

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 72-007-02-1-4-00003
Petitioner: Marlin Hukill
Respondent: Vienna Township Assessor, Scott County
Parcel: 051924001300007
Assessment Year: 2002

The Indiana Board of Tax Review (“the Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Scott County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated June 9, 2003.
2. The PTABOA’s Notification of Final Assessment Determination (Form 115) was mailed to the Petitioner on September 19, 2003.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 with the County Assessor on October 17, 2003. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 19, 2004.
5. The Board held an administrative hearing on June 23, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. On December 13, 2004, the Board issued its order extending the time within which to issue its determination through and including February 3, 2005.
7. Persons present and sworn in at the hearing:
 - a. For Petitioner:
Milo Smith, Petitioner’s representative
 - b. For Respondent:
Teresa Rigsby, Scott County Assessor
Richard Schultz, Accurate Assessments, representing Vienna Township.

Facts

8. The property is classified commercial, as is shown on the property record card (PRC) for parcel # 051924001300007.
9. The Administrative Law Judge did not conduct an inspection of the property.
10. Assessed Values of the subject property as determined by the Jennings County PTABOA (2002 assessment year) are:

Land: \$172,000 Improvements: \$60,000
11. Assessed Values requested by Petitioner as shown on the Form 131 petition are:

Land: \$42,000 Improvements: \$40,000

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:

Land Valuation

- a. The Petitioner contends that the Scott County Neighborhood Valuation Form allows for platted lots to be assessed at a maximum of \$400 per front foot. *Smith testimony.*
- b. According to the Petitioner, the property record card ("PRC") for the subject parcel shows that it is a platted lot - "Forest Park PT Lot 112 and Lot 113". Thus, the Petitioner contends that the subject parcel should be valued on a front foot basis rather than on an acreage basis. *Smith testimony; Petitioner Exhibit 1.*
- c. The Petitioner contends that, by valuing the subject parcel according to a base rate of \$250,000 per acre, the Respondent has not treated the subject parcel in a uniform and equal manner when compared to similar properties. *Smith testimony.*

Pricing Schedule

- a. The Petitioner contends that the subject building should not be valued pursuant to the General Commercial Mercantile ("GCM") pricing schedule set forth in the Real Property Assessment Guidelines for 2002 – Version A ("Guidelines"). *Smith testimony.* The Petitioner believes that the subject building instead should be valued using the General

Commercial Kit (“GCK”) pricing schedule set forth in the Guidelines. *Smith testimony.*

- b. The Petitioner submitted several photographs of the interior and exterior of the subject building, showing metal-framed exterior walls, tapered interior columns, “X” bracing in the roof and open cee channels. *Smith testimony; Petitioner Exhibits 1 – 4.*
- c. The Petitioner also submitted an invoice and purchase agreement for the subject building from CHIEF Buildings Division. *Smith testimony; Petitioner Exhibit 5.* The invoice and purchase agreement are dated August 24, 1995. *Petitioner Exhibit 5.* The net price, before taxes, of the materials was \$14,833. *Id.* The Petitioner contends that the total cost for the structure, including taxes and freight, was \$16,015. *Smith testimony; Exhibit 5.*
- d. The Petitioner presented a proposed revised property record card pricing the property under the GCK schedule. *Petitioner Exhibit 8.*

12. Summary of Respondent’s contentions in support of the assessment:

Land Valuation

- a. The Respondent contends that it valued the subject parcel uniformly with other land in the area in accordance with the appropriate Neighborhood Valuation Form. *Schulz testimony.* The Respondent contends that the subject parcel is located in a mixed area of commercial and residential properties. *Schulz testimony.* According to the Respondent, all of the commercial lots in the area were converted to acreage and all of the residential lots were valued as platted lots. *Schultz testimony; Respondent Exhibit C.*
- b. The Respondent further contends that sales of comparable properties demonstrate that the assessment of the subject parcel is in line with land values in the area. *Schultz testimony.* The Respondent acknowledges that the sales were not all within the time frame of January 1999, but the Respondent contends that those sales demonstrate that land values in the area are high. *Schultz testimony; Respondent Exhibits F-K.* The Respondent attributes the elevated value of some of the commercial land in the area to the proximity of one of the town’s main thoroughfares. *Schultz testimony.*
- c. The Respondent presented a copy of a map showing the locations of the comparable properties and the subject property. *Shultz testimony; Respondent Exhibit L.*

