

REPRESENTATIVES FOR PETITIONER:
Fred McCarter, C.M.I.

REPRESENTATIVES FOR RESPONDENT:
Greg Dodds, Deputy Township Assessor
Robert Borgmann, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

IRON MOUNTAIN STATUTORY)	Petition for Review of Assessment,
TRUST,)	Form 131
)	
Petitioner)	Petition No.: 49-940-01-1-4-00169
)	
v.)	County: Marion
)	Township: Wayne
WAYNE TOWNSHIP ASSESSOR,)	Parcel No.: 9-047362
Respondent)	Assessment Year: 2001
)	

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

February 6, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (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 subject building should be priced using the GCK schedule.*
 - ISSUE 2 – *Whether a grade of “C+2” should be applied to the subject structure, if it is determined that the structure is to be priced from the GCK schedule.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Fred McCarter of C.M.I., filed a Form 131 on behalf of Iron Mountain Statutory Trust (Petitioner) petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on March 15, 2002. The Notification of Final Assessment Determination (Form 115) of the Marion County Property Tax Assessment Board of Appeals (PTABOA) was mailed on February 22, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on October 14, 2003 in Indianapolis, Indiana before Paul Stultz, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:
 - For the Petitioner:
 - Fred McCarter, C.M.I.
 - Tim Barry, Excel Builders, Inc.
 - For the Respondent:
 - Greg Dodds, Deputy Township Assessor

Robert Borgmann, Attorney at Law

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

For the Petitioner:

Fred McCarter

Tim Barry

For the Respondent:

Greg Dodds

6. The following exhibits were presented at the hearing:

For the Petitioner:

Petitioner's Exhibit 1 – Disclosure Statement

Petitioner's Exhibit 2 - Copy of light pre-engineered kit building checklist

Petitioner's Exhibit 3 - Copy of Tax Court case summaries regarding kit buildings

Petitioner's Exhibit 4 – Two (2) interior and four (4) exterior photos of subject building

Petitioner's Exhibit 5 – Copy of four-page facsimile from F. McCarter to B. McHenry

dated February 6, 2002, which included the following:

- a. Cover sheets, two (2) pages
- b. Letter to C.M.I. from Tim Barry dated January 31, 2002
- c. Copy of page 5 of 9 of Indiana Tax Court case - *Susan Barker vs. The Indiana State Board of Tax Commissioners*

For the Respondent:

Respondent's Exhibit 1 - Copy of record of the PTABOA hearing

Respondent's Exhibit 2 - Copy of plat map including the subject property

Respondent's Exhibit 3 - Copy of property record card (PRC) of comparable building

Respondent's Exhibit 4 – Copy of thirteen (13) - page document showing value per building permits for a 31,246 square foot addition

Respondent's Exhibit 5 - Copy of 50 IAC 2.2-15-1 (pages 19 and 20)

Respondent's Exhibit 6 - Copy of the township pricing of the subject building

from the GCK schedule with a grade of “C+2” applied
generated on October 13, 2003

Respondent’s Exhibit 7 - Copy of the township pricing of the subject building
from the GCK schedule with a grade of “B +1” applied
generated on October 13, 2003

Respondent’s Exhibit 8 - Copy of the township pricing of the subject building
from the GCK schedule with a grade of “A” applied generated
on October 14, 2003

Respondent’s Exhibit 9 – Copy of subject PRC

7. The following additional exhibits were received from the Petitioner, per the Board’s
request:

On October 21, 2003:

Petitioner’s Exhibit 6 – Memo from F. McCarter dated 10-20-03, copy of Request for
Additional Evidence, and schedule of pricing subject building
from the GCK schedule

On November 10, 2003:

Petitioner’s Exhibit 7 - Memo from F. McCarter dated 11-05-03, with attached
letter from T. Barry to F. McCarter dated October 31, 2003.

