

Findings of Fact and Conclusions of Law

Issues

1. The issues presented for consideration by the Board were:

ISSUE 1 – *Whether item #3, labeled as utility storage, is real or personal property.*

ISSUE 2 – *Whether the depreciation factor is correct for seven grain bins.*

ISSUE 3 – *Whether an elevator, item #13, exists.*

ISSUE 4 – *Whether items #1 through #12, #14, and #26 warrant abnormal obsolescence.*

ISSUE 5 – *Whether the County Auditor shall reduce the assessment based on the State Chemist Certification of Qualification for Property Tax Deduction in accordance with Ind. Code § 6-1.1-12-38.*

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Ronald D. Fetters filed a Form 131 on behalf of Gibson County Farm Bureau Association, Inc. (the Petitioner), petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on July 30, 2001. The determination of the BOR was issued on October 1, 1996.¹

¹ The timeliness of filing will be discussed in Other Findings.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on March 26, 2002 in Princeton, Indiana before Paul Stultz the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. This hearing was held in conjunction with 3 other petitions filed on behalf of the Petitioner for different parcels. The other Petitions are: 26-019-95-1-3-00001; 26-006-95-1-3-00010; and 26-006-1-3-00011. Each of these petitions is addressed in separate findings.

5. The following persons were present at the hearing:

For the Petitioner:

Mr. Ronald D. Fetters, Tax Representative
Mr. Francis H. Turner, Controller, Gibson County Farm Bureau Co-op
Mr. James O. Elliott, General Manager, Gibson County Farm Bureau
Co-op

For the Respondent:

No representatives were present.

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

For the Petitioner:

Mr. Ronald D. Fetters
Mr. Francis H. Turner
Mr. James O. Elliott.

7. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 - copy of disclosure statement
Petitioner's Exhibit 2 - copy of subject's property record cards (PRC)

Petitioner's Exhibit 3 - copy of statement of the issues with copies of 50 IAC 2.2-3-1(d), 2.2-12-6.1, pages 26 and 28

Petitioner's Exhibit 4 - six photos of subject improvements

Petitioner's Exhibit 5 - four photos of subject improvements

Petitioner's Exhibit 6 - four photos of subject improvements

Petitioner's Exhibit 7- copy of questionnaire completed by Petitioner

Petitioner's Exhibit 8- copy of statement of the issues with the following attached:

- a. Copy of Statement for Deduction of Assessed Valuation (Fertilizer and Pesticide Storage Improvements) for 1995
- b. Copy of letter from Mr. Hancock to Petitioner dated May 8, 1995
- c. Copy of Certification of Qualification for Property Tax Deduction in Accordance with IC §6-1.1-12-38 dated May 8, 1995
- d. Copy of Statement for Deduction of Assessed Valuation (Fertilizer and Pesticide Storage Improvements) for 1997
- e. Copy of letter from Mr. Fetters to Gibson County Auditor dated May 3, 1997
- f. Copy of letter from Mr. Hancock to Petitioner dated April 30, 1997
- g. Copy of Certification of Qualification for Property Tax Deduction in Accordance with IC §6-1.1-12-38 dated April 30, 1997

Petitioner's Exhibit 9 - three photos of subject improvements

Petitioner's Exhibit 10 - Copy of Statement for Deduction of Assessed Valuation (Fertilizer and Pesticide Storage Improvements) with two photos of related improvements, copy of letter from Mr. Hancock to Petitioner dated April 11, 2000, and a copy of Certification of Qualification for Property Tax Deduction in Accordance with 6-1.1-12-38 dated April 11, 2000 for a parcel in Barton Township

Petitioner's Exhibit 11- six photos of subject improvements.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

A. Copy of the Form 131

B. Notice of Hearing

9. The subject property is a bulk fertilizer and grain storage facility located at Highway 165 & Outer Second Street, Owensville, Montgomery Township, Gibson County. The Administrative Law Judge did not view the property.
10. At the hearing, the Petitioner stated the year under appeal is 1995 and the values determined by the BOR are: Land \$18,200; and Improvements: \$144,330.

Jurisdictional Framework

11. 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.
12. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

13. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
14. 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.
15. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).

