

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

Petition: 41-004-02-1-3-00008
Petitioner: Susan Barker
Respondent: Blue River Township Assessor (Johnson County)
Parcel: 9300-21-01-003/05
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Johnson County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated July 10, 2003.
2. The Petitioner received notice of the decision of the PTABOA on November 7, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on December 4, 2003. The Petitioner elected to have this case heard as a small claim.
4. The Board issued a notice of hearing to the parties dated January 5, 2005.
5. The Board held an administrative hearing on March 8, 2005, before the duly appointed Administrative Law Judge Paul Stultz.
6. Persons present and sworn in at the hearing:
 - a) For Petitioner — Milo Smith, Tax Representative,
 - b) For Respondent — Mark Alexander, Johnson County Deputy Assessor.

Facts

7. The subject property has four buildings. One building is classified as a commercial light warehouse, built in 1986.¹ The other three buildings are classified as General Commercial Kit (GCK) type buildings, built in 1994. *Petitioner Exhibit 2.*

¹ The light warehouse structure consists of two sections, a small industrial office added to a 144,000 square foot light industrial warehouse. The Petitioner is not contesting the assessment of the industrial office portion of the building. All subsequent references to this building therefore will refer only to the contested warehouse portion of that improvement.

8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed value of subject property as determined by the Johnson County PTABOA:
 Land \$227,300 Improvements \$2,408,100 Total \$2,635,400.
10. Assessed value requested by the Petitioner on the Form 131:
 Land \$100,000 Improvements \$1,800,000 Total \$1,900,000.

Objection to Admission of Evidence

11. The Respondent objected to the admission of the replacement cost estimate prepared by Mr. Jay R. Johnson, *Petitioner Exhibit 6*. Because the document was not in the form of an affidavit and Mr. Johnson was not present for cross examination at the hearing, Respondent asserted that this evidence should not be admitted.
12. This document was included as an attachment to the Form 131 petition filed by the Petitioner. *Board Exhibit A*. The document is clearly hearsay. Petitioner has not established that the document or the estimated replacement cost would come within any recognized exception to the hearsay rule. Nevertheless, Respondent clearly was not surprised by it. Despite Respondent's objection, such evidence may be admitted.²
13. Accordingly, the Board admits *Petitioner Exhibit 6* into the record over the Respondent's objection. Nevertheless, the fact that Mr. Johnson's estimate of cost to replace the building is not under oath and is not subject to cross examination substantially reduces the weight and credibility of that evidence.

Issues

14. The Form 131 petition contained three issues, including land base rate and land classification. The two land issues were withdrawn at the administrative hearing. *Smith testimony; Petitioner Exhibit 18*. The remaining issue from the Form 131 petition claims the assessed value of the warehouse is excessive.
15. At the hearing, and without objection from the Respondent, the Petitioner raised an additional issue, claiming the grades of three GCK buildings are incorrect. *Id.*

² "Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence." Ind. Admin Code tit. 52, r. 2-7-3 (2004).

Issue 1: Is the assessed value of the warehouse excessive?

16. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The building should be priced from the GCK schedule and given a grade of D-1. The building is currently assessed from the General Commercial Industrial (GCI) schedule with a grade of D-1. *Smith testimony; Petitioner Exhibit 2.*
 - b) A personal inspection of the building under appeal was made by Mr. Smith and Mr. Jay R. Johnson, owner of Building Concepts of Indiana, on or about July 21, 1999. *Smith testimony.* As a result of this personal inspection, Mr. Johnson concluded the replacement cost of the structure on July 21, 1999, was \$1,325,750. *Petitioner Exhibit 6; Smith testimony.*
 - c) The structure is pre-engineered with equal bay spacing, a roof load of twenty pounds per square foot, a roof pitch of 1/12, 26 gauge exterior walls and roof, "X" bracing throughout the building, and girts and purlins. *Smith testimony; Petitioner Exhibit 18.*
 - d) The Petitioner presented copies of a Tax Court decision, *Barker v. State Bd. of Tax Comm'rs*, 712 N.E.2d 563 (Ind. Tax Ct. 1999), and a Final Determination by the State Board of Tax Commissioners, Petition #41-013-93-1-4-00001R, regarding the structure under appeal. *Petitioner Exhibits 16, 17.* These exhibits both demonstrate that the building was assessed as a kit structure for the 1993 assessment. *Smith testimony.*
17. Summary of the Respondent's contentions in support of the assessment:
- a) The township assessor's selection of the GCI light warehouse model best represents the subject structure. *Alexander testimony.*
 - b) The building has several features of a GCI light warehouse, including metal walls consistent with wall type 3, fire resistant framing, low profile roof, and unfinished interior.³ There were adjustments to account for variations between the subject structure and the GCI light warehouse model. *Alexander testimony.*
 - c) In further support of the assessment, the Respondent presented a building permit application dated June 18, 2002. *Respondent Exhibit 7.* The document indicated a smaller building could be constructed for \$1,200,000. This smaller building would have a proposed price of \$16.66 per square foot. The building under appeal is currently assessed at \$14.18 per square foot. *Alexander testimony; Respondent Exhibit 8.*

³ Wall type 3 indicates the wall is constructed of aluminum, metal, or steel siding on steel framing. GUIDELINES, ch. 6 at 13.