8. The following additional exhibits were received from the Respondent, per the Board’s
request:

On October 29, 2003:

Respondent’s Exhibit 10 - Copy of two-page statement

Respondent’s Exhibit 11 - Copy of the township pricing of the subject building
from the GCK schedule with a grade of “C+2” applied
generated on October 21 and 26, 2003

Respondent’s Exhibit 12 - Copy of the township pricing of the subject building
from the GCK schedule with a grade of “B+1” applied
generated October 28, 2003

Respondent’s Exhibit 13 - Copy of Board’s Final Determination for Petition No. 49-900-
99-1-4-10351

9. The following additional items are officially recognized as part of the record of proceedings:
 - Board's Exhibit A - Form 131 petition
 - Board's Exhibit B - Notice of Hearing on Petition
 - Board's Exhibit C - Request for Additional Evidence
 - Board's Exhibit D - Post-hearing Submission Waiver
10. The subject property is a commercial warehouse located at 1165 South Girls School Road, Indianapolis, Wayne Township, Marion County.
11. The ALJ did not conduct an on-site inspection of the subject property.
12. At the hearing, the parties agreed the year under appeal is 2001 and the values of record are:
 - Land: \$107,200
 - Improvements: \$1,557,600

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 Board of Tax Commissioners*, 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*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890 (Ind. Tax 1995). [‘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 Board of Tax Commissioners*, 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 Board of Tax Commissioners*, 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 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 Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance (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 Board of Tax Commissioners*,

694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 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 subject building should be priced using the GCK Schedule.*

28. The Petitioner contends that because the subject building has the characteristics of a pre-engineered building, the GCK pricing schedule should be used and not the GCI pricing schedule to value subject structure.
29. The Respondent contends that the GCI pricing schedule is the appropriate schedule to use to value the subject structure.
30. The applicable rules governing Issue 1 are:

50 IAC 2.2-10-6.1 Pricing

The model is a conceptual tool used to replicate reproduction cost of a given structure using typical construction materials. The model assumes that there are certain elements of construction for a given use type. Because there are so many models included in Schedule A, the base rates are divided into four (4) association groupings”. Each grouping appears as a separate schedule in order to facilitate selection. The four (4) grouping are General Commercial Mercantile (GCM), General Commercial Industrial (GCI), General Commercial Residential (GCR), and General Commercial Kit (GCK).

50 IAC 2.2-10-6.1(a)(1)(D) General Commercial Kit (GCK)

GCK does not include use type descriptions. GCK is utilized for valuing pre-engineered and pre-designed pole buildings which are used for commercial and industrial purposes. Building classified as special purpose designed buildings are not valued using the GCK pricing schedule.

50 IAC 2.2-11-6 Schedule A.4

GCK Base Rates: Pre-engineered & Pole Framed Buildings (used for C/I Occupancies)

31. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The subject building is a kit type building with framing characteristics found in kit buildings. *Barry testimony & Petitioner's Exhibit 2.*
 - b. The Petitioner submitted two (2) interior and four (4) exterior photos of the subject building. *Petitioner's Exhibit 4.*
 - c. The increased cost of the roof, a ballast membrane flat roof, was the only structural component that could not be accounted for using the GCK pricing schedule. This extra cost could be accounted for by the grade assigned to the building. *McCarter testimony.*
 - d. The Tax Court has used the State Board of Tax Commissioners' Instructional Bulletins 91-8 and 92-1 as a reference point. If the subject building matched the clues in Instructional Bulletin 91-8 with no deviation from it, and there is no evidence to suggest that the upgrades would make it no longer economical to build, then the said building should be priced using the GCK schedule. *McCarter testimony.*
 - e. Six (6) Indiana Tax Court cases were submitted to support the position that the Tax Court relied on information found in Instructional Bulletin 91-8 to determine if a building was a GCK type building. The cited Tax Court cases were: *Susan Baker v. the Indiana State Board of Tax Commissioners, Donald Morris v. State Board of Tax Commissioners, King Industrial Corp. v. State Board of Tax Commissioners, Componx, Inc. v. State Board of Tax Commissioners, Damon Corp. v. State Board of Tax Commissioners, and CDI, Inc. v. State Board of Tax Commissioners.* *McCarter testimony & Petitioner's Exhibit 3.* All the Tax Court cases submitted all involve appeals regarding the fifty percent (50%) kit adjustment used in the 1989 reassessment and found in Instructional Bulletins 91-8 and 92-1).

