



## Issues

1. Whether the grade of the plant is correct.
2. Whether the condition of the plant is correct.
3. Whether there is some steel grating that should be assessed as personal property.
4. Whether the assessment violates Article X Section 1 of the Indiana Constitution.
5. Whether the grade of the ash silos is correct.
6. Whether the condition of the ash silos is correct.
7. Whether the correct methodology was used in assessing the ash silos.

## 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 be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-15-3, Indianapolis Power & Light Company (IPL)(Petitioner) filed two Form 131 petitions requesting a review by the State. Both Form 131 petitions were filed on September 12, 1996. Both of the Pike County Board of Review's (County Board) final determinations on the underlying Form 130 petitions are dated August 19, 1996.
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on September 10, 1998 before Hearing Officer Carolyn Ives. Testimony and exhibits were received into evidence. Larry Stroble, Attorney, Barnes & Thornburg, Randal Kaltenmark, Attorney, Barnes & Thornburg, Stephen Wolsiffer, Project Coordinator, IPL, and Charles Drane, Senior Tax Accountant, IPL, represented the Petitioner. Wilma Jones, Pike County Assessor, and Kirk Reller, Southern Indiana Appraisal, represented Pike County. No one was present to represent Washington Township.

4. At the hearing, the subject Form 131 petitions were made a part of the record and labeled Board Exhibit A. The Notices of Hearing on Petition are labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:

Petitioner's Exhibit 1 – Brief including:

I Memorandum in support of assessment reduction

II Testimony of Stephen Wolsiffer

III Testimony of Charles Drane

IV Exhibits:

1. Grade factors from 50 IAC 2.2-10-3
2. Model for a power generating plant
3. State Board memorandum dated June 30, 1994
4. Drawing of the generating station
5. Form 131 petition, 63-009-95-1-3-10009
6. Form 131 petition, 63-009-95-1-3-10010
7. IPL's calculation of true tax value for the generating station
8. IPL's proposed property record card for the generating station
9. (a)-(g)Photographs of Petersburg generating station
10. Property record cards for Stout Generating Station
11. (a)-(g)Photographs of Stout Generating Station
12. IPL's calculation of true tax value of the fly ash silos
13. IPL's proposed property record card for the silos
14. Property record card for Countrymark
15. Photographs of graded industrial buildings, 50 IAC 2.2-11-4.1
16. Comparison of Countrymark's silo with the subject's silo
17. Four photographs
18. Two photographs
19. Exterior photograph of Unit 4

Petitioner's Exhibit 2 – Transcript of the hearing.

5. The hearing on September 10, 1998 was for both petitions. Therefore, both petitions will be included in this single determination. Issues 1 – 4 are for petition 63-009-95-1-3-10009 and issues 5 – 7 (relating to the fly ash silos) are for petition 63-009-95-1-3-10010.
6. The subject property is a power plant located at RR 1, Petersburg, Washington Township, Pike County.
7. The Hearing Officer viewed the subject property on December 3, 1998. Also present at the viewing were Charles Drane, Steve Wolsiffer, and Kirk Reller.

**Issue 1 – Whether the grade of the plant is correct.**

8. The plant has been assigned a grade of C+2. The evidence will show the grade should not be higher than a C. Rockport generating plant, in Spencer County, is also under appeal, and the subject plant should have the same grade as the Rockport plant. A memorandum issued by the State Board indicates power plants should be graded between a C-2 and a C+2, with most a C. *Stroble Statement*. Petitioner's Exhibit 1(f).
9. There are four (4) boilers, enclosed due to the climate in Southern Indiana. The enclosures are the exterior steel beams and siding placed around the structure. The siding is galvanized and painted; it is not sandwich siding. These are just weather enclosures to protect the equipment and make it functional and maintainable. The Stout generating plant in Marion County, owned by IPL, has 3 units graded C and 4 units graded C+2. Units 1-4 of the Stout plant have brick on the front of the building. Unit 1 has decorative tile on the walls and ceramic tile on the floor. Units 6 and 7 have siding and no decorative tile; they are more functional than the older designs. *Wolsiffer Testimony*. Petitioner's Exhibits 1(4), 1(9a-g), 1(11a-g).

