

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

Petition #: 53-009-02-1-4-00429
Petitioner: BKMM Holdings LLC
Respondent: Perry Township Assessor (Monroe County)
Parcel #: 0153270001
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 9, 2003.
2. The Petitioner received notice of the decision of the PTABOA on October 22, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on November 10, 2003. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 30, 2005.
5. The Board held an administrative hearing on September 15, 2005, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo Smith, Taxpayer Representative
 - b) For Respondent: Judith Sharp, Monroe County Assessor
Ken Surface, Nexus Group

Marilyn Meighen acted as legal counsel for both the Perry Township Assessor and the Monroe County Assessor. Ms. Meighen was not sworn in and did not testify.

Facts

7. The property is classified as industrial, as is shown on the property record card for parcel # 0153270001.

8. The ALJ did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Monroe County PTABOA:
Land \$ 93,200 Improvements \$ 520,000.
10. Assessed Value requested by Petitioner on the Form 131 petition:
Land \$ 93,200 Improvements \$ 340,000.

Objections to Evidence

11. Ms. Meighen objected to the admission of Petitioner Exhibits 7 thru 11. On September 1, 2005, the Respondent requested that the Petitioner make available copies of their witness list and exhibits. *Resp't Ex. 1.* Ms. Meighen states that the requested witness list and evidence was not forwarded to the Respondent within the five day time limit specified in the Indiana Board of Tax Review Small Claims rules 52 IAC 3-1-5 (f). *Meighen argument.*
12. Mr. Smith stated that he had not received the September 1, 2005, letter requesting the witness list and evidence because he is no longer located at the address the letter was sent to. He further stated that when he received the Respondent evidence (sent via Fed Ex – *Pet'r Ex. 17*) on the 12th of September, he immediately forwarded the Petitioner evidence. *Smith testimony.*
13. Ms. Meighen amended the Respondent objection to apply to only Petitioner Exhibits 7 and 10. These two exhibits reference the skirtboards of the subject building and are both printed information from internet websites.
14. Confusion about the mailing address of the Petitioner's representative may have led to the Respondent not receiving the requested witness list and evidence prior to the hearing. In fairness to the Petitioner the evidence will be admitted, therefore the objection of the Respondent is denied. However, the evidence that was objected that pertains to the portion of the building that was already valued using the GCK cost schedule, so the evidence had no probative value in these findings.

Issues

15. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner contends that all buildings having a wood post construction, including the subject improvement, should be valued using the GCK pricing schedule. *Smith testimony; Pet'r Ex. 1.* In support of this contention, the Petitioner submitted multiple photographs of the subject property that, according to the Petitioner, illustrates that the subject building is a GCK building and should be priced accordingly. *Smith testimony; Pet'r Exs. 6, 8, 9, 10, 12, 13.*

- b) The Petitioner contends that pressure treated skirtboard shown on Petitioner Exhibits 8 and 9 is indicative of a building that is pole construction and should be valued using the GCK cost schedules. *Smith testimony; Pet'r Ex. 10*. In addition, the Petitioner submitted a photo from the website for Better Built Buildings that, according to the Petitioner “looks almost identical to the subject structure.” *Smith Testimony; Pet'r Ex. 7*.
- c) Further, according to the Petitioner, a building with steel girts and steel purlins can be classified as a GCK building and can be valued using the GCK pricing schedule. *Smith testimony; Pet'r Ex. 4*. In support, the Petitioner submitted interior photographs of the rear portion of the subject improvement and contended that the building is a pre-engineered steel building with “X” bracing, rigid steel frame construction and steel girts and purlins. *Smith testimony; Pet'r Exs. 12, 13*. In response to Respondent’s testimony, the Petitioner argued that metal siding is used on all GCK structures with a commercial use. Therefore, the presence of metal siding does not dictate the use of the GCI wall type 3 cost schedule. *Pet'r Ex. 1; Smith testimony in rebuttal to Surface testimony*.
- d) According to the Petitioner, the subject improvement was valued as entirely pole construction with wood posts from the GCK cost schedule in the original 2002 general reassessment value, but a portion of the structure was changed to GCI wall type 3 following the Petitioner’s appearance before the Monroe County PTABOA. *Smith testimony; Pet'r Ex. 16*.
- e) Finally the Petitioner argued that only 700 square feet of the subject improvement should be priced as wood post finished divided (office). The remaining wood post portion of the building (5,460 square feet) is unfinished and 12,375 square feet is unfinished steel beam construction. *Smith testimony; Pet'r Ex. 15*.

