

REPRESENTATIVES FOR PETITIONER: Rob Pharr, Mellander & Associates

REPRESENTATIVES FOR RESPONDENT: Rita J. Sherretz, Posey County Assessor and Margie N. Grabert, Black Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ADM MILLING,)	Petition No.: 65-018-98-1-4-00004
)	
Petitioner)	County: Posey
)	
v.)	Township: Black
)	
POSEY COUNTY BOARD OF)	Parcel No.: 0090090700
REVIEW AND BLACK)	
TOWNSHIP ASSESSOR,)	Assessment Year: 1998
)	
Respondents.)	

Appeal from the Final Determination of the
Posey County Board of Review

November 21, 2002

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board was:
Whether functional and economic obsolescence depreciation is warranted.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Rob Pharr on behalf of ADM Milling (Petitioner) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on October 5, 1998. The Form 115 determination of the Posey County Board of Review (County Board) was issued on September 8, 1998.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on January 19, 2000 in Mount Vernon, Indiana before Betsy Brand, the designated Hearing Officer authorized by the Board.
4. The following persons were present at the hearing:
For the Petitioner: Rob Pharr, Mellander & Associates

For the Respondent: Rita J. Sherretz, Posey County Assessor, and
Margie N. Grabert, Black Township Assessor
5. The following persons were sworn in as witnesses and presented testimony:
For the Petitioner: Rob Pharr

For the Respondent: Rita J. Sherretz, and
Margie N. Grabert

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – Copy of Power of Attorney.

- a. Copy of property record card
- b. Copy of form 115
- c. Letter from ADM Milling, Re: comparison to a new facility
- d. Functional obsolescence calculation
- e. Obsolescence Report
- f. History of ownership
- g. Partial plat of ADM Milling parcels
- h. Functional and economic obsolescence quantification estimate
- i. New construction cost comparison
- j. Copy of page 40, section 17, Marshall & Swift, Re: Grain elevators
- k. Copy of property record cards for ADM Milling parcels
- l. Sales comparison based on milling capacity

Petitioner's Exhibit 2 – Photographs of ADM Milling property

Petitioner's Exhibit 3 – Plat of ADM Milling parcels.

For the Respondent:

Respondent's Exhibit 1 - Copy of the property record card.

Respondent's Exhibit 2 – Letter from Black Township Assessor, Re: PRC error.

7. The following additional items are officially recognized as part of the record of proceedings:

- A. Board Exhibit A – Subject Form 131 Petition with attachments.
- B. Board Exhibit B – Notice of Hearing on Petition.

8. The Hearing Officer did not view the subject property, which is a flour milling plant located at Second Street in Mount Vernon, Indiana (Black Township, Posey County).

The assessed value for 1998 as determined by the County Board is:

Land: \$12,130

Improvements: \$742,930

9. Mr. Pharr testified that he is an affiliate member of the Appraisal Institute, a registered tax consultant in the state of Texas, and a certified Illinois assessing officer. Mr. Pharr also testified that he receives a flat fee from the client for his services.

Jurisdictional Framework

10. 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.
11. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
13. 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.
14. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
15. 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*).
16. 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.

17. 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.
18. 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

19. The State does not undertake to reassess property, or to make the case for the petitioner. The State’s 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).
20. 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.]
21. 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.]

22. 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.]
23. 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).
24. 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 the Issue

ISSUE: *Whether functional and economic obsolescence depreciation is warranted*

25. The issue concerns obsolescence depreciation.

26. The Petitioner contends that the improvements located on the subject parcel should receive a minimum of twenty five percent (25%) obsolescence depreciation because it is outdated and less productive and efficient than modern facilities. The Petitioner also asserts that the 1995 property record card indicates 25% depreciation is warranted, however, it was never applied.
27. The Respondent contends that although the property record card has a notation regarding the application of twenty five percent (25%) obsolescence, it is a computer error and obsolescence is not applied and should not be applied to all of the improvements.
28. The County Board applied twenty five percent (25%) to the buildings constructed in 1900. No obsolescence was applied to the remaining structures. (See Respondent's Ex. 1).
29. The applicable rules governing this issue are: 50 IAC 2.2-10-7, which defines the concept of depreciation, 50 IAC 2.2-10-5(d)(16), which defines obsolescence depreciation, 50 IAC 2.2-10-7(e)(1), which describes the causes of functional obsolescence, and 50 IAC 2.2-10-7(e)(2), which describes the causes of economic obsolescence.
30. Evidence and testimony considered particularly relevant to this determination include the following:
 - a. The subject property represents a flour milling facility originally constructed in 1900. Several additional structures, storage bins, and additions have been added since the original construction date.
 - b. The County Board of Review granted twenty five percent (25%) obsolescence depreciation for *only* the buildings constructed in 1900. (Petitioner's Ex. 1b).
 - c. The Petitioner asserts that obsolescence is evident through the plant, not just in the buildings constructed prior to 1900.
 - d. The Petitioner contends that obsolescence is warranted for the facility due to the property's land locked status with no room left for expansion, which hinders production flow. (Pharr Testimony).

