

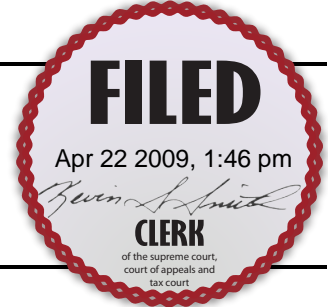
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**IN THE  
INDIANA TAX COURT**

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SUSAN BARKER, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 JOHNSON COUNTY ASSESSOR,<sup>1</sup> )  
 )  
 Respondent. )

Cause No. 49T10-0711-TA-68

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

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**NOT FOR PUBLICATION**  
**April 22, 2009**

FISHER, J.

Susan Barker (Barker) challenges the final determination of the Indiana Board of Tax Review (Indiana Board) valuing her real property for the 2002 tax year (year at issue). Barker raises one issue on appeal, which the Court restates as whether the

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<sup>1</sup> Barker also named the Blue River Township Assessor (Township Assessor) as a respondent in this appeal. (Pet'r V. Pet. for Judicial Review at 1.) The Township Assessor subsequently sought to be dismissed as a party, asserting that the Johnson County Assessor is the only proper respondent on appeal. (Resp't Mot. to Dismiss at 1-2.) The Court now GRANTS the Township Assessor's motion. See Ind. Tax Court Rule 4(B)(2). See also IND. CODE ANN. § 6-1.1-15-5(b) (West 2009) (requiring that the County Assessor be a party to judicial review of an Indiana Board final determination).

Indiana Board erred when it determined that Barker did not present probative evidence to prima facie establish that her assessment was incorrect.

### **FACTS AND PROCEDURAL HISTORY**

Barker owns land on U.S. Highway 31 in Edinburgh, Indiana, upon which four industrial warehouse buildings are situated. One building is a 144,896 square foot building: it contains an 896 square foot office and a 144,000 square foot pre-engineered warehouse (warehouse). For purposes of this appeal, however, Barker challenges the assessed value attributable to the warehouse only.

For the year at issue, the Johnson County Assessor (Assessor) valued Barker's warehouse using the General Commercial Industrial (GCI) light warehouse model for valuing improvements and assigned a grade of D-1. Barker appealed her assessment, first to the Johnson County Property Tax Assessment Board of Appeals (PTABOA), and then to the Indiana Board, arguing that her warehouse should have been assessed using the General Commercial Kit (GCK) model.<sup>2</sup> On June 6, 2005, the Indiana Board issued a final determination in which it determined that Barker prima facie established that her warehouse should have been assessed pursuant to the GCK model, rather than the GCI model. The Indiana Board further concluded that "[a] grade change may

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<sup>2</sup> The General Commercial Industrial (GCI) and the General Commercial Kit (GCK) models are used to facilitate "estimating the replacement cost new of subject improvements[.]" REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (2004 Reprint) (hereinafter, Guidelines) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2(c)), Bk. 2, App. D at 3. While the GCI models vary depending on occupancy type (see Guidelines, Bk. 2, App. G at 3, 14-15), the GCK model is used to determine the replacement cost of light, pre-engineered improvements known as "kit buildings." See *id.* at 3, 16. See also *Hamstra Builders, Inc. v. Dep't of Local Gov't Fin.*, 783 N.E.2d 387, 390 (Ind. Tax Ct. 2003).

be necessary as a result of th[e] change [from the GCI to the GCK model].” (Cert. Admin. R. at 55.)

On remand, the Assessor assessed the warehouse using the GCK model and changed the grade from D-1 to C.<sup>3</sup> As a result, for the year at issue, the approximate assessed value of Barker’s warehouse was \$1,255,565.<sup>4</sup> (See Cert. Admin. R. at 61-68 (footnote added).)

Still believing the assessment to be too high, Barker again appealed to the PTABOA and then to the Indiana Board. On October 16, 2007, after conducting a hearing on the matter, the Indiana Board issued its final determination in which it determined that Barker did not present probative evidence to prima facie establish that her assessment was incorrect.

Barker filed an original tax appeal on November 26, 2007. The Court heard the parties’ oral arguments on December 11, 2008. 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. *Knox County Prop. Tax Assessment Bd. of Appeals v. Grandview Care, Inc.*, 826 N.E.2d 177, 180 (Ind. Tax Ct. 2005).

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<sup>3</sup> A property’s grade describes “the cumulative effects of workmanship, the costliness of materials, and the individuality of design used in constructing an improvement.” Guidelines, Bk. 2, App. E at 3. An improvement’s grade is determined by an individual inspection of these characteristics. See *id.* at 3-6, 9.

<sup>4</sup> Because Barker is challenging only the value of her warehouse, and the assessed value on the property record card includes the office, it was necessary for the Court to isolate the value of the warehouse. This was done by applying a 37% depreciation reduction to \$1,992,960, the replacement cost attributable to the warehouse. (See Cert. Admin. R. at 62.)