- f. Referencing the PRC for Parcel No. 7-026521, the Respondent testified the PRC shows the building on this parcel has the same type of sandwich panel walls and built-up roof, and usages that include light warehouse and industrial office. These characteristics are similar to those of the subject structure, thus making the building comparable to the subject. *Dodds testimony & Respondent's Exhibit 3.*

Analysis of ISSUE 1

32. The 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.
33. 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 selection. The GCK schedule is the exception.
34. "...[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).
35. When selecting the appropriate pricing schedule, there are only four (4) 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 or industrial use; and (4) whether the structure is a special purpose designed building. Therefore, if a building is a pre-engineered or 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.

36. The Petitioner argued that the subject building qualified to be valued from the GCK pricing schedule rather than the GCI pricing schedule. Mr. Barry stated that he had physically inspected the subject building and that the subject building was a pre-engineered building which qualified to be priced from the GCK schedule.
37. Mr. Barry testified that he had been with Excel Builders for over thirty (30) years. Excel Builders designs and builds pre-engineered buildings.
38. Mr. Barry submitted into evidence a checklist (Petitioner's Exhibit 2) of components that indicated the subject building had steel walls made up of 22 to 26 gauge metal with minimal tolerances in the columns and roof beams, and a flat roof. The checklist supported Mr. Barry's opinion that the subject building qualified to be priced from the GCK schedule. The checklist was based on the State Board of Tax Commissioners Instructional Bulletins 91-8 and 92-1.
39. The petition under review is for the tax year 2001 and falls under the rules and regulations promulgated for the general statewide reassessment for 1995. Instructional Bulletins 91-8 and 92-1 were issued under the rules and regulations promulgated for the general statewide reassessment for 1989. With the onset of the 1995 reassessment and the creation of new rules and regulations for that reassessment, the Board's regulations included a cost schedule for certain light, pre-engineered buildings, i.e., kit buildings (GCK Pricing Schedule). The Instructional Bulletins were no longer applicable for the 1995 reassessment.
40. The pricing for kit buildings under the GCK schedule is reflective of the economical quality and low cost of materials used in the structure. "[K]it buildings are made of light

weight and inexpensive materials and are fabricated at central manufacturing facilities and shipped to the construction site ready for fast and efficient assembly.” *Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E. 2d 943, 049 (Ind. Tax Ct. 2001).

41. In a number of opinions, the Tax Court has stated that the key elements used to identify a kit building are, simply, the types of interior columns and roof beam support used in the building. *Componx, Inc. v. State Board of Tax Commissioners*, 683 N.E. 2d 1372, 1374 (Ind. Tax 1997). Kit building interior columns and roof beam supports may include cold cee channel supports, tapered columns, H-columns, and steel pole or post columns. *Miller Structures*, 748 N.E. 2d at 950. Consequently, “it should not be difficult for taxpayers to identify those characteristics in an improvement alleged to [be a kit building]. *Whitley*, 704 N.E. 2d at 1121.
42. In addition to Mr. Barry’s testimony and personal inspection of the subject structure, six (6) photos were submitted (Petitioner’s Exhibit 4) showing the subject building having cee channel supports, steel columns, and light weight steel exterior walls.
43. The Petitioner claimed that the only deviation the subject building has, from the GCK model, is a ballast membrane flat roof. The Petitioner stated that the use of this type of roof verses a 24 gauge single sheet roof, added approximately 10% to the cost of a building of this size. And that such a cost could be accounted for in the assigning of a grade factor.
44. Mr. Barry’s testimony, along with the photographs of the subject structure, represent probative evidence that if not disputed or contradicted will make a prima facie case for the Petitioner.
45. The Respondent did not address the Petitioner’s evidence but indicated that if the Board determined the subject structure should be valued from the GCK schedule then a grade of “B+1” would need to be applied so that the pricing “more closely reflects the building costs as indicated by the building permits, adjusted to 1991 costs less 15%.” See

Respondent's Exhibit 10. In addition, the Respondent submitted a purported "comparable" property (Respondent's Exhibit 3) valued from the same GCI schedule as that of the subject building.

