for 1989.*

37. The Petitioner claimed that certain base rate adjustments should be made to the subject facility. The Petitioner opined that negative adjustments should be made for the lack of partitioning and the lack of floor and that a positive adjustment should be made for the more abundant lighting.

38. The Respondent agreed that adjustments should be made for the lack of partitioning, lack of floor, and lighting.

39. At the hearing, the Petitioner and the Respondent agreed to the amounts of base rate adjustments for lack of partitioning and for the more abundant lighting, to be applied to the subject structure for assessment years 1989 through 1994.

40. On the floor issue, the Petitioner and Respondent submitted proposed adjustments for the lack of floor with their post hearing submissions (See Petitioner's Exhibits B & C and Respondent's Exhibit E). The Respondent proposed a negative adjustment of $1.80 per square foot, but failed to indicate if the adjustment was for 1989 or 1995 assessment year. The Petitioner, on the other hand, proposed a negative adjustment of $1.70 per square foot for assessment year 1989.

41. Since the parties were in agreement that some amount of a negative adjustment should be applied for the lack of floor and the fact that the Respondent's adjustment was within $.10 per square foot of the adjustment requested by the Petitioner of $1.70 per square foot, the Petitioner's requested amount of $1.70 per square foot, will be granted for the 1989 assessment year.

42. A change in the assessment is made as a result of the Petitioner and Respondent agreeing that a negative adjustment should be applied for the lack of floor.

ISSUE 4: *Whether the tennis court portion of the building deserves a grade adjustment for 1989.*

43. The Petitioner opined that a grade reduction must be made to the subject structure to account for the pre-engineered nature of the building. The Petitioner claimed that a reduction of 50%, similar to the kit adjustment allowed beginning in 1991, would be appropriate.

44. The Respondent testified that the subject structure currently had a grade factor of "D" (80%) and that a further reduction in the grade is unwarranted.

45. The applicable rules governing Issue 4 are:

50 IAC 2.1-6-1: Appendix – Real Estate Appraisal Terms
Grade – the classification of an improvement based on certain construction specifications, and quality of materials and workmanship.

Grade Factor – a factor or multiplier applied to a base grade level for the purpose of interpolating between grades or establishing an intermediate grade.

50 IAC 2.1-4-3(f) – Schedule F – Quality Grade and Design Factor
This schedule is used to adjust the total base replacement cost determined using Schedules to account for variations in the quality of materials, workmanship, and design.

State Tax Board Memorandum dated February 22, 1991
This bulletin presented an amendment to the Real Property Assessment Manual (50 IAC 2.1) that addressed pre-engineered steel frame "kit type" structures used for commercial and industrial purposes, commercial and industrial structures constructed with pole frame and metal siding, and turkey starter and finishing houses constructed of pole frame and metal siding. This bulletin addressed those structures valued from either the General Commercial Mercantile (GCM) or General Commercial Industrial (GCI) pricing schedules that would qualify for a 50% adjustment.

State Tax Board Instructional Bulletin 91-8 (October 1, 1991)
The purpose of this bulletin was to help assessing officials identify which improvements qualified for a 50% reduction in the base rate that are presently priced from the GCM, the GCI, and the Poultry Confinement Building Pricing Schedules.

State Tax Board Instructional Bulletin 92-1 (August 28, 1992)
The purpose of this bulletin was to provide local officials with instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as required in Instructional Bulletin 91-8.

Analysis of ISSUE 4

46. The Petitioner contends that prior to the issuance of Instructional Bulletin 91-8, township and county assessors were required to adjust the grade of a pre-engineered building. This adjustment varied by county, and as a result the Board issued this bulletin to standardize this adjustment.

47. State Tax Board Memorandum dated February 22, 1991, was an amendment to the Real Property Assessment Manual (50 IAC 2.1) cost schedules. This amendment addressed pre-engineered steel frame "kit type" structures used for commercial and industrial purposes, commercial and industrial structures constructed with pole frame and metal siding, and turkey starter and finishing houses constructed of pole frame and metal siding.

48. The amendment applied a 50% adjustment to the base rate. To qualify for the 50% adjustment from either the GCM or GCI pricing schedules the subject must be pre-engineered and pre-designed: "All adjustments are to be the base price schedule only, no additional schedules will be affected and most qualifying structures should be graded at "C" grade."

