STATE OF INDIANA
Board of Tax Review

In the matter of the Petitions for Review)
of Assessment, Form 131)

Petition No.: 01-017-95-1-4-00003	Parcel No.: 017-010-00001000
Petition No.: 01-021-95-1-4-00004	Parcel No.: 021-010-00000302
Petition No.: 01-002-95-1-4-00006	Parcel No.: 002-010-00001900
Petition No.: 01-021-95-1-4-00006	Parcel No.: 021-010-00000304

Assessment Year: 1995

Petitioner: Adams County Cooperative Association, Inc.
P.O. Box 158
Monroe, IN 46772

Petitioner Representative: Ronald D. Fetters
1348 North Lakeview Drive
Frankfort, IN 46041

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

1. Whether 55% obsolescence depreciation is warranted for the subject grain elevator annexes and metal tank storage facilities.

2. Whether the vacant 2.62 acre tract of land should be considered "unusable undeveloped" for the unimproved parcel #021-010-00000304.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Adams County Cooperative Association, Inc. (Adams County Co-op) filed four petitions requesting a review by the State. The Form 131 petitions were filed on April 22, 1996. The Adams County Board of Review's Final Determinations are dated March 25, 1996. The assessment year under appeal is 1995.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on May 9, 2001 before Hearing Officer Patti Kindler. Testimony and exhibits were received into evidence. Ronald D. Fetters and Dan Piper represented Adams County Co-op. Judith E. Affolder and Jeffrey L. Kiess represented Adams County.

4. At the hearing, the subject Form 131 petitions were made part of the record and labeled Board Exhibit A. Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following documents were submitted as evidence:
Board Ex. C - The Request for Additional Evidence from the Respondents
Board Ex. D – Copy of a letter from the hearing officer to Mr. Fetters
Board Ex. E - The Request for Additional Evidence from the Petitioner

Petitioner's Ex. 1 – Form 131 Attachments requesting obsolescence with pages 18 & 28 from Rule 12, Regulation #17

Petitioner's Ex. 2 – Copies of sixteen-grain elevators throughout Indiana that reflect obsolescence

Petitioner's Ex. 3 – Cover and pages 18-19 from the November/December 1990 issue of the *Grain Journal*

Petitioner's Ex. 4 – Copy of the PRC for Central States Enterprises indicating a base rate per bushel capacity

Petitioner's Ex. 5 – Copy of the PRC for Lehman Feed Mill to indicate a base rate per bushel capacity

Petitioner's Ex. 6 – Photographs of the Monroe Elevator (Parcel #017-010-00001000)

Petitioner's Ex. 7 – Photographs of the Geneva Elevator (Parcel #021-010-00000302)

Petitioner's Ex. 8 – Photographs of the Williams Elevator (Parcel #002-010-00001900)

Petitioner's Ex. 9 – Copy of total harvest-time inbounds records for corn and soybeans

Petitioner's Ex. 10 – Financial statements for Adams County Co-op for the years 1994 to 2000 Confidential

Petitioner's Ex. 11 – Copy of questions answered by Mr. Piper regarding the three subject elevators

Petitioner's Ex. 12 – Photographs of the subject vacant parcel at issue, parcel # 021-010-00000304.

5. At the hearing, the Respondents requested additional time to review and rebut the Petitioner's exhibits, which were not submitted in their entirety at the County Board of Review hearing. The date of submission for the Request for Additional Evidence from the Respondents was May 19, 2001. On May 16, 2001, the State Board received the additional information from the Respondents. At that time, the information was entered into the record as:

Respondent's Ex. 1 – Additional evidence submitted for Petition number 01-021-95-1-4-00004

Respondent's Ex. 2 – Additional evidence submitted for Petition number 01-017-95-1-4-00003

Respondent's Ex. 3 – Additional evidence submitted for Petition number 01-002-95-1-4-00006

Respondent's Ex. 4 – Additional evidence submitted for Petition number 01-021-95-1-4-00006

Respondent's Ex. 5 – Letter from Respondents to STB with summary of additional evidence, dated 5/14/01.

6. After receiving a copy of the additional evidence from the Respondents, Mr. Fetters sent a letter to the State Board, dated May 17, 2001 and labeled Petitioner's Ex. 13, stating that he did not recall that additional time to review the evidence was given to the Respondents. The hearing officer sent a reply along with a copy of the signed Request for Additional Evidence form to Mr. Fetters, labeled Board Ex. D. Consequently, Mr. Fetters also requested additional time to prepare his rebuttal to the additional evidence submitted by the Respondents, labeled Petitioner's Exhibit 14. The final date of submission was set for June 5, 2001 for the Petitioner's rebuttal.

7. On June 5, 2001, the State Board received a response from the Petitioner. The response was entered into the record and labeled Petitioner's Exhibit 15.

