

REPRESENTATIVE FOR PETITIONER:
Tracey J. Carboni, Baden Tax Management

REPRESENTATIVE FOR RESPONDENT:
Richetta Hale, Harrison Township Chief Deputy

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Bemis Bros. Bag Company,	)	Petition Nos.:	84-002-02-1-3-01024
	)		84-002-02-1-3-00861
Petitioner,	)		84-002-02-1-3-00862
)		
	)	Parcel Nos.:	118-06-12-300-002
v.	)		118-06-12-300-003
	)		118-06-12-176-001 ¹
)		
	)	County:	Vigo
Harrison Township Assessor,	)	Township:	Harrison
)		
Respondent.	)	Assessment Year:	2002

Appeal from the Final Determination of
Vigo County Property Tax Assessment Board of Appeals

May 10, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ The Administrative Law Judge misidentified this parcel number at the administrative hearing. The correct parcel number appears in these findings and on the Form 131 petition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. To rebut the presumption that an assessor correctly valued real property, a taxpayer must prove that the property has a lower market value-in-use by offering relevant, market-based evidence. The Petitioner's representative, Tracy Carboni, estimated the subject property's value using two generally accepted appraisal methodologies. But Mr. Carboni relied, in part, on incorrect information, and he did not explain the bases underlying several of his key assertions. Did the Petitioner rebut the assessment's presumption of correctness?
2. The Petitioner failed to rebut the presumption that the subject property's assessment is correct. Although Mr. Carboni relied upon two generally accepted valuation methods, his analysis suffers from many readily apparent substantive flaws. When viewed together, those flaws render his valuation opinion too unreliable for the Board to give it any probative weight.

PROCEDURAL HISTORY

3. The Vigo County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations concerning the above-captioned parcels on January 24, 2005. On February 25, 2005, the Petitioner filed three Form 131 Petitions to the Indiana Board of Tax Review for Review of Assessment ("Form 131 petitions") contesting the PTABOA's determinations.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The Board's duly designated Administrative Law Judge, Rick Barter ("ALJ"), held an administrative hearing on the above-captioned Form 131 petitions. The ALJ held that hearing on November 14, 2006, in Terre Haute, Indiana.

5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Tracey J. Carboni, Baden Tax Management.

For the Respondent:

Richetta Hale, Harrison Township Chief Deputy.

6. The Petitioner submitted a book, labeled as Exhibit A, that includes the following sections:

Petitioner Exhibit A-1 – Position Statement (pages 1-3),
Petitioner Exhibit A-2 – Assessment appeal (pages 4-7),
Petitioner Exhibit A-3 – Approaches to value (pages 8-14),
Petitioner Exhibit A-4 – Subject value estimate (pages 15-19),
Petitioner Exhibit A-5 – Sales-comparison approach (pages 20-23),
Petitioner Exhibit A-6 – Income approach (page 24),
Petitioner Exhibit A-7 – Reconciliation (pages 25-27),
Petitioner Exhibit A-8 – Photographs of subject property (pages 28-41),
Petitioner Exhibit A-9 – Map and summaries of comparable sales (pages 42-45),
Petitioner Exhibit A-10 – Pre-hearing Exhibit List (pages, 46-47),
Petitioner Exhibit A-11 – Form 11s & property record cards (pages 48-70),
Petitioner Exhibit A-12 – Forms 131, 115, 130, and power of attorney documents (pages 71-120).

7. The Respondent presented the following exhibits:

Respondent Exhibit 1 – General commercial models pages from the Real Property Assessment Guidelines for 2002 –Version A (Guidelines),
Respondent Exhibit 2 – Depreciation pages from the Guidelines,
Respondent Exhibit 3 – Calculations for weighted year 1982,
Respondent Exhibit 4 – Property record cards for Great Dane Limited property,
Respondent Exhibit 5 – Aerial photograph and assessment figures for Alcan property,
Respondent Exhibit 6 – Aerial color photograph of subject property,
Respondent Exhibit 7 – Aerial color photograph of Ampacet plant,
Respondent Exhibit 8 – Property record cards for Ampacet plant,
Respondent Exhibit 9 – Aerial color photograph of AET plant,
Respondent Exhibit 10 – Property record cards for AET plant,

Respondent Exhibit 11 – Test property record cards for subject parcels.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition for each parcel,
Board Exhibit B – Notices of hearing dated October 6, 2006,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Waiver of notice/exchange.

