

IN THE SUPREME COURT OF OHIO

THE METAMORA ELEVATOR :
COMPANY, et al., :
 : Case No. 2014-0874
Appellees, :
 : Appeal from Ohio Board of Tax Appeals
v. : BTA Case No. 2011-1854
 :
FULTON COUNTY AUDITOR and :
FULTON COUNTY BOARD OF :
REVISION, :
 :
Appellants. :
 :

**REPLY BRIEF OF APPELLANTS FULTON COUNTY AUDITOR AND
FULTON COUNTY BOARD OF REVISION**

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LAW AND ARGUMENT

Introduction

Metamora, as did the BTA in its Decision, relies exclusively on two claims: (1) the claim that the eighteen structures involved in the present appeal are not “permanent” in some sense;¹ and (2) that this appeal is governed by *Funtime, Inc. v. Wilkins*, 105 Ohio St. 3d 74, 2004-Ohio-6890; 822 N.E.2d 781. Neither claim is correct.

When the precise and clear language of R.C. 5701.02 is applied to property involved in this appeal, this Court will see that the property is real property; and as Appellants pointed out in their Merit Brief all of the property is an “improvement” on the land under Article XII, Section 2 of the Ohio Constitution and must be taxed as real property; and that the property is a “building” as now defined in R.C. 5701.02(B)(1), and for that reason the property is *still* real property for tax purposes.

1. The Undisputed Facts.

The only relevant facts are undisputed by Metamora in its Merit Brief, and the undisputed fact are the following: (1) the eighteen structures involved in the present appeal are large steel frame structures, ranging in height from 26 feet to 65 feet and in width from 46 to 107 feet, and the majority of them are almost 40 years old; (2) all of the structures are made of steel frames, have sides or walls made of corrugated steel panels, and have a steel floor and a steel roof on a steel frame; (3) Metamora acknowledges that all the structures are “fabrications”, which means

¹ In both their Merit Brief and in this Brief, Appellants refer to the property as ‘structures’ because that is most appropriate word to use in ordinary discourse, although Appellants pointed out in their Merit Brief that under the actual language of R.C. 5701.02(A)(1), all of the structures

that they were constructed on site out of the component parts described above (*see* Metamora’s Merit Brief, at p. 7, 10, 15); (4) the structures are attached to massive concrete foundations by large anchor bolts embedded into the concrete foundations; and (5) the structures “are used to store grain” (*Id.* at p. 2).

These undisputed facts mean that each of these structures is a “building” as defined in R.C. 5701.02(B)(1) because: (1) each is steel frame structure that is a “permanent fabrication or construction” in and of itself; (2) each is “attached or affixed to [the] land”; and (3) each is used for the storage of property, in this case grain.

2. Appellee’s structures are a ‘permanent fabrication or construction’ that are ‘attached or affixed to the land.’

As did the BTA, Metamora relies on the claim that the statutory definitions in question all “include the word ‘permanent’” (*see* Metamora’s Merit Brief at p. 6), and it argues that the structures involved in this appeal are not “permanent” in some sense. Appellee’s arguments have no merit and are in fact inconsistent with and contrary to the plain meaning of the definitions set forth in R.C. 5701.02 and R.C. 5701.03. There are two entirely different and distinct requirements set forth in R.C. 5701.02 and R.C. 5701.03 relating to the permanence of buildings, structures, and fixtures. Under R.C. 5701.02 (B)(1) and (E), a “building” and a “structure” are simply “a permanent fabrication or construction, attached or affixed to land”. A “fixture” and a “business fixture” are both defined to be “an item of tangible personal property that has become permanently attached or affixed to the land ***.” R.C. 5701.02(C) and R.C. 5701.03. As stated by Appellants in their Merit Brief, these provisions are codifications of the

are specifically defined to also be ‘buildings.’ Appellee also refers to them on occasion as

common law distinctions between structures (including buildings) and fixtures. A structure (including a building) provides a benefit to the land and makes the land usable for its intended purpose by being a permanent or relatively permanent fabrication or construction on the land. A fixture, on the other hand, is not a fabrication or construction on the land, but rather a chattel or a pre-existing item of tangible personal property that is brought to the site and attached thereto; and its permanence is established by the fact that it is “permanently attached or affixed to the land” or to another improvement thereon as specified in R.C. 5701.02(C).

