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**IN THE
INDIANA TAX COURT**

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|---------------------------------|---|-----------------------------|
| INDIANAPOLIS RACQUET CLUB INC., |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Cause Nos. 49T10-0312-TA-57 |
| |) | 49T10-0312-TA-58 |
| LAWRENCE TOWNSHIP |) | 49T10-0312-TA-59 |
| (MARION COUNTY) ASSESSOR, |) | |
| |) | |
| Respondent. |) | |

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
March 15, 2007

FISHER, J.

Indianapolis Racquet Club, Inc. (IRC) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) valuing its real property for the 1989, 1991, and 1995 tax years (years at issue). While IRC presents numerous issues for the Court's consideration, the Court consolidates and restates them as: whether IRC's improvement is a light, pre-engineered building that qualifies for a reduction in its assessed value for each of the years at issue.

FACTS AND PROCEDURAL HISTORY

IRC owns and operates a commercial tennis club in Lawrence Township, Marion County, Indiana. IRC's improvement consists of eight indoor tennis courts (the tennis facility), a lobby, pro-shop, locker rooms, and retail areas. The only section of IRC's improvement at issue in this case is the tennis facility.

For each of the years at issue, the Lawrence Township Assessor (Assessor) assessed IRC's tennis facility using the General Commercial Industrial (GCI) light warehouse cost schedule and the 40-year life expectancy table. Believing that its tennis facility was assessed incorrectly, IRC appealed the assessments. On September 17, 2002, the Indiana Board held a combined hearing on IRC's appeals.¹ The Indiana Board issued a final determination on November 6, 2003, in which it denied IRC's challenges.

IRC filed three original tax appeals with this Court on December 12, 2003. The Court heard the parties' oral arguments on January 29, 2007. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. *Wittenberg Lutheran Vill. Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 486 (Ind.

¹ More specifically, IRC filed a Petition for Review of Assessment (Form 131) with the State Board of Tax Commissioners (State Board) for both its 1989 and 1995 assessments; IRC filed a Petition for Correction of Error (Form 133) with the Marion County Auditor for its 1991 assessment. After the State Board was abolished by the legislature on December 31, 2001, the Indiana Board of Tax Review (Indiana Board) conducted the combined hearing and issued a final determination on IRC's appeals. See 2001 Ind. Acts 198 §§ 95, 119(b)(2); IND. CODE ANN. §§ 6-1.5-1-3, -4-1 (West 2007).

Tax Ct. 2003), *review denied*. Consequently, the Court will reverse a final determination of the Indiana Board if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2007).

The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs., L.P.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003). In order to meet that burden, the party seeking reversal must have submitted, during the administrative hearing process, probative evidence regarding the alleged assessment error. *Id.* (footnote omitted). If that party meets its burden of proof and prima facie establishes that the Indiana Board's final determination is erroneous, the burden then shifts to the opposing party to rebut the challenging party's evidence. See *Meridian Towers E. & W. v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003).

DISCUSSION AND ANALYSIS

During each of the years at issue, Indiana's property tax assessment system used cost schedules and models to determine the base reproduction cost of a particular improvement. See 50 IND. ADMIN. CODE 2.1-4-5, -7 (1992) (repealed 1995); 50 IND.

ADMIN. CODE 2.2-11-2, -6 (1996) (repealed 2002). The cost schedules and models indicated the reproduction costs of any given structure by assuming the presence of certain construction elements. See 50 IND. ADMIN. CODE 2.1-4-3(a) (1992) (repealed 1995); 50 IND. ADMIN. CODE 2.2-10-6.1 (1996) (repealed 2002). Consequently, the reproduction cost of a light, pre-engineered improvement, which was constructed using inexpensive materials and lacked construction elements present in the model, theoretically required a downward adjustment to reflect its lower value.

