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**IN THE
INDIANA TAX COURT**

KROOSWYK BROTHERS, LLC,)
)
 Petitioner,)
)
 v.) Cause No. 49T10-0205-TA-55
)
NORTH TOWNSHIP ASSESSOR,)
)
 Respondent.)
)

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

NOT FOR PUBLICATION
January 5, 2007

FISHER, J.

Krooswyk Brothers, LLC (Krooswyk) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) valuing its real property for the 2000 assessment year. The sole issue on appeal is whether the Indiana Board erred in not applying the General Commercial Kit (GCK) pricing schedule to certain sections of Krooswyk's improvement.¹

¹ Krooswyk raised several other issues during the administrative hearing process. Those issues, however, were not presented to the Court on appeal.

FACTS AND PROCEDURAL HISTORY

Krooswyk owns an office/light storage facility in Highland, Indiana. For the 2000 tax year, the North Township Assessor (Assessor) valued Krooswyk's improvement using both the General Commercial Mercantile (GCM) and the General Commercial Industrial (GCI) pricing schedules.

Krooswyk subsequently filed a Petition for Review of Assessment (Form 130) with the Lake County Property Tax Assessment Board of Appeals (PTABOA), claiming that two sections of its improvement should have been priced using the GCK model. The PTABOA sustained the Assessor's valuation. Krooswyk then filed a Petition for Review of Assessment (Form 131) with the State Board of Tax Commissioners (State Board). The State Board conducted an administrative hearing on Krooswyk's appeal on May 17, 2001. On April 19, 2002, the Indiana Board issued a final determination denying Krooswyk's request for relief.²

Krooswyk initiated an original tax appeal on May 24, 2002. The Court heard the parties' oral arguments on April 1, 2003. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board. *Wittenberg Lutheran Vill. Endowment Corp. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 486 (Ind. Tax Ct. 2003), *review denied*. Consequently, the Court may reverse a final determination of the Indiana Board only if it is:

² On December 31, 2001, the legislature abolished the State Board of Tax Commissioners (State Board). 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the legislature created the Indiana Board of Tax Review (Indiana Board) as "successor" to the State Board. IND. CODE ANN. §§ 6-1.5-1-3; 6-1.5-4-1 (West 2007); 2001 Ind. Acts 198 § 95. Consequently, when a final determination was issued on Krooswyk's appeal in April of 2002, it was issued by the Indiana Board.

- (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 burden of demonstrating the invalidity of an Indiana Board final determination rests with the challenging party. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 468 (Ind. Tax Ct. 2005), *review denied*. To meet this burden, the challenging party must present a prima facie case. *Id.* The challenging party has presented a prima facie case when it has submitted probative evidence concerning the alleged assessment error. *Id.* Probative evidence is evidence sufficient to establish a given fact and which, if not contradicted, will remain sufficient. *Id.*

DISCUSSION

Krooswyk asserts that the Indiana Board's final determination that sections "D" and "E" of its improvement do not qualify for GCK pricing should be reversed because it is unsupported by substantial evidence. The Court agrees – in part.

Indiana's assessment regulations in effect during 2000 provided that the GCK pricing schedule was to be used for "valuing preengineered and predesigned pole buildings which are used for commercial and industrial purposes." 50 IND. ADMIN. CODE 2.2-10-6.1(a)(1)(D) (1996). The assessment regulations further provided that the GCK

schedule “value[s] the base building on a perimeter area ratio basis and adjust[s] the value based on the various individual components of the building” and, to that end, provided a rate schedule for certain components. *Id.* See also 50 IND. ADMIN. CODE 2.2-11-6, Schedule A.4 (1996). The GCK schedule, however, was not to be applied to those buildings “classified as a special purpose design[.]” 50 I.A.C. 2.2-10-6.1(a)(1)(D).

This Court has previously explained that although these regulations provide little guidance as to which improvements are eligible for GCK pricing, the taxpayer needs to do more than simply describe its structure to establish a prima facie case. Consequently, the Court has instructed taxpayers to somehow link the components in their improvement to those listed in the regulations. For instance, this Court held that a taxpayer sufficiently established a prima facie case by comparing the features of its improvement with those listed in the regulations. See *LDI Mfg. Co. v. State Bd. of Tax Comm’rs*, 759 N.E.2d 685, 688 (Ind. Tax Ct. 2001). Indeed, the taxpayer presented evidence indicating that its structure contained several of the components listed in the regulations. See *id.* In addition, the taxpayer presented a proposed property record card demonstrating how its base rate would be calculated under the GCK schedule and accounted for other various features. See *id.*

Similarly, in *Morris v. State Board of Tax Commissioners*, 712 N.E.2d 1120, 1122-23 (Ind. Tax Ct. 1999), the Court held that the taxpayer established a prima facie case where, among other things, it provided testimony explaining how the structure’s features affected its reproduction cost. While taxpayers are not required to present the evidence highlighted in the aforementioned cases, “where there is little guidance on what kinds of evidence are to be considered, prudent litigants would err on the side of

offering more evidence rather than less evidence.” *Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230, 1239 n.13 (Ind. Tax Ct. 1998).

