

REPRESENTATIVE FOR PETITIONER:

Joshua J. Malancuk, Director, PricewaterhouseCoopers, LLC

REPRESENTATIVE FOR RESPONDENT:

Brenda D. Conner, Noble Township Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

GDX Automotive,	)	Petition No:	85-009-05-1-3-00001
	)		
Petitioner,	)	Parcel No:	851440134002000009
	)		
v.	)		
	)		
	)	County:	Wabash
Noble Township Assessor,	)	Township:	Noble
	)	Assessment Year:	2005
Respondent.	)		

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

**January 30, 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:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### ISSUE

1. The parties raised several issues, which the Board consolidates and restates as:
  - (1) *Whether the Petitioner filed its Form 130 petition within the time required to affect the March 1, 2005, assessment of the subject property; and*
  - (2) *Whether the subject property is assessed in excess of its market value-in-use*

### PROCEDURAL HISTORY

2. On or about May 10, 2005, the Petitioner, GDX Automotive (Petitioner), filed a Form 130 Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130 petition) with the Bartholomew County Assessor. *See Resp't Ex. 2.* The Bartholomew County Assessor forwarded the Form 130 petition to the Respondent on May 13, 2005. *Id.* The Wabash County Property Tax Assessment Board of Appeals (PTABOA) issued its determination concerning the Petitioner's Form 130 petition on March 31, 2006. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition) requesting the Board to conduct an administrative review of the subject property's assessment. The Petitioner filed its Form 131 petition on April 28, 2006.

### HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on November 1, 2006, in Wabash, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Joshua J. Malancuk, Director, PricewaterhouseCoopers, LLC

Benjamin F. Buckles, Consultant, PricewaterhouseCoopers, LLC  
Randy Shepherd, Operations Manager, GDX Automotive  
Lawrence W. Mitchell, Mitchell Appraisals, Inc.

For the Respondent:

Brenda D. Conner, Noble Township Assessor

William Schultz, Technical Advisor to Noble Township Assessor

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Form 131 petition,  
Petitioner Exhibit 2 – Power of attorney,  
Petitioner Exhibit 3 – GDX North America, Inc. property record card,  
Petitioner Exhibit 4 – Sales disclosure form,  
Petitioner Exhibit 5 – Commercial and industrial depreciation from - Real  
Property Assessment Guidelines for 2002 –Version A,  
Petitioner Exhibit 6 – Appraisal prepared by Mitchell Appraisals,  
Petitioner Exhibit 7 – Appraisal prepared by Cushman & Wakefield,  
Petitioner Exhibit 8 – GDX Automotive Functional Obsolescence Calculation,  
Petitioner Exhibit 9 – Petitioner’s Brief in Support of Appeal,<sup>1</sup>  
Petitioner Exhibit 10 – Map of GDX facility with corresponding photographs.

6. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Form 133 petition,  
Respondent Exhibit 2 – Form 130 petition,  
Respondent Exhibit 3 – Pages from – Real Property Assessment Guidelines for  
2002 – Version A containing terminology,  
Respondent Exhibit 4 – Property record card (PRC) for Ford Meter Box,  
Respondent Exhibit 5 – PRC for Stone Container Property,  
Respondent Exhibit 6 – Sales disclosure and PRC for Chromaproperties, LLC,  
Respondent Exhibit 7 – Sales disclosure and PRC for Essex Group, Inc.,  
Respondent Exhibit 8 – Sales disclosure and PRC for Flagship Properties,  
Respondent Exhibit 9 – Sales information and PRC for Grant County property  
(Ohio Logistics),  
Respondent Exhibit 10 – Sales information and PRC for Grant County property  
(Winterfield Realty),

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<sup>1</sup> The Petitioner’s brief is signed by Joshua J. Malancuk. *Pet’r Ex. 9*. Mr. Malancuk has not filed an appearance with the Board as counsel and it does not appear that Mr. Malancuk is a licensed attorney, although he is a certified tax representative. The Board’s rules prohibit tax representatives from engaging in representation that involves the practice of law. Ind. Admin. Code, tit. 52, r. 1-2-1(b)(4). In the Petitioner’s brief, Mr. Malancuk cites to and interprets decisions of the Indiana Tax Court. *Id.* While Mr. Malancuk’s discussion centers on basic concepts relating to the burden of proof in a claim for obsolescence, it approaches, if not crosses, the line into the practice of law. The Board cautions Mr. Malancuk against exceeding the permissible scope of his representation in future cases.

