

**STATE OF INDIANA
Board of Tax Review**

DIXIE WILCOX,)	On Appeal from the Floyd County
)	Board of Review
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 22-008-95-1-4-00093
)	Parcel No. 00841700331
FLOYD COUNTY BOARD OF REVIEW)	
and NEW ALBANY TOWNSHIP)	
ASSESSOR,)	
)	
Respondents.)	

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:

Issue

1. Whether the subject property should be valued using the General Commercial Kit Schedule rather than the General Commercial Industrial Schedule.
2. Whether the grade factor applied should be changed to "C+1."
3. Whether physical depreciation should be established using the thirty (30) year life depreciation table.

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, Appraisal Management Research Company (Appraisal Management), on behalf of Dixie Wilcox (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on October 28, 1996. The Floyd County Board of Review's (County Board) final determination on the underlying Form 130 petition is dated September 30, 1996.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on April 5, 2000, before Hearing Officer Jennifer Bippus. Testimony and exhibits were received into evidence. Mr. Michael White with Appraisal Management represented the Petitioner. Ms. Patricia Badger-Byrd, New Albany Township Assessor, was also present representing the Respondents.

4. At the hearing, the subject Form 131 petition was made part of the record and labeled Board Exhibit A. The Notice of Hearing is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State:
 - Petitioner's Ex. A – A summary of the issues;
 - Petitioner's Ex. B – A copy of the 1986 construction contract;
 - Petitioner's Ex. C – A copy of the 1993 construction contract;
 - Petitioner's Ex. D – A copy of the State's Final Determination for G & G Properties dated April 15, 1999;
 - Petitioner's Ex. E – A copy of the State's Final Determination for Spawn Mate, Inc. dated February 19, 1999;
 - Petitioner's Ex. F – A copy of the State's Final Determination for Spawn Mate, Inc. dated December 16, 1998;
 - Petitioner's Ex. G – A copy of the State's Final Determination for William T. Kraemer dated April 15, 1999;

Petitioner's Ex. H – A copy of the States Final Determination for Dixie Wilcox dated August 30, 1996;

Petitioner's Ex. I – A property record card (PRC) for the subject prepared by Mr. White showing proposed valuation using the grade reduction;

Petitioner's Ex. J – A copy of State Instructional Bulletin 91-8;

Petitioner's Ex. K – Copies from § 98 of Marshall Valuation Service, specifically:

- a. The narrative discussing the use of the Comparative Cost Indexes, § 98, p. 1, January 1996;
- b. Comparative Cost Multipliers, § 98, p. 24, April 1996; and
- c. Comparative Cost Multipliers, § 98, p. 23, April 1996.

Petitioner's Ex. L – Exterior and interior photographs of the subject property.

5. The subject property is an industrial manufacturing facility located at 540 Progress Way, New Albany, Indiana (New Albany Township, Floyd County). The Hearing Officer did not view the subject property.

Testimony and Evidence Regarding Schedule Selection

6. Mr. White testified the subject property is pre-engineered and should be priced from the General Commercial Kit (GCK) Schedule.
7. The Petitioner submitted as evidence (Petitioner's Ex. B & C) copies of the construction contracts between Koetter Construction and A.J. Wilcox agreeing that a pre-engineered structure would be erected with the following components:
 - a. 16' eave height;
 - b. Tapered column structural system with one interior support column;
 - c. Design Load of 20 pounds per square foot; Live load of 25 pounds per square foot; Wind load #3 Auxiliary Load;
 - d. 1:12 roof slope;
 - e. 26 gauge, AP-1 roof panels with 20 year warranty; and
 - f. 26 gauge, AP-1 wall panels with 5 year color warranty.

8. Mr. White testified that the following computations use the GCK Schedule to establish the value for the subject property:

Light metal/wood siding, pole frame:		\$4.55
Insulation:		\$0.60
Steel Girts & Purlins:		<u>\$0.35</u>
		\$5.50
Frame Adjustment	+	\$1.15
Interior Finish	+	\$1.55

Wall Height Adjustment – the model calls for 12’ – the subject is 16’. The difference is 4’ taller than the model. Using the GCK Schedule, add 2% per foot of wall height variation.

$$2\% \times (5.50 + 1.15 + 1.55 + 1.05) = 0.185 \times 4' = 0.74$$

* The 1.05 is the price for sprinklers.

9. The Petitioner submitted copies of State Final Determinations for properties in the area (Petitioner’s Ex. D, E, F, G, & H) for consideration as comparable properties. Mr. White testified that all of the comparable properties have been valued as GCK structures, as shown in the State Final Determinations. The Petitioner also provided a copy of each PRC, along with photographs of the comparable properties.
10. The Petitioner submitted interior and exterior photographs of the subject property showing the components of the building (Petitioner’s Ex. L).

