

**STATE OF INDIANA**  
**Board of Tax Review**

In the matter of the Petition for Review )  
of Assessment, Form 131 ) Petition No. : 10-004-96-1-4-00026

Parcel No.: 18000210630

Assessment Year: 1996

Petitioner: Melvin Lonowski  
PO Box 607  
Seymour, Indiana 47274

Petitioner's Representative: Milo Smith  
Tax Consultants, Inc.  
331 Franklin Street  
Columbus, Indiana 47201

**Findings of Fact and Conclusions of Law**

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**Issues**

1. Whether the grade factor of subject structure is correct.
2. Whether the condition rating of the subject structure is correct.
3. Whether a negative adjustment should be made for lack of partitioning.
4. Whether a negative adjustment should be made for the interior finish.

5. Whether the subject structure should be valued from the General Commercial Kit (GCK) Pricing Schedule.
6. Whether the special features are priced correctly.
7. Whether the exterior features are priced correctly.
8. Whether additional obsolescence depreciation is warranted.
9. Whether the land base rate is correct.
10. Whether the land value is in accordance to the County Land Valuation Order (Land Order).
11. Whether the correct influence factor is applied to the land.
12. Whether the assessment under review is for the tax year 1995 or 1996.

### **Findings of Fact**

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-15-3, Mr. Milo Smith of Tax Consultants, Inc., on behalf of Melvin Lonowski (Petitioner), filed a Form 131 petition, requesting a review by the State. The Form 131 was filed on November 27, 1996. The Clark County Board of Review (County Board) Assessment Determination on the underlying Form 130 is dated October 31, 1996.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 14, 2000 before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Smith represented the Petitioner. Ms. Norma Lockard, Deputy Clark County Assessor, represented the County Board. No one appeared to represent Charlestown Township.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition is labeled as Board Exhibit B. In addition, the following exhibits were submitted:

Board Exhibit C - Withdrawal of Issues

Petitioner Exhibit A - A summary of the issues prepared by Mr. Smith

Petitioner Exhibit B - Final Assessment Determination of the subject property for assessment year 1991

Petitioner Exhibit C - A description of 50 IAC 2.2-10-6.1 Pricing (D) "General Commercial Kit"

Petitioner Exhibit D - A copy of Schedule A.4 - GCK Base Rates

Petitioner Exhibit E - A copy of the Notice of Assessment, with a copy of the property record card (PRC) from August 11, 1992 attached

Petitioner Exhibit F - A copy of a letter and contract from Bateman Builders for the subject property

Petitioner Exhibit G - A copy of a theoretical gage thickness chart

Petitioner Exhibit H - A copy of page 458 from Indiana Law Review

Petitioner Exhibit I - A copy of reproduction cost summary for General Commercial Industrial (GCI) - Light Warehouse prepared by Mr. Smith

Petitioner Exhibit J - A reproduction cost summary for General Commercial Retail (GCR) - Motel units prepared by Mr. Smith

Petitioner Exhibit K - A copy of Comparative Cost Indexes from Section 98, page 1, *Marshall Swift Valuation Service*

Petitioner Exhibit L - A copy of a page from the Forward of the Indiana Real Property Assessment Manual (50 IAC 2.2)

Petitioner Exhibit M - A copy of the State Tax Board Instructional Bulletin 91-8

Petitioner Exhibit N - A copy of *Donald G. Morris v. State Board of Tax Commissioners* Indiana Tax Court Case

Petitioner Exhibit O - A copy of the paperwork and a summary of the history of the filing of forms, requesting the current petition apply to the 1995 assessment, not the 1996 assessment

5. The subject property is a commercial structure located at 1085 1/2 Market Street, Charlestown, Charlestown Township, Clark County.
6. The correct Assessed Values for 1996 are:  
Land: \$6,470      Improvements: \$125,570      Total: \$ 132,040
7. The Hearing Officer did not view the subject property.

**Issue No. 1 - Whether the grade factor of the subject structure is correct.**

**Issue No. 2 - Whether the condition rating of the subject structure is correct.**

**Issue No. 6 - Whether the special features of the subject property are priced correctly.**

**Issue No. 7 - Whether the exterior features of the subject property are priced correctly.**

**Issue No. 8 - Whether additional obsolescence depreciation is warranted.**

**Issue No. 9 - Whether the land base rate is correct.**

**Issue No. 10 - Whether the land value is in accordance to the County Land Valuation Order.**

**Issue No. 11 - Whether the correct influence factor is applied to the land.**

8. At the hearing, Mr. Smith withdrew the issues listed above from review by the State Board. In turn, Mr. Smith signed a Withdrawal Agreement (Board Exhibit C) to this fact.