16. 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*).
17. 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.
18. 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.
19. 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

20. 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 Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
21. 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 Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax*

Comm 'rs, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

22. 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 Bd. of Tax Comm 'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
23. 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 Bd. of Tax Comm 'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
24. 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 Bd. of Tax Comm 'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
25. 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 Bd. of Tax Comm 'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm 'rs*, 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 item #3, labeled as utility storage, is real or personal property.*

26. The Petitioner contends that the subject improvement is a grain dump and is personal property.
27. The local officials have assessed the structure as real property.
28. The applicable rules governing this issue are:
50 IAC 2.2-3-1(d)(39)
Grain elevator machinery and equipment, such as inside or outside, conveyors, spouting, hopper scales, man lifts, aeration systems, grain cleaners, grain dryers, mechanical grain dumping equipment, loading and unloading systems, truck scales, and all processing machinery and equipment are personal property
27. Evidence and testimony considered particularly relevant to this determination include the following:
 - A. The subject improvement is a structure with two (2) open sides and a roof.
 - B. There is no floor; the bottom is an open pit with a grate to keep objects from falling into the pit. Grain passes through the grate. The structure keeps the unwanted material from falling into the pit.
 - C. The drawing attached to the PRC shows the structure to be a metal clad building with two roll-up doors and no heat.

Analysis of Issue 1

28. The Petitioner submitted photographs of the improvement. There is no equipment visible in the photographs. The Petitioner also submitted a copy of 50 IAC 2.2-3-1(d). 50 IAC 2.2-3-1-(d)(39) is quite specific; it concerns equipment, not buildings. The structure under appeal is a building.
29. The Petitioner has not established that the structure in question is personal property. The Petitioner has not proved that his assessment is wrong. 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 Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999).
30. The State will not change the determination of the County Board of Review unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ prove, both the alleged error in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997).
31. In this case, the Petitioner did not, by a preponderance of the evidence, meet the burden of proof. Accordingly, there is no change in the assessment as a result of this appeal.

Issue 2 – *Whether the depreciation factor is correct for seven grain bins.*

34. The Petitioner contends that seven grain bins have been incorrectly depreciated from the thirty-year life expectancy table. The bins should be depreciated from the twenty-year table. The local officials describe these bins as corrugated metal on the drawing attached to the PRC.
35. The applicable rules governing Issue 2 are:
50 IAC 2.2-12-6.1
Commercial and industrial yard improvement depreciation tables
The twenty-year life expectancy table is used for wood and chain fencing, asphalt

and concrete paving, guardrails, wood water storage tanks, underground fuel oil tanks, *steel tanks and corrugated metal bins*, ... and lumber sheds.

Analysis of Issue 2

37. The Petitioner presented photographs of the subject grain bins and a copy of 50 IAC 2.2-12-6.1.
38. On the subject PRC, the County identified the grain bins as corrugated metal bins and assessed them from the section titled “Steel Tanks and Corrugated Metal Bins.” The County then applied the 30-year life table to depreciate the subject tanks.
39. However, steel tanks and corrugated metal bins should be depreciated from the 20-year life table. See 50 IAC 2.2-12-6.1. The Petitioner presented the PRC of the bins showing the local officials assessed them as steel tanks and corrugated metal bins. This is probative evidence that the bins were either steel tanks or corrugated metal bins, and therefore should be depreciated as such.
40. The Respondent did not present any evidence rebutting the Petitioner’s case. Accordingly, there is a change in the assessment of the bins.

Issue 3 – Whether an elevator, item #13, exists.

41. The Petitioner claims that item #13, an elevator, did not exist on the March 1, 1995 assessment date.
42. The drawing attached to the PRC contains a notation regarding a metal elevator annex; however, there is no date on the drawing.

Analysis of Issue 3

43. The Respondents failed to appear at the hearing to present evidence in support of their assessment. The only evidence presented indicates that the elevator does not exist on the subject property. The Board determines the undisputed testimony of Mr. Fetters and Mr. Elliott must prevail concerning this issue. Accordingly, there is a change in the assessment as a result of this issue.

Issue 4 – *Whether items #1 through #12 (various grain bins and storage facilities), #14 (warehouse), and #26 (a tank) warrant abnormal obsolescence.*

44. The Petitioner contends that the improvements warrant abnormal obsolescence. Items #1 through #12 warrant 80% obsolescence, item # 14, a warehouse, warrants 55% obsolescence, and item #26, a steel tank, warrants 60% obsolescence.