- e. The 1995 property record card indicates in the memorandum section that twenty five percent (25%) obsolescence depreciation was warranted for the facility. However, it was never applied to the assessment. (Pharr Testimony; Petitioner's Ex. 1a).
- f. The Respondent contends that the notation regarding obsolescence on the 1995 property record card is erroneous and the application of (25%) obsolescence depreciation for the entire plant was not applied and should not be applied.
- g. The Petitioner offered two calculations to quantify the amount of functional obsolescence attributable to the facility.

Analysis of the ISSUE

1. The concept of depreciation and obsolescence

- 31. "Depreciation" is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extend of it in improvements being valued. 50 IAC 2.2-10-7.
- 32. "Obsolescence depreciation" is the percentage of reduction of value due to functional and economic causes. Obsolescence depreciation is determined independently from the physical depreciation allowance. 50 IAC 2.2-10-5(d)(16).
- 33. 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)(1).
- 34. 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 danger from floods, toxic waste, or other special hazards.
50 IAC 2.2-10-7(e)(2).

2. Burden regarding obsolescence claims

- 35. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).
- 36. 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. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).
- 37. Obsolescence may be quantified using generally recognized appraisal principles. *Canal Square Limited Partners v. State Board of Tax Commissioners*, 694 N.E. 2d 806, 807 (Ind. Tax 1998).

3. The evidence submitted

- 38. The Petitioner contends that functional/economic obsolescence depreciation is warranted in the amount of twenty five percent (25%) because the subject facility is outdated and extremely less productive and efficient than modern facilities.
- 39. In support of the claim for obsolescence, the Petitioner submitted the testimony of Mr. Pharr, photographs, and calculations quantifying the requested factor. The calculations

include one based on a substitute building utilizing 25% less production space and the other calculation based on a comparison with a flourmill in Houston, Texas.

4. The reliability and probity of the evidence

40. 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.
41. Under *GTE North, Inc., supra*, and *Thornton Telephone Company v. State Board of Tax Commissioners*, 629 N.E. 2d 962,965 (Ind. Tax 1994), the State may give due consideration to the reliability of studies presented by a taxpayer, but must provide an explanation if it finds the studies unreliable. Included in this requirement is the prescription by the Tax Court in *GTE North* that the State defines what standards it will use to define whether a study or mode of analysis is “recognized” or “accepted”. *GTE North, Inc.*, 629 N.E. 2d at 888.
42. The United States Supreme Court has defined how a study or analysis becomes recognized or accepted. In *Daubert v. Merrill Dow Pharmaceuticals*, 113 S. Ct. 2786 (1993), the Court addressed whether scientific evidence has sufficient indicia or reliability to allow its admission under the Federal Rules of Evidence. Although the State is accorded broad discretion to consider such evidence as it deems pertinent (see IC 4-22-5-1), and therefore it is not expressly subject to formal rules of evidence, the State finds the analysis of relevancy presented in *Daubert*, which was cited with approval by the Indiana Supreme Court in *Steward v. State*, 652 N.E. 2d 490 (Ind. 1995), particularly instructive to the State in determining what relevancy to accord petitioner’s calculations for purposes of weighing its evidentiary value.
43. In *Daubert*, the Court held that to be relevant, “[p]roposed testimony must be supported by appropriate validation – i.e. ‘good grounds’, based on what is known”. 113 St. Ct. at 2795. In order to determine whether scientific or technical evidence is based on good grounds, a court or administrative agency must determine “whether it can be (and has

been) tested. ‘Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from other fields of human inquiry’.” *Id.* At 2796 (citing Green, *Expert Witnesses and Sufficiency of Evidence in Toxic Substances Litigation: The Legacy of Agent Orange and Bendectin Litigation*, 86 Nw. U.L. Rev. 643, 6445 (1992)). The Court went on to state the “[a]nother pertinent consideration is whether the theory or technique has been subjected to peer review and publication...submission to the scrutiny of the scientific community is a component of ‘good science’, in part because it increases the likelihood that substantive flaws in methodology will be detected.” *Id.* At 2797. Furthermore, the general acceptance of a particular theory can be important in weighing its relevance. *Id.*

44. In addition to the general requirements for relevancy discussed above, both the United States Supreme Court and the Supreme Court of Indiana have recognized that scientific evidence can be reliable for one purpose and not another, and that to be relevant to a particular inquiry, the proponent of the evidence must establish a valid scientific connection between the theory and the specific facts of the case. *Daubert*, 113 S. Ct. at 2796; *Steward*, 652 N.E. 2d at 498.
45. The State believes that the Petitioner’s evidence is meant to be offered as scientific evidence within the meaning of that term as defined by *Daubert* and *Steward*. Statistical analysis in the realms of finance and economics is a sophisticated inquiry and well-regarded studies satisfy the requirements of “good science” as described in *Daubert* and its progeny.
46. Because of the informality of the State’s proceedings it would be impractical to require exhaustive determinations regarding the admissibility of evidence at the time of the administrative hearings. Further, it would be unduly burdensome and time-consuming for the State Board to require taxpayers and local taxing officials alike to participate in such determinations at the hearings. Therefore, the State Board’s general position is to admit the evidence proffered, and to consider the relevancy in the weighing of the evidence.

