

REPRESENTATIVES FOR PETITIONER: John Johantges, Property Tax Group I, Inc. & Doug DeGlopper, Attorney-at-law.

REPRESENTATIVES FOR RESPONDENT: Lori Harmon, Hamilton County Deputy Assessor, Jerolyn Ogle, Washington Township Assessor.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

PRINE REALTY LLC,)	Petition No.: 29-014-01-1-3-00003
)	
Petitioner)	County: Hamilton
)	
v.)	Township: Washington
)	
HAMILTON COUNTY PROPERTY)	Parcel No.: 0809030000009000
TAX ASSESSMENT BOARD OF)	
APPEALS and WASHINGTON)	Assessment Year: 2001
TOWNSHIP ASSESSOR,)	
)	
Respondents.)	
)	

Appeal from the Final Determination of
Hamilton County Property Tax Assessment Board of Appeals

[September 4, 2002]

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 subject structure is a pre-engineered kit building and should be assessed from the General Commercial Kit schedule.*
 - ISSUE 2 – *Whether the grade of the subject is correct.*
 - ISSUE 3 – *Whether the physical depreciation of the subject is correct.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 John Johantges, Property Tax Group I, Inc., filed a Form 131 on behalf of Prine Realty, LLC, (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on December 17, 2001. The determination of the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) was issued on November 16, 2001.¹

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on May 29, 2002 at the Hamilton County Judicial Center before Dalene McMillen, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:
 - For the Petitioner: John Johantges, Property Tax Group I, Inc.
 - Doug DeGlopper, Attorney-at-Law
 - Randy Graham, Plant Manager, Westfield Steel
 - George Eiker, President, Design & Build Corporation

¹ The 30th day to file the Petition, December 16, 2001 was a Sunday, thus the filing on Monday December 17, 2001 is a timely filing of the Form 131 Petition.

For the Respondent: Lori Harmon, Hamilton County Deputy Assessor
Jerolyn Ogle, Washington Township Assessor
Brian Thomas, Property Systems, Inc.

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

For the Petitioner: John Johantges²
Doug DeGlopper
Randy Graham
George Eiker

For the Respondent: Lori Harmon
Jerolyn Ogle
Brian Thomas

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A disclosure statement provided by the Petitioner
pursuant to 50 IAC 15-5-5

Petitioner's Exhibit 2 – An overview of the Petitioner's arguments regarding the
subject building which includes a listing of building

Petitioner's Exhibit 3 – Photograph of the front exterior of the subject building

Petitioner's Exhibit 4 – Photograph of the rear exterior of the subject building

Petitioner's Exhibit 5 – Photograph of the side exterior of the subject building

Petitioner's Exhibit 6 – Photograph of the side exterior of the subject building

Petitioner's Exhibit 7 – Copy of the property record card (PRC) for the subject
building reflecting the 1989 assessment

Petitioner's Exhibit 8 – Copy of the current PRC reflecting the 2001 assessment

² Mr. Johantges testified that he is being compensated on a contingency basis. Compensation based upon the outcome of a case may result in improper motivation of a witness and may adversely affect the reliability of certain testimony. It is for this reason that the Board will take the fee arrangement between Mr. Johantges and the Petitioner into consideration when weighing the testimony of this witness. (*Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993); *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998)).

Petitioner's Exhibit 9 – Photograph depicting the support columns of the subject building

Petitioner's Exhibit 10 – Photograph depicting the roof beams of the subject building

Petitioner's Exhibit 11 – Photograph of the columns, beams, and “z” purlins in the subject building

Petitioner's Exhibit 12 – Photograph depicting “x” bracing of the subject building

Petitioner's Exhibit 13 – Photograph of the concrete floor in the subject building

Petitioner's Exhibit 14 – Copy of 50 IAC 2.3, Commercial and Industrial Units

Petitioner's Exhibit 15 – Copy of 50 IAC 2.2, Schedule A.4, “GCK Base Rates”

Petitioner's Exhibit 16 – Copy of Board Final Determination for Cambridge Industries, Inc. and the written argument of Cambridge Industries, Inc.