In this sense, a *permanent* fabrication or construction, as opposed to a *temporary* fabrication or construction, refers to the *nature of the materials* used in construction and not to the manner in which the structure is “attached or affixed to [the] land.” As so defined, a permanent fabrication or construction is a structure that is made out of *construction materials that provide permanence to the structure*. This fact is also brought out by that part of the definition of a “building” in R.C. 5701.02(B)(1) which states that a building “has *structural integrity* independent of the tangible personal property, if any, it is designed to shelter.” R.C. 5701.02(B)(1) (emphasis added). The majority of the structures involved in the present appeal hold 45,000 bushels of grain while two are so large that they will hold 400,000 and 500,000 bushels. *See* Property Record Card, Appellants’ Supp. at p. 7, 8.² A building or structure that has “structural integrity” sufficient to hold the weight of grain that Appellee’s structures can store is and has to be a “permanent fabrication or construction” on the land.

‘structures’ (see Appellee’s Merit Brief, p. 3).

² Merely for informational purposes, a bushel of grain can weight between 32 pounds (oats) to 60 pounds (wheat) depending on the moisture of the grain. *See* wikipedia.org/wiki/Bushel. One

Furthermore, no one involved in this appeal has ever claimed that the structures are *not* “attached or affixed to [the] land” (instead, it is claimed that they are not “permanently” attached to the land). They are “attached or affixed” to massive concrete foundations by heavy anchor bolts that are embedded into the concrete foundations. *See* Appellants’ Supp. at p. 13, 14 (photographs depicting massive concrete foundations for these structures and the large size and heavy anchor bolts embedded into the foundations).

Metamora, as did the BTA in its decision, applies the *permanent attachment* requirement for a fixture and business fixture to its buildings that need not be “permanently attached or affixed to the land.” For instance, Metamora claims that the structures are “mobile” (*see* Metamora’s Merit Brief at p. 2); that they “temporarily affixed to concrete platforms” (*Id.*); that they are “not permanent structures” (*Id.* at p. 3); that they are “temporary fabrications” (*Id.* at p. 7); that they are “mobile and impermanent” (*Id.* at p. 8); that they are “temporarily located” on the land (*Id.* at p. 10); that they are “not permanently affixed to the Subject property” (*Id.* at p. 14); that they are “not a permanent fabrication (*Id.*); they are “removable” (*Id.*); and that they are “movable and deconstructable” (*Id.* at p. 15). Most of these claims relate only to the requirement that a fixture and business fixture must be “*permanently* attached or affixed to the land” which has nothing to do with the classification of the structures at hand. The few that do refer to the claim that the structures are “not a permanent fabrication” also deal with the claim that the structures are not “permanently attached or affixed to the land.” For instance, Metamora does claim that the structures “are not ‘a permanent fabrication’ and, therefore, not ‘buildings’”

of Appellee’s 45,000 bushel storage structures would hold somewhere between 1 million to 2 million pounds of grain.

because “[t]he bins are attached to concrete pads, and are removable by simply unscrewing a series of bolts.” *See* Metamora’s Merit Brief at p. 14. This claim relates to the manner in which the structures are “attached” to their concrete foundations and is not relevant to the issue of whether these large steel frame structures are a “permanent fabrication or construction” that must only be only “attached or affixed to [the] land.”