**Issue No. 3 - Whether a negative adjustment should be made for lack of partitioning.**

9. There has not been an adequate adjustment made for the lack of partitions in the subject structure. The subject structure is an unfinished open building. There is a State Board Final Determination dated September 1994, for tax year 1991,

whereby a negative adjustment for the lack of partitioning was applied. *Smith testimony & Petitioner Exhibit B.*

**Issue No. 4 - Whether a negative adjustment should be made for the interior finish.**

10. The interior of the subject structure has very little finish. There is only three percent (3%) wall and ceiling finish throughout the building. There is a State Board Final Determination dated September 1994, for tax year 1991, whereby a negative adjustment for lack of interior finish was applied. *Smith testimony & Petitioner Exhibit B.*

**Issue No. 5 - Whether the subject property should be valued from the General Commercial Kit (GCK) Pricing Schedule.**

11. The subject structure is a pre-engineered building. A copy of 50 IAC 2.2-10-6-1 referring to the GCK structure is submitted into evidence. *Smith testimony & Petitioner Exhibit C.*
12. Mr. Smith submitted a copy of Schedule A.4 from the Indiana Real Property Assessment Manual with highlighted information on the components of the subject structure as a GCK structure. *Petitioner Exhibit D.*
13. On August 11, 1992, the subject building was given the 50% base rate adjustment. There was no charge for interior finish. A copy of the PRC and Notice of Assessment dated August 11, 1992 was submitted. *Smith testimony & Petitioner Exhibit E.*
14. The subject building is a pre-engineered Butler building. A copy of a letter from Bateman Builders, along with a copy of a Standard Form of Agreement between owner and contractor, dated May 4, 1983, with a stipulated contract sum for the construction of this building of \$183,896.00 was submitted. The specifications

are also detailed on page 4 of the submitted contract. *Smith testimony & Petitioner Exhibit F.*

15. The subject structure is 28-gauge, which is lighter than 24-gauge. A copy of a Theoretical Gage Thickness chart showing that 28-gauge metal is lighter in thickness was submitted. The extra cost of \$1.00 should not be included in the pricing of the GCK structure for heavy gauge siding and roofing. *Smith testimony & Petitioner Exhibit G.*
16. The County made the kit adjustment from the contract mentioned above in 1992, but did not allow the GCK pricing for the 1995 assessment. *Smith testimony.*
17. The cost summaries being used for the 1995 reassessment are based on prevailing costs through January 1991. The Indiana Law Review, page 458, shows that in the 1979 version of Regulation 17, the State Board had applied an across-the-board 15% "discount" to actual replacement costs (determined by a state-wide study) in establishing the schedules in the 1989 version of Regulation 17. The 15% "discount" is also used in the current Indiana Real Property Manual. A copy of a real property cost assessment reproduction cost summary based on light warehouse pricing, and another cost summary based on hotel/motel pricing, to prove that the 15% deduction to the base price is carried forth into the 1995 Indiana Real Property Manual pricing schedules was submitted. *Smith testimony & Petitioner Exhibits H, I, and J.*
18. Using the cost multipliers and formulas from Marshall Valuation Service, Section 98, page 1, the January 1991 reproduction cost of \$178,305 is determined for the subject structure. *Smith testimony & Petitioner Exhibit K.*

**Issue No. 12 - Whether the assessment under review is for the tax year 1995 or 1996.**

19. The assessment year for the appeal under review should be 1995 for the

following reasons:

- a. The Assessor changed the assessment, but did not send a Form 11;
- b. The taxpayer did not receive a Form 11 and therefore, did not file a petition until he found out at a later date that the assessment had been changed; and
- c. The Form 130 was filed with the County as soon as it was realized there were some presumed errors that needed to be corrected.

*Smith testimony & Petitioner Exhibit O.*

20. The County Board contends the appeal under review is for the assessment year 1996, for the following reasons:
  - a. The Assessor changed the assessment because of some depreciation errors on the computer;
  - b. The Assessor lowered the assessment and it is not necessary to send a Form 11, if the assessment has been lowered;
  - c. The Petitioner filed a Form 130 petition with the County Board on August 30, 1996. The County Board hearing was held on October 23, 1996;
  - d. The Petitioner filed a Form 131 petition with the State in a timely manner, after receiving notice of the Form 130.