Respondent Exhibit 11 – PRC for GDX Automotive.

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

Board Exhibit A – Form 131 petition with attachments,  
Board Exhibit B – Notice of Hearing dated August 30, 2006,  
Board Exhibit C – PricewaterhouseCoopers’ Witness and Exhibit list,  
Board Exhibit D – PricewaterhouseCoopers’ Exhibits and Summary of Witness List,  
Board Exhibit E – Hearing Sign-In Sheet,  
Board Exhibit F – Transcript of Hearing prepared by Marilyn M. Jones & Associates, Ltd.

8. The subject property is classified as “industrial light manufacturing and assembly” pursuant to the property record card for parcel number 851440134002000009. The subject property contains several buildings,<sup>2</sup> and it is located at 1 General Street, Wabash, Indiana.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. The PTABOA determined the assessed value of the property to be:

Land: \$304,100	Improvements: \$3,920,000	Total: \$4,224,100
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11. The assessed value requested by the Petitioner on the Form 131 petition:

Land: \$304,100	Improvements: \$2,520,200	Total: \$2,824,300
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12. At the hearing, the Petitioner requested a total assessed value of \$2,620,000. *Tr. at 91; Pet’r Ex. 6.*

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<sup>2</sup> The subject property appears to contain numerous buildings, including a 468,938 square foot manufacturing facility and a 22,400 square foot office building. *See Resp’t Ex. 11.* The witnesses seldom distinguish between the buildings in their testimony, often referring simply to the “plant.” For purposes of this decision, the Board refers to the improvements on the subject property collectively as the “subject plant.”

## JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; or (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would 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).
15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *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”).
16. Once the petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner'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 petitioner's evidence. *Id.; Meridian Towers*, 805 N.E.2d at 479.

## ANALYSIS

### Issue 1

*Whether the Petitioner filed its Form 130 petition within the time required to affect the March 1, 2005, assessment of the subject property*

17. The Respondent contends that the Petitioner did not timely file its Form 130 petition. *Tr. at 61-62.* The Respondent concedes that the Petitioner filed its Form 130 petition on May 10, 2005; however, the Petitioner filed that document with the Bartholomew County Assessor rather than with the Respondent. *Id.; Board Ex. A; Resp't Ex. 2.* The Respondent did not receive the Form 130 petition until May 13, 2005. *Id.*
18. The Petitioner contends that it timely filed its Form 130 petition because the Respondent accepted the petition and acted upon it. *See Tr. at 78.* The Petitioner further points to Ms. Connor's testimony that the Respondent changed the subject property's assessment to include obsolescence at some point in time after the Petitioner had filed a Form 133 petition on March 23, 2005. *See id; see also, Tr. at 65.* Thus, the Petitioner contends that the first time it would have been notified of the revised assessment would have been by a Form 11 notice or tax statement. *Tr. at 78.*
19. Ind. Code § 6-1.1-15-1 sets forth deadlines for initiating the process of appealing an assessment. At the times pertinent to this case, that statute provided, in relevant part:
  - (b) In order to appeal a current assessment and have a change in the assessment effective for the most recent assessment date, the taxpayer must request in writing a preliminary conference with the county or township official referred to in subsection (a):
    - (1) within forty-five (45) days after notice of a change in the assessment is given to the taxpayer; or
    - (2) May 10 of that year;whichever is later. . . .
  - (c) *A change in an assessment made as a result of an appeal filed:*
    - (1) *in the same year that notice of a change in the assessment is given to the taxpayer; and*
    - (2) *after the time prescribed in subsection (b); becomes effective for the next assessment date.*

(d) A taxpayer may appeal a current real property assessment even if the taxpayer has not received a notice of assessment in the year. *If an appeal is filed on or before May 10 of a year in which the taxpayer has not received notice of assessment, a change in the assessment resulting from the appeal is effective for the most recent assessment date. If the appeal is filed after May 10, the change becomes effective for the next assessment date.*

Ind. Code § 6-1.1-15-1 (2004) (emphasis added).