The fact that the structures are bolted to a concrete foundation is irrelevant to the classification of the property. All steel-framed buildings and structures constructed on a concrete slab foundation are bolted to the concrete foundation. Any large building or structure that must resist heavy storms and winds, for instance, as do all of the structures involved in the present appeal, are attached to the foundation by large anchor bolts that are embedded into the concrete foundation. Buildings constructed on concrete slab foundations are as large as 200,000 square-foot Wal-Mart stores, warehouses of similar size, and many other types of commercial and industrial structures, and residential homes, garages, and countless other types of buildings and structures. Many farm buildings can be built on concrete slab foundations. All of these structures are attached to their foundations in precisely the same manner as the structures involved in the present appeal. No one would claim that any of these improvements on the land are personal property simply because they can be unbolted from the foundation.

Metamora does claim that the structures involved in the present appeal are “deconstructable” meaning that they are “temporary fabrications” rather than permanent fabrications. *See* Metamora’s Merit Brief at p. 15. The mere fact that the General Assembly used the words “construction and fabrication” means that it understood that anything and everything that is a permanent construction or fabrication can be deconstructed and unfabricated. Any

building or structure in the State of Ohio can be deconstructed. Every steel frame building in this State can be deconstructed in the reverse manner in which the frame was bolted together and then reassembled somewhere else. The fact that any steel-framed structure can be taken apart has no bearing on the classification of the property for tax purposes. Were this Court to hold to the contrary, it would mean that every steel frame building in Ohio would be exempt from taxation because it was not a building or structure as defined in R.C. 5701.02 simply because it can be unbolted from its foundation and the steel frame can be taken apart.

Appellee also argues that the fact that the definition of a “structure” under R.C. 5701.02(E) includes a reference to “storage silos”: this provision states that “[s]tructure” includes, but is not limited to, bridges, trestles, dams, *storage silos* for agricultural products, fences, and walls.” Appellee argues that this includes large concrete grain silos, and is evidence of the fact that its steel frame structures are not real property. However, the ordinary meaning of the word “silo” is simply the following: “[a] silo (from the Greek σῖρος – siros, ‘pit for holding grain’) is a structure for storing bulk materials. Silos are used in agriculture to store grain (*see* grain elevators) or fermented feed known as silage” (*see* <http://en.wikipedia.org/wiki/Silo>), or “a tower that is used to store food (such as grain or grass) for farm animals.” *See* www.merriam-webster.com/dictionary/silo. As indicated above, the Tax Commissioner classes “elevators, storage bins, and storage silos” as real property and there is no distinction between any of types of property for real property classification purposes.

The eighteen structures involved in the present appeal are steel frame structures with steel roofs, sides, and floors and that on the whole are basically 30 feet high and 50 feet wide, and the majority of them are almost 40 years old. Steel is a construction material that is known for its

permanence. Each structure is capable of holding between 45,000 to 500,000 bushels of grain and the fact that the majority of the structures have lasted for almost 40 years constitutes proof of the permanent nature of the structures, if such proof be needed. All of the structures in question are clearly a “permanent fabrication or construction” in every sense of these words used in R.C. 5701.02(B)(1). The use of these structures has provided a permanent benefit to the land, for a period of almost 40 years, by making the land usable during that entire period for its intended purpose, which is for the purpose of storing grain on the land.

In summary, each of Appellee’s structures is a very large steel-framed structure, having steels walls, a steel roof and a steel floor, and each is a “permanent fabrication or construction,” and each is firmly “attached or affixed to [the] land,” and each is, in Metamora’s words, “used to store grain.” By definition, each is clearly a “building” under R.C. 5701.02(B)(1), and all must be taxed as real property under both Article XII, Section 2 of the Ohio Constitution and under R.C. 5701.02.

The only remaining issue is Appellee’s claim that its structures must be classified as a “business fixture” and as personal property under *Funtime*.

3. This Court’s decision in *Funtime* has no application to the classification of Appellee’s property for tax purposes.

This Court’s decision in *Funtime*, *supra*, has no application to the property involved in the present appeal for two reasons: (1) Appellee acknowledges that its property is not “permanently attached or affixed to the land” and, therefore, none of the property can be a “business fixture;” and (2) any “building” that is used in business is still building under R.C. 5701.02(B)(1). First, Appellee’s buildings cannot be a “business fixture” under the plain

meaning of the definition of a business fixture, and the statements made by Metamora in its Merit Brief support this. According to Metamora:

*** the bins *are not 'fixtures'* because they are *neither 'permanently attached [n]or affixed to the land.'*”

See Metamora’s Merit Brief at p. 15 (emphasis added).