- d) The building was constructed at a cost of \$835,200 in 1986 as a flat storage facility for grain. *Alexander testimony; Respondent Exhibit 4.*
- e) The evidence concerning the assessment prior to the 2002 reassessment is not relevant. *Alexander testimony.*
- f) The replacement cost estimate introduced by the Petitioner referred to a comparable structure, but there was no explanation of differences between the building under appeal and the comparable building. *Alexander testimony; Petitioner Exhibit 6.*

Issue 2: Are the grades of the three GCK buildings incorrect?

18. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The Petitioner contended the three GCK buildings should have a grade of D. Each one is currently assessed with a grade of C. *Smith testimony; Petitioner Exhibit 2.*
 - b) The Memorandum of Price from the builder of the structures, indicates the three structures were constructed in 1994 for a combined price of \$717,874. *Smith testimony; Petitioner Exhibit 9.*
 - c) The Petitioner presented a calculation, based on a Marshall Valuation Service formula, purporting to trend the combined 1994 cost data to the valuation date of January 1, 1999. *Smith Testimony; Petitioner Exhibits 9-12, 18.*
 - d) The Petitioner contended the resulting 1999 combined value, \$797,558, can be obtained by reducing the grade of each of the three structures to D. *Petitioner Exhibit 18.*
19. The Respondent did not address this issue.

Record

20. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The tape recording of the hearing labeled 5679,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Copy of Form 131,
 - Petitioner Exhibit 2 – Copy of subject Property Record Card (PRC),

Petitioner Exhibit 3 – 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 4 (incorporated by reference at 50 IAC 2.3-1-2),

Petitioner Exhibit 4 – REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINES), ch. 6 at 4 (incorporated by reference at 50 IAC 2.3-1-2),

Petitioner Exhibit 5 – GUIDELINES, Intro. at 1,

Petitioner Exhibit 6 – Estimate prepared by Jay R. Johnson,

Petitioner Exhibit 7 – GUIDELINES, ch. 6 at 9,

Petitioner Exhibit 8 – GUIDELINES, app. D at 38,

Petitioner Exhibit 9 – Memorandum of price,

Petitioner Exhibit 10 – GUIDELINES, Intro. at 2,

Petitioner Exhibit 11 – Marshall Valuation Service, Section 98, page 1,

Petitioner Exhibit 12 – Marshall Valuation Service, Section 98, page 23,

Petitioner Exhibit 13 – GUIDELINES, app. E at 3,

Petitioner Exhibit 14 – GUIDELINES, app. E at 6,

Petitioner Exhibit 15 – Copy of PRC with Petitioner’s requested pricing,

Petitioner Exhibit 16 – Copy of *Barker v. State Bd. of Tax Comm’rs*, 712 N.E.2d 563 (Ind. Tax Ct. 1999),

Petitioner Exhibit 17 – Copy of Final Determination by State Board of Tax Commissioners for Petition #41-013-93-1-4-00001R,

Petitioner Exhibit 18 – Statement of Petitioner’s argument and position,

Respondent Exhibit 1 – GUIDELINES, ch. 6 at 7, 9, 13, 17, 44, 45,

Respondent Exhibit 2 – GUIDELINES, app. D at 21, 30, 38,

Respondent Exhibit 3 – GUIDELINES, app. G at 44, 45,

Respondent Exhibit 4 – Photograph Grain Flat Storage Buildings,

Respondent Exhibit 5 – Aerial photograph subject property and Kokomo Grain property,

Respondent Exhibit 6 – Affidavit by Marcell and Mark Tworek, dated February 25, 1993,

Respondent Exhibit 7 – Building permit application form 013692,

Respondent Exhibit 8 – Specifications for Kokomo Grain building addition,

Respondent Exhibit 9 – PRC for subject property from PTABOA,

Respondent Exhibit 10 – Letter authorizing Mark Alexander to represent the township,

Board Exhibit A – Form 131,

Board Exhibit B – Notice of Hearing,

d) These Findings and Conclusions.

Analysis

21. The most applicable governing laws 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.

Issue 1: Is the assessed value of the warehouse excessive?

