

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

Petition #: 55-021-02-1-4-00062
Petitioner: Marlin Hukill
Respondent: Washington Township Assessor
Parcel #: 071-13-04-335-002-000
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 Morgan County Property Tax Assessment Board of Appeals (PTABOA) by written document dated October 6, 2003.
2. The Petitioner received notice of the decision of the PTABOA on February 24, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the County Assessor on March 15, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 15, 2004.
5. The Board held an administrative hearing on December 2, 2004, before the duly appointed Administrative Law Judge Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo Smith, Property Tax Consultant
 - b) For Respondent: Brenda Brittain, Morgan County Assessor
Reva Brummett, Morgan County PTABOA Member

Deborah Johnson, Washington Township Assessor, was present at the hearing but was not sworn in and did not testify.

Facts

7. The property is classified as commercial, as is shown on the property record card for parcel # 071-13-04-335-002-000.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Morgan County PTABOA:
Land \$48,700 Improvements \$48,800
10. Assessed Value requested by Petitioner on Form 131 petition:
Land \$48,700 Improvements \$28,000

Issues

11. Summary of the Petitioner's contentions in support of alleged error in assessment:
 - a) The Respondent used the incorrect pricing schedule to determine the depreciated replacement cost new of the subject building. The subject building should be valued utilizing the General Commercial Kit ("GCK") pricing schedule. *Smith argument.*¹
 - b) The purpose of reassessment is to determine the true tax value of property. *Smith argument; Pet'r Ex. 1.* The true tax value of a property is not defined as fair market value, but rather is defined as the "value determined under the rules of the State Board of Tax Commissioners." *Smith argument; Pet'r Ex. 2.*
 - c) The calculation of cost is the starting point for estimating the true tax value of improvements. *Smith argument.* The calculated cost of improvements sets the upper limit of value for the improvements. *Id.; Pet'r Ex. 3.*
 - d) The extensive use of sales data to determine the subject property's assessed value is in error, because the true tax value of the subject property was not determined under the rules of the State Board of Tax Commissioners, as required by IC 6-1.1-31-6(c). *Smith argument; Pet'r Ex. 2.*
 - e) The Morgan County PTABOA did not value the subject building utilizing the GCK pricing schedule due to its determination that the building is a special use structure. *Smith testimony; Pet'r Ex. 5.*

¹ The pricing key on the subject property record card submitted by the Petitioner contains the notation of "GCK" above the column for the pricing of the first floor. *Pet'r Ex. 15.* However, the parties do not dispute that the building was actually priced from the General Commercial Mercantile ("GCM") pricing schedules contained in the Real Property Assessment Guidelines for 2002 – Version A.

- f) The subject improvement has “X” bracing, tapered interior columns and cee channels found in the interior walls and roof; therefore it should be valued utilizing the GCK pricing schedule. *Smith testimony; Pet’r Ex. 6.*
- g) The Petitioner owns a total of nine (9) “Butler” pre-engineered structures located throughout central Indiana. All nine (9) buildings were assembled by the same contractor using the same type of components. *Smith testimony; Pet’r Exs. 7-15.* All of the buildings except the subject building were priced from the GCK pricing schedule. *Id.*
- h) The subject property was not assessed “on a just valuation basis and in a uniform and equal manner” as required by Ind. Code § 6-1.1-2-2. *Smith argument; Pet’r Ex. 4.*

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

- a) The pricing schedule used by other counties in the valuation process does not dictate the pricing schedule utilized by Morgan County in determining the true tax value of properties. *Brittain testimony.*
- b) Other properties used as oil change facilities in Morgan County are all valued utilizing the General Commercial Mercantile (“GCM”) Auto Service pricing schedule, and those are the properties to which the subject property should be compared. *Brummett testimony.*
- c) The value determined by Morgan County for the subject improvement is less than the values determined by other counties for some of the other buildings owned by the Petitioner, even though those counties may have utilized the GCK pricing schedule. *Brittain testimony.*
- d) There are limited sales of buildings similar to the subject building. *Brittain testimony.* A comparable commercial property located in Hendricks County sold for \$77,200 in 2004. *Id.; Resp’t Ex. 4.*
- e) A building permit was issued in September 2002 for a competitor grease and oil change operation in Martinsville. *Brittain testimony; Resp’t Ex. 5.* The permit lists the estimated cost of construction at \$90,000. *Id.* That building is very similar in style to the subject building. *Brittain testimony.*
- f) The GCK pricing schedule is not appropriate for the subject building because the building was constructed for a specific purpose and cannot be converted to another use without extensive and costly changes. *Brummett testimony; Resp’t Ex. 8.*
- g) The Petitioner has not disputed the value determined for the subject property, but rather disputes the method used to determine its value. *Brummett testimony.*