20. Thus, as reflected by the highlighted language, any failure by the Petitioner to file a written request for preliminary conference by the statutory deadline would simply change the assessment year under appeal rather than preclude the Petitioner from obtaining relief entirely. In this case, that would mean changing the assessment under appeal from March 1, 2005, to March 1, 2006.
  
21. The Board, however, finds that the Petitioner filed its Form 130 petition<sup>3</sup> within a timeframe sufficient to address its March 1, 2005, assessment. It does not appear from the record that the Respondent questioned the timeliness of the Form 130 petition to affect the March 1, 2005, assessment of the subject property at the proceedings before the PTABOA. Indeed, the Form 115 Notification of Final Assessment Determination (Form 115) issued by the PTABOA lists the effective date of assessment under appeal as March 1, 2005. *See Board Ex. A.* Moreover, at the outset of the administrative hearing before the ALJ, the parties all agreed that the assessment year under appeal before the Board was 2005. *See Tr. at 7.* Finally, the Petitioner filed its Form 130 petition by the statutorily prescribed deadline of May 10, 2005, although it filed the petition in the wrong county. *Tr. at 62; Resp't Ex. 2.* Given that the Respondent received a copy of that petition three days later, it is difficult to see how the Petitioner's error prejudiced the Respondent.

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<sup>3</sup> While the Respondent contests the timeliness of the Petitioner's form 130 petition, it does not otherwise argue that the petition is insufficient to serve as a written request for a preliminary conference as contemplated by Ind. Code § 6-1.1-15-1(b).

## Issue 2

### *Whether the subject property is assessed in excess of its market value-in-use*

22. The Petitioner contends that the subject property should receive functional and economic obsolescence in order to reflect its market value-in-use.
  
23. The Respondent contends that it acted fairly in making previous changes to the assessment of the subject property, including changing the subject property's usage classification and applying obsolescence to the manufacturing building located on the subject property.
  
24. The Petitioner presented the following evidence and argument in support of its position:
  - A. The Petitioner manufactures vehicle sealant at the subject property. The subject property was first used to manufacture trucks in the early 1900s. *Tr. at 25-26.* General Tire purchased the property in 1936 and began manufacturing rubber in 1937. *Id.* The property served as the division headquarters for vibration control and vehicle sealant. *Id.* For the last 10 to 12 years, the subject plant has only produced vehicle sealant. *Id.*
  - B. Operations at the subject property peaked in 2002 at about \$97,000,000 in annual sales and well over 800 employees. *Tr. at 11.* The automotive industry subsequently experienced a downturn, and Petitioner's operations at the subject property deteriorated each year thereafter. *Id.* Sales for 2005 dropped to a projected low of \$57,000,000, and the employee count dropped well below 500. *Id.*
  - C. The downsizing in sales idled equipment as well as facilities. *Tr. at 12.* The Petitioner actually tried to compress some areas into one department instead of two or three. *Id.* The Petitioner hung inexpensive drapery, such as tarps and plastic, to shut off large sections of the subject plant and reduce the utility costs during the downturn. *Id.* The Petitioner hung the tarps in November or December of 2004, before hitting the winter months. *See Tr. at 15..*
  - D. The Petitioner presented a diagram of the subject plant with what its witnesses termed as the "non-value-added" areas marked. *Tr. at 15; Pet'r Ex. 10.* The Petitioner also