Testimony and Evidence Regarding Grade

11. Mr. White testified that because the subject building is being calculated using the GCK Schedule, the grade factor should be increased to “C+1” or 105%. Mr. White testified that the current Indiana Real Property Assessment Manual is based on 1991 construction costs. Mr. White further testified that the actual cost of construction for a building built in any year other than 1991 must be adjusted

to compare the actual cost of construction to the reproduction cost on the assessment.

12. Mr. White testified that, to calculate the adjustment needed, information from Marshall Swift Valuation Service was used. Mr. White testified that “Comparative Cost Indexes” were used to calculate the adjustments. The calculations, as shown in Petitioner’s Ex. A, are as follow:

$$\text{Historical Cost} = \frac{\text{Known Multiplier}}{\text{Historical Multiplier}} \times \text{Known Cost}$$

The original structure cost \$433,511 in 1986; therefore, the adjusted cost would be \$479,650 as calculated below:

$$\begin{aligned} \text{Historical Cost} &= (1.258/1.137) \times \$433,511 \\ &= 1.106421 \times \$433,511 \\ &= \$479,650 \end{aligned}$$

In addition, the 1993 addition cost \$175,365; therefore, the adjusted cost would be \$171,830 as calculated below:

$$\begin{aligned} \text{Historical Cost} &= (1.114/1.137) \times \$175,375 \\ &= 0.979772 \times \$175,375 \\ &= \$171,830 \end{aligned}$$

The adjusted cost of the subject building is \$651,480 (\$479,650 + \$171,830). After the cost tables in the Indiana Real Property Assessment Manual are trended down by the specified 15%, the cost is \$553,758 (\$651,480 x 0.85).

13. Mr. White testified that by applying a “C+1” grade factor to the reproduction cost (before grade) of the subject property established under the GCK Schedule, the resulting value is \$550,030. Mr. White testified that this value is in line with the calculations made above using the known costs adjusted under Marshall Swift Valuation.

Testimony and Evidence Regarding Physical Depreciation

14. Mr. White testified that the subject property should be depreciated from the thirty (30) year life depreciation table for the light pre-engineered construction. The Petitioner submitted a copy of the State's Final Determination for the subject property for the March 1, 1992 assessment date, issued on August 30, 1996, in which the physical depreciation was established using the thirty (30) year life table.

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 merely because 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.

D. Schedule Selection

18. The State'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.
19. Because of the numerous models provided, the base rates are divided into four association grouping, namely: (1) General Commercial Mercantile (GCM); (2) General Commercial Industrial (GCI); (3) General Commercial Residential

(GCR); and (4) General Commercial Kit (GCK). Three of the four groupings contain use type descriptions in order to aid in selection. The GCK schedule is the exception.

20. “[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 special purpose design are not valued using the GCK pricing schedule.” 50 IAC 2.2-10-6.1(a)(1)(D).
21. 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 structure is pre-engineered; (3) whether the structure is for commercial or 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.
22. The Petitioner contends that the subject property should be valued using the GCK Schedule rather than the GCI Schedule selected by the local assessing officials. The Petitioner presented the testimony of Mr. White and the information contained in Petitioner’s Ex. A through L in support of this contention.
23. Petitioner’s Ex. A is a summary of the Petitioner’s contentions with a proposed PRC attached. Petitioner’s Ex. A also contains the calculations presented by the Petitioner showing the subject property valued using the GCK Schedule. The State notes that, although the Petitioner claims the subject property should be valued under the GCK Schedule, the testimony offered, the calculations

presented, and the proposed PRC address *only* the Light Manufacturing and the Light Warehouse sections of the subject building. This gives the impression that the Petitioner is only contesting the valuation of these two sections and not the valuation of the office areas. However, the fact that the subject building was constructed in two phases and the office area is included in one of these phases makes this aspect illogical. Therefore, the State concludes that the office area of the subject is also at issue and these findings and conclusions will address the valuation of the entire facility to include the Light Manufacturing (Lt. Mfg.) and the Light Warehouse (Lt. Whse.) section of the subject, as well as the office area (Gen. Office).

24. Petitioner's Ex. B and C are the construction contracts between the Petitioner and Koetter Construction. These contracts clearly state that the subject building is constructed as pre-engineered steel frame building and provide details regarding the components used in the construction of the subject building. These contracts also provide the actual construction costs attributable to each phase of construction.
25. The Petitioner also submitted exterior and interior photographs of the subject property (Petitioner's Ex. L). These photographs show that the subject building is metal framed with metal siding.
26. Again, the Petitioner bears the responsibility of presenting probative evidence 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 a 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 and that the subject building is pre-engineered. The evidence speaks for itself. The Petitioner's Ex. B, C, & L) indicate the incorrect cost schedule may have been selected. The burden has now shifted to the County Board to present evidence to contradict the Petitioner's evidence and justify its decision with substantial evidence.