Pricing Schedule

- a. The Respondent contends that the model for a GCK structure set forth in the Guidelines calls for exterior walls of light metal or wood. *Schultz testimony.* According to the Respondent, the walls of the subject building

are only partially metal. *Id.* In fact, the Respondent contends that over fifty percent (50%) of the wall area of the subject building consists of overhead doors and glass panels. *Id.*

- b. The Respondent contends that the subject building qualifies for valuation under the GCM cost schedule with a reduced grade. *Schultz testimony.*

Record

- 13. The official record for this matter is made up of the following:
 - a. The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
 - b. The tape recording of the hearing labeled BTR #5868.
 - c. Exhibits:
 - Petitioner Exhibit 1: Photograph of the subject structure showing metal framed exterior walls
 - Petitioner Exhibit 2: Photograph of subject structure showing tapered columns
 - Petitioner Exhibit 3: Photograph of subject structure showing “X” bracing in plane roof and open “cee” channels
 - Petitioner Exhibit 4: Photograph of subject structure showing roof “cee” channels and tapered interior columns
 - Petitioner Exhibit 5: Invoice and Purchase Agreement to construct the subject structure
 - Petitioner Exhibit 6: Comparative Cost Indexes (Marshall Valuation Services)
 - Petitioner Exhibit 7: Comparative Cost Multipliers (Marshall Valuation Services)
 - Petitioner Exhibit 8: “GCK” pricing of the subject property.
 - Petitioner Exhibit 9: Guidelines Chapter 6, Schedule A.4 - (GCK)
 - Petitioner Exhibit 10: Commercial Area I – Neighborhood Valuation Form
 - Petitioner Exhibit 11: Ind. Code § 6-1.1-4-13-6
 - Petitioner Exhibit 12: 2002 Real Property Assessment Manual, page 2
 - Petitioner Exhibit 13: 2002 Real Property Assessment Manual, page 3
 - Petitioner Exhibit 14: Guidelines, Chapter 2, page 7
 - Petitioner Exhibit 15: PRC for the subject property

 - Respondent Exhibit A: Authority for Richard Schultz to represent Vienna Township/Scottsburg Corp. Assessor
 - Respondent Exhibit B: Authority for Teresa Rigsby to represent Vienna Township/Scottsburg Corp. Assessor
 - Respondent Exhibit C: Commercial Area I Neighborhood Valuation Form – Scottsburg Corp.

Respondent Exhibit D: PRC of the subject property with photograph
Respondent Exhibit E: Comparable property sales disclosure
with PRC

Respondent Exhibits F through K: Sales disclosure forms and PRCs
Respondent Exhibit L: Map of purportedly comparable properties

Board Exhibit A: Form 131 petition

Board Exhibit B: Notice of Hearing on Petition

d. These Findings and Conclusions

Analysis

14. The most applicable governing case law is:
- a. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case, proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc., v. Washington Township Assessor*, 802 N.E. 2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E. 2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E. 2d at 479.

Land Valuation

15. The Petitioner did not provide sufficient evidence to support his contention that the subject land should have been assessed on a front foot basis from the platted portion of the Neighborhood Valuation Form. This conclusion was arrived at because:
- a. The parties agree the parcel under appeal is platted. The Petitioner contends that the subject property therefore should have been valued on a front foot basis like other platted properties rather than on an acreage basis. *Smith Testimony*.
 - b. The Petitioner essentially contends that an assessor necessarily errs when it assesses a platted lot on an acreage basis. However, the Petitioner’s

position is at odds with the intent of the relevant administrative rules, which provide that “[I]t should be stressed that the pricing method for valuing the neighborhood is of less importance than arriving at the correct value of the land as of the valuation date.” *2002 Real Property Assessment Guideline – Version A, Ch. 2, p. 16 (Incorporated by reference at 50 IAC 2.3-1-2)*. The correct value of property is its “true tax value,” which is defined as “the market value-in-use of property for its current use, as reflected by the utility received by the owner or a similar user of the property.” *2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2)(Manual)*.

