



## Findings of Fact and Conclusions of Law

### Issues

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

ISSUE 1 – *Whether the land is classified and priced correctly.*

ISSUE 2 – *Whether the gas tank, shown on line #12 of the summary of improvements, should be assessed to the Petitioner.*

ISSUE 3 – *Whether the office/warehouse, line #3 of the summary of improvements, should be assessed as retail/warehouse.*

ISSUE 4 – *Whether the temporary storage facilities, lines #4, #5, and #6 of the summary of improvements, should have a zero value.*

ISSUE 5 – *Whether the elevator, annex, office/warehouse, and railroad sidings, lines #1, #2, #3, and #7 of the summary of improvements, warrant abnormal obsolescence.*

### 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 County Board Of Review (“BOR”) was issued on October 1, 1996.<sup>1</sup>

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<sup>1</sup> 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: 26-017-95-1-3-00003; 26-006-95-1-3-00010; and 26-006-95-1-3-00011. 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 – statement of issues with a map of the subject property and a copy of 50 IAC 2.2-12-6.1, page 28

Petitioner's Exhibit 3 - copy of property record card (PRC)

Petitioner's Exhibit 4 - copy of the Gibson County Land Valuation Order, page 84

Petitioner's Exhibit 5 – drawing of the subject property

Petitioner's Exhibit 6 - eight photos of subject improvements

Petitioner's Exhibit 7- five photos of the street where subject property is located and subject's improvements

Petitioner's Exhibit 8- three photos of the temporary storage facilities

Petitioner's Exhibit 9 – copy of questionnaire completed by Petitioner.

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
  - C. Response to Notice of Defect (attached to Petition #26-006-95-1-3-00010).
9. The subject property is a grain elevator and storage facility located on South Main Street, Princeton, Patoka 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: \$24,830; and Improvements: \$127,600.

### **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: 1a – *Whether the land is classified correctly.*

1b – *Whether the land is priced correctly.*

Issue 1a – *Whether the land is classified correctly.*

26. The Petitioner contends that the land should be classified as 1.5 acres primary land, 2.64 acres secondary land, and 2.906 usable undeveloped.
27. The local officials have assessed the land as 3.14 acres primary, 1 acre secondary, and 2.906 acres usable undeveloped.

28. The applicable rules governing this issue are:

**50 IAC 2.2-4-1(18)**

Primary commercial or industrial land refers to the primary building or plant site.

The following are examples of primary land:

- (A) Land located under buildings.
- (B) Regularly used parking areas.
- (C) Roadways.
- (D) Regularly used yard storage.
- (E) Necessary support land.

**50 IAC 2.2-4-1(19)**

Secondary commercial or industrial land refers to land utilized for purposes which are secondary to the primary use of the land. The following are examples of secondary land:

- (A) Parking areas that are not used regularly.
- (B) Yard storage that is not used regularly.

**50 IAC 2.2-4-17**

Discusses the procedure for valuing commercial and industrial land.

Describes the categories of commercial and industrial land and the developmental costs associated with each category.

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

- A. The subject is located in a residential area.
- B. The Petitioner requests a change in classification as noted in ¶ 24 and Petitioner's Exhibit 2.
- C. The amount of usable undeveloped land is not disputed.



Analysis of Issue 1a

28. The Petitioner submitted a calculation in Petitioner's Exhibit 2 and a sketch (Petitioner's Exhibit 5) showing the measurements to support the request for 1.5 acres of primary land.
29. The local officials failed to appear at the hearing, but a notation on the property record card indicates that the temporary storage was included in the 3.14 acres of primary land, as well as 53,250 square feet (2,130 linear feet x 25) of railroad siding. Petitioner's Exhibit 2 includes a survey that shows the property line on the railroad to be 565 feet.
30. According to 50 IAC 2.2-4-1(19), secondary land includes "yard storage that is used regularly." This would include temporary storage. The Respondent did not appear at the hearing and present evidence that the temporary storage has been used on a regular basis.
31. The Petitioner has established a prima facie case. The Petitioner has proven that the land classification is incorrect and what the correct assessment should be. Accordingly, there is a decrease in the primary land amount to 1.5 acres and an increase in the secondary land amount to 2.64 acres. The usable undeveloped was not in dispute and remains the same.

Issue 1b – *Whether the land is priced correctly.*

32. The Petitioner contends the pricing should be \$9,000 per primary acre, \$4,500 per secondary acre, and \$1,500 per acre usable undeveloped.
33. The local officials have assessed the land as 3.14 acres primary at \$20,000 per acre, 1 acre secondary at \$10,000 per acre, and 2.096 usable undeveloped at \$600 per acre.

34. The applicable rules governing this issue are:

**Ind. Code § 6-1.1-31-6(a)(1)**

Land values shall be classified for assessment purposes based on acreage, lots, size, location, use, productivity or earning capacity, applicable zoning provisions, accessibility, and any other factor that the Board determines by rule is just and proper.

**Gibson County Land Valuation Order**

Contains the base rates established by the Gibson County land valuation commission and approved by the State Board.