- h) The lack of available data forced the Respondent to utilize the cost approach rather than the income or the sales approaches to value when valuing the subject property. *Brittain testimony.*

Objection

13. The Respondent objected to the admission of the Petitioner's exhibits, because the Petitioner did not provide the exhibits to the Respondent in advance of the hearing. *Brittain objection.*
14. The parties elected to contest this case under the procedures governing small claims. *See* 52 IAC 3. Those procedures are intended to make the administration of small claims "more efficient, informal, simple, and expeditious than those administered under 52 IAC 2." 52 IAC 3-1-1(b).
15. The small claims rules provide that "the parties shall *make available* to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing." 52 IAC 3-1-5(f) (emphasis added).
16. By contrast, the rules applicable to non-small claims proceedings state that a party to the appeal "*shall provide*" to the other parties: (1) copies of documentary evidence at least five (5) business days before the hearing; and (2) a list of witnesses and exhibits at least fifteen (15) business days before the hearing. 52 IAC 2-7-1(b).
17. The Board interprets the phrase "shall make available" contained in 52 IAC 3-1-5(f) to mean that the specified items must be provided to other parties if requested. The Board does not interpret that phrase to create an obligation to provide copies of documentary evidence to other parties independent of a request by one or more of those parties. This interpretation gives meaning to the difference between the language used in 52 IAC 3-1-5(f) and 52 IAC 2-7-1(b) and best reflects the principles underlying the more informal small claims procedures.
18. The Respondent did not indicate that it requested copies of the Petitioner's exhibits prior to the hearing. Consequently, the Board overrules the Respondent's objection.

Record

19. The official record for this matter is made up of the following:
- a) The Petition.
 - b) The tape recording of the hearing labeled BTR # 5954.
 - c) Exhibits:

Petitioner Exhibit 1: Article 2.3. Real Property Assessment Manual, Rule 1 (page 1)
Petitioner Exhibit 2: 2002 Real Property Assessment Manual, Introduction (page 2)
Petitioner Exhibit 3: Elements of Cost, Introduction for Assessment (page 1)
Petitioner Exhibit 4: IC 6-1.1-2-2. Assessment of property (one page)
Petitioner Exhibit 5: Section V, PTABOA determination issued 2-24-04 (one page)
Petitioner Exhibit 6: Picture – Interior components of all 8 comparables (taken at 4535 E. 3rd Street, Bloomington)
Petitioner Exhibit 7: Photo and Property Record Card for 4535 E 3rd Street, Bloomington, IN
Petitioner Exhibit 8: Photo and Property Record Card for 4719 W. State Road 46, Bloomington, IN
Petitioner Exhibit 9: Photo and Property Record Card for 2313 W 3rd Street, Bloomington, IN
Petitioner Exhibit 10: Photo and Property Record Card for 735 S. College Avenue, Bloomington, IN
Petitioner Exhibit 11: Photo and Property Record Card for 1400 E. Tipton Street, Seymour, IN
Petitioner Exhibit 12: Photo and Property Record Card for N State Street, North Vernon, IN
Petitioner Exhibit 13: Photo and Property Record Card for 103 East Broadway, Shelbyville, IN
Petitioner Exhibit 14: Photo and Property Record Card for 1832 State Street, Columbus, IN
Petitioner Exhibit 15: Photo and Property Record Card for 170 Morton Avenue, Martinsville, IN (subject property)
Petitioner Exhibit 16: Indiana Board of Tax Review – Notice of Hearing – 1200 W. McClain Avenue with coversheet

Respondent Exhibit 1: Form 115 for subject property dated February 17, 2004
Respondent Exhibit 2: Property record card (PRC) for Monroe County property
Respondent Exhibit 3: PRC for 051924001300007 in Scott County
Respondent Exhibit 4: Agent full report for 121 Commerce Dr. in Hendricks County
Respondent Exhibit 5: September 2002 Building permits list for Martinsville
Respondent Exhibit 6: PRC for 642 Morton Ave in Martinsville
Respondent Exhibit 7: Page 9 Chapter 6 Version A Real Property Assessment Guideline
Respondent Exhibit 8: Page 19 Glossary Version A Real Property Assessment Guideline
Respondent Exhibit 9: Page 16 Appendix E Version A Real Property Assessment Guideline
Respondent Exhibit 10: Page 2-3 Appendix G Version A Real Property Assessment Guideline
Respondent Exhibit 11: PRC and photo of subject property

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing

- d) These Findings and Conclusions.