10. Included in Petitioner's Exhibit 1 is written testimony by Mr. Drane and Mr. Wolsiffer regarding the grade of the subject. Petitioner's Exhibit 1(II) and 1(III). This testimony has been given as much weight as it would have been if it had been stated at the hearing.
  
11. The State Board memo, presented by the Petitioner as an exhibit, states when determining the grade, very little consideration should be given to architectural styling and built in features. Quality of workmanship on a project such as this is going to be average for the industry; therefore, the C+2 grade is more of a design function than a cost function. The plant uses far more substantial vertical columns than other plants, except AEP's Rockport plant. In the model, there is nothing about reinforced concrete column piers and footings pilecaps and piling. The building also reaches a height of 257 feet. The model calls for 30-foot high walls. Regulation 17 recognizes the extra cost in moving materials to higher elevations with the application of a Base price Adjustment for Story Height (BPA). Simply moving materials 200 feet up would require a much more sturdy foundation. Architectural attractiveness, built-ins, interior finish, and workmanship are all average and not an issue. The materials used might be average, however, they are much more extensive than what is used in other plants. *Reller Testimony.*

**Issue 2 – Whether the condition of the plant is correct.**

12. There has been no extraordinary maintenance on the plant. From time to time the walls get stained, or they have to have access through a wall so it is cut out and put back. *Wolsiffer Testimony.*
  
13. There is written testimony from Mr. Drane and Mr. Wolsiffer contained in Petitioner's Exhibit 1(II) and (III). This will be given the same weight as it would if it had been in oral form.

14. There has not been any significant remodeling. The structures are well maintained when compared to their power plant next door. *Reller Testimony.*

**Issue 3 – Whether there is some steel grating that should be assessed as personal property.**

15. There were problems reconciling some numbers between the summary sheets he originally had from Mr. Reller and the actual assessed value. *Drane Testimony.*

**Issue 4 – Whether the assessment violates Article X Section 1 of the Indiana Constitution.**

16. No evidence or testimony was given regarding this issue.

**Issue 5 – Whether the grade of the ash silos is correct.**

17. There is no pricing schedule in the Manual for the fly ash silos. The fly ash silos were priced using the grain elevator pricing schedule. Grain elevators have a head house and some other structures that are not present in the fly ash silos. The Annex Storage more closely resembles the fly ash silos. The fly ash silos were graded an A+5 by the township officials. The grain silos that were comparable in size to the fly ash silos were all graded C. The fly ash silos true tax value was considerably more than the grain silos, even though the grain silos had much larger capacity. *Drane Testimony.*
18. There is really no good schedule for pricing the fly ash silos. They used the grain elevator schedule, and applied a grade factor to make up for features such as thicker walls. *Reller Testimony.*

**Issue 6 – Whether the condition of the fly ash silo is correct.**

19. There is no unusual maintenance program assigned to the fly ash silos. He stated that they are periodically cleaned out, but that is part of normal maintenance. *Wolsiffer Testimony.*
20. The written testimony of Mr. Wolsiffer and Mr. Drane will also be considered for this issue.
21. For the condition to be in better than average condition, there would have to be more than normal routine maintenance or average maintenance. All the structures are well maintained relative to the power plant next door. *Reller Testimony.*

**Issue 7 – Whether the correct methodology was used in assessing the ash silos.**

22. The annex was the more proper pricing schedule to use when valuing the fly ash silos because they do not contain a head house and other features like the elevators do. *Drane Testimony.*
23. There is no good schedule to price the silos. *Reller Testimony.*