- c. The Petitioner did not present any probative evidence to demonstrate that the assessment of the subject land does not represent its market value-in-use. Even if the Petitioner had established an error in assessment, it did not present any evidence to support its requested valuation of \$42,000. A mere assertion of a property’s value is insufficient to establish a prima facie case. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax 1998)(mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error).
- d. Consequently, the Petitioner has failed to present a prima facie case of error with regard to the assessment of the subject land.

Pricing Schedule

16. The Petitioner provided sufficient evidence to support his contention that the subject building should have been assessed using the GCK pricing schedule:
 - a. The Petitioner contends that the assessment of the subject building is excessive because the Respondent applied an inappropriate pricing schedule to determine the depreciated replacement cost new of the building. Specifically, the Petitioner contends that the Respondent should have valued its property using the GCK schedule as opposed to the GCM schedule. *Smith testimony*.
 - b. The Guidelines provide for the assessment of improvements based upon the depreciated replacement cost new of such improvements. *2002 REAL PROPERTY ASSESSMENT MANUAL, p.13 (incorporated by reference at 50 IAC 2.3-1-2); Guidelines, at 1-2*. With regard to commercial and industrial buildings, the Guidelines provide three models – GCM, General Commercial Retail (“GCR”), and General Commercial Industrial (“GCI”) - on the assumption that there are certain elements of construction for given use types. *Guidelines, Ch. 6, p. 7*.
 - c. The Guidelines also provide a fourth model, GCK, which is not dependent on the use for which the building is designed. *Id.* The GCK model is reflective of the economical quality and low cost of materials used in constructing certain light, pre-engineered, or “kit” buildings. *Miller Structures, Inc. v. State Bd. Of Tax Comm’rs*, 748 N.E.2d 943, 949 (Ind. Tax Ct. 2001). Kit buildings are generally made of lightweight and

inexpensive materials and are “fabricated at central manufacturing facilities and shipped to the construction site ready for fast and efficient assembly.” *Miller Structures*, 748 N.E.2d at 950 quoting State Board of Tax Commissioners Instructional Bulletin 91-8.¹

- d. The Tax Court has stated that the key elements used to identify a kit building are the types of interior columns and roof beam support used in the building. *Componx, Inc. v. State Board of Tax Commissioners*, 683 N.E.2d 1372, 1374 (Ind. Tax Ct. 1997). Kit building interior columns and roof beam supports may include cold cee channel supports, tapered columns, H-columns, and steel pole or post columns. *Miller Structures*, 748 N.E.2d at 950. Consequently, “it should not be difficult for taxpayers to identify those characteristics in an improvement alleged to [be a kit building]. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1121 (Ind. Tax Ct. 1998).
- e. Here, the Petitioner submitted evidence demonstrating that the subject building was centrally fabricated and shipped to the subject land for assembly. *Smith testimony; Petitioner Exhibit 5*.² This is precisely the type of building that the GCK schedule was designed to address. *See, Miller Structures*, 748 N.E.2d at 950. Moreover, the Petitioner introduced several photographs of the interior and exterior of the subject building, showing metal-framed exterior walls, tapered interior columns, “X” bracing in the roof and open cee channels. *Smith testimony ;Petitioner Exhibits 1 – 4*. Once again, these represent key elements indicative of a kit type building. *Id.*; *see also, Componx*, 683 N.E.2d at 1374.
- f. This evidence is sufficient to establish a prima facie case that the subject building should be assessed using the GCK schedule.
- g. The burden therefore shifted to the Respondent to offer evidence impeaching or rebutting the Petitioner’s evidence.
- h. The Respondent contends that the GCK model calls for light metal or wood walls. According to the Respondent, the walls of the subject building are less than fifty percent (50%) metal. *Schultz testimony*. The Respondent contends that overhead doors and glass window panels make-up the remaining portion of the walls. *Id.*
- i. Minor deviation from the GCK model does not disqualify a structure from being valued under the GCK schedule. *See, Morris v. State Board of Tax Commissioners*, 712 N.E.2d 1120, 1123 (Ind. Tax Ct. 1999)(minimal feature options, such as a plate glass front, do not disqualify a building