If, as Metamora acknowledges, the structures are *not* a “fixture” specifically because they are not “permanently attached or affixed to the land” then they cannot possibly be a “business fixture”, because a “business fixture,” like a “fixture,” must be “*permanently attached or affixed to the land.*” The business fixture definition in R.C. 5701.03(B) uses precisely the same words of attachment as does the fixture definition in R.C. 5701.02(C). If the property is not a “fixture” for this reason, then it cannot be a “business fixture.” The property involved in *Funtime* was said to be “business fixtures” and all appear to have been “permanently attached or affixed to the land”.³ That clearly cannot be said of the property involved in the present appeal. As stated above, Appellee’s property cannot be a “business fixture” by virtue of the plain meaning of the words used in R.C. 5701.03(B) because none of the property is “permanently attached or affixed to the land.” As such, *Funtime* has no application to this appeal.

Second, Metamora acknowledges that its structures “are used to store grain.” See Metamora’s Merit Brief at p. 2. Appellants pointed out in their Merit Brief that R.C. 5701.02(B)(1) defines a “building” to be a structure that is “that is intended as *** shelter *** for tangible personal property.” See Appellants’ Merit Brief at p. 5. There is clearly nothing in this language or any other language in the definition of a “building” that would suggest that a

³ In *Funtime*, this Court stated that roller coaster “cannot be moved” (*Funtime, supra*, at ¶ 4) and

building that happens to be used for the commercial storage of goods, such as a commercial warehouse, is not a “building” as defined in this provision. Appellee’s grain storage structures are used for the same purpose as, and are identical in construction to, most common commercial warehouses in this State. Furthermore, there is nothing in the definition of a “business fixture” in R.C. 5701.03(B) that could be read to exempt a commercial warehouse from taxation by calling it a “business fixture” and any such interpretation would be arbitrary and capricious and would be a violation of Article XII, Section 2, of the Ohio Constitution. There is nothing in this Court’s *Funtime* decision that that would conflict with either of these two principles.

4. This Court’s decision in *Funtime* should be overruled or clarified as to the parts of the decision that deal with the business use of real property.

However, in its Merit Brief, Appellee argues that several of this Court’s statements in *Funtime* apply to the classification of Appellee’s property. Appellants reply to those arguments by requesting this Court to overrule or clarify the decision in *Funtime* to the extent that it conflicts with the arguments made by Appellants in their Merit Brief. The principles in *Funtime* that Appellee argues are in conflict with Appellants’ Merit Brief are essentially the following: (1) Appellants’ claim that the fact that its grain storage structures are used in business is not relevant to the classification of the property; and (2) the “otherwise specified” in R.C. 5701.02 has no application to any definition set forth in R.C. 5701.02.

- A. A ‘building’ or ‘structure’ that is used for commercial purposes is still a ‘building’ and ‘structure’ under R.C. 5701.02.

that the water ride ‘cannot be disassembled and moved.’ *Id.* at ¶ 3.

The only critical conflict between *Funtime* and Appellants' analysis of R.C. 5701.02 and R.C. 5701.03 is Appellants' argument that the business use of a building, structure, and fixture has no bearing on, and is not relevant to, the classification of the property. This is so for the following reasons:

(1) A "building" under R.C. 5701.02(B)(1) is always a building whether it is used in business or not. A "structure" as defined in R.C. 5701.02(E) is always a structure whether it is used in business or not; and

(2) "An item of tangible personal property" is always a "fixture" under R.C. 5701.02(C), and never a "business fixture," when it is appropriated to or devoted to the *same use as is the realty, the premises, or the land itself*. Therefore:

(A) An "item of tangible personal property" that is used in the *same business* as the business that is conducted on the realty, the premises, and the land is always a "fixture" and never a "business fixture," and is always real property. Appellee uses its land and the other improvements thereon for the commercial storage of grain, and all eighteen structures involved in the present are used for the same purpose. The use of all such structures clearly "increases or enhances utilization or enjoyment of the land" and fundamentally "benefits the land" by making the land usable for its intended (commercial) purpose.