Petitioner's Exhibit 17 – Memo to the PTABOA from Mr. DeGlopper and copy of *Baker v. State Board of Tax Commissioners*, 712 N.E. 2d 563 (Ind. Tax 1999)

Petitioner's Exhibit 18 – Correspondence from Mr. Eiker to Mr. Johantges regarding the subject building, dated September 17, 2001, August 22, 2000, June 17, 1998, and December 22, 1997

Petitioner's Exhibit 19 – Copy of Board Final Determination for Metal Sales Manufacturing Corporation, dated February 22, 2000

Petitioner's Exhibit 20 – Copy of Board Final Determination for Multi Color Corporation, dated June 29, 1999

Petitioner's Exhibit 21 – Copy of Board Final Determination for Haas Cabinet Company, Inc., dated March 1, 2000

Petitioner's Exhibit 22 – Copy of Board Final Determination for Our Own Hardware Company, dated March 1, 2000

For the Respondent:

Respondent's Exhibit 1 – Copy of the 1992 Board Final Determination for James W. Irwin (subject property)

Respondent's Exhibit 2 – Copy of the 1993 Board Final Determination for James W. Irwin (subject property)

Respondent's Exhibit 3 – Copy of the 1994 Board Final Determination for James W. Irwin (subject property)

Respondent's Exhibit 4 – Copy of the 1995 Board Final Determination for James W. Irwin (subject property)

Respondent's Exhibit 5 – Copy of the 1996 Form 131 petition filed by Property Tax Group I, Inc, challenging the assessment for the subject property

Respondent's Exhibit 6 – Copy of the 1996 Board Final Determination for James Irwin, d/b/a Park 32 (subject property)

Respondent's Exhibit 7 – copy of a memo from the State Board of Tax Commissioners to assessing officials dated August 25, 1996

Respondent's Exhibit 8 – Copy of additional evidence provided by the Petitioner at the request of the PTABOA

Respondent's Exhibit 9 – Copy of the PTABOA's Final Assessment Determination for 2001

Respondent's Exhibit 10 – Copy of the Township Assessor's response to the issues raised on the Form 131

For the Board:

Board Item A – Subject Form 131 Petition

Board Item B – Notice of Hearing

Board Item C – Request for additional evidence from Petitioner and Respondent

Board Item D – Post-hearing submission waiver from the Petitioner and Respondent

7. On May 31, 2002, the Petitioner submitted, via facsimile, its proposed valuation of the subject property using the base rates from the General Commercial Kit (GCK) Pricing Schedule and a grade factor of "C+1." The Petitioner's submission was labeled Petitioner's Exhibit 23.
8. On June 1, 2002, the Respondent submitted the current PRC for the subject building. The Respondent's submission is labeled Respondent's Exhibit 11.

9. On June 4, 2002, the Respondent submitted, via e-mail, a letter questioning possible errors or omissions in the valuation submitted by the Petitioner. The Respondent's submission is labeled Respondent's Exhibit 12.
10. On June 4, 2002, the Petitioner sought an opportunity to respond to the Respondent's letter (Respondent's Exhibit 12). On June 5, 2002, the Petitioner submitted, via facsimile, two versions of revised pricing brought about by the Respondent's letter. One version used a grade factor of "C" and the other version used a grade factor of "C+1." The Petitioner's submission is labeled Petitioner's Exhibit 24.
11. On June 6, 2002, the Respondent submitted, via facsimile, a letter and a copy of a bulletin issued by the Indiana State Board of Tax Commissioners entitled Bulletin #RO-38. The Respondent offered this information to explain the method used to calculate the perimeter-to-area ratio (PAR) used in the original assessment. The Respondent's submission is labeled Respondent's Exhibit 13.
12. On June 6, 2002, the Petitioner submitted, via facsimile, a response to Respondent's Exhibit 13 detailing the Petitioner's position regarding Bulletin #RO-38. The Petitioner's submission is labeled Petitioner's Exhibit 25.