46. The Respondent opined that the subject building was similar to the building presented as a "comparable". The Respondent claimed the comparable property has similar type sandwich panel walls, similar use types (light warehouse/industrial office), and a similar built up roof. The alleged comparable building was valued using the GCI pricing schedule. Such a comparison is conclusory when it is not supported by any documentation. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
47. A review of the PRCs shows that the subject structure consists of 78,790 square feet, whereas, the purported comparable consists of 377,314 square feet (See Respondent's Exhibits 3 and 9). The building the Respondent claims is comparable to the subject building is almost five (5) times larger than the subject building. The Respondent did not address the significant difference in size of the two (2) buildings.
48. The fact that the subject building has sandwich panel walls and/or similar use types of a building being priced using the GCI schedule, does not preclude the subject structure from being valued from the GCK schedule.
49. Respondent's Exhibit 10 identifies components that the Petitioner may not have considered in their pricing of the subject structure from the GCK schedule. The correct use of the GCK pricing schedule will remedy these omissions.
50. The Respondent's evidence and the conclusion of comparability is not sufficient to outweigh the evidence provided by the Petitioner.
51. For all the reasons set forth above, it is determined the Petitioner submitted probative evidence of an incorrect assessment. It is also determined that the subject structure

should be valued from the GCK pricing schedule and appropriate adjustments should be made.

ISSUE 2 – Whether a grade of “C+2” should be applied to the subject structure, if it is determined that the structure is to be priced from the GCK schedule

52. In the current assessment, the subject building has a grade of “D+2”. This grade is based on a comparison of the subject structure to the GCI schedule model (light warehouse/industrial office).
53. Since it has been determined to value the subject structure using the GCK pricing schedule (Issue 1), a comparison to GCI models to determine the grade is no longer appropriate. For the assessment to be correct, the grade must be adjusted, based on the GCK descriptions. See *Barth v. State Board of Tax Commissioners*, 699 N.E. 2d 800 (Ind. Tax Ct. 1998).
54. The Petitioner contends the grade should be “C+2”.
55. The Respondent contends the grade should be “B+1”.
56. The applicable rules governing Issue 2 are:
- 50 IAC 2.2-1-30 “Grade” defined**
“Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship.
- 50 IAC 2.2-1-31 “Grade factor” defined**
“Grade factor” means a factor or multiplier applied to a base grade level for the purpose of interpolating between grades or establishing an intermediate grade.
- 50 IAC 2.2-10-3(a) Grade**
“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(b)

The pricing schedules contained in 50 IAC 2.2-11-6 reflect the “C” grade standards of quality and design unless otherwise stated. The following schedule illustrates the multiplier applied to each listed grade classification:

- (1) “A” grade indicates a multiplier of one hundred sixty percent (160%).
- (2) “B” grade indicates a multiplier of one hundred twenty percent (120%).
- (3) “C” grade indicates a multiplier of one hundred percent (100%).
- (4) “D” grade indicates a multiplier of eighty percent (80%).
- (5) “E” grade indicates a multiplier of forty percent (40%).

50 IAC 2.2-10-3 (c)

Because structures sometimes fall between major grade classifications, or at intermediate grade levels a method of interpolation is built into the system. Intermediate grade levels are indicated by suffixing the letter symbol “A” through “E” of the major classification with + or – numbers.

57. Evidence and testimony considered particularly relevant to this determination include the following:

- a. The increased cost of the roof, a ballast membrane flat roof, was the only structural component that could not be accounted for using the GCK schedule. This extra cost could be accounted for in the grade factor. *McCarter testimony.*
- b. The additional cost to the roof would add approximately \$1.40 to \$1.50 per square foot. This would be approximately 10% of the total cost per square foot to build this type of building. *Barry testimony.*
- c. The Petitioner submitted a letter from Mr. Barry dated October 31, 2003 stating that the cost of the subject roof would be \$135,000. *Petitioner’s Exhibit 7.*
- d. Building permits for a 31,246 square foot addition to the subject structure were submitted for review. The cost per the building permits were reasonably close to the value that the same area is currently being assessed after adjusting the 1993 cost to 1991 cost and decreasing that amount by 15% - \$765,724 - building permits versus \$741,560 - current assessment of same area (The 1995 reassessment was based on 1991 cost schedules that were reduced by 15%). This comparison supported the accuracy of the assessment of the whole building. *Dodds testimony & Respondent’s Exhibit 4.*
- e. Though the permits say “estimated value”, the estimated value would be

reasonably close to actual cost. *Dodds testimony*.