49. On October 1, 1991, the Board issued Instructional Bulletin 91-8 to help assessing officials identify which improvements qualify for the 50% reduction in the base rate as was stated in the Memorandum.

50. On August 28, 1992, the Board issued Instructional Bulletin 92-1. This bulletin provided local officials instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as required in the Board's Instructional Bulletin 91-8.

Instructional Bulletin 92-1 gave a more detailed method to use to assess structures qualifying for the 50% reduction in the base rate.

51. It was the purpose of Instructional Bulletin 92-1 to explain how petitions are to be handled. "This does not mean that every structure on which a taxpayer or taxpayer representative files one of these petitions qualifies for a reduction in the assessment."

52. It should be noted that the amendments in both the Memorandum and the Instructional Bulletins, would be effective for March 1, 1991 with no retroactive refunds. In addition, the Memorandum and the Instructional Bulletins pertained only to the 1989 statewide general reassessment.

53. The Petitioner was correct in not filing an appeal based on either of the Instructional Bulletins for tax year 1989 that allowed for a 50% reduction in the base rate since the Instructional Bulletins would not be applicable to that assessment year. The Petitioner instead filed an appeal based on a request for a reduction in the grade factor by 50%. The Petitioner requests a 50% grade reduction because "this will assure some consistency in the pre-engineered kit type building adjustment."

54. Though the Petitioner stated that township and county assessors were required to adjust the grade of a pre-engineered building prior to Instructional Bulletin 91-8, the Petitioner did not present any documentation that supported such a statement. Other than the Petitioner's unsubstantiated conclusions that the grade presently applied to the subject structure is incorrect and should be adjusted, the Petitioner did not present any analysis of the features of the subject building or any analysis of comparable properties indicating the grade of "D", presently applied to the subject structure, was inaccurate.

55. The Petitioner bears the burden of proof on this issue and must offer probative evidence concerning the alleged grading error. *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d at 1233 (Ind. Tax 1998); *Miller Structures v. State Board of Tax Commissioners,* 748 N.E. 2d at 947 (Ind. Tax 2001). "A taxpayer's conclusory statements do not constitute probative evidence concerning the grading of the subject improvement."

Sterling Management-Orchard Ridge Apartments v. State Board of Tax Commissioners, 730 N.E. 2d 828,838 (Ind. Tax Ct. 2000).

56. As stated in ¶33, 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.

57. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products,* 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb, 656* N.E. 2d 1230 (Ind. Tax 1998).

58. There is no change in the assessment as a result of this issue.

ISSUE 5: *Whether the tennis court portion of the building deserves a kit adjustment for 1991.*
ISSUE 7: *Whether the tennis court portion of the building should be priced as GCK for 1995.*

59. The Petitioner contends that for assessment years 1991 through 1994 the subject structure should be given a "kit" adjustment because it is pre-engineered, pre-designed, and a lightweight building. The Petitioner further contends that for the 1995 assessment year, the subject structure being pre-engineered, pre-designed, and a lightweight building should be valued from the GCK pricing schedule.

60. The Respondent contends that the structure is not pre-engineered, and that certain modifications have been made that disqualify the structure from both the "kit" adjustment for 1991 and the application of the GCK pricing schedule for 1995.

61. The applicable rules governing these issues are:

> **Indiana Code 6-1.1-15-12 Tax duplicates; correction of errors; reasons**
> Sec. 12 (a) Subject to limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons:
> (1) The description of the real property was in error.
> (2) The assessment was against the wrong person.

(3) Taxes on the same property were charged more than one (1) time in the same year.
(4) There was a mathematical error in computing the taxes or penalties on the taxes.
(5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
(6) The taxes, as a matter of law, were illegal.
(7) There was a mathematical error in computing the assessment.
(8) Through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.

Form 133 Petition
Indiana Code 6-1.1-15-12 limits the use of this form to correct only the following types of errors:

- The taxes are illegal as a matter of law
- There is a math error in the assessment
- Through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law

State Tax Board Instructional Bulletin 91-8 (October 1, 1991)
The purpose of this bulletin was to help assessing officials identify which improvements qualified for a 50% reduction in the base rate that are presently priced from the GCM, the GCI, and the Poultry Confinement Building Pricing Schedules.

50 IAC 2.2-10-6.1
There are four "association groupings" for commercial buildings, and each grouping has a separate schedule to facilitate selection. The four groupings are General Commercial Mercantile (GCM), General Commercial Industrial (GCI), General Commercial Residential (GCR), and General Commercial Kit (GCK).