9. The Respondent did not provide the Petitioner with a list of witnesses and exhibits or copies of documentary evidence before the administrative hearing as required by 50 Ind. Admin. Code 2-7-1(b). The Petitioner, however, agreed to waive 52 I.A.C. 2-7-1(b)'s exchange requirements and proceed with the hearing. *Carboni statement; see also Board Ex. D.*
10. The property under appeal consists of three parcels located at 1350 N. Fruitridge Avenue, Terre Haute, Indiana. The subject land totals approximately 32.98 acres. The improvements include an approximately 765,742-square-foot light manufacturing facility built in phases from 1956 to 2000, as well as mezzanines, truck walls and wells, and yard improvements. The Board will refer to the three parcels collectively as the “subject property.”
11. The ALJ did not inspect the subject property.

12. For 2002, the PTABOA assessed the subject parcels as follows:

<u>Petition No.</u>	<u>Parcel No.</u>	<u>Land</u>	<u>Improvements</u>
84-002-02-1-3-01024	1180612300002	\$69,000	\$12,298,800
84-002-02-1-3-00861	1180612300003	\$75,000	\$ 928,200
84-002-02-1-3-00862	1180612176001	\$91,400	\$ 2,593,700

Total: \$16,056,100.

13. The Petitioner requested the following values on its Form 131 petitions:

<u>Petition No.</u>	<u>Parcel No.</u>	<u>Land</u>	<u>Improvements</u>
84-002-02-1-3-01024	1180612300002	\$69,000	\$ 9,101,100
84-002-02-1-3-00861	1180612300003	\$75,000	\$ 686,900
84-002-02-1-3-00862	1180612176001	\$91,400	\$ 1,919,300

Total \$11,942,700.

14. At the hearing, the Petitioner requested a total assessed value of \$12,000,000. *Carboni testimony; Pet'r Ex. A-1 at 3.*

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

15. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
16. In making its case, the taxpayer must explain how each piece of evidence relates to the assessment it requests. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
17. Once the taxpayer establishes a prima facie case, the burden shifts to the assessing official to rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the taxpayer's evidence. *Id.; Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Parties' Contentions

18. The Petitioner contends that, in valuing the subject facility, the Respondent failed to account for all depreciation and obsolescence. *Carboni testimony; Pet'r Ex. A-1 at 2, 3.* The Petitioner's representative, Tracy Carboni, accounted for those items when he independently estimated the subject property's market value-in-use using the cost and sales-comparison approaches to value. After reconciling his analyses under those two approaches, Mr. Carboni estimated the subject property's market value-in-use to be \$12,000,000. *Id.*

19. The Petitioner presented the following evidence and argument to support its position:
 - a) According to Mr. Carboni, the subject facility suffers from abnormal functional and economic obsolescence in addition to the physical depreciation incorporated into the property's assessment. *Carboni testimony; Pet'r Ex. A-1 at 2.* The facility's inefficient layout and consequent inability to optimize workflow saddle the Petitioner with excess capital and operating costs. *Id.* Those excess capital and operating costs create abnormal functional obsolescence. *Id.* Similarly, facilities of the subject's size and character are not in high demand. Thus, the subject property would be on the market for a significant time before it sold or, if it were leased, before it achieved stabilized occupancy. *Id.* Those factors create abnormal economic obsolescence. *Id.*
 - b) Upon examining the subject property's record cards, Mr. Carboni determined that the Respondent reduced the subject facility's replacement cost new by 35.7% to account for depreciation. *Carboni testimony; Pet'r Ex. A-4 at 17.* The Respondent used an approach known as the "age-life method" to estimate the facility's depreciation. *Carboni testimony; Pet'r Ex. A-3 at 10.* That method assumes improvements depreciate on a straight-line basis throughout their useful lives. *Id.* In applying the age-life method, appraisers account for things such as remodeling and modernization by estimating an improvement's effective age. *Pet'r Ex. A-3 at 10.* Thus, in order to properly estimate an improvement's effective age, an appraiser must consider the