8. The parties to the appeal agreed that the assessed values for 1995 are:
Parcel #017-010-00001000 Land - $1,930, Improvements - $40,770.
Parcel #021-010-00000302 Land - $2,900, Improvements - $92,870
Parcel #002-010-00001900 Land - $ 430, Improvements - $109,070
Parcel #021-010-00000304 Land - $2,630, Improvements- $0.

9. The subject property consists of three (3) grain elevator operations and one (1) unimproved plat all located in Adams County. Parcel #017-010-00001000, aka the Monroe Elevator is located on East Andrews Street in Monroe Township.

Parcel #021-010-00000302, aka the Geneva Elevator is located at 500 East Shackley Street in Geneva Township. Parcel #002-010-00001900, aka the Williams Elevator is located at 1988W – 1200N in Root Township. Parcel #021-010-00000304 is unimproved acreage located on South Mill Street in Geneva Township. The hearing officer did not view the properties.

Issue 1 - Obsolescence depreciation

10. Adams County Co-op owns three (3) grain elevators in Adams County on three (3) separate parcels. All three (3) elevator facilities are under appeal. During the 1995 reassessment the Adams County officials applied obsolescence depreciation to the original wood elevator feed mills located on two (2) of the parcels. *Kiess Testimony; Petitioner's Exhibit 13.* No obsolescence depreciation was allowed for the annex grain handling systems, metal bins, or buildings. The Petitioner requests fifty five percent (55%) obsolescence depreciation be allowed for the elevator annexes and metal bins on the three properties that are the subject of this appeal. *Fetters Testimony; Petitioner's Exhibit 1.*

11. Petitioner argues that obsolescence is warranted for the annex elevators and metal bins. All three (3) of the elevators are obsolete due to their small bushel capacities, age (the newest addition being twenty years old), lack of expansion area, lack of rails, market trends and location. *Fetters Testimony*; Petitioner's Ex. 13. These shortcomings severely limit the productivity and income capabilities of the elevators. *Piper Testimony*.

12. Several property record cards from competing elevators throughout the State were submitted. Petitioner's Ex. 2. The property record cards indicate that the comparables were allowed various amounts of obsolescence on the grain annexes and bins. *Id.* Some of the finest elevator facilities have a much larger capacity, which results in a lower base price per bushel capacity and still are receiving obsolescence. *Fetters Testimony*.

13. The financial statements submitted by Adams County Co-op for the years 1994-2000 indicate a loss in profits due to several factors including: increased competition from larger more efficient facilities, a volatile grain market, lack of rails and storage facilities, increased operating costs per bushel, and obsolete buildings and equipment. *Piper Testimony*; Petitioner's Ex. 9, 10, & 11. The Monroe elevator has been closed because if is no longer producing any profit and is scheduled for demolition. *Piper Testimony*; Petitioner's Ex. 13.

14. Mr. Kiess argues that the Petitioner did not meet its two-prong burden according to *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233, at the County Board of Review hearing or the hearing before the State. *Kiess Testimony*; Respondent Ex. 5. The Petitioner must qualify and quantify the amount of obsolescence required. Respondent Ex. 5. Although the Petitioner has provided various documents, which include operating statements and property record cards of other elevators across Indiana, no attempt was made to relate these documents to the requested 55% obsolescence. *Id.* Mr. Keiss argues that the Petitioner qualified that some obsolescence does exist in the subject facilities, but failed to quantify the amount of obsolescence. *Keiss Testimony*.

15. Mr. Fetters claims that he arrived at the 55% obsolescence figure because it is "fair". *Fetters Testimony*; Petitioner's Ex. 15. Mr. Fetters claims that he is not aware of a formula for quantifying the obsolescence of a grain handling facility, but if there is one available the County can provide it and he will fill in the figures. Petitioner's Ex. 13 & 15.

Issue 2 – Land Classification

16. The Petitioner requested that a 2.62-acre tract of unimproved land (Parcel # 021-010-00000304) should be classified as "undeveloped unusable". *Fetters Testimony*. The Adams County Board of Review amended the land from its 1995 classification as secondary commercial/industrial land to "developed-usable land". Respondent Ex. 4.

17. The land has not been used since 1992 because of flooding problems – no equipment is stored there and no crops have been planted. *Piper Testimony*. Dirt is being hauled onto the site to try to elevate the terrain to relieve some of the flooding problems. *Piper Testimony*. The percentage of the acreage that floods is not known, nor is Mr. Piper aware if the land was considered to be in a flood zone. *Piper Testimony*.

18. According to Regulation #17, Rule 4 – Page 22, "unusable undeveloped" land is described as land that has incurred no on-site development costs and normally represents an area of vacant land with restrictions. *Kiess Testimony*. These restrictions may include environmental hazards on the property, or designations as a wetland area. *Kiess Testimony*. There was no evidence presented that the entire parcel is unusable, or that any environmental hazards or building restrictions exist, or that the property is classified as a wetland. *Kiess Testimony*.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and –4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles,* 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments*

for Lake County v. Kranz (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and –2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners,* 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John,* 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V)*.