50 IAC 2.2-11-1
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 this section of the Regulation.

50 IAC 2.2-11-5, Schedule A.4
GCK Base Rates

Analysis of the ISSUES 5 and 7

62. Regarding the issue under review, there are two (2) petitions for two (2) separate reassessment time periods filed by the Petitioner. The Form 133 was filed for 1991, which fell into the 1989 statewide general reassessment and a Form 131 filed for 1995, which fell into the 1995 statewide general reassessment. In each of these cases the Board

(as it does for all reassessments) promulgated rules and regulations for the 1989 and 1995 reassessments. The rules and regulations that are promulgated for each reassessment pertained only to that reassessment and do not carry forward to any other reassessment.

63. Since there are two (2) separate petitions (a Form 133 and a Form 131) for two (2) separate tax years involving two (2) separate statewide reassessments (1989 and 1995), each petition will be reviewed under the rules and regulations promulgated by the Board for each reassessment as well as its own merits.

1991 Form 133 Petition

64. For tax year 1991 the Petitioner contends the subject structure should be given a "kit" adjustment because it is pre-engineered, pre-designed, and a lightweight building.

65. Reproduction Cost minus Depreciation equals True Tax Value. Prior to tax year 1995, the reproduction cost for commercial and industrial property was the base rate for the model selected less adjustments. 50 IAC 2.1-4-3 and –5.

66. In addition, for the 1989 statewide general reassessment the Board introduced Instructional Bulletin 91-8 (October 1, 1991) and 92-1 (August 28, 1992). Instructional Bulletin 91-8 provided a 50% reduction in the base rate for qualifying kit buildings. Instructional Bulletin 91-8 stated, "These amendments allowed for a fifty percent (50%) reduction in the base rate of qualifying structures priced from the General Commercial Mercantile, General Commercial Industrial, and the Poultry Confinement Building Pricing Schedules."

67. Board's Instructional Bulletin 92-1 provided local assessing officials instructions on handling appeals by taxpayers who felt their qualifying structures were not reassessed as required in the Board's Instructional Bulletin 91-8. Instructional Bulletin 92-1 gave a more detailed method to use to assess structures qualifying for the 50% reduction in the base rate.

68. In summary, for appeals prior to the 1995 assessment date, the methodology used (in Instructional Bulletins 91-8 and 92-1) to make this type of adjustment entailed making a 50% reduction to the base rate of the existing pricing schedule that was in use at the time.

1995 Form 131 Petition

69. As cited in the *Indiana Administrative Code* (2001), 50 IAC 2.1, "real property assessment" was repealed by the State Board of Tax Commissioners, filed September 14, 1992 (16 IR 662) effective March 1, 1995 and replaced by the "real property assessment" 50 IAC 2.2. The Board's 1995 Regulation, 50 IAC 2.2, eliminated the "kit" building adjustment described in the Board's Instructional Bulletins 91-8 and 92-1 for assessment years 1995 and thereafter.

70. Under the 1995 regulation, the reproduction cost for commercial and industrial property is the base rate for the selected association grouping less adjustments. 50 IAC 2.2-10-6.1 and 2.2-11-6. (As previously noted, the term "association grouping" was introduced by the 1995 Regulation. Prior to that time, the term "model" was the commonly used descriptive term.)

71. 50 IAC 2.2-10-6.1 identifies four (4) association groupings to be used for the selection of the appropriate base rate. These four (4) groupings are: (1) General Commercial Mercantile (GCM), (2) General Commercial Industrial (GCI), (3) General Commercial Residential (GCR), and (4) General Commercial Kit (GCK).

72. The GCK association grouping was added to the 1995 Regulation to value pre-engineered and pole framed buildings used for commercial and industrial purposes that were not special purpose designed structures. Selecting the GCK association grouping instead of another is not a straightforward finding of fact. Rather, subjective judgment is used to select the appropriate association grouping. First, as part of the assessment analysis, the assessor must necessarily decide whether the physical attributes of the building under review more appropriately fall within the purview of one association grouping or another. Also, in deciding whether the GCK association grouping should be used, the assessor

must decide whether the building under review is a pre-engineered building and whether the frame type is light metal/wood siding. 50 IAC 2.2-11-5, Schedule A4.