- included photographs that correspond to the diagram. *Tr. at 27.* The Petitioner further submitted a worksheet with the details of the sections of the subject plant that are underutilized and the areas in square feet associated with those sections. *Tr. at 16-17; Pet'r Ex. 8 at 8.* Although there are several smaller sections, the Petitioner focuses on the sections marked as "R2" and "R5" on the diagram. *Tr. at 17.* R2 contains 41,000 square feet and R5 contains 55,000 square feet. *Id.*
- E. The area designated as R2 originally was a storage area for raw materials, but the Petitioner moved the raw materials to a different location. *Tr. at 17.* The Petitioner used R2 for storage until November or December of 2004. *Tr. at 19.* The Petitioner has not used the area designated as R5 since late 2003. *See Tr. at 18-19.* R9 is an old structure that the Petitioner has not used for years. *Tr. at 18.* R8 was a storage area for metal and maintenance type items that the Petitioner wanted to maintain but was not using at the time of the hearing. *Id.*
- F. Mr. Malancuk measured the non-value-added areas. *Tr. at 22.* Mr. Malancuk conservatively estimated that twenty percent (20%) of the subject plant, or 120,000 square feet would not be needed if the Petitioner were to build a new plant. *Tr. at 22-23.* Mr. Shepherd estimated the Petitioner could cut at least 40% of the total building area if the Petitioner were to build a new plant. *Tr. at 25.* The Petitioner could improve its processes by having a straight-line flow. *Tr. at 23.*
- G. In effort to quantify the functional obsolescence experienced by the subject plant, PricewaterhouseCoopers, calculated the excess utility costs associated with the non-value-added area of 120,000 square feet. *Tr. at 28-29; Pet'r Ex. 8.* John Zak, the Petitioner's former facilities manager, provided the data. *Tr. at 29.* Mr. Zak pulled all of the utility records by month and compiled a report. *Id.* The numbers are for the 2004 fiscal year, which started December 1, 2003, and ended November 2004. *Tr. at 30.* PricewaterhouseCoopers removed 21.56% each month for the non-value-added areas and arrived at a five-year net present value of \$495,000 for the excess utility costs over the five remaining years of the subject plant's economic life. *Tr. at 32-33; Pet'r Ex. 8.*
- H. Mr. Shepherd agreed the Petitioner could save \$100,000 per year on utilities with a newer facility. *Tr. at 32.* There would be some savings on electric, but the biggest

- savings would come from gas heat and compressed air. *Id.* Mr. Shepherd testified that the Petitioner's consumption of utilities dropped in 2005, although the cost of utilities may not have been lower due to the loss of "realtime pricing" from the utility company *Tr. at 34-35*.
- I. The Petitioner presented a certified appraisal prepared by Lawrence W. Mitchell of Mitchell Appraisals. *Pet'r Ex. 6*. Mr. Mitchell is a licensed appraiser, and he has obtained an MAI designation from the Appraisal Institute, which Mr. Mitchell testified is a higher designation than that of licensed appraiser. *Tr. at 36-38*. Mr. Mitchell has appraised approximately thirty (30) large manufacturing plants throughout the Midwest. *Tr. at 36*. Mr. Mitchell certified that he performed his appraisal of the subject property in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP). *Pet'r Ex. 6 at 33*.
- J. In his appraisal, Mr. Mitchell estimated the market value-in-use of the subject property at \$2,620,000 as of January 1, 1999. *Pet'r Ex. 6 at 6, 31*. Mr. Mitchell reached his estimate by examining sales of comparable properties that occurred close to March 2002, which he described as the relevant "economic point of ... value for the assessment," and he trended the value derived from his comparable sales analysis to a value as of January 1, 1999. *Tr. at 39*. Mr. Mitchell did not value the subject property using the income or cost approaches to value. *Pet'r Ex. 6 at 22-23*. Mr. Mitchell chose not to use the cost approach due to the age of the subject improvements and the lack of consideration of that approach by market participants. *Id. at 22*. Mr. Mitchell similarly chose not to use the income approach due to the lack of market-based lease transactions for manufacturing buildings of over 200,000 square feet. *Id. at 23*.
- K. In preparing his appraisal, Mr. Mitchell selected comparable properties based upon the following criteria: (1) properties containing buildings in the range of 300,000 to 800,000 square feet; (2) properties utilized for manufacturing both prior to and subsequent to being sold; (3) properties sold close to March 2002 or before that date; and (4) properties located outside of larger metropolitan areas. *See Tr. at 38-39; Pet'r Ex. 6 at 24*. Mr. Mitchell confirmed about twenty (20) sales and listings, which suggested that there was market for the subject property, albeit a limited one. *Tr. at*