Analysis

20. The most applicable governing cases are:
- a) A Petitioner seeking review of a determination of an assessing official 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 Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also*, *Clark v. State Bd. of Tax Comm'rs*, 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 Twp. 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.
21. The Petitioner did provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

Petitioner’s Prima Facie Case

- a) The Petitioner contends that the Respondent should have valued its property using the GCK pricing schedule as opposed to the GCM schedule. *Smith testimony*.
- b) The 2002 Real Property Assessment Manual (hereinafter “Manual”) provides for the assessment of improvements based upon their depreciated replacement cost new. 2002 REAL PROPERTY ASSESSMENT MANUAL 13 (incorporated by reference at 50 IAC 2.3-1-2); *See also*, REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A 1-2 (incorporated by reference at 50 IAC 2.3-1-2). The Real Property Assessment Guidelines for 2002 – Version A (hereinafter “Assessment Guidelines”) provide three models – GCM, General Commercial Retail (“GCR”), and General Commercial Industrial (“GCI”) – which are to be used by local assessing officials as a guide in determining which pricing schedule to apply to a given building in order to determine its replacement cost new. The models are provided on the assumption that there are certain elements of construction for given use types. GUIDELINES, ch. 6 at 7.
- c) The Assessment 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 generally are 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).²
- 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 Bd. of Tax Comm’rs*, 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 Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1121 (Ind. Tax Ct. 1998). Moreover, while the current GCK model does not explicitly reference cold cee channel supports or H-columns, it does explicitly contemplate steel framed buildings with tapered columns. See GUIDELINES, app. D at 40.
- e) The Petitioner introduced a photograph of the exterior of the subject building as well as an interior photograph of a similar building owned by the Petitioner located at 4535 E 3rd Street in Bloomington. *Pet’r Exs. 6, 15*. The Petitioner’s representative, Milo Smith, testified that the interior photograph is representative of the subject building and of eight (8) other building owned and operated by the Petitioner. *Smith testimony*. The interior photograph shows metal-framed exterior walls, tapered interior columns, “X” bracing in the roof and open cee channels. *Smith testimony; Pet’r Ex. 6*. Unless impeached or rebutted, Smith’s testimony is sufficient to establish that the subject building exhibits the design characteristics depicted in the photograph.
- f) As explained above, the design features depicted in the photograph represent key elements indicative of a kit type building. *Miller Structures*, 748 N.E.2d at 950; see also, *Componx*, 683 N.E.2d at 1374. Thus, the Petitioner has established a prima facie case that current assessment is incorrect, and that the first floor of the subject building should be assessed using the GCK pricing schedule.
- g) However, the Petitioner did not present any evidence concerning the design or construction of the three hundred (300) square foot area of the subject building, which the Petitioner’s representative referred to as a “grease pit,” and which is assessed

² Bulletins 91-8 and 92-1 were issued by the State Board of Tax Commissioners to interpret the “kit adjustment” prior to the adoption of the GCK cost schedule. *Waterfurnace Intl. v. Dep’t of Local Gov. Fin.*, 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 under the GCK schedule, as do Tax Court decisions construing those bulletins. *Id.*

under the GCM Utility Storage model. *See Smith testimony; Pet'r Ex. 15.* Consequently, the Petitioner did not establish a prima facie case of error with regard to the assessment of that portion of the subject building.

Respondent's Rebuttal

- h) Because the Petitioner established a prima facie case of error concerning the assessment of the first floor of the subject building, the burden shifted to the Respondent to offer evidence impeaching or rebutting the Petitioner's evidence. *See Meridian Towers*, 805 N.E.2d at 479.
- i) The Respondent contends that use of the GCK pricing schedule would be inappropriate, because the subject building was constructed for a specific purpose and cannot be converted to another use without extensive and costly changes. *Brittain testimony*.
- j) The Assessment Guidelines provide that structures classified as "special purpose design" are not to be valued using the GCK schedule. GUIDELINES, ch. 6 at 9. The Assessment Guidelines define "special purpose design" as follows: "An improvement whose design is such that it limits its use to a narrow range of occupancies. Any building designed in such a way that it cannot easily be converted to another use can be considered a *special purpose structure*. Although most buildings can be converted to alternative occupancies, conversion of special-purpose structures involves the expenditure of large sums of money and requires design expertise. Examples are steel mills, theaters, auditoriums, and churches." GUIDELINES, glossary at 19 (emphasis in original).
- k) The subject building, on its face, is dissimilar to the examples given by the Assessment Guidelines of special purpose structures. Nonetheless, the Respondent asserts that the subject building was constructed for a special purpose, and that it cannot easily be converted to another use. *Brittain testimony*. However, the Respondent did not provide any evidence in support of its assertion. For example, the Respondent did not explain what, if any, costs would be associated in converting the building to another use. The Respondent's assertion therefore amounts to nothing more than a conclusory statement. Such statements, unsupported by factual evidence, lack probative value. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
- l) The Respondent's remaining contentions may be summarized as follows: the Petitioner's position that the Respondent utilized an improper pricing schedule is misplaced, because the bottom line value is what is important. According to the Respondent, the assessments of the Petitioner's other buildings as well as market evidence concerning comparable buildings in Morgan County demonstrate that the bottom line assessment of the subject building is not excessive. *Brittain testimony; Brummet testimony; Pet'r Exs. 7-15; Resp't Ex. 5.*