27. The County Board did not offer any rebuttal to the Petitioner's evidence or testimony. As stated above, the burden is now placed upon the County Board to present evidence justifying its decision. The County Board has fallen well short of this burden.
28. For all the above reasons, the Petitioner has made its case before the State regarding selection of schedules. As such, the State will make the schedule selection change sought by the Petitioner. A change is made to the assessment as a result of this issue.

E. Grade

29. The Petitioner contends that, due to the use of the GCK Schedule, the grade factor should be "C+1" rather than "C-2." The Petitioner presented calculations using the actual construction costs for the subject property in support of the grade issue.
30. The Petitioner's grade calculation trends the actual construction costs (Petitioner's Ex. B & C) to reflect 1991 construction costs using the comparative cost multipliers found in Marshall Valuation Services because the State's 1995 cost schedules are based on 1991 construction costs. The Petitioner then deflates these trended costs by 15% because the cost tables in the State's Regulation are deflated 15%. The Petitioner concludes that a grade factor of "C+1" is appropriate under the GCK Schedule because this calculation indicates the adjusted 1991 construction cost would have been \$553,758.
31. The State will not go to great lengths in analyzing the Petitioner's request to increase the grade factor from "C-2" to "C+1." However the State will carry out the remainder of the Petitioner's calculation to insure that the grade factor of "C+1" sought is well founded. To complete such a calculation, it is necessary to divide the adjusted 1991 construction cost of \$553,785 by the reproduction cost

determined under the State's Regulation. \$553,785 divided by \$491,600 equals 111% or rounded down to 110%. Under the State's Regulation, a grade multiplier of 110% equates to a "C+2" grade factor. 50 IAC 2.2-11-6.

32. The Petitioner has sought a grade factor change. The Petitioner seeks to have the grade factor changed from a "C-2" to a "C+1." The Petitioner brought forth a calculation using its reproduction cost determined under the State's Regulation and the adjusted 1991 construction costs of the subject building. The result of the Petitioner's grade calculation indicated that a grade factor of "C+1" resulted in a reproduction cost more in line with the adjusted 1991 construction costs. However, when a correction is made for the omission of the Gen. Office area in the Petitioner's reproduction cost calculation, the appropriate grade factor is C+2" to bring the reproduction cost in line with the adjusted 1991 construction costs. Therefore, the State will change the grade factor from "C-2" to "C+2." A change is made to the assessment as a result of this issue.

F. Physical Depreciation

33. The State's Regulation, 50 IAC 2.2-10-7, provides an explanation of how depreciation is determined. Physical depreciation is a combination of age and condition. Life expectancy table are provided to enable the correct selection of physical depreciation. There are four tables provided for the physical depreciation of commercial and industrial buildings. These are: (1) the 30-year life expectancy table; (2) the 40-year life expectancy table; (3) the 50-year life expectancy table; and (4) the 60-year life expectancy table.
34. In short, to determine the correct amount of physical depreciation of a building, the first step is to select the appropriate life expectancy table based on a building's use and components. The second step is to determine the age and condition of the building.
35. Pre-engineered buildings are depreciated using the 30-year life table. 50 IAC

2.2-11-7.

36. The Petitioner contends that, because the subject property is a light pre-engineered structure, the physical depreciation for the subject property should be established using the 30-year life table.
37. Again, the Petitioner has the responsibility of making a case before the State by presenting factual evidence probative of the alleged error. In doing so, the Petitioner establishes a prima facie case and shifts the burden to the County Board to present factual evidence substantiating its position. The Petitioner presented evidence (Petitioner's Ex. B, C, & L) that showed the subject property is a pre-engineered structure. This evidence is probative of the alleged error in physical depreciation. The burden has now shifted to the County Board.
38. The County Board did not offer any evidence or testimony to support the amount of physical depreciation currently applied to the subject property. The County Board offered no response to the Petitioner's claim. The County Board has failed to justify its position and has failed to meet its burden.
39. For all the above reasons, the Petitioner has made its case before the State regarding the issue of physical depreciation. Therefore, the State will make the change in physical depreciation sought by the Petitioner and a change is made to the assessment as a result of this issue.

G. Other Findings

40. In the preparation of the revised PRC, a mathematical error was discovered in the total valuation of special features. The \$560 value of fencing was not included in the total value of special features. Therefore, the special feature value shown in the pricing ladder of the original PRC is incorrect. The value of fencing is added into the total value of special features increasing the value from \$40,200 to \$40,760. A change is made to the assessment as a result of this

correction.

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.

Chairman, Indiana Board of Tax Review