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

- a) The subject improvement is currently valued partially from the GCK cost schedule (14’ x 50’ and 50’ x 106’) with the rear portions (100’ x 150’ and 25’ x 45’) being valued from the GCI wall type 3 cost schedule. The GCI wall type 3 cost schedule is identified as metal siding on metal framing in the 2002 Real Property Assessment Guidelines. *Surface testimony*.
- b) According to the Respondent, the purpose of the GCI wall type 3 cost schedule is intended to “be an in-between pricing” between the GCI wall type 1 cost schedule and the GCK cost schedule. *Surface testimony*.
- c) The Respondent argued that the Petitioner’s photographic evidence (*Pet'r Exs. 12, 13*) illustrate that the subject building is not a “light pre-engineered” building and should not be valued using the GCK cost schedule. *Surface testimony*. According to the Respondent, Petitioner’s Exhibit 6 illustrates that the exterior cover of the rear portion of the subject improvement is metal which indicates that the proper cost

schedule would be the GCI type 3 wall type construction cost schedule. *Surface testimony.* Further, even though steel girts and purlins can be indicative of a GCK building, the girts and purlins in the subject building are more characteristic of a GCI wall type 3 due to the heavier construction grade of the girts and purlins. *Surface testimony.*

- d) The Respondent estimated what the value of the subject building would be if determined by the Board to be completely GCK. The estimate did not include the epoxy floor covering that was evident when Mr. Surface visited the subject improvement on the day before this hearing. *Surface testimony; Resp't Ex. 3.* According to the Respondent, an addition of \$ 5.75 per square foot is the adjustment for the epoxy floor finish in the light manufacturing portion of the subject improvement. *Surface testimony.*

- e) The Respondent did, however, note that there were errors on the Property Record Card. According to the Respondent, the original value assigned to the improvement that used the GCI wall type 3 cost schedule for the rear portion of the structure is correct with two exceptions. A wall height adjustment (the wall height is only 8' and the model calls for a wall height of 16') is necessary in the 14' x 50' finished divided (office) portion of the structure and the epoxy floor finish needs to be added to the structure. These adjustments result in a total value of \$674,800, with \$93,200 attributable to land and the remaining \$581,600 attributable to the improvement. *Surface testimony.* The Respondent also agreed that only 700 square feet of the subject improvement should be valued as finished divided (the 14' x 50' section at the front of the building that is used as an office). *Surface testimony.*

Record

17. The official record for this matter is made up of the following:

- a) The Petition

- b) The tape recording of the hearing labeled BTR # 6188

- c) Exhibits:

Petitioner Exhibit 1: Version A – Real Property Assessment Manual – Chapter 6,
page 9

Petitioner Exhibit 2: Version A – Real Property Assessment Manual – Appendix
D, page 3

Petitioner Exhibit 3: Version A – Real Property Assessment Manual – Chapter 6,
page 13

Petitioner Exhibit 4: Version A – Real Property Assessment Manual – Appendix
D, page 38

Petitioner Exhibit 5: LDI Manufacturing Co, Inc. v State Board of Tax
Commissioners

Petitioner Exhibit 6: Exterior photo of the subject building
Petitioner Exhibit 7: Better Built Buildings – web site info with similar GCK structure pictured
Petitioner Exhibit 8: Exterior photo of the subject building with treated skirtboard pictured on NW corner
Petitioner Exhibit 9: Exterior photo of the subject building with treated skirtboard pictured on SW side
Petitioner Exhibit 10: Picture from easybuildings.com – picturing “skirtboards”
Petitioner Exhibit 11: Interior picture of the front wood post building
Petitioner Exhibit 12: Interior picture of the 75’ x 150’ GCK steel structure
Petitioner Exhibit 13: Interior picture of the 25’ x 45’ GCK steel structure
Petitioner Exhibit 14: Version A – Real Property Assessment Manual – Appendix G, page 16
Petitioner Exhibit 15: Subject PRC with the correct GCK assessment
Petitioner Exhibit 16: Subject PRC dated 4-10-03
Petitioner Exhibit 17: Federal Express mailer envelope