39. From those twenty (20) sales, Mr. Mitchell selected four (4) from Indiana because he believed that the properties involved in those sales were most comparable to the subject property. *Id.* Mr. Mitchell also considered sales of five (5) properties from surrounding states. *Id.*
- L. Mr. Mitchell applied adjustments to the sale prices of the comparable properties based on differences in the percentage of the respective facilities devoted to office space, as well as differences in condition, effective age, and lot size. *Tr. at 40.* Mr. Mitchell placed the greatest weight on the first three (3) sales listed in his appraisal because those properties were located in Indiana and were physically similar to the subject property. Mr. Mitchell placed little weight on the remaining sales because the properties either were located outside of Indiana or were not as similar to the subject property as were the first three (3) properties. *Id.* Based on his analysis, Mr. Mitchell obtained a weighted average sale price of \$4.12 per square foot of building area, which he reconciled to \$4.50 per square foot. *Id.* Mr. Mitchell applied the \$4.50 per square foot rate to the area of subject plant to arrive at his estimate of value for the subject property as of January 1, 1999. *Tr. at 41; Pet'r Ex. 6 at 30.*
- M. Mr. Mitchell also testified regarding the recent sales of two properties from Indiana that closely resemble the subject property. *Tr. at 41.* Mr. Mitchell did not include those sales in his primary data because the buildings are new and the sales did not occur within the timeframe of his analysis. *Id.* Nonetheless, Mr. Mitchell testified that both of those sales support his conclusion of value. *See Id.*
- N. In addition, Mr. Mitchell explained why he did not rely on several of the sales identified by the Respondent. *See Tr. at 68-72.* In several instances, the buyer changed the use of the property from manufacturing to a warehousing following the purchase. *Id.* In other instances, the buildings at issue were substantially newer than the subject plant. *Id.*
- O. The Petitioner requests a value of \$2,620,000 as determined by the Mitchell Appraisal. *Tr. at 45.* In order for the property record card to reflect the \$2,620,000 value, obsolescence of 44% would need to be applied. *Id.*
- P. Mr. Malancuk also performed a sales comparison analysis. *See Tr. at 45-46; Pet'r Ex. 1 at attachment to Form 131.* Mr. Malancuk selected properties containing

buildings similar to the subject plant in terms of size and age, and he made adjustments for various differences between the comparable properties and the subject property. *Tr. at 46; Pet'r Ex 1 at attachment to Form 131.* Mr. Malancuk believed that comparable properties five, seven, and four in his report were the most similar to the subject property. *Tr. at 47.* Mr. Malancuk estimated the market value of the subject property at \$2,325,672, or \$4.00 per square foot of building area. *Id.; Pet'r Ex. 8 at 9.*

Q. The Petitioner also included as an exhibit an appraisal prepared by Cushman & Wakefield. *Pet'r Ex. 7.* Although the Petitioner submitted that appraisal as part of a previous appeal, the Petitioner does not rely upon it in this case. *Tr. at 51.*

R. Finally, the Petitioner submitted a copy of a sales disclosure form relating to its purchase of the subject property from GenCorp Inc. on August 28, 2004. *Tr. at 87; Pet'r Ex. 4.* GenCorp Inc. (GenCorp) and the Petitioner are unrelated and the sale was an arm's length transaction. *Tr. at 84.* The disclosure form indicates a sale price of \$3,000,000. *Tr. at 87.* That price, however, included two parcels in addition to the subject property. *Id.* Those other two parcels have a combined assessed value of \$175,600. *Id.* The sale was part of a larger transaction in which the Petitioner purchased the vehicle sealant division of GenCorp. *Tr. at 85.* Mr. Malancuk testified that he was not familiar with how the Petitioner allocated the total purchase price between the plants. *Tr. at 87.* The Petitioner does not rely heavily on the sales disclosure form in making its case to the Board. *Tr. at 87-88; Pet'r Ex. 4.*