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

- A. The values requested by the Petitioner are within the range of the County Land Valuation Order.
- B. Two property record cards were submitted with Petition #26-006-95-1-3-00011 that are used in this appeal to show lower land values. Parcel #0170010700 in Montgomery Township has a primary land value of \$5,000 per acre. Parcel #0010011600 in Barton Township has a primary value of \$8,000 per acre, a secondary value of \$5,600 per acre, and a usable undeveloped value of \$600 per acre.
- C. The Petitioner requests a change in values as noted in ¶ 24 and Petitioner's Exhibit 2.

Analysis of Issue 1b

36. The Petitioner submitted photographs showing the location of the subject in a residential area.

37. The Petitioner submitted PRCs for two other properties in other townships that have lower values than the subject. The Petitioner failed to establish a relationship between

the evidenced offered and the subject property. The Petitioner claimed that The Petitioner did not submit the County Land Valuation order for these properties. The Petitioner also did not establish why the land values requested were correct, as they did not match either of the other properties' values.

38. The Petitioner has a burden to present more than just 'de minimus' 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).
39. 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).
40. 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 land prices as a result of this issue.

Issue 2 – *Whether the gas tank, shown on line #12 of the summary of improvements, should be assessed to the Petitioner.*

41. The Petitioner contends that the gas tank does not belong to the co-op, but to a gas company.
42. The property record card shows that the gas tank has been there since 1983.

#### Analysis of Issue 2

43. The Petitioner did not provide any probative evidence as to the ownership of the subject tank. The Petitioner did not provide the lease agreement that could have verified the ownership of the tank and the party responsible for the property tax on the tank.

44. "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)). Mr. Fetters' testimony is not sufficient to establish a prima facie case.
45. The Petitioner did not meet his burden of proof. Accordingly, there is no change in the assessment as a result of this issue.

Issue 3 – *Whether the office/warehouse, line #3 of the summary of improvements, should be assessed as retail/warehouse.*

46. The Petitioner claims that the office/warehouse, shown on line #3 of the property record card, should be priced as general retail/warehouse, or the grade should be changed.
47. The applicable rule governing Issue 3 is:

**50 IAC 2.2-10-6.1**

Provides an explanation of how to determine a base rate. Specifically, base rates are given for a range of perimeter to area ratios for specific construction types for various use and finish types. Models are provided as conceptual tools to use to replicate reproduction cost of a structure using typical construction materials assumed to exist for a given use type. Use type represents the model that best describes the structure. Finish type is a descriptive classification denoting the extent to which the interior finish cost is included in the base rate.

Analysis of Issue 3

48. The Petitioner did not present any evidence indicating the subject structure is more like the general retail model than the model currently used to assess it. The Petitioner merely concludes that because the subject does contain an area used as retail, that portion of the

structure should be priced as retail. The subject should be assessed according to the model that most closely resembles the subject. The Petitioner did not present any evidence of a model more closely resembling the subject.

49. The Petitioner also contends that the subject, in the alternative, may deserve a reduction in grade. The Petitioner did not present any comparable properties to show what they believe the most appropriate grade should be. The Petitioner did not present any evidence supporting a grade reduction.

50. The Petitioner did not meet their burden of proof. Accordingly, there is no change in the assessment as a result of this issue.

*Issue 4 – Whether the temporary storage facilities, lines #4, #5, and #6 of the summary of improvements, should have a zero value.*

51. The Petitioner contends that the storage facilities have no value. The facility on line #4 did not exist on the assessment date. The storage facilities on lines #5 and #6 have not been used for eight years.

52. The current assessment includes all three facilities; all have 50% obsolescence applied.

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

- A. The photographs (Petitioner's Exhibit 8) show that the facility on line #4 consists of sticks in the ground.
- B. The improvements on line #4 did not exist on the assessment date.
- C. The storage facilities on lines #5 and #6 have not been used for eight years.
- D. The items on lines #5 and #6 are intact.

#### Analysis of Issue 4

54. The Petitioner submitted photographs that showed the temporary storage facilities. The temporary storage facility on line #4 is not intact or usable. The other facilities are intact.
55. The Petitioner has proven that the improvement on line #4 does not exist. Accordingly, this is removed from the assessment.
56. The Petitioner has not proven by a preponderance of the evidence that the improvements on lines #5 and #6 have no value or are not usable. In fact, there was testimony that at some point after the 1995 assessment date the improvements on lines #5 and #6 were in fact used again. The local officials have applied 50% obsolescence to these improvements. The improvements were there on March 1, 1995 therefore they must be assessed.
57. The Petitioner has not proven that the assessment of these improvements is incorrect. Accordingly, there is no change in the assessment of the facilities on lines #5 and #6.

#### Issue 5 – Whether the elevator, annex, office/warehouse, and railroad sidings, lines #1, #2, #3, and #7 of the summary of improvements, warrant abnormal obsolescence.