"Kit" adjustment/GCK pricing

73. Kit buildings components are fabricated from lightweight, inexpensive materials at central manufacturing facilities then shipped to a location for fast and efficient assembly. *Miller Structures Inc. vs. State Board of Tax Commissioners*, 748 N.E.2d 943, 949; *Hamstra Builders, Inc. v. Department of Local Government Finance,* 783 N.E. 2d 387, 390 (Ind. Tax Ct. 2003).

74. "[T]he key elements used to identify kit buildings are simply [the] building's type of interior column and roof beam support, [which] may include cold form cee channel supports, tapered columns, H-columns, and steel pole (or post) columns." *Miller Structures*, 748 N.E.2d at 950; *Hamstra Builders, Inc.,* 783 N.E. 2d at 390-91.

75. To be priced from the GCK schedule, the Petitioner must show the subject building is: 1) pre-engineered; 2) pole framed; 3) used for commercial or industrial purposes; and 4) not special purpose.

76. The parties agreed that the subject structure was pole framed, used for commercial or industrial purposes, and that it was not a special purpose design. However, the parties disagreed with whether the subject was pre-engineered.

77. The Respondent contends that the subject is built on a 2 foot to 2½-foot high perimeter foundation of concrete block. The Petitioner stated that this is not a foundation, but a method to seal the bottom of the building to prevent moisture from getting in. The Petitioner stated that the additional cost of concrete block should be included, but claims it is not a foundation.

78. The Petitioner further contends the sealing function of the concrete block perimeter is necessary because there is no standard floor in the subject. The Petitioner stated that with

tennis courts as the floor, it was necessary to seal the building in this manner to prevent moisture from seeping in onto those floors. The floor of the subject is actually numerous tennis courts and not a normal poured concrete floor

79. At the hearing, the Petitioner stated that normally a small portion of the concrete floor is visible outside of a structure to seal a pre-engineered building. This was not an option for the subject building because of the modified floor (tennis courts). Prior to its construction, concrete blocks were used to seal the building. The Petitioner testified that these concrete blocks are 2 to 2½ -feet in height and had to be put in place (some below grade, some above).

80. The Respondent opines that both ends of the structure's exterior walls are constructed of either 100% concrete block or brick. The Petitioner contends the rear wall of the subject is a "bang board" that is for customers to practice tennis by themselves and the other wall is an interior wall whose concrete construction is picked up in the pricing of the front portion of the subject building.

81. The concrete block wall found between the front portion of the subject building (4,800 square feet) and the rear portion of the subject building (52,800 square feet) is an interior wall (division wall). However, the rear wall is entirely concrete block. This wall, called a "bang board" by the Petitioner, is an exterior wall. The Petitioner claims the wall does not support the roof structure. The Respondent testified that it is still an exterior wall made of concrete block.

82. The Petitioner testified that the ceiling pitch was specifically selected in order to allow, "lob" shots. The higher ceiling center was necessary, but the same height did not need to extend to the edge. The Petitioner also testified that normal warehouse lighting was not appropriate either. To best see the tennis balls, more powerful lighting was required.

83. The concrete foundation to seal the building floor, the concrete "bang board," the high ceiling pitch, the tennis court floor, and the more powerful lighting are all additions to the building that must be accounted for. These types of modifications can change the nature

of the building from pre-engineered and therefore the building would not qualify to be valued from the GCK pricing schedule or to receive a "kit" adjustment to the base rate.

84. The question in this case is whether the subject structure is a pre-engineered kit building. The subject property clearly has had numerous modifications applied to it. These additions are not the normal type of enhancements of a lightweight, pre-engineered, low cost building.

85. When all of the modifications are taken into consideration, the subject structure ceases to be an economical pre-engineered structure that would qualify for either the "kit" adjustment or to be valued from the GCK schedule. These additions, and increased costs of such changes, change the nature of the building to something more than an economical pre-engineered building.

86. Though the Petitioner points to *Indianapolis Racquet Club, Inc. v. State Board of Tax Commissioners,* 722 N.E. 2d 926 (Ind. Tax Court 2000) Tax Court case, on another property owned by the Petitioner and having the same use, the Petitioner failed to show that the two (2) properties were in fact identical to one another and that the issues should be reviewed in the same manner. The fact that the properties are tennis facilities owned by the same individual, does not automatically determine that they were constructed in the same way and thus should be valued similarly. It is the Petitioner's burden to show that the assessment is incorrect and to show what it seeks is correct. The Petitioner failed to do this regarding both the "kit" adjustment and the use of the GCK pricing schedule.