(B) A "business fixture" is "an item of tangible personal property" that is *not used in the same business* as the business that the realty, premises, or the land are used in. A "business fixture" is used in a business that is *different* than the business to which the realty, premises, or land is devoted; instead a "business fixture" is used in and for "*the business conducted by the*

occupant on the premises” which is not the same business in which the realty, premises, or land are used.

All of Appellee’s land and all of the improvements thereon, including the property involved in this appeal, are used for the very same purpose: that purpose being the use of this property for the “storage of grain,” or if anyone prefers, that purpose is for the *commercial* “storage of grain.” For *classification purposes* the use of the property for the “storage of grain” and the use of the property for the *commercial* (in business) “storage of grain” are precisely *the same use of the property*. The use of all of the improvements on the land, including the grain storage structures involved in this appeal, “increases or enhances utilization or enjoyment of the land” and provides a benefit to the land by making the intended use of the land possible. The use of these buildings and structures are essential and necessary in order to allow the land to be used for its intended purpose. This is true whether the land and all of the improvements thereon are used for the *commercial* storage of grain or not. A commercial warehouse is always an “improvement” on the land under Article XII, Section 2 of the Ohio Constitution and is always a “building” under R.C. 5701.02 because the intended use of the land is for the commercial storage of goods and the warehouse itself makes that use possible. The warehouse, by definition, “increases or enhances utilization or enjoyment of the land” and directly “benefits the land” by making the intended use of the land possible. This is precisely why a “building” used for the commercial storage of people, goods, or animals is still a “building” under R.C. 5701.02(B)(1). The same thing applies to a “structure” that is used in business. The use of the “structure” in business “increases or enhances utilization or enjoyment of the land” by allowing the land to be used for its intended business purpose.

In this respect, Appellants' arguments do conflict with this Court's decision in *Funtime*, in that the majority opinion in *Funtime* did not consider the use of the land and the improvements thereon as an "amusement park" to be the exact same use as that of a *commercial* "amusement park" for classification purposes and that the park rides did directly "benefit the land" by making the intended use of the land possible (whether for a commercial purpose or not). Instead, Appellants' arguments are consistent with the two dissenting opinions. The fact that the amusement park was operated for a commercial purpose had no bearing on the classification of the property for tax purposes.

If an individual constructed a personal amusement park on a large estate purely for the benefit of his children, such that it could not be said that the property was used in business at all, every "building" and every "structure" on the land as defined in R.C. 5701.02 would be classified as real property, including all buildings and structures that were the same as or similar to those involved in the *Funtime* decision. The most fundamental rule for classifications purposes is that two identical buildings or structures on the land cannot be classified differently simply because one is used in business and the other is not.

- B. An 'item of tangible personal property' that is devoted to the same business to which the land and other improvements thereon are devoted is a 'fixture' under R.C. 5701.02 and not a 'business fixture', and is real property.

The same principles will apply to a "fixture" defined in R.C. 5701.02 as "an item of tangible personal property that ****benefits the realty." This Court has consistently held that the common law definition of a fixture has been incorporated into definition of an "improvement" under Article XII, Section 2 of the Constitution and that a fixture as so defined is an