25. The Respondent presented the following evidence and argument in support of the current assessment:

A. The Respondent made changes to the subject property's assessment at two different stages. *Tr. at 61.* The first change occurred after the Petitioner filed a Form 133 petition alleging changes in its use of the subject property. *Tr. at 62; Resp't Ex. 1.* The Respondent toured the subject property and changed its assessment based upon changes in the property's use. *Tr. at 61.*

B. The Respondent subsequently applied obsolescence factors to two buildings on the subject property. *See Tr. at 61.* The Respondent granted 10% obsolescence to the

- 468,938 square foot manufacturing building and 20% obsolescence to the office building for the March 1, 2005, assessment. *See Tr. at 73; Resp't Ex. 11.*
- C. The Respondent presented four (4) pages from the Real Property Assessment Guidelines for 2002 – Version A (Guidelines) discussing the concepts of obsolescence and value-in-use. *Tr. at 66; Resp't Ex. 3.* The Respondent also presented property record cards for properties owned by Ford Meter Box and Stone Container Corp to show how the Respondent values different portions of buildings based upon differences in the uses to which those portions are devoted. *Tr. at 66-67; Resp't Exs. 4-5.*
- D. The Respondent further presented sales information and property record cards regarding five (5) properties, which Mr. Shultz testified were comparable to the subject property. *See Tr. at 67-72; see also, Resp't Exs. 6-10.* In choosing those properties, Mr. Shultz tried to focus on properties located in counties and cities similar to the area in which the subject property is located. *See Tr. at 79.* Mr. Shultz acknowledged that some of the properties he identified were used for warehousing and not for manufacturing. *See Tr. at 82.*
- E. The first property, owned by Chroma Properties, sold for \$2,100,000 in November 2001. *See Tr. at 67; Resp't Ex. 6.* The property has 192,000 square feet of building area, which works out to approximately \$11.00 per square foot. *Id.* It is not as big as the subject property but it is located in the area surrounding the subject property. *See Tr. at 67.*
- F. The old Essex plant located in Whitley County is older and smaller than the subject plant. *See Tr. at 69.* The owner of the Essex plant now uses it as a warehouse rather than as a manufacturing facility, but it is in about the same condition as the subject plant. *Id.* The Essex plant has 121,000 square feet, and it sold for \$11.43 per square foot. *Id.; Resp't Ex. 7.*
- G. The plant owned by Flagship Properties, LLC, is newer than the subject plant and it has 463,000 square feet. *See Tr. at 70.* The Flagship plant no longer is used for manufacturing, but is a multi-tenant warehouse. *Id.* The Flagship property sold for \$3,576,000, or \$7.72 per square foot. *Id.; Resp't Ex. 8.*