- improvement's overall physical condition as compared to similar improvements and all non-physical influences that create obsolescence. *Pet'r Ex. A-7 at 25*. Even so, the age-life method consistently fails to capture all the depreciation experienced by improvements. *Pet'r Ex. A-7 at 26*. And the Respondent compounded that problem by simply using the facility's weighted-average actual age rather than truly estimating its effective age. *Id.* The Respondent's error in that regard is repeated almost uniformly throughout Indiana's assessment community. *Pet'r Ex. A-4 at 16 n. 7*.
- c) Mr. Carboni therefore performed his own cost-approach analysis. In doing so, Mr. Carboni used the Respondent's estimates of the subject land's value, as vacant, and the facility's reproduction/replacement cost new. *Carboni testimony; Pet'r Ex. A-1 at 2*. But he independently estimated facility's depreciation using an approach known as the "market-extraction method." *Carboni testimony; Pet'r Ex. A-4 at 17-19*. That method more accurately accounts for an improvement's functional and economic obsolescence than does the age-life method employed by the Respondent. *Id.*
- d) Mr. Carboni examined sales of twenty-two light manufacturing facilities containing more than 100,000 square feet. *Carboni testimony; Pet'r Ex. A-4 at 17-19*. The sales occurred between December 1995 and December 2002. *Id.* The buildings' ages ranged from three years to fifty-seven years at the time of sale. *Id.* Mr. Carboni adjusted the sale prices, as necessary, to reflect any special conditions, rights conveyed, or finance terms. He then determined the portion of each sale price attributable to improvements, which he termed the "building residual" value. *Id.* Next, Mr. Carboni subtracted each building's residual value from its replacement cost new. *Id.* The resulting figure reflected the total depreciation experienced by the building, which Mr. Carboni expressed as a percentage of the building's replacement cost new. *Id.* Mr. Carboni then divided each building's depreciation percentage by its actual age to determine an annual depreciation rate. *Id.*
- e) The median annual depreciation rate for the twenty-two buildings was 2.2%. *Carboni testimony; Pet'r Ex. A-4 at 17-19*. Mr. Carboni multiplied that median rate by 26 — the subject facility's weighted-average age as reflected on its property record cards — to determine that it suffered from accumulated depreciation equal to 57% of its

- replacement cost new. *Carboni testimony; Pet'r Ex. A-4 at 19.* Finally, Mr. Carboni added the subject property's assessed land value to the facility's depreciated replacement cost new to arrive at a total rounded estimate of \$12,400,000. *Id.*
- f) Mr. Carboni, however, acknowledged that he relied upon the subject property's record cards as they existed prior to the PTABOA hearing. After that hearing, the values changed as follows: parcel #118-06-12-176-001 changed from \$3,203,600 to \$2,685,100; parcel #118-06-12-176-002 changed from \$14,214,000 to \$12,367,800; and parcel #118-06-12-176-003 changed from \$1,072,700 to \$1,003,200. *Carboni testimony; Pet'r Ex. A-11; Board Ex. A.* Mr. Carboni testified that the changes reflected things such as the facility's perimeter-to-area ratio, but did not affect the facility's effective age. Thus, although the changes lowered the facility's replacement cost new, Mr. Carboni testified that the formula he applied to value the subject property would not change. If anything, applying that formula to a lower replacement cost new would yield a lower overall value. *Carboni testimony.*
- g) Mr. Carboni also estimated the subject property's market value-in-use using the sales-comparison approach. *Carboni testimony; Pet'r Ex. A-5 at 20-23.* In doing so, Mr. Carboni first identified three light industrial facilities that were larger than 350,000 square feet and that sold before March 1, 2002. *Carboni testimony; Pet'r Ex. A-5 at 21.* All three properties were located in Indiana. *Id.* Mr. Carboni based his choice on similarities between those three facilities and the subject facility in terms of size, age, and use. *Id.*
- h) Mr. Carboni adjusted the sale prices of the three purportedly comparable properties to account for several differences between those properties and the subject property. Thus, Mr. Carboni adjusted for differences in the percentage of office space contained in each facility, building size, wall height, and land-to-building ratio. *Carboni testimony; Pet'r Ex. A-5 at 23.* Mr. Carboni based his adjustments on "market observations." *Pet'r Ex. A-5 at 22.* While Mr. Carboni acknowledged that his adjustments were "not statistically certain," he asserted that they "provide a reasoned method of adjusting the characteristics of the sold properties to the subject and assimilating the value of the adjustments." *Id.* Mr. Carboni also adjusted each