*Lockard testimony.*

### **Conclusions of Law**

1. The Petitioner is statutorily limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the

levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

#### **A. Indiana's Property Tax System**

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause 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. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

### **B. Burden**

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr.,

*Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V*, 702 N.E. 2d at 1040.
12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer

must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination even though the taxpayer demonstrates flaws in it).

### **C. Review of Assessments After *Town of St. John V***

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property’s market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

**Issue No. 1 - Whether the grade factor of the subject structure is correct.**

**Issue No. 2 - Whether the condition rating of the subject structure is correct.**

**Issue No. 6 - Whether the special features of the subject property are priced correctly.**

**Issue No. 7 - Whether the exterior features of the subject property are priced correctly.**

**Issue No. 8 - Whether additional obsolescence depreciation is warranted.**

**Issue No. 9 - Whether the land base rate is correct.**

**Issue No. 10 - Whether the land value is in accordance to the County Land Valuation Order.**

**Issue No. 11 - Whether the correct influence factor is applied to the land.**

18. At the hearing, Mr. Smith withdrew the issues listed above from review by the State Board. In turn, Mr. Smith signed a Withdrawal Agreement (Board Exhibit C) to this fact. No change in the assessment is made as a result of these issues.

Note: The issue of whether the GCK pricing schedule should be used, Issue No. 5, will be addressed first as its conclusion is pertinent to Issue No. 3 - Whether a negative adjustment should be made for the lack of partitioning, and to Issue No. 4 - Whether a negative adjustment should be made to the base rate for the interior finish.

**Issue No. 5 - Whether the subject property should be priced from the General Commercial Kit (GCK) Pricing Schedule.**

19. The State Board's Regulation, 50 IAC 2.2-10-6.1, provides an explanation of how to determine a base rate. Specifically, base rates are given for a range of perimeter to area ratios for specific construction types for various use and finish types. Models are provided as conceptual tools to use to replicate reproduction cost of a structure using typical construction materials assumed to exist for a given use type. Use type represents the model that best describes the structure.

20. Because of the numerous models provided, the base rates are divided into four (4) association groupings, namely: (1) General Commercial Mercantile (GCM); (2) General Commercial Industrial (GCI); (3) General Commercial Residential (GCR); and (4) General Commercial Kit (GCK). Three (3) of the four (4) groupings contain use type descriptions in order to aid in selection. The GCK schedule is the exception.
21. "...[G]CK does not include use type descriptions. This schedule is utilized for valuing pre-engineered, pre-designed, 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 to adjust the value based on various individual components of the building. Buildings classified as a special purpose design are not valued using the GCK pricing schedule." 50 IAC 2.2-10-6.1(a)(1)(D).
22. In a nutshell, when selecting the appropriate pricing schedule, there are only four factors to be considered in determining whether or not the GCK schedule is appropriate for valuing a structure. These factors are: (1) whether the structure is pole framed; (2) whether the structure is pre-engineered; (3) whether the structure is for commercial and industrial use; and (4) whether the structure is a special purpose designed building. Therefore, if a building is a pre-engineered pole framed building used for commercial or industrial purposes, and is not a special purpose design building, the GCK schedule is the appropriate schedule for valuing the building.
23. In assessing the subject building, the County used the GCM pricing schedule, which includes those use types generally associated with commercial related operations. The Petitioner contends the correct pricing schedule should be GCK.
24. 50 IAC 2.2-10-6.1 directs assessing officials to select and use the pricing schedule and model that best represents the structure being assessed. Therefore, in this appeal, the Petitioner has the burden of proving that the subject

building qualifies to be valued from the GCK schedule, and that the GCK schedule best represents the subject building.

25. The Petitioner presented testimony and evidence (Petitioner Exhibit F) showing the subject building to be a Butler manufactured building made up of a 100 foot by 200 foot by 12 foot section and a 35 foot by 20 foot by 12 foot section, with the following components:
  - a. Three (3) inch vinyl insulation in roof and walls;
  - b. Wall and roof panels of 28 gauge metal;
  - c. Four (4) inch thick floor with wire mesh and vapor barrier;
  - d. Three (3) steel overhead doors (non- insulated) and one (1) walk-in entry door; and
  - e. Sidewalk, fencing, plumbing, heating, air conditioning, electrical, and sprinkler.
  
26. The Petitioner opined that the following components (Petitioner Exhibit D) could also be found in the subject building:
  - a. Steel girts and purlins;
  - b. Unfinished occupancy; and
  - c. Steel post and beam construction.
  