Jurisdictional Framework

13. 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.
14. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

15. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
16. 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.
17. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
18. 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*).
19. 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.
20. 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.
21. 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

22. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
23. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
24. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
25. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
26. Essentially, the petitioner must do two things: (1) prove that the existing assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).

27. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Discussion of Issues

ISSUE 1: *Whether the subject structure is a pre-engineered kit building and should be assessed from the General Commercial Kit schedule.*

28. The Petitioner contends the subject building is an economically built light pre-engineered building that should be assessed from the General Commercial (GCK) schedule with a grade of C.
29. The Respondent contends the subject is correctly assessed from the General Commercial Industrial (GCI) schedule with a grade of D for lower quality construction.
30. The applicable rule(s) governing this Issue 1 is (are):

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). Assessing officials are to select and use the pricing schedule that best represents the structure being assessed. The GCM, GCI, GCR association groupings include

use type descriptions to facilitate the selection of the appropriate pricing schedule. GCK does not include use type descriptions. GCK is utilized for valuing pre-engineered, pre-designed wood pole or steel frame buildings used for commercial or industrial purposes. Buildings classified as special purpose designed buildings are not valued using the GCK pricing schedule.

50 IAC 2.2-11-1

[This section contains general commercial models for GCI structures.]

31. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The subject structure was built in five sections: 50' x 240' in 1977; 50' x 240' in 1985; 50' x 480' in 1987; 50' x 480' in 1992; and 50' x 480' in 1994 at various costs. There was an additional section built after March 1, 2001 that is not part of this appeal.
 - b. The approximate cost for the subject structure measuring 50' x 480' x 20' is around \$11.50 per square foot, including steel columns, roof beams, roof purlins, wall girts, roof panels, roof and wall insulation, painted wall panels, 5" concrete floor, fill, frost wall footing, building column footings, piers and anchor bolts and bracing.
 - c. The subject structure contains metal siding, exterior sheathing, insulation, "z" shaped girts and purlins, 26-gauge roof and siding, 90 MPH wind load, and 20 PSF snow load for the roof and frame. The building has various floor elevations and there are 4-foot high masonry seal walls.
 - d. The costs submitted by the Petitioner did not include the cost for the electrical system. The electrical system was contracted out, and the Petitioner did not provide any cost information.
 - e. The subject structure also contains eight stiffener plates per roof beam to support the 5-ton crane ways (there are two cranes per bay). An additional six cubic yards of concrete was also used in the column footings.

Analysis of ISSUE 1

32. To be assessed from the GCK schedule, a building must be: (1) pre-engineered; (2) pre-designed pole building; (3) used for commercial or industrial purposes; and (4) not special purpose. 50 IAC 2.2-10-6(a)(1)(D).
33. The subject building is clearly used for commercial/industrial uses. According to Mr. Graham, Plant Manager, the subject is “basically a steel warehouse.” The subject is used to warehouse structural beams, angles, sheet plate, tubing, flat bar, and it is a service center that ships the steel out to customers, whether it is a stock length or if it may be cut down to another stock type length. *Graham Testimony*.
34. The subject building was built in sections ranging in size from 50’ x 240’ to 50’ x 480’. The subject building is also steel framed. The subject building is pre-designed.
35. The subject building has been modified in the following ways: electrical added, stiffener plates added to roof beams, extra concrete added to the building footers, cranes attached to the ceiling.
36. These modifications eliminate the building from being considered pre-engineered. Stiffener plates were added to support the cranes. Extra concrete was added to the building footers. Cranes were added in each bay of the building to help move the steel. These cranes are attached to the building.
37. The Petitioner attempts to use a Final Determination issued by the State Board of Tax Commissioners for Cambridge Industries, issued on June 18, 2001 as precedent for a building having cranes and still determined to be a GCK building. However, the cranes mentioned in the Cambridge building are free standing, and not attached to the building, nor supported by the building. *Petitioner’s Exhibit 16, Findings of Fact, ¶ 24*.
38. In the subject building, not only does the roof support the cranes, but also extra support, in the form of stiffener plates and extra concrete in the footings, has been added. These

are not the normal types of additions. For instance, a masonry block wall on the exterior for aesthetic purposes, or a masonry wall on the interior that does not support the roof are the type of additions that do not change the nature of the building.