- property's sale price to reflect changes between the property's sale date and the effective date of his valuation. *See Pet'r Ex. A-5 at 22-23.* Mr. Carboni, however, disclosed neither his source for calculating his "market conditions" adjustment nor the valuation date upon which he premised that adjustment. *See Id; see also Carboni testimony.*
- i) Mr. Carboni determined that the comparable properties had a weighted-average adjusted sale price of \$15.04 per square foot of building area. He then multiplied that price by the subject facility's area (765,742 square feet) to arrive at a rounded estimate of \$11,500,000 under the sales-comparison approach. *Id.*
 - j) Finally, Mr. Carboni reconciled his estimates under the cost and sales-comparison approaches by assigning a weight of 55% to his cost-approach estimate and 45% to his sales-comparison estimate. *Carboni testimony; Pet'r Ex. A-7 at 27.*
20. The Respondent contends that it assessed the subject property correctly under the 2002 Real Property Assessment Manual ("Manual") and the Real Property Assessment Guidelines for 2002 – Version A ("Guidelines"). *Hale testimony.* Unlike the Petitioner, the Respondent does not believe that the subject facility suffers from significant obsolescence. And the Respondent contends that Mr. Carboni's market-extraction and sales-comparison analyses were flawed because he did not rely upon properties that were comparable to the subject property and because many of the sales occurred outside the time allowed under the Manual and Guidelines. *Id.*
21. The Respondent presented the following evidence and argument in support of its position:
- a) The Manual and Guidelines require assessors to value a property base upon its use, which is not necessarily the same as the amount for which that property might sell. *Hale testimony.* The subject property is a large plastic-manufacturing facility. *Id.; Resp't Ex. 6.* The Petitioner employs 1,014 employees at the facility with a payroll over \$2,000,000 per month. *Hale testimony.*

- b) The Respondent followed the Manual and Guidelines in calculating the subject facility's depreciation. *Hale testimony; Resp't Exs. 2-3.* The Petitioner built the subject facility in segments over time. *Hale testimony.* The Respondent therefore multiplied the area of each segment and/or addition thereto by the year that such segment/addition was constructed to arrive at a weighted-average construction year of 1982. *See Hale testimony; Resp't Ex. 3.*
- c) The Petitioner received an "urban exemption" as each new portion of the facility was constructed. *Id.* Although the subject facility may suffer from some obsolescence, the Petitioner did not present any evidence to quantify that obsolescence. *Hale argument.*
- d) The Respondent "reworked" the subject property and her assessment came out higher. *Hale testimony; Resp't Ex. 11.* The square footages and uses for some portions of the facility changed. *Id.* Although the Respondent does not request that the subject property's 2002 assessment be increased, the changes give a better picture of the subject facility's measurements, age, and use. *Hale testimony.*
- e) Mr. Carboni based his market-extraction analysis largely on sales occurring outside the time allowed by the Manual and Guidelines. *Hale argument.* In fact, only six of the twenty-two sales that Mr. Carboni identified occurred within the permissible timeframe. *Id.*
- f) Mr. Carboni's sales-comparison analysis suffers from similar flaws. Mr. Carboni relied, in part, on the sale of a property owned by Great Dane. But that property sold in 1995, well outside the time allowed by the Manual and Guidelines. *Hale argument; Resp't Ex. 4.* And JI Case, which owned the property before selling it to Great Dane, vacated the premises more than ten years before the sale. During that time, the facility sat vacant, unheated, unused, and vandalized. *Hale testimony.*
- g) Mr. Carboni also relied upon the sale of a facility located in Lebanon. That facility, however, is smaller than the subject facility. *Hale testimony.* And only 2% of the Lebanon facility constitutes office space as compared to 4% of the subject facility. *Hale testimony.* Although Mr. Carboni described the Lebanon property as "light

- industrial,” the Petitioner did not present any evidence showing how that facility was used. *Id.*
- h) The Respondent also submitted property record cards for, and aerial photographs of, three light-industrial manufacturing plants in Vigo County. *Hale testimony; Resp’t Exs. 5, 7 – 10.* The first facility, owned by Alcan, is smaller than the subject facility. *Hale testimony; Resp’t Ex. 5.* Alcan employs fewer than 100 people at the facility. The three parcels comprising the Alcan facility are assessed for a total of \$8,679,300. *Id.*
- i) Ampacet owns the second facility, which is located close to the subject property. *Hale testimony; Resp’t Exs. 7-8.* The 281,701-square-foot facility sits on two parcels of land and was built in 1972. *Id.* The Ampacet property is assessed for a total of \$8,367,400 *Id.*
- j) Applied Extrusion Technologies (“AET”) owns the third facility. *Resp’t Exs. 9-10.* Of the three facilities, AET’s is the most similar to the subject facility. *Hale testimony.* AET, like the Petitioner, manufactures plastics for the food industry, so the facilities have to be maintained well and kept clean. *Id.* AET’s facility contains 770,759 square feet and was built in 1968. The property is assessed for \$17,613,100. *Hale testimony; Resp’t Ex. 10.*

Discussion

22. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 Ind. Admin. Code 2.3-1-2). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales-comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the Guidelines.