Consequently, the Court will reverse a final determination of the Indiana Board only 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 2009). 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.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

### **DISCUSSION AND ANALYSIS**

Under Indiana's assessment system, real property is assessed on the basis of its "true tax value." IND. CODE ANN. § 6-1.1-31-6 (West 2009). "True tax value" does not mean fair market value, but rather "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2. See also A.I.C. § 6-1.1-31-6(c). In turn, a property's market value-in-use "may be thought of as the ask price of property by its owner, because this value . . . represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property." Manual at 2.

To determine an improvement's market value-in-use, Indiana has promulgated a series of guidelines that explain the valuation process.<sup>5</sup> See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (2004 Reprint) (hereinafter, Guidelines) (incorporated by reference at 50 I.A.C. 2.3-1-2(c)), Bks. 1 and 2 (footnote added). While a property's market value-in-use (i.e., true tax value) as ascertained through an application of the Guidelines is presumed to be accurate, that presumption is rebuttable. See Manual at 5. Thus, a taxpayer

shall be permitted to offer evidence relevant to the fair market value-in-use of the property to rebut such presumption and to establish the actual true tax value of the property as long as such information is consistent with the definition of true tax value provided in th[e M]anual and was readily available to the assessor at the time the assessment was made. Such evidence may include *actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles.*

*Id.* (emphasis added). Accordingly, in challenging her assessment, Barker must have presented probative evidence during the administrative hearing that demonstrated that her warehouse's assessed value did not accurately reflect its market value-in-use. See *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006).

During the administrative hearing, Barker argued that the actual market value-in-use of her warehouse was \$742,600. (See Cert. Admin. R. at 62.) To support this

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<sup>5</sup> Although there are three generally accepted appraisal techniques that assessors may use to calculate a property's market value-in-use, the primary method used by Indiana assessing officials is known as the "cost approach." See 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, Manual) (incorporated by reference at 50 I.A.C. 2.3-1-2 (2002 Supp.)) at 3. In valuing an improvement under the cost approach, the assessor estimates the "replacement cost new" of the improvement, and then subtracts any accrued depreciation attributable thereto. See Manual at 13.

claim, she presented an estimate stating that the cost to construct her warehouse on July 21, 1999 was \$1,325,750. (Cert. Admin. R. at 46.) Barker compared this cost to the replacement cost new of \$1,992,960, as calculated by the Assessor.<sup>6</sup> (See Cert. Admin. R. at 62, 81-82 (footnote added).) Barker reasoned that her assessment was wrong because there was such a large disparity between this cost estimate and the Assessor's replacement cost new. (See Cert. Admin. R. at 81-82.) Consequently, Barker argued that adjustments needed to be made to the Assessor's assessment to arrive at the actual market value-in-use of the warehouse. (See Cert. Admin. R. at 81-82, 90-94.)

More specifically, Barker argued that the Assessor should have used a grade of D-1, instead of C, in assessing her warehouse. (Cert. Admin. R. at 81-82.) Barker explained that in doing so, the Assessor would have calculated a replacement cost new that is closer to the warehouse's actual construction cost of \$1,325,750. (See Pet'r Br. at 4; Cert. Admin. R. at 81-82.) Next, Barker stated that by applying a grade of D-1, the Assessor would have also needed to increase the amount of depreciation applied to the warehouse from 37% to 48%. (Cert. Admin. R. at 90-91.) After making these adjustments to the assessment, Barker argued that the correct market value-in-use of her warehouse was actually \$742,600.

In its final determination, the Indiana Board found that Barker's estimate did not constitute probative evidence because she did not compare the building in her estimate to her warehouse and her estimate did not include the cost to construct the office

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<sup>6</sup> Even though Barker compared her estimate with the replacement cost new for both the warehouse and the office, for ease of reference, the Court will refer solely to the replacement cost new attributable to the warehouse. (See Cert. Admin. R. at 62.)

portion of her building. (Cert. Admin. R. at 33.) Consequently, the Indiana Board held that Barker failed to demonstrate the inaccuracy of her assessment. (Cert. Admin. R. at 33.) The Court, however, disagrees.

First, when demonstrating the comparability of one property with another, a taxpayer's statements that "another property 'is similar' or 'is comparable' are nothing more than conclusions, and conclusory statements do not constitute probative evidence." *Fidelity Fed. Sav. & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (citation omitted). Instead, "the taxpayer must provide specific reasons as to why it believes the property is comparable." *Id.* (citation omitted). In this case, Barker has met her burden.