- H. The property owned by Ohio Logistics, LLC, is located in Grant County, just south of Wabash County. *See Tr. at 71.* The property contains a 250,000 square foot warehouse, and the property sold in 2000 for \$2,750,000 or \$11 per square foot. *Id.; Resp't Ex. 9.*
- I. The property referenced in Respondent's Exhibit 10 is also located in Grant County. *See Tr. at 71.* It contains a building with approximately 300,000 square feet, and it sold on August 18, 2005, for \$2,200,000 or \$8.33 per square foot. *Id.; Resp't Ex. 10.*
- J. Most manufacturing facilities sell for warehouse or multi-tenant uses. *See Tr. at 72.* If the subject property were to sell, the buyer most likely would use it for warehousing. *Id.* Mr. Schultz estimated that the subject property would be worth roughly \$2,300,000 if used for warehousing. *Id.* Nonetheless, the Petitioner uses the subject property for manufacturing, not warehousing, and the Respondent has valued the property accordingly.
- K. Mr. Schultz testified that he had not been able to determine whether the 2004 sale of the subject property was an arm's length transaction. *See Tr. at 84.* Mr. Schultz also questioned how the Petitioner arrived at \$3,000,000 as the portion of the sale price allocated to the subject property when the sale was part of a larger transaction involving several properties. *See Tr. at 86-87.*
- L. The Respondent notes that the cost approach in the appraisal prepared by Cushman & Wakefield reflects 80% depreciation and 12% external obsolescence. *See Tr. at 88-89; Pet'r Ex. 7 at 34.* This is similar to the 79% physical depreciation and 10% functional obsolescence that the Respondent has applied to the subject manufacturing building. *See Tr. at 88-89.*
- M. The Respondent understands that 2005 was not a good year for the Petitioner and that its business was dropping. *Tr. at 92.* The assessment date of March 1, 2005, is based on the prior year of 2004. *Id.* According to Mr. Shepherd's own admission, 2004 was not as bad as 2005. *Id.* Mr. Schultz acknowledged that the Respondent probably should review the March 1, 2006, assessment because obsolescence needs to be reviewed every year. *Id.*

26. 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 at 2 (incorporated by reference at 50 IAC 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 primarily use the cost approach, as set forth in the Guidelines, to assess real property.
27. A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, 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). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
28. The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4, 8. That is also true for succeeding assessment years through 2005. *See* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the Department of Local Government Finance to adopt rules for annually adjusting

assessments to account for changes to value in years since general reassessment, with such adjustments to begin in 2006). Consequently, in order to present evidence probative of a property's true tax value for assessment years 2002-2005, a party relying on an appraisal performed substantially after January 1, 1999, must explain how the value estimated by the appraiser relates to the property's market value-in-use as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

29. The Petitioner submitted an appraisal prepared by Lawrence W. Mitchell, a certified appraiser, pursuant to which Mr. Mitchell estimated the market value-in-use of the subject property at \$2,620,000 as of January 1, 1999. *Pet'r Ex. 6 at 6, 31, 45*. Mr. Mitchell prepared his appraisal in accordance with USPAP. *Id. at 33*. Mr. Mitchell used the sales comparison approach to value in estimating the market value-in-use of the subject property, and he explained his decision not to use the cost or income approaches to value. *Id. at 22-31*. Thus, Mr. Mitchell's appraisal represents precisely the type of evidence contemplated by the Tax Court and the Manual as being relevant to rebut the presumption of validity afforded to an assessment prepared in accordance with the Guidelines. The Petitioner therefore established a prima facie case that the current assessment is incorrect and that the correct assessment is \$2,620,000, as estimated by Mr. Mitchell in his appraisal.
30. The Petitioner offered additional evidence to support Mr. Mitchell's estimate of value. That evidence includes testimony from Messrs. Shepherd and Malancuk regarding what they believe to be causes of functional and external obsolescence experienced by the subject plant, an estimate of value by Mr. Malancuk pursuant to his application of the sales comparison approach, and a sales disclosure form regarding the transaction pursuant to which the Petitioner bought the subject property. Given its finding that Mr. Mitchell's appraisal is sufficient to establish a prima facie case of error in the subject property's assessment, the Board need not discuss the remainder of the Petitioner's evidence in detail. The Board, however, notes that it assigns no weight to the sales disclosure form



relating to the Petitioner's purchase of the subject property. The sale was part of a larger transaction in which the Petitioner bought five (5) plants from GenCorp. *See Tr. at 86-88*. The Petitioner's own witness, Mr. Malancuk, acknowledged that he did not know how the parties allocated the sale price between the various plants and that none of the witnesses could confirm whether the sale was "valid." *See Tr. at 86-88*.