23. A property's market value-in-use, as determined by applying the Guidelines, is presumed to be accurate. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may offer evidence to rebut that presumption, provided such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. A professional appraisal prepared in conformance with the Manual's definition of true tax value and the Uniform Standards of Professional Appraisal Practice ("USPAP") generally will suffice. *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also rely upon sales information for the subject or comparable properties and any other information compiled using generally accepted appraisal principles. MANUAL at 5.
24. Here, the Petitioner relies upon Mr. Carboni's opinion estimating the subject property's market value-in-use. And Mr. Carboni purports to have formed his opinion using two generally accepted appraisal methods — the cost approach and the sales-comparison approach. Mr. Carboni's analysis under each approach, however, suffers from manifest problems that deprive his opinion of probative weight. The Board explains those flaws in detail below, focusing initially on Mr. Carboni's cost-approach analysis.
25. The cost approach is based on the assumption that potential buyers will pay no more for a given property than it would cost them to purchase an equally desirable parcel of vacant land and construct an equally desirable substitute improvement. MANUAL at 13. The appraiser first calculates the existing improvement's replacement "cost new." The appraiser next subtracts from that replacement cost new an amount reflecting the improvement's accrued depreciation. *Id.* Finally, the appraiser adds the value of the land, as if it were vacant, to determine the property's total value. *Id.*
26. Mr. Carboni's cost-approach analysis appears to be a hybrid between the mass-appraisal approach contained in the Guidelines and what he asserts is a more accurate market-

oriented approach for determining depreciation. His methodology, however, generally is consistent with the Manual's description of the cost approach. Nonetheless, several readily apparent flaws detract markedly from the reliability of Mr. Carboni's value estimate. First, Mr. Carboni used the replacement cost new ("RCN") for the subject facility that is reflected on the subject property's record cards as they existed prior to the PTABOA hearing. The PTABOA, however, ordered changes to the Respondent's original calculations that reduced the RCN. *See Carboni testimony; Board Ex A.* According to Mr. Carboni, the PTABOA's changes did not affect his market-extraction analysis for determining the improvements' accrued depreciation. *See Carboni testimony.* But Mr. Carboni's failure to consider those changes speaks to the care with which he performed his analysis, and by extension, the credibility of his value estimate.

27. Second, Mr. Carboni's market-extraction analysis, while impressive in form, lacks substance in several key respects. For example, Mr. Carboni extracted his median annual-depreciation estimate from sale and cost information for twenty-two facilities. Mr. Carboni, however, did little to compare those twenty-two facilities to the subject facility other than to assert that all twenty-three were light manufacturing facilities larger than 100,000 square feet. The Board need not determine whether that failing, by itself, would deprive Mr. Carboni's analysis of probative value entirely. But it is one factor in the Board's finding that Mr. Carboni's value estimate lacks credibility.
28. Third, Mr. Carboni's market-extraction analysis compares apples to oranges. Mr. Carboni testified that he used the consumer price index to adjust the sale prices for all twenty-two properties in his market-extraction analysis. *Carboni testimony.* Although he did not specify the date to which he adjusted those sale prices, one must assume that it was either the January 1, 1999, valuation date set forth in the Manual² or the March 1, 2002, assessment date. In his report, however, Mr. Carboni says that he calculated the RCN for each facility as of its sale date. *Pet'r Ex. A-4 at 17.* And those sale dates ranged from February 1995 to October 2002. *Id. at 18.* Thus, it appears that Mr. Carboni

² MANUAL at 4, 8; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)

determined each property's depreciation by subtracting its RCN, calculated as of one date, from its sale price, adjusted to an entirely different date.