Indeed, Barker's estimate was prepared by Mr. Jay R. Johnson, who owns a construction company that builds pre-engineered steel and post frame buildings similar to Barker's warehouse. (Cert. Admin. R. at 82, 103.) Johnson testified that he determined the specifications used in the estimate by going on-site and viewing Barker's warehouse. (Cert. Admin. R. at 111-12.) The estimate listed the length, width, and eave height of the building as 600 feet, 240 feet, and 24 feet, respectively. (Cert. Admin. R. at 46.) These specifications are identical to those listed on Barker's property record card. (*Cf.* Cert. Admin. R. at 46 *with* Cert. Admin. R. at 62.) The estimate also incorporated a roof load of 20 pounds per square foot, a roof pitch of 1/12, and 26 gauge exterior walls. (Cert. Admin. R. at 46.) Each of these specifications was established as being a part of Barker's warehouse. (See Cert. Admin. R. at 50 (where the Indiana Board noted Barker's testimony as to these specifications of her warehouse).) Furthermore, in response to a question at the Indiana Board hearing,

Johnson affirmed that all of the specifications used in the estimate were “to the subject building.” (Cert. Admin. R. at 98.) Thus, even though Johnson did not provide a one-to-one comparison with each specification listed in the estimate, there is sufficient evidence in the record from which a reasonable mind may conclude that the two buildings are comparable.<sup>7</sup> (See Cert. Admin. R. at 46, 50, 62, 95-98, 111-12 (footnote added).)

Second, the assessed value of the office portion of Barker’s building was never in dispute. (Cert. Admin. R. at 48.) Indeed, the warehouse and the office were assigned separate replacement values on Barker’s property record card. (See Cert. Admin. R. at 62.) Therefore, it was not necessary for Barker’s estimate to reflect the cost to construct the office portion of the warehouse, nor was it necessary for Barker to compare the building in the estimate with the office portion of her building. Accordingly, the Court finds that the Indiana Board’s conclusion that Barker’s estimate is not probative is not supported by substantial evidence.

By introducing probative evidence of her warehouse’s value, Barker prima facie established that the replacement cost new as calculated by the Assessor, and

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<sup>7</sup> Even the Assessor acknowledged, albeit implicitly, that the building in the estimate is comparable to the warehouse. (See Cert. Admin. R. at 117-118 (where the Assessor argued that “it would have been more appropriate to get an estimate of an identical and not a comparable building”).)



consequently the assessed value flowing therefrom, is incorrect.<sup>8,9</sup> Thus, it was incumbent on the Assessor to rebut Barker's case. See *Hometowne Assocs. v. Maley*, 839 N.E.2d 269, 277 (Ind. Tax Ct. 2005). Instead, however, it appears that the Assessor merely relied on the erroneous belief that Barker did not present a prima facie case and therefore chose not to present any evidence in support of the assessment. (See Cert. Admin. R. at 116.) Consequently, the Assessor failed to rebut Barker's prima facie case.

Although Barker demonstrated that her assessment is incorrect, she is not entitled to the \$742,600 assessed value she seeks. As noted above, Barker claimed that her warehouse should have been assigned a grade of D-1, which, in addition to changing the replacement cost new, would also change the amount of depreciation applied to the warehouse. See *supra* p. 6. When challenging a property's grade, however, a taxpayer must present a prima facie case showing what the grade should

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<sup>8</sup> In its final determination, the Indiana Board held that even if Barker's evidence were probative, her argument "separate[d] the assessment into components of land and improvements[.]" whereas "the fundamental goal [is to] arriv[e] at the overall market value-in-use as of the assessment date." (Cert. Admin. R. at 33.) This Court has never held that it is error for a taxpayer to challenge solely the value of land, or solely the value of improvements. Indeed, even the property record card separates the value of Barker's land and improvements. (Cert. Admin. R. at 61.) Thus, it is possible to determine the overall market value-in-use of Barker's property even though her evidence focuses solely on the value of the warehouse. Accordingly, the Indiana Board's conclusion as to this issue is contrary to law and not supported by substantial evidence.

<sup>9</sup> The Court notes that the relevant valuation date for a 2002 assessment is January 1, 1999. See Manual at 4. Barker's estimate, however, determines the warehouse's replacement cost as of July 21, 1999. Nevertheless, neither the Assessor, nor the Indiana Board raised the issue of the six month difference between the relevant valuation date and the date of Barker's estimate. Accordingly, the Court finds that for purposes of this case, the six month difference has no effect on the probative value of Barker's estimate.

be, and submit probative evidence to support that claim. *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 (Ind. Tax Ct. 2002).

Barker provided no evidence that is probative of her warehouse's grade. Instead, Barker merely claimed that her property should be assigned a grade of D-1 because doing so would result in a replacement cost new that was close to the value in her estimate. Because she did not present any evidence relating to her warehouse's grade, Barker is likewise not entitled to the additional depreciation that would accompany a grade change.

### **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 appropriate assessing official to assess Barker's warehouse using 1) a replacement cost new of \$1,325,750; and 2) 37% depreciation.<sup>10</sup>

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<sup>10</sup> The assessed values of the office, the land, and the other buildings on Barker's property are to remain unchanged.