22. The Petitioner provided sufficient evidence to support her contentions that the building should be assessed from the GCK schedule. This conclusion was arrived at because:

- a) Indiana’s assessment regulations provide that for the 2002 reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); 2002 REAL PROPERTY ASSESSMENT MANUAL at 4 (incorporated by reference at 50 IAC 2.3-1-2).
- b) Petitioner presented testimony that a personal inspection of the building under appeal was made by Mr. Smith and Mr. Jay R. Johnson, of Building Concepts of Indiana, on or about July 21, 1999. As a result of this personal inspection, Mr. Johnson concluded the replacement cost of the structure on July 21, 1999, would be \$1,325,750.
- c) Respondent objected to that evidence because Mr. Johnson's estimate was not in the form of an affidavit and he was not present to be questioned about the circumstances and basis for his estimate of value. In essence, Respondent objected that the evidence was hearsay. Respondent is correct. Petitioner made no argument that the Johnson estimate is not hearsay and made no argument that the estimate qualifies under any exception to the hearsay rule. While hearsay may be admitted as evidence, if there is an objection to it, the resulting determination may not be based solely upon the hearsay evidence. Ind. Code § 4-21.5-3-26; Ind. Admin. Code tit. 52, r. 2-7-4 (2004). In this case, the written estimate and testimony based on that estimate are the only evidence supporting Petitioner's position that the building's market value in 1999 was \$1,325,750. Accordingly, the final assessment determination will not be made on that basis.

- d) Nevertheless, there is substantial evidence that makes a prima facie case for assessing the building from Schedule A.4, the GCK Base Rates. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, app. G at 16 (incorporated by reference at 50 IAC 2.3-1-2).
- e) In support of the assessment, the Respondent presented a building permit application dated June 18, 2002. The Respondent contended this document indicated a smaller building could be constructed for \$1,200,000. This smaller building would have a proposed price of \$16.66 per square foot. The building under appeal is currently assessed at \$14.18 per square foot. A party relying on evidence from subsequent years to establish error in the assessment of a property must provide some explanation as to how this evidence demonstrates, or is relevant to, the property's value as of January 1, 1999. *Long*, 821 N.E.2d at 471. Respondent did not do so.
- f) Respondent failed in two respects. Respondent failed to explain the manner in which cost data from 2002 is relevant to the valuation date of January 1, 1999. Accordingly, this evidence is of no probative value. Respondent also failed to prove comparability of the buildings. These failures leave the building permit evidence with no probative value. *Id.* at 470.
- g) Respondent failed to rebut or impeach the Petitioner's prima facie case that the assessed value of the warehouse portion of the building should be assessed as a GCK type building.
- h) As a result of switching from an assessment based on GCI light warehouse base prices to GCK base prices, it will be necessary to reevaluate the grade assigned to the building. Although Petitioner argued that the current grade classification of D-1 should be maintained, she presented no probative evidence about what the grade should be when the building is considered to be a light, pre-engineered building assessed from GCK base prices. Therefore, as part of this decision it will be necessary for the assessor to make a new determination about the grade for this building.

Issue 2: Are the grades of three GCK buildings incorrect?

23. The Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) The Petitioner contended the three other GCK buildings should each have a grade of D. All three structures are currently assessed with a grade of C.
 - b) The Petitioner presented no probative evidence about comparable properties. The Petitioner also presented no comparison of the features of the subject structures and the grade classification table for commercial and industrial structures. GUIDELINES, app. E at 8. Further, the Petitioner presented no evidence of the

individual costs of any of the three structures. Instead, the Petitioner presented a Memorandum of Price from the builder of the structures. This document indicated the three structures were constructed in 1994 for a combined price of \$717,874.

- c) The Petitioner presented a calculation, based on a Marshall Valuation Service formula, purporting to trend the combined 1994 cost data of the three structures to the valuation date of January 1, 1999. The Petitioner opined that the resulting 1999 combined value, \$797,558, can be obtained by reducing the grade of each of the three structures to D.
- d) The Petitioner failed to provide any assessing or legal authority for this methodology of combining construction costs for three structures and comparing the result to the current total assessment of the three buildings. Accordingly, the Petitioner failed to establish this methodology demonstrates error in the assessment.
- e) Instead, the Petitioner merely suggested one hypothetical means of changing the total assessed values of the three structures to arrive at the proposed trended total valuation.
- f) Petitioner's unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Accordingly, Petitioner failed to prove any grade error.
- g) Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusions

- 24. Petitioner failed to prove the alleged market value of the property. Nevertheless, the weight of the evidence indicates that the "Varco Pruden" portion of the building previously assessed as a light commercial warehouse should have been assessed as a light, pre-engineered building. The Board finds in favor of the Petitioner. The assessed value of the 144,000 square foot warehouse portion of that building should be determined from the GCK price schedule. GUIDELINES, app. G at 16. A grade change may be necessary as a result of this change.
- 25. The Petitioner did not make a prima facie case regarding the grade on the other three buildings. The Board finds in favor of Respondent on those assessments.

Final Determination

Accordingly, the Indiana Board of Tax Review now determines that the assessment should be changed.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.