29. Finally, Mr. Carboni computed the subject facility's accrued depreciation using an incorrect weighted-average age. In calculating the facility's accrued depreciation, Mr. Carboni multiplied the annual percentage he extracted from the market by twenty-six — the facility's weighted-average age based solely on the original construction dates, without regard to newer additions. *Pet'r Ex. A-4 at 15-19*. In his report, however, Mr. Carboni acknowledged that the facility had a weighted-average age of eighteen years when one considers both original construction and additions thereto. *See Pet'r Ex. A-4 at 15*³. And the Respondent's hand-written calculations appear to confirm that fact. *See Resp't Ex. 6; Hale testimony*. Thus, Mr. Carboni ignored the effect of newer construction on the subject facility's overall depreciation rate. And he did not allege that generally accepted appraisal practice allows appraisers to do so. In fact, the Guidelines require assessors to calculate a facility's weighted age to reflect additions made after its original construction date and to use that weighted age, rather than an age based solely on original construction, in applying the Guidelines' depreciation tables. GUIDELINES, app. F at 5. It is at least possible that Mr. Carboni could have offset his failure to account for the subject facility's newer additions by ignoring comparable newer construction in determining the ages of the twenty-two facilities from which he extracted his market depreciation rate. But there is no evidence that he did so.
30. The Board next turns to Mr. Carboni's estimate under the sales-comparison approach. The sales-comparison approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute improved property already existing in the market place. MANUAL at 13. The appraiser locates sales of comparable improved properties and adjusts their selling prices to reflect the subject property's total value. *Id.* The adjustments represent a quantification of

³ According to Mr. Carboni, “[a]s is true in the instant case, when an addition is constructed to an existing building, the Indiana assessment community typically calculates a weighted-average actual age of the improvements and purports that weighted-average actual age to be an effective age.” *Pet'r Ex. A-4 at 16 n. 7* (emphasis added).

property characteristics that cause sale prices to vary. *Id.* Using objectively verifiable evidence, the appraiser examines all possible differences between the subject property and the comparable properties and isolates the items that influence market value. *Id.* The appraiser quantifies those items' contributory values and uses those contributory values to adjust the comparable properties' sale prices. *Id.*

31. Thus, in order to use the sales-comparison-approach as evidence in an assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must compare the subject property's characteristics to the characteristics of the purportedly comparable properties. *Id.* at 471. And the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
32. As is the case with his cost-approach analysis, Mr. Carboni's sales-comparison analysis, while impressive in form, lacks substance. It is true that Mr. Carboni provided more detail about how the three purportedly comparable properties in his sales-comparison analysis compared to the subject property than he did for any of the properties listed in his market-extraction analysis. But his comparison was still largely conclusory. And, while Mr. Carboni adjusted the purportedly comparable properties' sale prices to reflect various differences between those properties and the subject property, he did not explain how he quantified any of his adjustments. At most, Mr. Carboni said in his report, "[t]he adjustments are based on market observations and while not statistically certain the adjustments provide a reasoned method of adjusting the characteristics of the sold properties to the subject and assimilating the value of the adjustments." *Pet'r Ex. A-5 at 22.*
33. In truth, Mr. Carboni's assertions may not differ significantly from those made by a certified appraiser in an appraisal report. But the appraiser's assertions are backed by his

education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Mr. Carboni, however, is not a certified appraiser, did not establish that he has any particular expertise in applying generally accepted appraisal principles outside of the mass-appraisal context, and did not certify that he complied with USPAP in performing his valuation analysis. The Board therefore will not simply defer to Mr. Carboni's "market observations" without evidence showing the data upon which he grounded his observations.

34. What is more, Ms. Hale testified to facts about one of Mr. Carboni's three purportedly comparable properties that cast serious doubt on the reliability of Mr. Carboni's analysis. Specifically, Ms. Hale testified that the facility owned by Great Dane sat vacant and unheated for ten years before the 1995 sale that Mr. Carboni relied upon. *Hale testimony; Pet'r Ex. A-5 at 23*. Ms. Hale also testified that the property had been vandalized. *Id.* The Board credits Ms. Hale's testimony. Indeed, an addendum to Mr. Carboni's report indicates that the property was vacant for at least seven years. *Pet'r Ex. A-9*. But Mr. Carboni did not adjust the Great Dane property's sale price to account for those factors. In fact, Mr. Carboni adjusted that property's sale price downward by 5% to reflect its *superior* quality. *Pet'r Ex. A-5 at 23*. A limited period of vacancy may not automatically affect a property's market value. But Mr. Carboni's failure to consider, even in passing, the Great Dane property's decade-long vacancy and history of vandalism seriously detracts from the reliability of his valuation estimate.

SUMMARY OF FINAL DETERMINATION

35. The Petitioner failed to submit probative evidence to rebut the presumption that the subject property's assessment is correct. The Board finds for the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.