87. The Petitioner made no comparison between the two (2) facilities but concluded that they should be valued in the same way. Unsubstantiated conclusions do not constitute probative evidence. *Whitley,* 704 N.E. 2d at 1119. There is no change in the assessment as a result of this issue.

ISSUE 8: *Whether the lobby, pro-shop and locker rooms should be valued as GCM health club for 1995.*

88. At the hearing, the Petitioner and Respondent agreed that the lobby, pro-shop, and locker room area should be valued from the GCM Health Club model. As a result of this agreement, there is a change in assessment.

89. The agreement between the Township and the Petitioner is a decision among these parties and the Board will accept the agreement. The Board's acceptance of the agreement should not be construed as a determination regarding propriety of the change in the pricing schedule used to value the lobby, pro-shop, and locker room of the subject building, agreed to by the parties.

ISSUE 9: *Whether the tennis court portion of the building deserves certain base rate adjustments for 1995.*

90. The Petitioner claimed that certain base rate adjustments should be made to the subject facility. The Petitioner opined that negative adjustments should be made for lack of partitioning and lack of floor and that a positive adjustment should be made for the more abundant lighting.

91. The Respondent agreed that adjustments should be made for the lack of partitioning, lack of floor, and lighting.

92. At the hearing, the Petitioner and the Respondent agreed to the amount of base rate adjustments to be made for the lack of partitioning and the more abundant lighting to be applied to the subject structure for the 1995 assessment year.

93. On the floor issue, the Petitioner and Respondent submitted proposed adjustments for the lack of floor with their post hearing submissions (See Petitioner's Exhibits B & C and Respondent's Exhibit E). The Respondent proposed a negative adjustment of $1.80 per square foot, but failed to indicate if the adjustment was for 1989 or 1995 assessment year.

The Petitioner, on the other hand, accepted the $1.80 per square foot proposed by the Respondent for the 1995 assessment year.

94. The Respondent also proposed a pricing adjustment to the tennis courts. The Petitioner stated that he agreed with the new pricing of the tennis courts (see Petitioner's Exhibit B).

95. Therefore, based on the adjustments agreed to by the parties for the lack of partitioning, the lack of floor and the more abundant lighting, as well as the agreed to change in the tennis court pricing, there is a change in the 1995 assessment as a result.

Summary of Final Determinations

Determination of ISSUE 1: *Whether the land base rate and classification is correct for 1989.*
Determination of ISSUE 6: *Whether the land base rate and classification is correct for 1995.*

96. At the hearing, the Petitioner withdrew these issues from review by the Board. There is no change in the assessment as a result of these issues.

Determination of ISSUE 2: *Whether the tennis court portion of the building should be priced as a light warehouse for tax year 1989.*

97. At the hearing, the parties stipulated that the tennis court portion of the subject structure should be priced as a light warehouse. There is a change in the assessment as a result of this agreement.

Determination of ISSUE 3: *Whether the tennis court portion of the building deserves certain base rate adjustments for 1989.*

98. At the hearing, the parties stipulated that there should be negative adjustments for lack of slab flooring and lack of partitioning and a positive adjustment for more abundant lighting. There is a change in the assessment as a result of these agreements.

Determination of ISSUE 4: *Whether the tennis court portion of the building deserves a grade adjustment for 1989.*

99. The Petitioner did not meet their burden on this issue. Accordingly, there is no change in the 1989 assessment as a result.

Determination of ISSUE 5: *Whether the tennis court portion of the building deserves a kit adjustment for 1991.*

Determination of ISSUE 7: *Whether the tennis court portion of the building should be priced as GCK for 1995.*

100. The Petitioner did not meet their burden in these issues. Accordingly, there is no change in the 1991 and 1995 assessments as a result.

Determination of ISSUE 8: *Whether the lobby, pro-shop, and locker rooms should be valued as GCM Health Club for 1995.*

101. At the hearing, the parties stipulated that the lobby, pro-shop, and locker rooms should be valued as GCM health club for assessment year 1995. There is a change in the assessment as a result of this agreement.

Determination of ISSUE 9: *Whether the tennis court portion of the building deserves certain base rate adjustments for 1995.*

102. The parties agreed to negative adjustments for lack of slab flooring and the lack of partitioning, a positive adjustment for the more abundant lighting, as well as the re-pricing of the tennis courts. There is a change in the assessment as a result of these agreements.

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.