58. The Petitioner contends that the improvements warrant 40% abnormal obsolescence due to the seasonal operation of the facility, the location, and the number of other operating elevators in close proximity. It is not economically feasible to operate the facility due to EPA restriction.
59. The applicable rules governing Issue 5 are:

#### **50 IAC 2.2-12-6**

Note that in applying this method of depreciation to grain elevators, it is important to first consider functional obsolescence caused by excess capacity, a major cause of functional obsolescence in grain elevators. The determination of excess

capacity requires a comparative analysis of historical and current operating data. A rule of thumb procedure employed by appraisers for lack of historical data is to consider 50% of the difference between the current operation capacity (preferably an average of the most recent years) and the rated capacity of the elevator (the capacity upon which the replacement cost is predicated) as excess. A corresponding reduction to the RCN estimate would be required prior to applying the age-life method of depreciation discussed above. (age-life procedure omitted from this paragraph).

**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 from floods, toxic waste, or other special hazards.

60. The applicable case law governing the issue 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.

61. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The facility is located in the center of town.
  - B. The building has been for sale for two years with no offers.
  - C. The facility was operated as a seasonal operation.

Analysis of Issue 5

62. Concerning the obsolescence for the elevator and the annex, the Petitioner submitted a questionnaire that was prepared by Mr. Fetters and answered by Mr. Elliott (Petitioner's Exhibit 9). The questions related to the efficiency of the subject elevator. This evidence was not persuasive. The questionnaire did not attempt to explain how the efficiency causes a loss in value no quantify the loss, if any.
63. The Petitioner claimed that the facility is located in the center of town, has been for sale for two years, and is a seasonal operation. All grain elevators in Indiana can claim they are a seasonal operation. The seasonal nature of the operation is inherent to the business in that grain is not harvested year round in Indiana.
64. That the elevator is located in the center of town and has been for sale for two years are immaterial facts that the Petitioner failed to relate to his contention that the facility warrants functional obsolescence. This evidence was found not to be persuasive.



65. The Petitioner did not provide any data to determine the 1995 operating capacity. Per 50 IAC 2.2-12-6, this information is critical in helping an assessing official determine the amount of loss in value caused by functional obsolescence.
66. Furthermore, it is noted that the subject elevator has a base price of \$4.39 per bushel and was assessed at \$2.42 per bushel, based on a capacity of 40,000 bushels per the PRC. This is a 45% reduction in the base price. The annex had a base price of \$2.19 per bushel, based on a capacity of 392,411 bushels per the PRC and was assessed at \$1.31 per bushel. This is a 40% reduction in the base price. These facts demonstrate the assessment of the elevator was reduced for functional obsolescence.
67. For the above reasons, the Board determined that the elevator and the annex had a reduction in the assessment to account for functional obsolescence. The Petitioner did not provide credible evidence that additional obsolescence is required. Accordingly, there is no change in the assessment of the elevator and the annex. There is no change in the assessment as a result of this issue.
68. The Petitioner did not present substantial evidence or testimony regarding obsolescence for the office/warehouse. The Petitioner made no attempt to quantify the requested obsolescence, which is one of the requirements necessary to prevail in a request for 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. *See Clark, supra.*
69. The Petitioner has not proven or quantified a loss in value to the subject improvements.
70. 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.

## **Other Findings**

### Timeliness of the Appeals

71. 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.
72. 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.
73. 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 the land is classified and priced correctly.*

Issue 1a – *Whether the land is classified correctly.*

74. The Petitioner prevailed by a preponderance of the evidence on the land classification issue. The primary land is 1.5 acres, the secondary land is 2.64 acres, and the usable

undeveloped land is 2.906 acres. There is a change in the assessment with regard to this portion of issue 1.

Issue 1b – *Whether the land is priced correctly.*

75. The Petitioner did not prevail by a preponderance of evidence on the land value issue. Accordingly, there is no change in the assessment with regard to this portion of issue 1.

Issue 2 – *Whether the gas tank, shown on line #12 of the summary of improvements should be assessed to the Petitioner.*

76. The Petitioner did not prevail by a preponderance of the evidence on Issue 2. Accordingly, there is no change in the assessment as a result of this issue.

Issue 3 – *Whether the office/warehouse, line #3 of the summary of improvements, should be assessed as retail/warehouse.*

77. The Petitioner did not prevail by a preponderance of the evidence on Issue 3. Accordingly, there is no change in the assessment as a result of this issue.

Issue 4 – *Whether the temporary storage facilities, lines #4, #5, and #6 of the summary of improvements, should have a zero value.*

78. The Petitioner did prevail by a preponderance of the evidence regarding the improvement on line #4. Accordingly, improvement on line #4 is removed from the assessment.

79. The Petitioner did not prevail regarding the improvements on lines #5 and #6. There is no change in the assessment with regard to improvements on lines #5 and #6.

Issue 5 – *Whether the elevator, annex, office/warehouse, and railroad sidings, lines #1, #2, #3, and #7 of the summary of improvements, warrant abnormal obsolescence.*

80. The Petitioner did not prevail by a preponderance of the evidence on Issue 5. 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.

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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.**