**Conclusions of Law**

1. The Petitioner is statutorily 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. Ind. Code §§ 6-1.1-15-1, -2.1, and -4. See also the Forms 130 and 131 petitions. 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. “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. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
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. The taxpayer's burden in the State's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. 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 even though 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 – Whether the grade of the plant is correct.**

18. Grade” means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
19. Grade is used in the cost approach to account for variations from the norm or “C” grade. The quality and design of a building are the most significant variables in establishing grade. 50 IAC 2.2-10-3.
20. The determination of the proper grade requires assessors to make a variety of subjective judgments regarding variations in the quality of materials and workmanship and the quality of style and design. *Mahan v. State Board of Tax Commissioners*, 622 N.E. 2d 1058, 1064 (Ind. Tax 1993). For assessing officials and taxpayers alike, however, the Manual provided indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3), models, and graded photographs (50 IAC 2.2-11-4) assist assessors in the selection of the proper grade factor.
21. The major grade classifications are A through E. 50 IAC 2.2-10-3. The cost schedules (base prices) in the Manual reflect the C grade standards of quality and design. The following factors (or multipliers) are assigned to each major grade classification:
- |           |      |
|-----------|------|
| “A” grade | 160% |
| “B” grade | 120% |
| “C” grade | 100% |
| “D” grade | 80%  |
| “E” grade | 40%  |
22. Intermediate grade levels ranging from A+10 through E-1 are also provided for in the Manual to adequately account for quality and design features between major grade classifications. 50 IAC 2.2-10-3(c).

23. State Tax Board Memo – dated June 30, 1994:

3. Grade – Power Generating Plant Structures:

Prior to the 1995 general reassessment, the assessed value of power generating plant structures was determined utilizing various manufacturing models included in the real property assessment manual. Beginning in 1995, a model has been specifically designed to value power generating structures. Development of the new model and the corresponding base rates for power generating plant structures takes into consideration the specialized requirements of these type structures.

The norm for power plants is that they are designed and built with average to above average quality of materials to specifications dictated by equipment requirements with little consideration for architecture styling and built-in features. The power generating plant model was specifically designed to accommodate the norm, after consideration for either a metal (Type 1) or a brick (Type 2) power generating plant structure should only represent a variation from the C grade classification. Thus, structures valued from the power plant model should have a grade assigned in a C-2 to C+2 range with most structures being assigned a C grade.

24. Again, the Petitioner's burden is two fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties.

25. The Petitioner presented a property record card (PRC) and photographs of another power plant, the Stout Plant, located in Indianapolis as a comparable property. The Stout Plant has seven units. Four of these units (Units 1-4) are graded at a C+2 and the other three (Units 5-7) are graded at a C.

26. The Petitioner presented photographs and testimony concerning the differences between the C+2 units at the Stout Plant and the C units at the Stout Plant. The C+2 units have a brick exterior; the interiors of the C+2 units have decorative tile

flooring and decorative tile on the walls. Unit 7, graded C, has a metal exterior and either a semi-finished or unfinished interior.

27. The Petitioner compares the subject to Unit 7 at the Stout Plant. The Petitioner states that they are made with the same type materials and, therefore, should be graded the same.
28. The subject is constructed with a metal exterior and either a semi-finished or unfinished interior. The subject does not have any decorative tile on the floor or the walls. The Petitioner stated that the evidence shows what a C+2 unit is, and what a C unit is. The Petitioner stated that the subject is clearly a C unit.
29. The evidence presented by the Petitioner attempts to prove disparate treatment based on similarly situated properties. However, the Petitioner presented only one comparable. The Petitioner did mention that another power plant in Spencer County was also under appeal. The power plant under appeal, owned by American Electric Company, is also seeking a review of the grade assigned to it. The Spencer County Board of Review PRC for this power plant indicates the grade for the 1995 assessment is a C+2.
30. On page 13 of Petitioner's Exhibit1, the brief states: "despite its imposing size, the structure of the Station is basically no different from other typical industrial facilities in terms of the quality of the materials, workmanship, or design." However, the Petitioner did not provide any photographs, analysis, or PRCs for other industrial properties to show how the grade assigned by the County Board is incorrect. Instead, the Petitioner chose to rely on one comparable.
31. A single comparable is not enough to show disparate treatment. The purpose of showing comparable properties is to insure fair and equal treatment. With only one comparable, there is no way to determine what fair and equal treatment would be. Would fair and equal treatment be the subject with a grade C, or