45. The current assessment reflects no obsolescence.

46. The applicable rules governing Issue 4 are:

50 IAC 2.2-10-7(e)(1)

Functional obsolescence may be caused by, but is not limited to, the following:

- (A) Limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan.
- (B) Inadequate or unsuited utility space.
- (C) Excessive or deficient load capacity.

50 IAC 2.2-10-7(e)(2)

Economic obsolescence may be caused by, but is not limited to, the following:

- (A) Location of the building is inappropriate for the neighborhood.
- (B) Inoperative or inadequate zoning ordinances or deed restrictions.
- (C) Noncompliance with current building code requirements.

- (D) Decreased market acceptability of the product for which the property was constructed or is currently used.
- (E) Termination of the need of the property due to actual or probable changes in economic or social conditions.
- (F) Hazards, such as the danger fro floods, toxic waste, or other special hazards.

47. The applicable case law governing Issue 4 is:

***Ronald Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998)**

Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it.

***Canal Square Limited Partners v. State Board of Tax Commissioners*, 694 N.E. 2d 806, 807 (Ind. Tax 1998)**

Obsolescence may be quantified using generally recognized appraisal principles.

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

- A. The facility is closed four or five months out of the year.
- B. The amount of grain handled by the facility was 35% of total capacity.
- C. The rail tracks were in poor condition in 1995 and abandoned in 1998.
- D. The facility would close before repairing any breakdown of \$50,000 to \$100,00.
- E. Item #14 on the PRC's summary of improvements would be exempt if it would have been built after 1991. It was built to unload railroad cars and this is no longer done.
- F. Item #26 on the PRC's summary of improvements is a steel tank used for liquid fertilizer. The tank is not in compliance with IC 15-3-3-12 and cannot be used after July 1, 1996 without extensive work.

G. Per Petitioner's Exhibit 7, this location showed a profit until 1997 when the rail became unreliable.

Analysis of Issue 4

49. The Petitioner submitted a written statement and testimony to support the claim for obsolescence. The Petitioner identified numerous possible causes of obsolescence, including the fact that railroad cars can no longer be unloaded, however the Petitioner did not identify how this causes a loss in value to the property.
50. The Petitioner did not quantify the obsolescence requested, which is one of the requirements necessary to prevail in a request for obsolescence. Petitioner's Exhibit 7 states that the location was profitable until 1997; the appeal is for 1995.
51. The Petitioner has not proven or quantified a loss in value, using recognized appraisal methods, to the subject improvements. Instead, the Petitioner merely lists possible causes of obsolescence and then requests and amount. There was no explanation given on how the amount of obsolescence requested was determined by the Petitioner. In fact, the Petitioner seems to be requesting obsolescence on the steel tank because it cannot be used after July 1, 1996. The year under appeal is 1995, and the fact that the tank cannot be used after July 1, 1996 would have no bearing on the assessment for year 1995.
52. In this case, the Petitioner did not, by a preponderance of the evidence, meet the burden to prove that the current assessment is incorrect or that the obsolescence factors requested are correct. Accordingly, there is no change in the assessment as a result of this appeal.

Issue 5 – *Whether the County Auditor shall reduce the assessment based on the State Chemist Certification of Qualification for Property Tax Deduction in accordance with Ind. Code § 6-1.1-12-38.*

53. The Petitioner contends that the County Auditor never deducted the appropriate improvements in accordance with Ind. Code § 6-1.1-12-38.

54. The applicable rules governing Issue 5 are:

IC § 6-1.1-12-38

(a) A person is entitled to a deduction from the assessed value of the persons' property in an amount equal to the difference between:

- (1) the assessed value of the persons' property, including the assessed value of the improvements made to comply with the fertilizer storage rules adopted by the State Chemist under IC 15-3-3-12 and the pesticide storage rules adopted the State Chemist under IC 15-3-3.5-11; minus
- (2) the assessed value of the persons' property, excluding the assessed value of the improvements made to comply with the fertilizer storage rules adopted by the State Chemist under IC 15-3-3-12 and the pesticide storage rules adopted by the State Chemist under IC 15-3-3.5-11.