“improvement” on the land and must be classified as real property. This issue was addressed by Appellant in his Merit Brief at pages 21 and 22. That part of the common law definition of a fixture that requires the fixture to provide a benefit to the land is the appropriation to the use test that is set forth in *Teaff v. Hewitt*, 1 Ohio St. 511 (1853). The second part of the definition of a fixture is that of “[a]ppropriation to the use or purpose of that part of the realty with which it is connected.” An item of tangible personal property that is “appropriated to the use or purpose of that part of the realty with which it is connected” is a fixture and is real property. The appropriation to the use test is a reference to the relationship between *the use of the realty* to which the fixture is attached and the *specific use of the fixture itself*. The use of fixture “*benefits the realty*” whenever it “appropriated to the use or purpose of that part of the realty with which it is connected;” that is, when it is used for the same purpose as the “realty with which it is connected.” The key point, once again, is that if the *land is devoted to a commercial purpose* and the “item of tangible personal property” (the potential fixture) is devoted *to that very same purpose*, then by definition it is “appropriated to the use or purpose of that part of the realty with which it is connected” and it is a fixture, and it provides a “benefit” to the land. A fixture that is devoted to the *same business* as that to which the land and other improvements thereon are devoted is a “fixture” merely by definition. It makes no difference to the classification of a fixture whether the land and the fixture are used in business or not used in business because the only relevant test for classification is whether they are used *for the same purpose*, whether that be in business or not in business.

- C. A ‘business fixture’ is ‘item of tangible personal property’ that is devoted to the ‘business conducted by the occupant on the premises’ and is not devoted to the business conducted on the realty or the premises itself.

It has been shown above that whenever an item of tangible personal property is “appropriated to *the use or purpose* of that part of the realty with which it is connected” then it is a fixture because it provides a direct “benefit to the land.” It has also been shown that this will always be the case when “the use or purpose of that part of the realty with which it is connected” is a commercial use or business use, so long as the fixture is devoted to *the same commercial or business use*. A “fixture” is defined to be “an item of tangible personal property *** that primarily benefits the realty and not *the business, if any, conducted by the occupant on the premises.*” A “business fixture” merely reverses the benefits test: it is “an item of tangible personal property *** that primarily benefits *the business conducted by the occupant on the premises* and not the realty.” What do the words “business conducted by the occupant on the premises” refer to?

When the “realty” and the “premises” are used in business, then the words mean that the “business conducted by the occupant on the premises” is a *different business* than the business to which the “realty” or the “premises” are used for. If the item is devoted to the *same business* to which the “realty” or the “premises” are devoted, then the item is “appropriated to *the use or purpose* of that part of the realty with which it is connected” and it provides a benefit to the realty and is a “fixture” and not a “business fixture.” Therefore, when the land and the improvements thereon are used in one single business, the business conducted on the “realty” is the same as the “business conducted by the occupant on the premises,” and it is not possible to

even ask whether the use of the item “benefits” the realty or “benefits” the business conducted on the land because both are the very same thing. An improvement on the land that is used in business benefits the land by making that business use possible.

A “business fixture” is merely something that is not a “fixture” under R.C. 5701.02 (it is a non-fixture) because it is *not* “appropriated to the use or purpose of that part of the realty with which it is connected,” because it is not used for the *same purpose* or not used *in the same business* as is the land, the “realty” or the “premises” under R.C. 5701.02 or R.C. 5701.03. The only relevant fact for classification purposes is simply that the business fixture is *not* devoted to the same use or purpose to which the land or realty is devoted and for that reason is *not* a “fixture” and such a thing is and always has classed as personal property since 1852.

In the appeal at hand, Appellee’s parcel of real property is devoted exclusively to the storage of grain, and all of the buildings, structures, and fixtures thereon are devoted to that single and same purpose, and all such improvements must be classified as real property. Appellee uses the land for the storage of grain for a commercial purpose, but that fact has no relevance to the classification of any building, structure, and fixture on the land because all such improvements are used for the very same (commercial) purpose. As the “occupant” of the land and all improvements thereon the Appellee has devoted the eighteen storage structures involved in the present appeal to precisely the same use and the same business to which Appellee has devoted all of land and the rest of all other improvements thereon. For classification purposes, it is irrelevant whether the storage of grain on the land is done for a commercial purpose or not.

- D. The “Otherwise Specified” language in R.C. 5701.02(A) does not override any of the specific definitions in R.C. 5701.02.