47. In addition to the factors applied by the courts to establish reliability, the State will consider a number of additional factors to determine the relevancy of evidence regarding obsolescence. The first factor is whether the alleged maladies of the property actually lead to a loss of value as required by 50 IAC 2.2-10-7(e). Evidence of such loss of value may be based on the assessor's observations of the property, statistical evidence establishing a correlation between the faults of the property and its value, or from anecdotal evidence if sufficiently reliable. In many cases there will be causes of obsolescence that cannot be easily seen by the assessor. In these cases, it is incumbent on the taxpayer to establish a link between the evidence and the loss of value. For statistical evidence this may be established by providing sufficient evidence of a correlation of the evidence to value. For anecdotal evidence establishing reliability is more difficult. Statements by the taxpayer or consultant regarding the value of the property are inherently unreliable unless they can be confirmed either by other statements or by the opinions of impartial observers.

5. Evaluation of the evidence

48. The Petitioner contends that twenty five percent (25%) functional/economic obsolescence depreciation is warranted because the subject facility is outdated and extremely less productive and efficient than modern facilities. In addition, the Petitioner asserts that the property is landlocked and there is no room for expansion.

49. The Petitioner also contends that the property received twenty five percent (25%) obsolescence depreciation in the 1989 reassessment. However, no evidence was presented to support the contention. The Petitioner's conclusory statements regarding the allowance of obsolescence in the 1989 reassessment lack any support and are therefore, not probative to this appeal.

50. Further, the Petitioner contends that the 1995 property record card indicates, in the memorandum section that twenty five percent (25%) obsolescence depreciation was to be applied to the subject property. (See Petitioner's Ex. 1a). The Petitioner asserts that the

assessor failed to apply the obsolescence depreciation noted on the property record card to the subject facility.

51. The Respondent rebutted that there was a computer error on the 1995 property record card, which indicated the application of twenty five percent (25%) obsolescence depreciation for the property. (See Respondent's Ex. 2). The Respondent asserts that no obsolescence was applied to the subject 1995 property record card and no obsolescence should be applied.
52. The burden was on the Petitioner to demonstrate that the obsolescence noted on the 1995 property record card was not a computer error and should have been applied to the entire property.
53. The Petitioner submitted a copy of the 1995 property record. Although the property record card contains a notation regarding the twenty five percent (25%) obsolescence, it does not state that the obsolescence is to be applied to all the structures and tanks, nor is there a applicable date with the notation. The Petitioner fell short of showing with probative evidence that according to the property record card, the obsolescence was to have been applied in the 1995 assessment.
54. At the State hearing, the Petitioner requested that obsolescence be applied to the remaining buildings listed on the property record card. Although the County Board is in agreement that some obsolescence does exist on the older structures located on the parcel, there is no agreement that obsolescence is warranted for the structures built after 1900. Therefore, the Petitioner has the burden of proving that obsolescence is inherent in the overall facility.
55. To prevail, the Petitioner must first show that obsolescence does exist, and then quantify their request for the obsolescence using recognized appraisal methodology.
56. A definition of economic obsolescence was offered along with a list of alleged reasons the facility suffers a loss in value. (See Petitioner's Ex. 1e). However, no calculation was presented to quantify an amount of economic obsolescence depreciation.