(b) To obtain the deduction under this section, a person must file a certified statement in duplicate, on forms prescribed by the state board of tax commissioners, with the auditor of the county in which the property is subject to assessment. In addition to the certified statement, the person must file a certification with the State Chemist listing the improvements that were made to comply with the fertilizer storage rules adopted by the State Chemist under IC 15-3-3-12 and the pesticide storage rules adopted by the State Chemist under IC 15-3-3.5-11. The statement and the certification must be filed before May 10 of the year preceding the year the deduction will first be applied. Upon the verification of the statement and certification by the assessor of the township in which the property is subject to assessment, the county auditor shall allow the deduction.

55. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The Petitioner claims there are items that should be deducted from the assessed valuation per State Form 45651.
 - B. The Petitioner submitted the Statement for Deduction of Assessed Valuation for 1995 with letter and certification from the State Chemist.
 - C. The Petitioner submitted the certification for 1995.

Analysis of Issue 5

56. The state statute, Ind. Code § 6-1.1-12-38, provides for property tax relief for certain improvements, providing the appropriate documentation is filed within the statutory time limits.
57. The Board determines the State Chemist found certain improvements eligible for the exemption under Ind. Code § 6-1.1-12-38. The improvements are items 15 (utility storage), 31 and 32 (retaining walls), and 35 (GCK building) per summary of improvements of the PRC.
58. The Petitioner did substantiate that the required documentation was, in fact, filed in a timely manner. See ¶ 55 above.
59. The Petitioner did meet his burden by a preponderance of the evidence, that the deduction certified by the State Chemist should be granted. Accordingly, the Auditor shall apply the deduction to the 1996 tax bill as a result of this issue.

Other Findings

Timeliness of the Appeals

60. In May of 1996, the Petitioner's representative filed four (4) Form 130 petitions with the Gibson County Auditor. The Petitioner claims that no notice of the Gibson County

Board of Review was ever sent. Petitioner presented copies of letters sent to Mr. Greubel, Auditor of Gibson County, as well as letters sent to Ms. Jane Chrisman and Ms. Marilyn Meighen of the State Board of Tax Commissioners. These letters detailed Petitioner's attempts to have notice sent to him. No letters from the above mentioned persons to the Petitioner were included.

61. Petitioner also included several letters to Ms. Ann O'Conner, Public Access Counselor. On June 28, 2001, the Petitioner received from Ms. O'Conner a letter, and four Form 130 petitions with the decision of the Grant County Board of Review, file stamped by Ms. O'Conner on June 28, 2001. According to the Form 130 petitions, the County Board's decision was made in October 1996.
62. No representative of the Respondent appeared at the hearing to testify whether notice was mailed to Petitioner in October of 1996, nor to explain, if notice was not sent, why it was not sent. For these reasons, the Board will accept the Form 131 petitions as timely filed and consider all issues presented on them.

Summary of Final Determination

Issue 1 – *Whether item #3, labeled as utility storage, is real or personal property.*

63. The Petitioner did not prevail by a preponderance of the evidence on Issue 1. There is no change in the assessment with regard to this issue.

Issue 2 – *Whether the depreciation factor is correct for seven grain bins.*

64. The Petitioner did prevail by a preponderance of the evidence on Issue 2. Accordingly, the grain bins should be depreciated from the commercial, twenty-year life expectancy table.

Issue 3 – *Whether an elevator, item #13, exists.*

65. The Petitioner did prevail by a preponderance of the evidence on Issue 3. Accordingly, the elevator should be removed from the assessment.

Issue 4 – *Whether items #1 through #12, #14, and #26 warrant abnormal obsolescence.*

66. The Petitioner did not prevail by a preponderance of the evidence on Issue 4. There is no change in the assessment with regard to this issue.

Issue 5 – *Whether the County Auditor shall reduce the assessment based on the State Chemist Certification of Qualification for Property Tax Deduction in accordance with Ind. Code § 6-1.1-12-38.*

67. The Petitioner did prevail by a preponderance of the evidence on Issue 5. Accordingly, the Auditor shall apply the deduction to the 1996 tax bill as a result of this issue.

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

Chairman, 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.