



## **Findings of Fact and Conclusions of Law**

### **Issues**

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

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

ISSUE 2 – *Whether the fertilizer building on line #3 of the Property Record Card as a small shop warrants 35% obsolescence.*

ISSUE 3 – *Whether the County Auditor should 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 Gibson County Board of Review (BOR) was issued on October 1, 1996.<sup>1</sup>

### **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; 26-017-

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<sup>1</sup> The timeliness of filing will be discussed in Other Findings.

95-1-3-00003; and 26-006-95-1-3-00010. 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

Petitioner's Exhibit 3 - copy of the Gibson County Land Valuation Order, page 84

Petitioner's Exhibit 4 - copy of property record card (PRC)

Petitioner's Exhibit 5 – four photos of the roads near the subject property

Petitioner's Exhibit 6 - partial copy of a PRC for comparable property

Petitioner's Exhibit 7- partial copy of a PRC for comparable property with two  
photos

Petitioner's Exhibit 8- four photos of the subject property

Petitioner's Exhibit 9 – Copy of Statement for Deduction of Assessed Valuation (Fertilizer and Pesticide Storage Improvements) for 1995 with letter and certification

Petitioner's Exhibit 10 - Copy of Statement for Deduction of Assessed Valuation (Fertilizer and Pesticide Storage Improvements) for 2000 with letter, photos, and certification

Petitioner's Exhibit 11-certification for 1997.

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 bulk fertilizer storage facility located on Old Highway 41 North, 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 \$6,700; and Improvements: \$44,300.

### **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 the land is priced correctly.*

26. The Petitioner contends that the land value for primary land should be \$5,000 per acre and the secondary and usable undeveloped land valued in accordance with that amount.
27. The local officials have assessed the land at \$15,000 per acre for primary land, \$7,500 for secondary land, and \$3,750 for usable undeveloped land.
28. The applicable rules governing Issue 1 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.

28. Evidence and testimony considered particularly relevant to this determination include the following:
- A. The subject is located on a county road that was gravel in 1995.
  - B. The values requested by the Petitioner are within the range of the County Land Valuation Order.
  - C. Two property record cards for bulk fertilizer storage plants 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. These properties are on better roads than the subject.

#### Analysis of Issue 1

29. The Petitioner submitted photographs showing the location of the subject.
30. The Petitioner submitted PRCs for two other properties in other townships that have lower values than the subject. The Petitioner did not submit the County Land Valuation order for these properties. The Petitioner also did not establish why the lower value was more correct than the higher value.
31. The two parcels Mr. Fetters alleged as comparable and the subject parcel are not in the same township. The fact that the roads around the subject parcel had not been improved is not sufficient to support the land value change requested by the Petitioner.



32. 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).
33. 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).
34. 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 values as a result of this appeal.

Issue 2: Whether the fertilizer building listed on line #2 as a small shop warrants 35% obsolescence.

35. The Petitioner contends that the subject building warrants obsolescence because if it had been built after 1991, it could have been fully deducted under regulations allowing fertilizer and chemical storage units to be deducted.
36. The current assessment reflects no obsolescence.
37. The applicable rules governing Issue 2 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.

38. The applicable case law governing Issue 2 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.

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

- A. Certain regulations were developed in 1991 involving chemical and fertilizer storage. Certain types of containment may be deducted from the assessment.
- B. Since this building was built in 1960, it does not qualify for the deduction.

#### Analysis of Issue 2

40. The Petitioner did not present any evidence to support the claim for obsolescence. The rules and regulations referenced were not submitted at the administrative hearing. The Petitioner is seeking an obsolescence adjustment because had the improvements been

constructed after 1991 they would qualify for a deduction. The Petitioner never attempts to explain how this is a cause of obsolescence.

41. 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 Petitioner has not proven or quantified a loss in value to the subject improvements.
42. “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.
43. 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 factor requested is correct. Accordingly, there is no change in the assessment as a result of this appeal.

Issue 3: *Whether the County Auditor shall reduce the assessment based on the State Chemist Certification of Qualification for Property Tax Deduction In Accordance With IC 6-1.1-12-38.*

44. The Petitioner contends that the County Auditor never deducted the appropriate improvements in accordance with IC §6-1.1-12-38.
45. The applicable rules governing Issue 3 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 by 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 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.

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

- A. 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.

### Analysis of Issue 3

47. The state statutes, IC § 6-1.1-12-38, provide for property tax relief for certain improvements, providing the appropriate documentation is filed within the statutory time

limits.

49. The Board determines the State Chemist found certain improvements eligible for the exemption under IC § 6-1.1-12-38. The improvements are items 1 (warehouse), 14 and 16 (retaining walls), and 18 and 19 (concrete pad and fertilizer pad) per summary of improvements of the PRC.
50. The Petitioner did provide evidence that the required documentation was, in fact, filed in a timely manner.
51. The Petitioner met 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

52. 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.
53. 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.

54. 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 priced correctly.*

55. 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 fertilizer building listed on line #2 as a small shop warrants 35% obsolescence.*

56. The Petitioner did not prevail by a preponderance of the evidence on Issue 2. There is no change in the assessment.

Issue 3: *Whether the County Auditor shall reduce the assessment based on the State Chemist Certification of Qualification for Property Tax Deduction In Accordance With IC 6-1.1-12-38.*

57. The Petitioner did prevail by a preponderance of the evidence on Issue 3. 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 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.**