Beginning in 1991, Indiana's property tax assessment regulations referred to certain light, pre-engineered improvements as "kit buildings" and allowed a fifty percent reduction in their base rates.² See *Hamstra Builders, Inc. v. Dep't of Local Gov't Fin.*, 783 N.E.2d 387, 390 (Ind. Tax Ct. 2003) (stating that "[g]enerally kit buildings are made of [lightweight] and inexpensive materials and are fabricated at central manufacturing facilities and shipped to the construction site ready for fast and efficient assembly") (citation omitted, footnote added). See also 50 IND. ADMIN. CODE 2.1-4-5 Schedules A.1 and A.2 (1992) (repealed 1995). In addition, buildings that qualified for the kit building adjustment were depreciated according to the 30-year life expectancy table.³ See

² In other words, the reduction in the base rate accounted for the building's economical quality and its use of low cost construction materials. See *Hamstra Builders, Inc. v. Dep't of Local Gov't Fin.*, 783 N.E.2d 387, 390 (Ind. Tax Ct. 2003) (citation omitted, footnote omitted).

³ Because the kit building adjustment was not established until 1991, it was obviously not applied to similar buildings before that (i.e., 1989). Nevertheless, an equivalent base rate reduction could be accomplished through a grade factor reduction. See *Bock Prods., Inc. v. State Bd. of Tax Comm'rs*, 683 N.E.2d 1368, 1372 (Ind. Tax Ct. 1997). These buildings were also depreciated pursuant to the 30-year life expectancy table. See 50 IND. ADMIN. CODE 2.1-5-1 (1992) (repealed 1995).

Barth, Inc. v. State Bd. of Tax Comm'rs, 699 N.E.2d 800, 808 (Ind. Tax Ct. 1998) (footnote added).

After the creation of the kit building adjustment, the State Board of Tax Commissioners issued Instructional Bulletin 91-8 to further clarify which light, pre-engineered buildings actually qualified for the kit building adjustment. See *Hamstra Builders*, 783 N.E.2d at 390. See also *Componx, Inc. v. State Bd. of Tax Comm'rs*, 683 N.E.2d 1372, 1374 (Ind. Tax Ct. 1997). Instructional Bulletin 91-8 indicated that the key elements used to identify a kit building were the improvement's interior column and roof beam support. See *Hamstra Builders*, 783 N.E.2d at 390-91 (stating that pursuant to Instructional Bulletin 91-8, a "[k]it building[s] interior columns and roof beam supports may include 'cold form cee channel supports,' tapered columns, H-columns, and steel pole (or post) columns").

In 1995, Indiana's property tax assessment regulations were amended to include a General Commercial Kit (GCK) cost schedule for valuing kit buildings. See 50 IND. ADMIN. CODE 2.2-11-6 (Schedule A.4) (1996) (repealed 2002). The GCK schedule, however, provided minimal detail in describing the essential characteristics of a kit building. See *id.* Therefore, while Instructional Bulletin 91-8 was superseded by the GCK schedule, it still offers guidance in determining whether a building qualifies for assessment under the GCK schedule.

IRC asserts that during the Indiana Board hearing it prima facie established that its tennis facility is a light, pre-engineered building that qualified as a kit building. (See

1989 Pet'r Br. at 8; 1991 Pet'r Br. at 7; 1995 Pet'r Br. at 8.)⁴ Consequently, IRC maintains that it is entitled to: 1) a grade factor reduction equivalent to 50% of the tennis facility's reproduction cost for the 1989 tax year; 2) a kit building adjustment for the 1991 tax year; and 3) application of the GCK cost schedule for the 1995 tax year. (See 1989 Pet'r Br. at 7-8; 1991 Pet'r Br. at 6-7; 1995 Pet'r Br. at 7-8.)