- m) To the extent that the Respondent argues that the Petitioner is required to present market evidence to establish an error in assessment, the Board disagrees. In the absence of more credible market data, the value determined under the cost approach utilized by the Assessment Guidelines is at least some indication of a property's true tax value. Thus, by demonstrating an error in the application of the Assessment Guidelines, a petitioner may also demonstrate an error in assessment. Notwithstanding such error, if a respondent believes that the assessed value can be supported by evidence other than misapplied cost data from the Assessment Guidelines, the respondent bears the burden of presenting such evidence.
- n) The Respondent points to the following facts in an attempt to support the bottom line assessed value of the subject property: (1) the 2004 sale of what the Respondent describes as a comparable commercial property in Hendricks county for \$77,200; (2) the issuance of a building permit in September of 2002 estimating construction costs of \$90,000 for a building to be operated by one of the Petitioner's competitors; and (3) the assessments of some of the Petitioner's other buildings, which are valued pursuant to the GCK schedule for amounts less than the subject building's assessment. *Brittain testimony; Resp't Exs. 4-5; Pet'r Exs. 7-15.*
- o) With regard to the first two items – the 2004 sale and the 2002 building permit – the Respondent did not present any evidence to establish that the properties in question are comparable to the subject property. The mere statement that properties are similar or comparable to each other does not constitute probative evidence of that fact. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Moreover, even if the properties in question were comparable to the subject property, the Respondent's evidence shows the value of those properties as of dates more than three years removed from January 1, 1999 – the relevant valuation date for the 2002 general reassessment. MANUAL, at 4. Therefore, it was incumbent upon the Respondent to explain how such evidence relates to the value of the subject property as of January 1, 1999. *See Long* 821 N.E.2d at 471 (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The Respondent did not provide such an explanation.
- p) The Board similarly is unconvinced by the Respondent's contention that some of the Petitioner's other buildings, which are valued pursuant to the GCK pricing schedule, have lower assessments than the subject building. The Respondent apparently argues that any error in its choice of pricing schedule is harmless, because valuing the subject building under the GCK pricing schedule would not lower the Petitioner's assessment.
- q) A review of the property record cards for the buildings in question does not support the Respondent's contention. Only three of the buildings have replacement costs new³ that approach or exceed the replacement cost new of the subject building.⁴

³ *See Pet'r Exs. 8-10* (\$53,250, \$66,820 and \$54,210)

However, those three buildings encompass areas significantly larger than the area encompassed by the subject building.⁵ Thus, it appears that valuation of the subject building under the GCK pricing schedule would lead to an assessment lower than that yielded by its current valuation under the GCM pricing schedule.

- r) Based on the foregoing, the Respondent did not impeach or rebut the Petitioner's evidence. The preponderance of the evidence demonstrates that the Respondent erred in assessing the first floor of the subject building using the GCM rather than the GCK schedule.

Conclusion

- 22. The Petitioner made a prima facie case. The Respondent failed to rebut Petitioner's evidence. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed and that the Respondent should assess the first floor of the subject building using the GCK pricing schedule.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

⁴ See *Pet'r Ex. 15* (\$58,860)

⁵ Compare *Pet'r Ex. 8* (1530 sq. ft. 1st floor; 1530 sq. ft. utility storage) and *Pet'r Ex. 9* (2006 sq. ft. 1st floor; 2006 sq. ft. utility storage) and *Pet'r Ex. 10* (1386 sq. ft. 1st floor; 1386 sq. ft. utility storage) with *Pet'r Ex. 15* (subject property) (1200 sq. ft. 1st floor; 300 sq. ft. utility storage).

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.