31. Because the Petitioner established a prima facie case of error through Mr. Mitchell's appraisal, the burden shifted to the Respondent to impeach or rebut that appraisal. *See Meridian Towers*, 805 N.E.2d at 479.
32. The Respondent submitted sales disclosure forms and property record cards for five (5) properties that it claims are comparable to the subject property. *Tr. at 67-71; Resp't Exs. 6-10*. The Respondent presumably relies on those documents to support its own estimate of the subject property's market value-in-use based on the sales comparison approach.
33. The sales comparison approach is based on the assumption 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 the selling prices to reflect the subject property's total value. *Id.* The adjustments represent a quantification of characteristics that cause prices to vary. *Id.* The appraiser "considers and compares all possible differences between the comparable properties and the subject property that could affect value," using objectively verifiable evidence to determine which items have an influence on value in the market place. *Id.* The appraiser quantifies the contributory values of the items affecting value in the market place and uses those contributory values to adjust the sale prices of comparable properties. *Id.* at 13-14.
34. Thus, in order to use the sales comparison approach as evidence in a property assessment appeal, the proponent of that evidence must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two

properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

35. Here, the Respondent did little to explain how the five (5) properties it identified compare to the subject property. At most, Mr. Shultz identified the relative size, age and location of buildings on those properties in comparison to the subject plant. Mr. Shultz, however, did not compare other characteristics that are relevant to market value. In fact, Mr. Shultz admitted to a lack of familiarity with two (2) of the five (5) purportedly comparable properties he identified. *Tr. at 71*. Mr. Shultz also failed to adjust the sale prices of the comparable properties to reflect significant differences between those properties and the subject property. *See Tr. at 66-72; Resp't Exs. 6-10*.
36. Moreover, Mr. Mitchell testified as to why he did not rely on the sales identified by Mr. Schultz in performing the sales comparison analysis in his appraisal. Mr. Mitchell identified various reasons for rejecting those sales, including that several of the plants at issue are significantly smaller than the subject plant, and that the buyers of those properties did not continue to use them as manufacturing facilities following the sales. *Tr. at 68-72*. In fact, the plant bought by Ohio Logistics was not even used as a manufacturing facility prior to the sale. *Tr. at 71*. In some cases, the plants were much newer than the subject plant. *Tr. at 68-72*. In addition, the sale involving the property located in Grant County occurred in 2005, which is well past the relevant valuation date. *Tr. at 71*.
37. To some degree, the differences between Mr. Mitchell's analysis and that of Mr. Shultz stem from the two men's differing priorities in identifying comparable properties. Mr. Mitchell focused more on industrial plants similar to the subject plant in terms of age, size and use. Mr. Schultz, by contrast, focused primarily on properties located in close proximity to the subject property. Mr. Mitchell did not ignore location; he testified that

he relied most heavily on the sales of properties located in Indiana. According to Mr. Mitchell, however, buyers of manufacturing facilities in excess of 500,000 square feet are likely to look throughout the Midwest. *Tr. at 80.* Even if potential buyers want to be in Indiana, they are not going to limit their searches to a one or two county area. *Id.* Indeed, Mr. Shultz agreed with Mr. Mitchell's analysis in that regard, but indicated that he focused his search on counties immediately surrounding the subject property because that was the area with which he was most familiar. *Tr. at 81-82.*

38. The Board finds Mr. Mitchell's comparable sales analysis significantly more persuasive than Mr. Schultz's analysis. In addition to the reasons set forth above, the Board is persuaded by Mr. Mitchell's MAI accreditation, by his experience in appraising large industrial facilities. The Board is also persuaded by the comparatively greater level of detail contained in Mr. Mitchell's analysis.

39. Based on the foregoing, the Petitioner established by a preponderance of the evidence that the current assessment is incorrect and the correct assessment is \$2,620,000.

#### **SUMMARY OF FINAL DETERMINATION**

40. The Petitioner filed its Form 130 petition within the time required to address the March 1, 2005, assessment of the subject property. The Petitioner made a prima facie case of error in the subject property's assessment. The Respondent did not rebut the Petitioner's evidence. The Board finds for the Petitioner.

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

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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](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>>.