- f. The Respondent submitted the Board's Final Determination of Pugh & Wood Partnership, Petition No. 49-900-99-1-4-0-10351, claiming they submitted building permits to indicate building cost, and the Board relied on said evidence to support the findings that the property assessment was accurate in that appeal. *Dodds testimony & Respondent Exhibits 10 and 13*.
- g. Both parties acknowledged they did not know the actual cost of the building. *McCarter and Dodds testimonies*.

Analysis of ISSUE 2

- 58. The Petitioner acknowledged that subject's roof is a structural component that cannot be accounted for using the GCK pricing schedule but that the extra cost could be accounted for in the grade factor.
- 59. Mr. Barry stated the additional cost of the roof would be approximately ten percent (10%) of the total cost of this type of structure. For the subject structure it would be \$135,000. See Petitioner's Exhibit 7.
- 60. To increase the replacement cost new of the subject building 10%, a grade of "C+2" or a grade factor of 110% should be applied. Refer to 50 IAC 2.2-11-6, Schedule F- Quality Grade & Design Factor.
- 61. Mr. Barry's testimony was addressed by the Respondent only to the extent to clarify what Mr. Barry meant by claiming the roof would add 10% to the total cost of the subject building. The Respondent did not dispute the Petitioner's testimony or his estimate of the cost for the roof.
- 62. Instead the Respondent presented building permits for an addition to the subject building. The total cost per the building permits were reasonably close to the value that the same area is currently being assessed (\$765,724-per cost of building permits versus \$741,560-

current assessment of same area) after adjusting the 1993 cost to 1991 costs and decreasing the amount by 15%.

63. The building permits are estimated costs and do not represent the actual or finalized construction costs of the subject building. The Respondent acknowledged he could not verify the accuracy of the estimated values reflected in the building permits. Both parties acknowledged that they did know the actual total cost of the subject building.
64. In addition, the Respondent submitted the Board's Final Determination for the Pugh & Wood Partnership appeal (Petition No. 49-900-1-4-10351) to support his position that the building permits are probative evidence and that the Board should rely on these estimates to determine the grade in the appeal under review. See Respondent's Exhibit 13.
65. However, it is possible for a particular type of evidence to be considered adequate in one appeal and not adequate in another appeal. Careful review of the Board's determination in the Pugh & Wood appeal clearly shows that the Petitioner did not meet their burden in that case. Thus, the burden did not shift to the Respondent to support the actions they took in the assessment. The Board determined that the Petitioner's evidence (a copy of the grade classification table and conclusory statements regarding "average" to "below average" materials and workmanship) were not sufficient to support the Petitioner's position. See Respondent's Exhibit 13, Findings of Fact ¶13 through ¶16.
66. In the Pugh & Wood Partnership determination, the Board did not use the building permits to determine a value. The Board reviewed the building permits as evidence that indicated a lack of probative evidence submitted by the Petitioner to establish that the assessment was excessive. If the Petitioner had presented probative evidence, before the Board that established the assessment was incorrect, the discussion regarding the building permits would have been different.
67. In the case at bar, the Petitioner's undisputed evidence determines that the cost increase due to the roof is approximately \$135,000, which equates to a grade factor of "C+2".

68. For all the reasons set forth above, it is determined that the grade factor to be applied to the structure being valued from the GCK pricing schedule, is “C+2”. A change in the assessment is made as a result of this issue.

Summary of Final Determination

Determination of ISSUE 1: *Whether subject building should be priced using the GCK schedule.*

69. The Petitioner met its burden, by a preponderance of the evidence. Accordingly, the building should be valued from the GCK schedule. Because the subject building is now assessed from a different schedule all appropriate adjustments should be made. There is a change in the assessment as a result of this issue.

Determination of ISSUE 2: *Whether a grade of “C+2” should be applied to the subject structure, if it is determined that the structure is to be priced from the GCK schedule.*

70. The Petitioner met his burden, by a preponderance of the evidence. Accordingly, a grade of “C+2” should be used to value the structure. There is a change in the assessment as a result of this issue.

The Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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.