Appellee makes reference to the “otherwise specified” language in R.C. 5701.02 to the effect that something in the definition of a “business fixture” could override the definitions in R.C. 5701.02. In *Funtime*, this Court held that even if “the item meets the requirements of one of the statutory definitions of real property set forth in R.C. 5701.02” it can be “otherwise specified” in R.C. 5701.03 that the item is personal property and that “[i]f an item is ‘otherwise specified’ under R.C. 5701.03, it is personal property.” *Funtime*, at ¶ 33. For reasons that do not appear to have been considered by this Court in *Funtime*, Appellant asks this Court to overrule *Funtime* on this point.

The “otherwise specified language” is set forth in R.C. 5701.02(A) and states that “real property” includes:

*** land itself *** and, unless *otherwise specified in ***section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land ***”*

R.C. 5701.02(A)(emphasis added).

The “otherwise specified” language did make some sense when there were *no definitions* of “buildings, structures, improvements, and fixtures” in R.C. 5701.02. However, when these terms were given specific definitions, along with the definition of a “business fixture” in R.C. 5701.03, then the “otherwise specified” language was rendered totally obsolete by the definitions themselves. The point of putting very specific definitions in R.C. 5701.02 and R.C. 5701.03 was to have *mutually exclusive definitions that have no essential components in common*. The definitions of a “building” and a “structure” have nothing in common with any of the words or concepts that set forth in the definition of a “fixture.” Neither a building nor structure can be a fixture for this reason. A building and a structure are each a “permanent fabrication or

construction” while a fixture is “an item of tangible personal property” which is simply a different type of property altogether. A building and a structure are each “attached or affixed to land” while a fixture must be “permanently attached or affixed to the land.” These all are entirely different types of property that have nothing in common with each other and the definitions of each type are mutually exclusive. If a “building” or a “structure” cannot be a “fixture” for these reasons, then a “building” or “structure” cannot be a “business fixture” for the same reasons, as the definitions of a “fixture” and “business fixture” are identical in these two respects. Even if the “otherwise specified” language was still operative, there is nothing in the definition of a “business fixture” that can be “otherwise specified” as to the contents of the definition of a “building” or a “structure.” The mere fact that a “building” or “structure” might be used in business cannot mean that those definitions have anything to do with the definition of a “business fixture”.

This is clear from the fact that the first sentence of R.C. 5701.03(A) was also amended at the time these definitions were created and now reads as follows:

(A) ‘Personal property’ includes every tangible thing that is the subject of ownership, whether animate or inanimate, *including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code.*

R.C. 5701.03(A) (emphasis added).

Under this language, nothing in the definition of a “business fixture” can override anything set forth in one of the *definitions* of real property in R.C. 5701.02, that is, the definition of a “business fixture” cannot apply to or override anything that is “*defined* in section 5701.02 of

the Revised” as “real property.” A “building” and “structure” are “defined in Section 5701.02” to be real property. This Court cited this language in *Funtime at P28*, but it did not analyze it.

Reply to Amicus Brief of Ohio AgriBusiness Association

The Ohio AgriBusiness Association argues that the fact that Appellee’s storage structures (defined to be “buildings”) “consist[] of metal frames and supports indicates the ease with which they can be disassembled and reassembled, making the grain bins personal property.” *See* Amicus Brief of Ohio AgriBusiness Assoc. at p. 7. The fact that Appellee’s structures have “metal frames and supports” prove that they are a “permanent fabrication or construction” as set forth in R.C. 5701.02. Whether a steel frame building can be “disassembled” is irrelevant for classification purposes, as all steel-frame structures can be “disassembled.”