would it mean the Stout plant with a grade of C+2? There is no way to know if the Stout Plant Units 5-7 are the only power plant units graded C in the State.

32. The Petitioner made references to the photographs in the Manual (Rule 11, pgs. 74 – 75). However, these photographs are to assist assessors, they are not meant to conclusively establish grade. The Petitioner also presented testimony from employees of IPL stating the materials used were average and nothing warrants a grade above a C. However, the individuals are stating their opinions. These statements are conclusory, and the only supportive evidence presented were photographs, references to the Regulation, and one alleged comparable.
33. Mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax 1999).
34. The Petitioner did not supply sufficient probative evidence to indicate the grade is incorrect; the Petitioner did not quantify the requested reduction. Accordingly, there is no change in the assessment as a result of this issue.

#### **E. Issue 2 – Whether the condition of the plant is correct.**

35. Condition is a judgment of the physical condition of the item relative to its age. Average condition indicates structure is in average condition relative to its age, or the condition in which it would normally be expected. Good condition indicates the structure is in good condition relative to its age. There is minor deterioration, but it is in somewhat better condition than would normally be expected. 50 IAC 2.2-10-5(d)(8).
36. The estimate of depreciation is an essential element in the cost approach. An estimate must be predicated on an understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating its extent

in improvements being valued. Physical depreciation is evidenced by wear and tear, decay, dry rot, cracks, or structural defects. 50 IAC 2.2-10-7(a).

37. Condition, the degree of wear and tear displayed by a building, is determined relative to the age of the building. Condition measures the remaining usefulness of the building based on its age. 50 IAC 2.2-10-7(b).
38. Mr. Wolsiffer and Mr. Drane both testified in their written testimony that they believe the condition of the subject should be average. They also testified that no modernization or extraordinary maintenance has occurred at the subject. However, there is no evidence provided to support their conclusions. The Petitioner offers no evidence to show the condition of the subject.
39. The Petitioner claims that there has been no extraordinary maintenance at the subject plant. However, what is normal maintenance for a power plant? The Petitioner did not provide this information; therefore, there is no way of determining what is normal maintenance. Even if this evidence had been provided, it would not conclusively establish the condition.
40. The evidence provided by the Petitioner, opinions of the condition, limited photographs, and statement of no extraordinary maintenance, does not help to establish the subject's remaining useful life. According to 50 IAC 2.2-10-7(a) evidence of or lack of decay, dry rot, cracks, or structural defects would help establish the condition of the subject.
41. Again, the Petitioner's burden is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties.
42. The Petitioner did not attempt to compare the subject to the Stout plant on the basis of condition. The Petitioner did not present any other properties

comparable to the subject in an attempt to show disparate treatment. Instead, the Petitioner presented quotes from the Regulation and the opinions of two IPL employees.

43. The Petitioner did not present any probative evidence; therefore, the Petitioner did not meet the burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

**F. Issue 3 – Whether there is some steel grating that should be assessed as personal property.**

44. The Petitioner stated that some of the figures relating to the steel grating could not be reconciled. However, this was never explained at the hearing, or in any of the evidence presented by the Petitioner.
45. The Petitioner did not present any probative evidence. The Petitioner did not attempt to explain what figures were incorrect in their opinion. There is no change in the assessment as a result of this issue.

