

**STATE OF INDIANA  
Board of Tax Review**

OVERTON INDUSTRIES, INC. ,	)	On Appeal from the Morgan County
	)	Property Tax Assessment Board
Petitioner,	)	of Appeals
	)	
v.	)	Petition for Review of Assessment, Form 131
	)	Petition No. 55-902-00-1-4-00001
MORGAN COUNTY PROPERTY TAX	)	Parcel No. 0210512155012000
ASSESSMENT BOARD OF APPEALS	)	
And BROWN 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 makes the following findings of fact and conclusions of law:

**Issue**

1. Whether the subject structures should be valued from the GCK pricing schedule.

**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, Duane R. Zishka of Uzelac & Associates, Inc., on behalf of Overton Industries, Inc. (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on June 6, 2000. The Morgan County Property Tax Assessment Board of Appeals (PTABOA) Notification of Final Assessment Determination on the underlying Form 130 is dated May 11, 2000.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 26, 2002, before Administrative Law Judge (ALJ) Alyson Kunack. Testimony and exhibits were received into evidence. Mr. Zishka represented the Petitioner, Steve Overton, was also present. Ms. Brenda Brittain, County Assessor, and Ms. Reva Brummett, consultant to Morgan County, represented Morgan County. No one appeared to represent Brown Township.
4. At the hearing, the subject Form 131 petition was made a part of the record and labeled Board Exhibit A. Notice of Hearing on Petition was labeled Board Exhibit B. In addition, the following exhibits were submitted:
  - Board Exhibit C – Petitioner’s list of witnesses and exhibits
  - Board Exhibit D – Disclosure statement
  
  - Petitioner Exhibit 1 – Photographs and statement regarding subject property
  - Petitioner Exhibit 2 – Copy of Marshall & Swift Cost Multipliers, Central District, dated July 1999
  - Petitioner Exhibit 3 – Copy of section of blueprints for subject structure
  - Petitioner Exhibit 4 – Cost estimate for subject structures from Newcomb Construction
  - Petitioner Exhibit 5 – *Zakutansky v. State Board of Tax Commissioners*, 696 N.E. 2d 494
  - Petitioner Exhibit 6 – *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890

Petitioner Exhibit 7 – *LDI Manufacturing v. State Board of Tax Commissioners*, 759 N.E. 2d 685 (Ind. Tax 2001)

Petitioner Exhibit 8 – Statement regarding relevance of court cases

Respondent Exhibit 1 – Property Record Card (PRC) for subject property

Respondent Exhibit 2 – State’s Final Determination for Eugene & Barbara Perry, Petition Number 55-005-98-1-4-00001

Respondent Exhibit 3 – State’s Final Determination for Shreve/Nobis Holdings LLC, Petition Number 55-021-95-1-4-00001

5. At the hearing, Mr. Zishka requested additional time to submit a response to the evidence submitted by the Respondent. Mr. Zishka’s request to respond to the Respondent’s evidence was granted by the ALJ. Mr. Zishka, via a Request for Additional Evidence (Board Exhibit E), was given until April 2, 2002 to submit his response. On April 1, 2002, the ALJ received Mr. Zishka’s response with copies being provided to the Respondent. This response to the evidence submitted is entered into the record and labeled as Petitioner Exhibit 9.
6. The subject property is a mini warehouse facility located at 1240 Old State Road 67 South, Mooresville, Brown Township, Morgan County.
7. The ALJ did not view the subject property.

**Whether the subject structures should be valued from the GCK pricing schedule.**

8. The structures under review make-up a mini-warehouse facility. All the structures have been valued from the General Commercial Industrial (GCI) pricing schedule.

9. The subject structures are pole frame buildings with 6 x 4 posts, 29 gauge aluminum siding and pull-down doors. *Zishka testimony & Petitioner Exhibit 3*.
10. The PTABOA denied the Form 130 appeal, finding the structures to be special use buildings (Board Exhibit A). Mr. Zishka argues that none of this prevents the subject structures from being easily converted to another use, and therefore they are not special purpose structures.

### **Conclusions of Law**

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the PTABOA or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. 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.
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. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). 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.<sup>2</sup> 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 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.

### **Whether the subject structures should be valued from the GCK pricing schedule.**

18. The State 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.
19. 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 of the four groupings



contain use type descriptions in order to aid in selection. The GCK schedule is the exception.

20. "...(GCK) does not include use type descriptions. This schedule is utilized for valuing pre-engineered and 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 a special purpose design are not valued using the GCK pricing schedule." 50 IAC 2.2-10-6.1(a)(1)(D).
21. In a nutshell, 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 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 pole framed or light metal 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. 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).
23. It is the Petitioner's contention that the mini-warehouse structures under review should be valued using the GCK pricing schedule rather than the GCI pricing schedule. The Petitioner opined that the structures are pre-engineered "kit" type buildings having pole frame construction with 6 x 4 posts, 29 gauge aluminum siding, with pull-down doors and are not of a special purpose design.