27. As additional support for the GCK pricing, the Petitioner presented a State Board Final Determination for the assessment as of March 1, 1991 in which the subject structure was not determined to qualify for the 50% kit type adjustment (Petitioner Exhibit B). In addition, the Petitioner also presented a Notice of Assessment and a PRC (Petitioner Exhibit E) in which the County applied a 50% adjustment to the base rate for 1992.
  
28. The State Board will not change the pricing schedule of the subject structure under appeal on the basis of its Final Determination for tax year 1991. That Final Determination determined the structure did not qualify to receive a 50% adjustment to the base rate. The findings determined the structure's structural

components were heavier than those typically found to exist in a “kit type” structure.

29. The 1991 determination was based upon the rules and regulations promulgated by the State Board for the statewide general reassessment for 1989. As part of these rules and regulations were Instructional Bulletins 91-8 and 92-1 that dealt with the valuation of structures that may qualify as “kit type” structures. However, in 1995, the State Board promulgated rules and regulations for the statewide general reassessment for 1995 establishing a separate pricing schedule (GCK) for structures meeting the criteria stated in Conclusion of Law ¶122. The assessment under review is for 1996 and thus falls under those rules and regulations established for the 1995 reassessment.
30. Additionally, the State Board will not change the pricing schedule of the subject structure on the basis of a change made by the County for 1992. That determination did not specifically state the basis for or meaningfully deal with the evidence presented supporting the application of the 50% “kit type” adjustment.
31. Again, the Petitioner bears the responsibility of presenting probative evidence in order to establish a prima facie case. In order to establish a prima facie case, the Petitioner must present evidence sufficient to establish a given fact that if not contradicted will remain fact. The Petitioner has established that the subject building is used for commercial purposes; that the subject building is constructed with metal framing and metal siding; that the subject building is a Butler building that is typically pre-engineered structure and the structure is not special purpose design. Although the Petitioner did not identify other similarly situated properties, the evidence speaks for itself giving indication that the incorrect cost schedule may have been selected.
32. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence.

33. On this issue, Ms. Lockard did not submit any evidence or give any testimony that contradicts the set of facts established by the Petitioner. In fact, Ms. Lockard did not testify on this issue at all.
34. For all of the reasons set forth above, the Respondent failed to meet its burden on this issue. Therefore, the State Board will make the change requested by the Petitioner and grant the GCK pricing. A change in the assessment is made as a result of this issue.

**Issue No. 3 – Whether a negative adjustment should be made for the lack of partitioning.**

**Issue No. 4 – Whether a negative adjustment should be made for the lack of interior finish.**

35. Mr. Smith contends there is little wall or ceiling finish (only 3%) and there has not been an adequate adjustment made for lack of partitions in the subject structure. Because of these deficiencies, Mr. Smith concluded the subject structure should be valued as “unfinished”.
36. To support this position Mr. Smith again submitted the State Board Final Determination for the March 1, 1991 assessment date of the subject property (Petitioner Exhibit B).
37. As stated in Conclusions of Law ¶¶27 through 29, this State Board determination followed the rules and regulations for the 1989 general reassessment and not the rules and regulations established for the 1995 reassessment under which this appeal falls. In addition, the changes made on the PRC did not specifically state the basis for the changes or detail the evidence submitted at that hearing that required such a change. The findings also failed to mention or discuss any adjustment issues at all.



38. Unlike Mr. Smith's presentation on the GCK pricing issue (Issue No. 5), Mr. Smith did not present any evidence (other than the PRC from 1991) to support his statement of only "3% wall and ceiling finish" or the fact that an "adequate negative partitioning adjustment" had not been made. Mr. Smith did not present any information or calculations as to the adjustments he sought. Mr. Smith did not present any interior photographs of the subject that may have supported his "unfinished" position nor did he present any similarly situated properties.
39. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
40. However, based on the evidence presented in Issue No. 5 and the subsequent conclusion to value the subject structure from the GCK schedule, it is also determined to value the subject structure with the following adjustments:
  - a. 96% general retail (20,000 square feet) and 4% auto service (750 square feet)
  - b. With adjustments for insulation, steel girts and purlins, steel post and beam construction, sprinkler and lack of heat in the auto service area
  - c. Additional adjustments for finished open and semi-finish interiors
  - d. With a base rate determined to be \$15.28.

**Issue No. 12 – Whether the assessment under review is for the tax year 1995 or 1996.**

41. It is the Petitioner's position the Assessor changed the assessment on the subject property for the March 1, 1995 assessment date but did not notify the taxpayer. The Petitioner contends that at a later date when it was realized the assessment had been changed, the Petitioner then filed a Form 130 petition. This Form 130 petition was filed on August 30, 1996 with the County Board to correct some presumed errors for 1995. It was the 1995 assessment the Assessor had changed (Petitioner Exhibit O).