5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause 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. *Town of St. John V,* 702 N.E. 2d at 1039 – 40.

6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners,* 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners,* 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners,* 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.

9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice,* § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.

10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners,* 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley,* 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

11. One manner for the taxpayer to meet its burden in the State's administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners,* 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to "whether the system prescribed by statute and regulations was properly applied to individual assessments." *Town of St. John V,* 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark,* 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners,* 634 N.E. 2d 882, 887 (Ind. Tax 1994).

14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. *See Whitley,* 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State's final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V,* 702 N.E. 2d at 1043; *Whitley,* 704 N.E. 2d at 1121.

17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

D. Issue 1 - Obsolescence

18. 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 extent of it in improvements being valued. 50 IAC 2.2-10-7.

19. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.

20. 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).

21. 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).

22. The Respondent stated at the hearing that the Petitioner has shown evidence that there might be obsolescence warranted. The Respondent continued by stating the Petitioner has never quantified the amount of obsolescence the property may deserve.

23. There are five methods used to measure accrued depreciation, two indirect and three direct. Each has advantages and disadvantages and has a different

degree of reliability. Direct methods involve measuring the depreciation of the subject property, whereas indirect methods use sales of comparable properties and income loss from rental properties to measure depreciation. The methods are categorized as follows:

Indirect methods
1. sales comparison method
2. capitalization of income method

Direct methods
1. economic age-life method
2. modified economic age-life method, and
3. observed condition (breakdown) method

IAAO Property Assessment Valuation,155-156 (2nd ed. 1996).

23. In addition to the guidance and methodology for calculating obsolescence outlined above, 50 IAC 2.2-12-6.1-29 offers instructions for calculating the percentage of depreciation due to functional and economic obsolescence specifically for grain elevator properties by using the age-life concept.

24. The submission of property record cards from elevators around the state, as well as a lengthy discussion of the subject's financial statements does not suffice as probative evidence of the *amount* of obsolescence that exists in the subject properties.

25. Taxpayer representatives must offer probative evidence of an alleged assessment error. Allegations of error, conclusory statements, and mere references to regulations or photographs do not constitute probative evidence. *Bernacchi v. State Board of Tax Commissioners,* 727 N.E. 2d 1133, 1135-37 (Ind. Tax 2000) and *Hoogenboom-Nofziger v. State Board of Tax Commissioners,* 715 N.E. 2d 1018 (Ind. Tax 1999). Also See Conclusions, ¶¶ 7-14, above.

26. Conclusory statements that 55% obsolescence should be applied to the subject elevators because the Petitioner feels it is "fair", does not constitute a sufficient

and accepted method for quantifying obsolescence depreciation. The Petitioner has failed to offer probative evidence of the amount of obsolescence applicable to the elevator properties, and has failed to meet the second prong of the two-prong burden regarding obsolescence depreciation claims.

27. For the above reasons, no change is made to the assessment.

E. Issue 2 – Land Classification

28. The Petitioner claims that a 2.62-acre tract of land should be classified as "undeveloped unusable". The tract is currently classified as "undeveloped usable" on the subject property record card.

29. The Petitioner claims that the land is not used because of persistent flooding problems. In addition, the Petitioner stated that dirt is being hauled to the site in an attempt to elevate the flooding areas. The Petitioner submitted photographs in support of their testimony. Petitioner's Ex. 12. However, the Petitioner's claim that the land has not been used since 1992 does not constitute probative evidence that the site is indeed unusable. In fact, the Petitioner made the statement that Adams County Co-op has no specific use for the acreage, other than to sell it. This statement indicates that if the site can be sold, then indeed it is usable and is unrestricted.

30. 50 IAC 2.2-4-17 (4) states that "unusable undeveloped" land represents the 1991 value of undeveloped land that is zoned for commercial and industrial purposes. This type land has incurred no on-site development costs and normally represents an area of vacant land with *restrictions*. This may involve restrictions against building because there are environmental hazards on the property or the area has been designated as a wetland area by the federal government.

31. Probative evidence that the land should be classified as unusable would include

items such as: a flood zone map indicating that the subject parcel is in a flood-zone and development is restricted or evidence of environmental hazards on the property. The Petitioner offered no evidence that the subject parcel is even within a flood zone, or what percentage of 2.62-acre plat is affected by the flooding. In addition, the Petitioner stated that the land is not influenced by environmental hazards and is not a designated wasteland. In fact, the photographs submitted by the Petitioner suggest that some development is occurring on site in the form of grading for general improvement of the tract.

32. For all the above reasons, no change is made to the assessment.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of_____, 2002.

_____

Chairman, Indiana Board of Tax Review