24. To support his contention, the Petitioner submitted a construction-cost based analysis and supporting documents (Petitioner Exhibits 1, 2, & 4), a photocopy of a portion of the subject blueprints (Petitioner Exhibit 3), three (3) opinions of the Indiana Tax Court (Petitioner Exhibits 5 - 7), a statement regarding the relevance of those opinions to the case at bar (Petitioner Exhibit 8), and a written response to the evidence submitted by the Respondent (Petitioner Exhibit 9) at the hearing.
  
25. Before applying the evidence to reduce the contested assessment, the State must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.

#### Review of Petitioner's Evidence

26. The Petitioner argues the subject structures should be valued from the GCK pricing schedule and should not be disqualified as special purpose design buildings.
  
27. The Petitioner attempts to support the GCK pricing request via an adjusted cost computation (Petitioner Exhibit 1). The Petitioner uses a 1994 "Job Proposal" from Newcomb Construction, Marshall & Swift cost multipliers to trend the costs back to 1991 then deducts 15% to calculate an adjusted cost.
  
28. However, this calculation is inherently flawed because it is based upon a "proposed" or "estimated" construction cost provided in Petitioner Exhibit 4. As stated in the Job Proposal, "These costs do not include plans and permits, any groundwork, parking lot, driveways etc. Prices of material will be adjusted when contract is signed and work is approved to start. These prices are good for 30 days." Without the finalized signed contract detailing the costs and changes in costs, any calculations based on these figures are speculative.

29. The Petitioner also submitted three (3) decisions issued by the Indiana Tax Court and a statement that attempts to explain the relevance of said cases. The Petitioner references *Zakutansky* and *Herb* (Petitioner Exhibits 5 & 6) as general statements from the Tax Court regarding selection of pricing schedule. With regard to Petitioner Exhibit 7, the Tax Court's opinion in *LDI Manufacturing*, the Petitioner simply cites general statements regarding the application of the GCK schedule.
30. The main focus of the Petitioner in this appeal is whether or not the subject structures (mini-warehouses) are of special purpose design thus disqualifying the buildings from being valued using the GCK pricing schedule. The Petitioner contends the structures are not special purpose design and can be easily reconfigured for other purposes.
31. In the past, parties to appeals have argued the Regulation failed to define the meaning of special purpose design. This is no longer the case, the Indiana Tax Court in *LDI Manufacturing Co., Inc. v. State Board of Tax Commissioners*, 759 N.E. 2d 685 (Ind. Tax 2001) referred to technical, appraisal terms to define it. The Tax Court defined a "special-purpose property" or a "special-design property" as "[a] limited-market property with unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built [.]" Appraisal Institute, *The Appraisal of Real Estate* 25 (12<sup>th</sup> ed.2001).
32. As previously stated, the Petitioner bears the responsibility of presenting probative evidence in order to make 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 fact.
33. On the issue of applying the GCK pricing schedule the Petitioner must show the GCK schedule is appropriate for valuing the subject structures. The Petitioner must show that the structures fit the four (4) factors established to qualify for the GCK pricing, namely: (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 pole framed or light metal 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.

34. One would agree that some of the Petitioner's evidence does lend support to their position that the structure is of pole-framed construction and used for commercial purposes (blueprints, photographs).
35. The Petitioner then opines that the structures could be easily modified for other uses/purposes and thus should not be disqualified as special purpose design buildings. However, if the structures were to be modified, some of the areas that would need to be reviewed and considered for modification are:
  - a. Air conditioning, because there is none presently
  - b. Heating, because there is none presently
  - c. Plumbing, because there is none presently
  - d. Lighting, because it is limited
  - e. "Doorways", because there is a large number of them of various sizes and all overhead type
  - f. Interior partitioning, because it is presently metal
  - g. The fact that the buildings are cut up into a number of smaller units
  - h. Insulation changes
  - i. What to do with gravel/dirt floors
36. It is obvious from this list alone that the structures cannot be "easily modified". It is also clear that the subject is a limited-market property with unique physical design or layout that does restrict its utility to the use for which it was built and thus disqualifies the structures from being valued using the GCK pricing schedule.

37. The Petitioner did not submit into evidence any other mini-warehouses as comparables. Therefore the Petitioner did not show that the subject structures were being treated differently than the comparable properties, thus establishing disparate treatment of the subject (See Conclusions of Law ¶11).
38. For all the reasons set forth above, there is no change in the assessment as a result of this issue.

**SUMMARY OF STATE DETERMINATIONS**

Whether the subject structures should be valued from the GCK pricing schedule. – No change.

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.

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Chairman, Indiana Board of Tax Review