¹ Bulletins 91-8 and 92-1 were issued by the State Board of Tax Commissioners to interpret the “kit adjustment” prior to the enactment of the GCK cost schedule. *Waterfurnace Intl. v. Department of Local Government Finance*, 806 N.E.2d 891, 893, n.4 (Ind. Tax. Ct. 2004). Consequently, those bulletins have been superceded. *Id.* Nonetheless, they still offer guidance regarding whether a building may be assessed as a kit building under the GCK schedule, as do Tax Court decisions construing those bulletins. *Id.*

² The Petitioner’s representative testified that the invoice and purchase agreement reflected the subject building’s construction costs. *Smith testimony*. However, those documents appear to reflect the price only of the component parts of the subject building. *Petitioner Exhibit 5*. They do not appear to reflect a fully assembled building, nor do they reflect any costs associated with assembling the parts into a finished building on site. *Id.*

from receiving kit adjustment). Instead, a respondent must explain how the incorporation of features departing from the GCK model renders the structure no longer “economical,” or why the incorporation of such features cannot be accounted for through an upward adjustment to the grade of the building. *Id*; *Waterfurnace Intl Inc. v. Department of Local Government Finance*, 806 N.E.2d 891, 894 (Ind. Tax Ct. 2004).

- j. Here, the subject building’s incorporation of glass windows and overhead doors represents a departure from the GCK model. *See, Guidelines, Appendix D, p. 40* . However, the Respondent failed to demonstrate that the inclusion of these features rendered the subject building no longer economical to build. In fact, it appears that the fabricated components of the subject building cost only \$14,833 before taxes. *Smith testimony; Petitioner Exhibit 5*. The Respondent similarly failed to explain why the increased value attributable to the glass windows and doors could not be accounted for through an upward adjustment to the grade assigned to the subject building.
- k. The preponderance of the evidence therefore demonstrates that the Respondent erred in assessing the subject building under the GCM rather than the GCK schedule.
- l. Finally, the Board notes that the actual cost of constructing the subject building, with appropriate time adjustments, may well be the best evidence of the replacement cost new of the structure. Here, the Petitioner presented evidence regarding the cost of the pre-fabricated components used in constructing the subject building. *Petitioner Exhibit 5*. However, he did not provide any evidence regarding the cost of assembling the building from those materials, nor did he explain the cost indexes and multipliers he submitted to bring the construction costs forward to January 1, 1999. Therefore, the Board is unable to enter an order concerning the correct value of the subject building. Instead, the Board will direct that the subject property be assessed from the GCK schedule, with appropriate adjustments to reflect any increase in value resulting from departures from the GCK model.

Conclusions

Land Valuation

- 17. The Petitioner failed to make a prima facie case that the land value was incorrect. The Board finds in favor of Respondent on this issue.

Pricing Schedule

- 18. The Petitioner made a prima facie case that the Respondent erred in valuing the subject building from the GCM schedule rather than from the GCK schedule. The Respondent failed to rebut the Petitioner’s evidence. The Board finds in favor of the Petitioner on this issue.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines:

- 1: There is no change in the assessment of the subject land. The land value remains at \$172,000.
- 2: The assessment is incorrect with regard to the subject building. The subject building should be valued using the GCK pricing schedule.

ISSUED: _____

Commissioner,
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.