During the Indiana Board hearing, IRC's president, Stephen DeVoe, presented written testimony, oral testimony, and photographs showing that the tennis facility had: (1) a rigid beam steel framing system; (2) cold form open "Z" channels; (3) two "H" columns; (4) "X" bracing; (5) 26-28 gauge metal sidewalls and roof; (6) 14-16 gauge steel purlins and girders; (7) a 120' width; (8) a 20' eave height; (9) 25' uniform bay spacing between its rigid frame components; (10) no concrete floor; (11) no load bearing walls or interior poles; (12) no columns or roof beams; (13) no foundation, and (14) a three row, concrete block sealant surrounding its perimeter. (See 1989 Cert. Admin. R. at 33-42, 399-416; 1991 Cert. Admin. R. at 33-42, 393-410; 1995 Cert. Admin. R. at 32-41, 397-414.)⁵ (See *also* Oral Argument Tr. at 17-33.) This testimony and photographic evidence demonstrates that the tennis facility's columns, roof supports, and other features are consistent with the features that qualify light, pre-engineered buildings for the kit building adjustment. See *Hamstra Builders*, 783 N.E.2d at 390-91. As a result, IRC presented a prima facie case showing that the tennis facility

⁴ For ease of reference in this opinion, the Court will refer to IRC's brief pertaining to its 1989 appeal as "1989 Pet'r Br.," the brief pertaining to its 1991 appeal as "1991 Pet'r Br.," and the brief pertaining to its 1995 appeal as "1995 Pet'r. Br."

⁵ For ease of reference in this opinion, the Court will refer to the administrative record pertaining to IRC's 1989 appeal as "1989 Cert Admin. R.," the administrative record pertaining to its 1991 appeal as "1991 Cert. Admin. R.," and the administrative record pertaining to its 1995 appeal as "1995 Cert. Admin. R."

qualified for the assessment adjustments it requested for each of the years at issue. See *Componx*, 683 N.E.2d at 1374-75.

Despite this evidence, the Indiana Board held that IRC's tennis facility was not a kit building because certain features of the building "change[d] the nature of the building to something more than an economical [kit] building." (See 1989 Cert. Admin. R. at 106; 1991 Cert. Admin. R. at 106; 1995 Cert. Admin. R. at 104.) To support its holding, the Indiana Board relied on the Assessor's claims that because IRC's tennis facility was built on a concrete block foundation, had two concrete block or brick walls, and had a roof pitch well above that of a typical kit building, it was not a kit building. (See 1989 Cert. Admin. R. at 333-36, 356; 1991 Cert. Admin. R. at 327-30, 350; 1995 Cert. Admin. R. at 331-34, 354.)

The Assessor, however, offered no evidence during the Indiana Board hearing to show *how* these features increased the tennis facility's reproduction cost so that it was no longer "economical" (i.e., no longer a kit building). (See 1989 Cert. Admin. R.; 1991 Cert. Admin. R.; 1995 Cert. Admin. R.) This Court has repeatedly rejected the attempts of assessing officials to deny a kit building adjustment by merely pointing to features that do not necessarily disqualify the particular improvement from qualifying as a kit building. See *Morris v. State Bd. of Tax Comm'rs*, 712 N.E.2d 1120, 1124-26 (Ind. Tax Ct. 1999) (building qualified for the kit building adjustment although it had brick walls, large glass windows, and a four foot concrete wall surrounding it). See also *Barker v. State Bd. of Tax Comm'rs*, 712 N.E.2d 563, 568-70 (Ind. Tax Ct. 1999) (building's two foot concrete wall, 240 foot width, and 24 foot wall height were not dispositive as to its entitlement to the kit building adjustment). Rather, this Court has explained that

assessing officials must quantify the effect of the subject improvement's deviations from the basic kit model in order to determine whether those deviations rendered it no longer economical. *See id.* at 571; *Morris*, 712 N.E.2d at 1123-24.

IRC made a prima facie case. The Assessor failed to rebut IRC's prima facie case. Therefore, the Indiana's Board final determination is not supported by substantial evidence.

CONCLUSION

For the above stated reasons, the Court REVERSES the Indiana Board's final determination and REMANDS this case to the Indiana Board. On remand, the Indiana Board is directed to instruct the local assessing officials to: (1) apply a grade reduction equivalent to 50% of the tennis facility's reproduction cost for IRC's 1989 assessment; (2) apply the kit building adjustment to IRC's 1991 assessment; (3) apply the GCK cost schedule to IRC's 1995 assessment; and (4) apply the 30-year life expectancy table for all three of the years at issue.