Respondent Exhibit A: Meighen letter to Milo Smith – September 1, 2005
Respondent Exhibit B: Subject property record card
Respondent Exhibit C: “Dummied” property record card

Board Exhibit A: 131 Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Notice of Appearance
Board Exhibit D: October 20, 2005 letter to Petitioner Representative
Board Exhibit E: October 26, 2005 response from Petitioner Representative
Board Exhibit F: October 20, 2005 letter to Respondent Representative
Board Exhibit G: October 25, 2005 response from Respondent Representative

d) These Findings and Conclusions.

18. Due to a tape recorder malfunction, the tape recording of the hearing stopped prior to the conclusion of the hearing. Accordingly, a letter summarizing the evidence and testimony was sent to both the Petitioner (*Board Ex. D*) and the Respondent (*Board Ex. F*) in order to determine that all substantive testimony was included. The Petitioner’s response (*Board Ex. E*) indicates that the summary accurately reflects what occurred at the hearing. The Respondent’s response (*Board Ex. G*) states that the summary does not reflect Mr. Surface’s testimony regarding the taxpayer’s failure to establish a value for the subject building as of January 1, 1999. It is the belief of the Board that the record reflects Mr. Surface’s disagreement with the Petitioner regarding the value of the improvements.

Analysis

19. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township 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 Township 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.
20. The Petitioner did not provide sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the subject improvement should be valued using the GCK cost schedule rather than the GCI wall type 3 cost schedule.¹ According to the Petitioner, photographs of the structure illustrate that the rear portion of the building has steel framing, “X” bracing and steel siding that could be priced under the GCK pricing schedule.²
 - b) In response, the Respondent admitted that some features are common to both CGI wall type 3 structures and GCK structures. The Respondent argued that the exterior cover of the rear portion of the subject improvement is metal which indicates that the proper cost schedule would be the GCI type 3 wall type construction cost schedule. Further, the Respondent noted that even though steel girts and purlins can be indicative of a GCK building, the girts and purlins in the subject building are more

¹ The Petitioner introduced evidence regarding adjustments for lack of partitioning and adjustments for wood post construction, while the Respondent testified that an adjustment for the epoxy floor covering had not been made to the pricing of the building. These issues were not listed on the Form 131 petition, nor were these issues raised as a result of the PTABOA hearing. Therefore, these issues will not be addressed in these findings. The Board's small claims procedures limits the issues to those raised at the PTABOA hearing or issues raised as a result of the PTABOA determination. 52 IAC 3-1-2 (b) and (c). Thus, the only issue before the Board here today is whether GCK is the appropriate cost schedule for the subject improvement.

² This argument only applies to the 75' x 150' and the 25' x 45' sections of the building as the other portions (14' x 50' and 50' x 106') of the building are already priced from the GCK schedule. This was agreed to by all parties during the hearing. Much of Petitioner's evidence, including the Better Built Buildings website information, the photographs skirtboard and diagrams of wood post construction apply to the front sections of the structure that are already priced according to the GCK and is not probative of the assessment of the back section of the building at issue in this appeal.

characteristic of a GCI wall type 3 due to the heavier construction grade of the girts and purlins.

- c) In order to establish a prima facie case, the Petitioner needs to do more than simply describe its structure with features that *may* qualify it for GCK pricing. The Petitioner must link the features of the structure to those listed in the regulations. *See CDI, Inc. v. State Board of Tax Comm'rs*, 725 N.E.2d 1015, 1020 (Ind. Tax Ct. 2000) (stating that taxpayer did not provide the Court with any insight as to why the structure should be classified as a kit building, but only stated it was pre-engineered and had certain features).
- d) Here the Petitioner submitted no evidence regarding the gauge of the steel in the framing of the building, therefore, there was no clear evidence to indicate that the framing would qualify as “light pre-engineered” as compared to the gauge of steel framing that would be indicative of the GCI wall type 3 construction. Nor was evidence submitted regarding the actual cost of the construction of the subject improvement or the market value of the property. Thus, the Board finds that the Petitioner has not demonstrated that the subject structure should be valued using the GCK pricing schedule.

Conclusion

- 21. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not 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>>.