Section “D”

With respect to its claim that section “D” of its improvement is entitled to GCK pricing, Krooswyk presented the testimony of its tax consultant, Milo Smith, at the administrative hearing. Specifically, Mr. Smith stated:

[Section] D which is this area here, is a kit type structure, there is x-bracing, I’ve got pictures, and there are z-channels for the roof and it measures 30’ [by] 82’[.] It is unfinished with insulation . . . it is a lean-to is what it is. It is between these two [other sections of the] building[.] It uses this [concrete] wall and this [partial concrete] wall and it has z-channels across, x-bracing back here to hold the wall straight. . . . [but t]his back half here, these are metal walls.

See that is just a thin sheet of metal on that back wall over there. . . . So technically, we have a lean-to, but there is no way to price a lean-to, a modified lean-to.

(Cert. Admin. R. at 114, 119.) Mr. Smith also used photographs to demonstrate these features. (See Cert. Admin. R. at 66-69.)

Admittedly, z-channels, x-bracing, and metal walls are characteristic of improvements priced from the GCK schedule. See *LDI*, 759 N.E.2d at 688. See also *King Indus. Corp. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 339, 339-41 (Ind. Tax Ct. 1998). Nevertheless, section “D” is not the type of improvement – overall – contemplated by the GCK schedule. Indeed, as Mr. Smith readily admits, section “D” is neither a “preengineered” or “predesigned” building. Rather, it is merely a space between two pre-existing concrete walls that Krooswyk enclosed, albeit with materials or features typically characteristic of GCK improvements. Because section “D” is not

the type of improvement to be priced under the GCK schedule, the Indiana Board's final determination on the matter is affirmed.

Section "E"

At the administrative hearing, Mr. Smith described the features of section "E" of Krooswyk's improvement:

The rear portion of this building, which is [section] E . . . is a pre-engineered Armco building. It is finished without heat and should be priced from [the] GCK schedule . . . [it has] tapered ceiling beams and z-channels and it . . . [has] x-bracing wall girts and a tapered beam.

(Cert. Admin. R. at 117-18.) Mr. Smith also presented photographs demonstrating the presence of these features. (See Cert. Admin. R. at 66-69.) This evidence establishes a prima facie case that section "E" of Krooswyk's improvement qualifies for GCK pricing. See *LDI*, 759 N.E.2d at 688. See also *Damon v. State Bd. of Tax Comm'rs*, 738 N.E.2d 1102, 1111 (Ind. Tax Ct. 2000) (holding that taxpayer made prima facie case that its improvement should have been valued pursuant to GCK schedule when it showed presence of tapered columns, cee channels, and cross-bracing, all characteristic features of a GCK building).

Despite this evidence, the Indiana Board held that Krooswyk's "presentation lacks [] basic facts . . . such as the gauge of the exterior walls, and the gauge of the girts and purlins." (Cert. Admin. R. at 31.) The Indiana Board also explained that during the administrative hearing, the Assessor testified that section "E" had "heavy, load-bearing steel beams." (Cert. Admin. R. at 31.) The Indiana Board reasoned that while the Assessor's testimony "neither proves nor disproves whether the [section "E"] should

be priced using the GCK schedule, it highlights the lack of factual evidence submitted concerning this building.” (Cert. Admin. R. at 31.)

Simply put, the Indiana Board has failed to deal with Krooswyk’s evidence in a meaningful manner. To the extent that the Court has previously rejected “attempts to justify a denial of [GCK pricing] by merely pointing to features that do not [necessarily] disqualify the particular improvement for the [] adjustment[,]” it will not allow the Indiana Board’s final determination in this case to stand merely because the Indiana Board wanted or preferred different evidence from the taxpayer. *See Barker v. State Bd. of Tax Comm’rs*, 712 N.E.2d 563, 570 (Ind. Tax Ct. 1999) (holding that, among other things, the existence of a concrete wall does not disqualify an improvement for GCK pricing). Thus, the Indiana Board’s final determination as it relates to section “E” of Krooswyk’s improvement is reversed.

CONCLUSION

For the aforementioned reasons, the Indiana Board’s final determination with respect to section “D” of Krooswyk’s improvement is AFFIRMED. The Indiana Board’s final determination with respect to section “E” of Krooswyk’s improvement, however, is REVERSED. Accordingly, the matter is REMANDED to the Indiana Board so as to instruct the local assessing officials to assess section “E” of Krooswyk’s improvement using the GCK schedule.