**G. Issue 4 – Whether the assessment violates Article X Section 1 of the Indiana Constitution.**

46. The Indiana Supreme Court declared Indiana's true tax value property tax system constitutional. *Town of St. John V*, 702 N.E. 2d at 1038.
47. Though the Courts have declared the cost tables and certain subjective elements of the State Board'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.
48. The issue concerning constitutionality of the tax system is denied.

#### **H. Issue 5 – Whether the grade of the ash silos is correct.**

49. The Petitioner contends the grade of A+5 on the fly ash silos is excessive. In addition, the Petitioner states that a grade adjustment is not warranted on a yard type item, unless the pricing schedule specifically allows one.
50. The schedule for pricing grain silos does not give any directions for adjusting the grade. (50 IAC 2.2-12-5). In *Garcia v. State Board of Tax Commissioners*, 694 N.E. 2d 794 (Ind. Tax 1998), the court held it was an abuse of discretion to assign a grade factor to a swimming pool enclosure when the Regulation made no mention of adjusting for quality grade.
51. The court's decision in *Garcia* is clear. "The regulations do not expressly provide that a grade factor is to be applied when using the cost schedule for pool enclosure, but expressly provide that a grade factor be applied when using other cost schedules. This leads to the conclusion that the regulations were drafted with the intent to specifically delineate which cost schedules required the application of a grade factor." *Id.*, at 800.
52. Accordingly, there can be no grade adjustment made to the fly ash silos of the subject property. There is a change in the assessment as a result of this issue.

#### **I. Issue 6 – Whether the condition of the fly ash silo is correct.**

53. The Petitioner also argues that the condition of the fly ash silos is incorrect. The Petitioner contends the silos are in average condition, not good as assigned by the County Board.
54. In support of this position, the Petitioner presented the testimony of Mr. Wolsiffer and Mr. Drane, both employees of IPL. They testified that the structures were in average condition in their opinion.

55. As stated previously in Conclusions #35-37, condition is a judgment of the physical condition of the item relative to its age.
56. The Petitioner presented photographs and the property record card of Countrymark Co-op; however there was no analysis done to compare the structures. The Petitioner did not attempt to show how the property is being treated differently. Instead, the Petitioner relies on the opinion of Mr. Wolsiffer and Mr. Drane.
57. The Petitioner did not present any probative evidence; therefore, the Petitioner did not meet the burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

**J. Issue 7 – Whether the correct methodology was used in assessing the ash silos.**

58. The Petitioner argues that annex pricing should be used rather than the elevator pricing. Both parties are in agreement that the Grain Elevator schedule should be used.
59. “Annex costs are for vertical storage facilities. They are to be used for elevators when there is an exposed leg system and no headhouse or for additional detached storage, which utilizes the headhouse of the original elevator as well as its basic machinery. If the annex has a headhouse, it should be priced from the elevator cost tables, using the total capacity of the elevator and the annex.” 50 IAC 2.2-12-5.
60. In his written testimony, Mr. Drane (Petitioner’s Exhibit 1(III), page 13) testifies that the subject’s fly ash silos do not contain a headhouse, and therefore, should be priced from the annex schedule. The Petitioner also presented a single

photograph of the subject's fly ash silos. There is no way to determine from this single photo whether there is or is not a headhouse.

61. The Petitioner also presented photographs of grain elevators from a property in Marion County. The silos in Petitioner's Exhibit 1(17) are elevators and show headhouses, according to the Petitioner. The silos in Petitioner Exhibit 1(18) are annexes. These do not have headhouses and are similar to the fly ash silos of the subject, according to the Petitioner.
62. Again, the Petitioner's burden is two fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties.
63. The Petitioner again only presents one property as a purported comparable. The submission of one comparable is not sufficient to establish disparate treatment.
64. The Petitioner did not provide probative evidence of error in the use of the grain elevator pricing schedule. For all the above reasons, the Petitioner did not meet its burden concerning this issue. Accordingly, there is no change in 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.

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Chairman, Indiana Board of Tax Review