57. On the subject Form 133, the Petitioner also listed fire damage and unused bins as part of the deficiencies relative to the request for obsolescence. At the hearing, no connection between the unused bins in the elevator or fire damage and the obsolescence request was made, and those contentions are deemed immaterial to this appeal.
58. The Petitioner asserts that due to the property's land locked status, there is no room for expansion. However, the only evidence submitted in support of this contention was a plat map that indicates the boundaries as the Ohio River, Second Street, Pearl Street, and a railroad track. (See Petitioner's Ex. 3). While the river and railroad tracks appear to be a deterrent to expansion, there was no evidence to prove the property is "landlocked" on the other two sides. In fact, there is a note on the plat map that indicates a gravel parking area for trucks on Pearl Street across from the subject facility.
59. The Petitioner failed to correlate how the facility's landlocked status is relative to its loss in value or income due to obsolescence. The first factor to consider in determining the relevancy of evidence in obsolescence depreciation appeals is whether the alleged maladies of the property actually lead to a loss of value as required by 50 IAC 2.2-10-7(e).
60. Recognition of obsolescence beyond physical depreciation is a profession that requires supportable evidence. This recognition of cause and effect may be supported by use of some of the following techniques and methods: (1) the paired data analysis, (2) a capitalization of rent loss, (3) the breakdown method, (4) the market extraction method, and (5) the age-life method. Even when fully prepared to the requirements acceptable in professional appraisal standards and ethics, these techniques and methods are considered support approaches in justifying and documenting obsolescence.
61. The Petitioner offered a definition of functional obsolescence (See Petitioner's Ex. 1e) and two calculations to quantify the amount of functional obsolescence. One calculation indicates twenty five percent (25%) functional obsolescence depreciation and the other indicates functional obsolescence depreciation in the amount of fifty one and sixty five

hundreds percent (51.65%). These calculations represent percentages of obsolescence depreciation that are extremely different. This disparity of information is confusing and, in addition, other than testimony, no probative evidence was submitted that would prove functional obsolescence exists.

62. In support for the request of twenty five percent (25%) obsolescence depreciation, the Petitioner asserts the overall physical building square footage of a new facility at the Mr. Vernon location could be reduced by approximately twenty-five percent (25%). (See Petitioner's Exhibit 1c). The calculation presented in Petitioner's Exhibit 1d merely compares the current reproduction cost to the reproduction cost of the facility with twenty-five percent (25%) less area. The calculation simply does not offer proof that functional obsolescence exists in the facility, only that a smaller building would have a lower assessment. (See ¶ 60).
63. In a second attempt to quantify obsolescence, the Petitioner offered a comparison between the subject facility and a newer modern facility located in Houston, Texas, which is much larger. (See Petitioner's Ex. 1h). The calculation compares the assessor's reproduction cost for the subject facility to the purported actual construction costs plus Marshall & Swift construction costs (grain elevator) for the newer property.
64. The replacement cost for the comparable is actually Harvest States' milling investment as of the facility's first quarter ending August 31, 1997. It is not known if this is the complete investment planned for this facility nor is it clear what this investment includes. The calculation does not provide a true comparison. In addition, a size adjustment was used in the calculation but no explanation or supportive evidence was offered about how the 1.15 adjustment was derived, nor does the Petitioner provide any explanation to show how the subject property is comparable to the one discussed in the exhibit.
65. Further, the Petitioner did not adjust the 1997 cost for the comparable to the reproduction cost of the subject, which are 1991 costs less fifteen percent (15%). More importantly this calculation purports to show that the indicated functional obsolescence is fifty one and sixty five hundreds percent (51.65%). This is incorrect. The calculation actually

shows total accrued depreciation, which includes physical depreciation. The Petitioner did not address the amount of physical depreciation already applied to the facility.

66. In *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d, 1230 (Ind. Tax 1998) the court states, “It is important to keep in mind that the obsolescence of a given improvement must be tied to a loss of value. In the commercial context, that loss of value usually means the loss of income generated by the property. See *Simmons*, 642 N.E. 2d at 560-61; *GTE N.*, 634 N.E. 2d at 887.” While the Petitioner presented some testimony and evidence that referenced production amounts, no probative evidence of a loss of income was established.
67. The Petitioner’s chart of sales comparison also mixes market-based information with assessed value. (Petitioner’s Ex. 11). The true tax value of the subject facility was used for the comparison, while the sale price of each comparable property was the basis for the calculation. Sale price does not necessarily indicate value and a true comparison cannot be made when the calculation mixes incompatible information.
68. Further, the Petitioner compared the building-to-land ratio of the subject facility to the average building-to-land ratio of twelve flourmill properties. (Petitioner’s Ex. 11). No evidence was offered to support the ratio amounts presented in the comparison. In addition, a correlation between this evidence and the loss of value in the property was not established. (See ¶ 66).
69. The burden was on the Petitioner to present a prima facie case as to obsolescence. See *Miller Structures*, 748 N.E. 2d 943 at 954. In consideration of the directive within *Clark, supra.* and for all the reasons stated above, the Petitioner has failed to meet their burden in this appeal. Accordingly, no change is made to the assessment.

Other Findings

70. The Petitioner claimed the obsolescence should be applied to the entire plant. However, only one of the four parcels' assessments was appealed in regard to obsolescence. The taxpayer must file a separate appeal for each parcel.

Summary of Final Determination

Determination of ISSUE: *Whether functional and economic obsolescence depreciation is warranted*

71. The Petitioner failed to, by a preponderance of the evidence, to meet its two-prong burden to qualify and quantify the amount of obsolescence requested. Accordingly, there is no change in the assessment as a result of this issue.

This Final Determination of the above captioned matter is issued this 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.