Reply to Amicus Brief of Ohio Farm Bureau Federation

Amicus Ohio Farm Bureau Federation points to the BTA’s decision in *The Mennel Milling Company vs. Roger W. Tracy, Tax Commissioner of Ohio*, BTA No. 94-X-116, 1996 Ohio Tax Lexis 862 (July 12, 1996), unreported, which was a sales and use tax case in which the BTA stated that a distinction between a “portable grain bin” and concrete tank is that “[r]ather than being soldered or welded to its foundation, a portable grain bin is bolted in such a way that it can be removed without destroying it, or its foundation.” *See* Amicus Brief of Ohio Farm Bureau Federation at p. 26. Had this been a real property classification case, the BTA would have been required to address the fact that R.C. 5701.02(E) requires only that a building or structure be “attached or affixed to [the] land.” There is no basis for concluding that this language requires any structure to “soldered or welded to its foundation,” as the BTA suggested,

and such a requirement would exempt from taxation every steel-frame building attached to a concrete foundation in this State.

Reply to Amicus Brief of Central Ohio Farmers Co-Op

Amicus Central Ohio Farmers Co-Op relies on the Tax Commissioner's Memorandum of December, 18, 2007, for the fact that the Commissioner classified "portable grain storage bins regardless of size" as personal property. *See* Amicus Brief of Central Ohio Farmers Co-Op at p. 3; Exhibit D. However, just as did the BTA erred in citing and relying on the Tax Commissioner's PP2007-01 and RP 2007-1 bulletin of January, 2008, which says the same thing (*see* Appellants' Merit Brief at p. 13), the Central Ohio Farmer's Co-Op failed to cited that part of the Tax Commissioner's 2007 Memorandum that went on to classify "Elevators, *storage bins*, and storage silos" as "real property." *See* Commissioner's Memorandum, Supp. at p. 5, ¶ 30.

All of the Amici rely on the fact that a "storage bin" is included in the definition of a "business fixture" in R.C. 5701.03(B). This language reads as follows:

'Business fixture' includes, but is not limited to, machinery, equipment, signs, *storage bins* and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground.

R.C. 5701.03(B) (emphasis added).

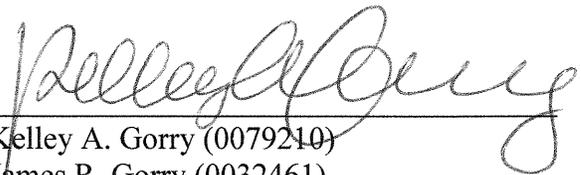
As stated by Appellants in their Merit Brief, these "storage bins" are storage bins of the kind that is used in the manufacturing process and are part of a raw materials storage and handling system. *See* Appellants' Merit Brief at p. 24. Furthermore as pointed out by Appellants in this Brief, nothing included in the definition of a "business fixture" can have any effect for classification purposes on any property that falls within one of the definitions of real

property set forth in R.C. 5701.02. Appellee's grain storage structures fall within the definition of a "building" in R.C. 5701.02 and nothing in the definition of a "business fixture" can be relevant to the classification of a "building."

CONCLUSION

For the reasons stated herein, Appellants respectfully request this Honorable Court to reverse the decision of the BTA and to hold that Appellee's eighteen grain storage structures are "buildings" as defined in R.C. 5701.02(A)(1) and are "improvements" on the land under Article II, Section 2 of the Ohio Constitution, and therefore must be classified as real property under both provisions.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Appellant's Reply Brief was served on Jonathan T. Brollier, Esq., Bricker & Eckler, LLP, 100 S. Third St., Columbus, OH 43215; Luther L. Liggett, Jr., Esq., Kohrman Jackson & Krantz, 10 W. Broad St. #1320, Columbus, OH 43215; Chad A. Endsley, Esq., Ohio Farm Bureau Federation, Inc., P.O. Box 182383, Columbus, OH 43218-2383; David C. Barrett, Jr., Esq., Barrett, Easterday, Cunningham & Eselgroth, LLP, 7259 Sawmill Rd., Dublin, OH 43016; and the Honorable Michael DeWine, Ohio Attorney General, 30 E. Broad St., 17th Floor, Columbus, OH 43215, by regular U.S. Mail, postage prepaid, this 25th day of November, 2014.


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