39. The additions to the subject structure deviate from what a normal pre-engineered kit building contains. The additions change the nature of the building. They increase the amount of weight the footers will support, and they increase the weight the ceiling will support.
40. Because the building does have increased load capacity in the footers, and in the roof (supporting 5 ton crane ways), it is determined that the Petitioner did not present probative evidence indicating the subject structure is more like a GCK structure than an GCI structure. The Petitioner did not meet their burden showing the subject structure is pre-engineered.
41. In the case of *Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E. 2d 943, 951 (Ind. Tax 2001), the court held that “the tolerance loads of the concrete floors, beams, and roof were heavier than those used in a standard kit building constitutes substantial evidence to support the State Board’s final determination that the buildings in question were not entitled to a kit building adjustment.”
42. While this case dealt with a pre-1995 appeal, and the method of assessing kit buildings was different, the stiffener plates and extra footing used to support cranes are not used in standard kit buildings. These are add-ons that increase the strength of the building, making it more like GCI than GCK.
43. The GCK designation does not apply to special purpose buildings. Special purpose is defined as: “A ‘special purpose property’ or a ‘special design property’ is a limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built.” *LDI Manufacturing Co., Inc. v. State Board of Tax Commissioners*, 759 N.E. 2d 685, 689 (Ind. Tax 2001)(internal citations excluded).

44. The subject property, with the crane ways, stiffener plates added to support the crane ways, and increased concrete in the footings to support the building may be an indication of a unique physical design and special construction materials.
45. For all the above reasons, the Petitioner failed to meet his burden in this appeal. Accordingly, there is no change to the assessment as a result of this issue.

ISSUE 2: *Whether the grade of the subject is correct.*

46. The Petitioner contends that the subject structure should be graded a “C” if it is assessed from the GCK schedule. Because the Petitioner did not meet their burden in establishing the building should be assessed from the GCK schedule, there is no change in the grade of the subject building.

ISSUE 3: *Whether the physical depreciation of the subject structure is correct.*

47. The Petitioner contends that the building should be depreciated from the 30-year life table if it is priced from the GCK schedule. Because the Petitioner did not meet their burden in establishing the building should be priced from the GCK schedule, there is no change in the depreciation of the subject building.

Other Findings

48. The Petitioner testified to previous appeals (1992 – 1995) on the subject property in which the State determined the subject structure to qualify for a 50% reduction in the base rate. However, the Respondent was quick to point out that the State’s decisions in these appeals were due to settlement agreements and cannot be used for any other evidentiary purposes.

49. The Respondent submitted into evidence the original State determinations for 1992 – 1995 for the subject property to support their contention that the reduction in the base rate was not due to a State decision but due to a settlement agreement.
50. A review of the Form 118s issued for the tax years 1992, 1993, 1994, and 1995 show them to be a result of agreements to settle pending litigation. An agreement made between parties is not evidence probative of an error in the assessment. The Form 118s submitted as evidence of an erroneous assessment, were drafted pursuant to a settlement agreement mutually agreed upon by all parties and was done to avoid the expenses of further litigation. As such it cannot be used for any other purpose that is evidentiary in nature. Therefore, the State will not consider the Petitioner’s testimony, as it relates to the State’s determination for the previous tax years, in making this determination.

Summary of Final Determination

Determination of ISSUE 1: *Whether the subject structure is a pre-engineered kit building and should be assessed from the General Commercial Kit schedule.*

51. The Petitioner failed to meet their burden, accordingly, there is no change in the schedule used to assess the subject building.

Determination of ISSUE 2: *Whether the grade of the subject is correct*

52. There is no change in the grade of the subject building.

Determination of ISSUE 3: *Whether the physical depreciation of the subject building is correct.*

53. There is no change in the depreciation of the subject building.

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.