42. The County's position is the petition filed by the Petitioner was for the March 1, 1996 assessment date. The Assessor changed the assessment because of some depreciation errors on the computer, which lowered the assessment. The County further contends the Assessor was not required to notify the taxpayer because the assessment was lowered.
43. The County testified that the Form 130 was filed with the County Board on August 30, 1996, the County Board held a hearing on October 18, 1996, and notified the taxpayer of its final determination on October 31, 1996. Upon receiving the determination from the County Board, the Petitioner then filed a Form 131 petition, in a timely manner, with the State Board on November 27, 1996. The Petitioner lists 1996 as the year of the appeal on the Form 131 petition.
44. Indiana Code § 6-1.1-15-1(b) states, "In order to appeal a current assessment and have a change in the assessment effective for the most recent assessment date, the taxpayer must file a petition with the auditor of the county in which the action is taken: (1) within 45 days after notice of a change in the assessment is given to the taxpayer; or (2) May 10 of that year; whichever is later".
45. Indiana Code § 6-1.1-15-1(d) states, "A taxpayer may appeal a current real estate assessment in a year even if the taxpayer has not received a notice of assessment in the year. If an appeal is filed on or before May 10 of a year in which the taxpayer has not received notice of assessment, a change in the assessment resulting from the appeal is effective for the most recent assessment date. If the appeal is filed after May 10, the change becomes effective for the next assessment date."
46. It also states in Indiana Code § 6-1.1-15-13, "If notice of the action of a board or official is not otherwise given in accordance with the general assessment provisions of this article, the receipt by the taxpayer of the tax bill resulting from

that action is the taxpayer's notice for the purpose of determining the taxpayer's right to obtain a review or initiate an appeal under this chapter."

47. Mr. Smith argues the Petitioner never received a Form 11 informing him of the changes made for 1995 but does not explain why a petition was not filed then prior to May 10, 1995. The fact that the Petitioner may or may not have received a Form 11 by May 10 did not preclude the Petitioner from filing against "presumed errors" by the May 10 timeline. One finds it difficult to believe an individual who makes a living representing clients in real estate appeals would not be aware of the May 10 date. Once such an appeal is filed after May 10, the change becomes effective for the next assessment date.
48. Assuming *arguendo* the Petitioner did not receive a Form 11, the tax bill would become the taxpayer's notice of change. This would allow a taxpayer to file upon receipt of this statement as if it were a notice of assessment. Thus, allowing the filing within 45 days after notice of a change in the assessment is given to the taxpayer; or May 10 of that year; whichever is later.
49. The Petitioner, however, does not file within 45 days of receiving the May 1996 tax statement but filed a Form 130 petition August 30, 1996 which is after all of the aforementioned deadlines.
50. Based on the evidence presented at the hearing, it is determined the petition under appeal is for the tax year 1996. However, after stating all of the above the Petitioner's filing on August 30, 1996 could also be considered a filing of an appeal for tax year 1997. The County though, reviewed the appeal as if it was for 1996, and that will stand.

## Other Conclusions

### Grade

51. In the assessment under review, the subject building is graded based on a comparison to the GCM pricing schedule models for general retail and auto service. Since it has been determined to value the subject structure using the GCK pricing schedule, a comparison to GCM models to determine the grade is no longer appropriate. For the assessment to be correct, the grade of the building must be adjusted, based on the GCK descriptions. See *Barth v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax Court, 1998).
52. “Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
53. Grade is used in the cost approach to account for variations from the norm or “C” grade. The quality and design of a building are the most significant variables in establishing grade. 50 IAC 2.2-10-3.
54. Mr. Smith testified about the construction cost of the subject but did not discuss or present any information regarding grade. Ms. Lockard also did not discuss grade.
55. As stated above it has been determined to value the subject structure from the GCK pricing schedule and in doing so the grade attributed to the structure based on the GCM pricing schedule is not applicable. Therefore, based on the evidence presented it is determined the grade of the subject building to be “C”.
56. A change in the assessment is made as a result of this issue.

## **Depreciation**

57. The commercial and industrial depreciation schedules are included in 50 IAC 2.2-11-7. Pursuant to these schedules, light pre-engineered buildings must be depreciated from the 30-Year Life Expectancy Table. Based on the County PRC, the subject building is currently depreciated from the 40-Year Life Table. There is a change in the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_ day of \_\_\_\_\_, 2002.

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Chairman, Indiana Board of Tax Review