

REPRESENTATIVE FOR PETITIONER:

Barton T. Sprunger
Ice, Miller, Donadio, & Ryan
Indianapolis, Indiana

REPRESENTATIVES FOR RESPONDENTS:

Tippecanoe County:
Bob McKee, Tippecanoe County Board of Review Representative

Fairfield Township:
Oneta Tolle, Township Assessor
Scott Potts, Consultant

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

ALUMINUM COMPANY OF AMERICA,)	Petition No.: 79-004-95-1-3-00084
)	
Petitioner)	County: Tippecanoe
)	
v.)	Township: Fairfield
)	
TIPPECANOE COUNTY BOARD OF REVIEW and FAIRFIELD TOWNSHIP ASSESSOR'S OFFICE,)	Parcel No.: 156-12101-014-4
)	
Respondents)	Assessment Year: 1995
)	

Appeal from the Final Determination of
Tippecanoe County Board of Review

September 27, 2002

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to

the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issue, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board was:

Whether additional functional and economic obsolescence is warranted.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Barton T. Sprunger, of Ice, Miller, Donadio, & Ryan, filed a Form 131 on behalf of Aluminum Company of America (ALCOA) petitioning the Board to conduct an administrative review of the above petition. The determination of the Tippecanoe County Board of Review was issued on March 28, 1996. The Form 131 petition was filed on April 29, 1996.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on December 10, 1999, in Lafayette, Indiana, before Hearing Officers Ellen Yuhan and Joseph Stanford.
4. The following persons were present at the hearing:

For the Petitioner:

Barton T. Sprunger, Attorney at law

Dan Schipper, Controller

Deborah A. Dillinger, Administrator of Property Taxes

Gregg Manzione, MAI, Nationwide Consulting Company, Inc.

For the Respondents:

Bob McKee, Tippecanoe County Board of Review Representative
Oneta Tolle, Fairfield Township
Scott Potts, Sabre Systems (consultants to the Township Assessor's office)

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Dan Schipper, Controller
Deborah A. Dillinger, Administrator of Property Taxes
Gregg Manzione, MAI, Nationwide Consulting Company, Inc.

For the Respondents:

Bob McKee, Board of Review Representative
Oneta Tolle, Fairfield Township
Scott Potts, Sabre Systems

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Ex. 1 – The 1989 industrial report for the subject property, prepared by Sabre Systems;
Petitioner's Ex. 2 – The 1994 payable 1995 tax bill;
Petitioner's Ex. 3 – A summary of the 1989 industrial report for the Lafayette Works, prepared by Deborah Dillinger;
Petitioner's Ex. 4 – The 1995 industrial report for the subject property, prepared by Sabre Systems;
Petitioner's Ex. 5 – A copy of the Board of Review determination;
Petitioner's Ex. 6 – An aerial photograph of the subject parcel;
Petitioner's Ex. 7 – An appraisal report for the subject property, prepared by Nationwide Consulting Company, Inc.
Petitioner's Ex. 8 – An obsolescence report for the subject prepared by Nationwide Consulting Company, Inc.

Petitioner's Ex. 9 – A drawing of the subject that is color-coded to show truck access, vacant buildings, and production area.

For the Respondents:

Respondent's Ex. 1 – Board of Review minutes for December 20, 1995;

Respondent's Ex. 2 – Board of Review minutes for March 13, 1996.

7. Subsequent to the hearing, pursuant to the hearing officers' request, both parties submitted additional evidence:

Petitioner's Ex. 10a – An aerial photograph of ALCOA's Chandler, Arizona plant;

Petitioner's Ex. 10b – Calculation of heat loss;

Petitioner's Ex. 10c – Documentation of monthly repair costs for trucks;

Petitioner's Ex. 10d – PCB expenditures, 1980-1999;

Petitioner's Ex. 10e – Agreed Order between Department of Environmental Management and ALCOA;

Petitioner's Ex. 10f – Consent agreement between Environmental Protection Agency and ALCOA;

Petitioner's Ex. 10g – Support for capitalization rate utilized in obsolescence calculation.

Respondent's Ex. 3 – Rebuttal letter from Mr. Potts dated January 10, 2000.

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

Board Ex. A – Form 131 petition;

Board Ex. B – Notice of hearing.

9. The property is a manufacturing facility located at 3131 Main Street, Lafayette, Fairfield Township, Tippecanoe County.
10. The hearing officers did not view the property.

Jurisdictional Framework

11. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
12. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

13. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
14. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed "True Tax Value." See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
15. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
16. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property's market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
17. The Indiana Supreme Court has said that the Indiana Constitution "does not create a personal, substantive right of uniformity and equality and does not require absolute and

precise exactitude as to the uniformity and equality of each individual assessment”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.

18. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.
19. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner’s Burden

20. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
21. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]
22. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]

23. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
24. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
25. The State will not change the determination of the County Board of Review unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issue

ISSUE: *Whether additional functional and economic obsolescence is warranted.*

26. ALCOA contends that the obsolescence factor should be 80%. The County Board of Review determined that the appropriate obsolescence factor is 45%.

27. The applicable rules governing this issue are:

50 IAC 2.2-1-20

“Depreciation” means loss in value from all causes. It may be further classified as follows:

- (1) Physical, which refers to the loss of value caused by physical deterioration.
- (2) Functional.
- (3) Economic.

50 IAC 2.2-1-40

“Obsolescence” means a diminishing of a property’s desirability and usefulness brought about by either functional inadequacies or overadequacies inherent in the property itself, or adverse economic factors external to the property.

50 IAC 2.2-10-7(e)

In addition to physical depreciation, some buildings experience a loss of value due to **obsolescence**. These effects are much less noticeable than physical depreciation and must be examined in depth. Accurate determination of obsolescence depreciation requires the assessor to recognize the symptoms of obsolescence and to exercise sound judgment in equating his or her observation of the property to the correct deduction in value. Functional obsolescence is caused by internal factors. Economic obsolescence is caused by external factors.

50 IAC 2.2-10-7(e)(1)

Functional obsolescence may be caused by, but is not limited to, the following:

- (A) Limited use or excessive material and product handling costs caused by an irregular or inefficient floor plan.
- (B) Inadequate or unsuited utility space.
- (C) Excessive or deficient load capacity.

50 IAC 2.2-10-7(e)(2)

Economic obsolescence may be caused by, but is not limited to, the following:

- (A) Location of the building is inappropriate for the neighborhood.
- (B) Inoperative or inadequate zoning ordinances or deed restrictions.
- (C) Noncompliance with current building code requirements.
- (D) Decreased market acceptability of the product for which the property was constructed or currently used.
- (E) Termination of the need of the property due to actual or probable changes in economic or social conditions.
- (F) Hazards, such as the danger from floods, toxic waste, or other special hazards.

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

- A. ALCOA appealed the 1989 assessment of this property to the State Board. The State Board granted 56% obsolescence. (Petitioner's Ex. 2)
- B. For the 1995 assessment, the original amount of obsolescence granted by the local officials was approximately 11%. On appeal, the Board of Review changed the amount of obsolescence to 45%. No explanation for this amount is attached to the Board of Review determination. (Petitioner's Ex. 4 & 5)
- C. The plant was originally built with the government in preparation for World War II. The plant was designed and built in such a way to prevent enemy bombs from destroying the facility totally, meaning that the buildings are separated. The entire production process requires truck or crane movement. The building constructed in 1980 is abandoned; there was a potential market for a coiled tube product that never came to fruition. The amount of production at the plant has been greatly reduced. Much of the product produced in the peak days is no longer produced because ALCOA cannot be competitive. Much of the production has gone to other plants or competitors. The plant, which once employed 5,500 workers, employed only 832 in 1994. Finally, the

plant has experienced a history of PCB contamination. From 1980 to 1994, ALCOA spent \$12.3 million to remove PCBs. (Schipper testimony)

- D. A much smaller plant in Chandler, Arizona has the same production output as the subject. The plant in Chandler would be considered ALCOA's ideal plant. This plant has six times less space per extrusion press. Very few cranes are required to move product from workstation to workstation at this plant. (Schipper testimony)
- E. An appraisal of the subject property states that the building suffers from excessive handling (\$93,150) and heating costs (\$693,316) due to the design. These amounts were capitalized to reach a value determination of \$4,260,025 for functional obsolescence. (Manziona testimony)
- F. Approximately 20% of the building is unused. Obsolescence due to inadequate or vacant space was determined to be \$5,403,213. (Manziona testimony)
- G. Other items of functional and economic obsolescence were considered in a comparison to five other industrial plants. Based on five sales analyzed, obsolescence between 80% and 89% is claimed. (Manziona testimony)
- H. The county argues that the excess heating cost has not been proven, but is merely speculation. Also, the county argues that the capitalization rate used (12%) by ALCOA has not been substantiated, and that the problem with PCBs has not been proven. Factors determined by ALCOA to be economic obsolescence, such as demand for the product, may have nothing to do with the property itself, but a matter of business practices. (Potts testimony)

Analysis of the Issue

- 29. As discussed, the County Board of Review determined that the appropriate obsolescence factor is 45%. ALCOA contends that the obsolescence factor should be 80%.

30. Depreciation is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.
31. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property.
32. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).
33. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).
34. Both parties have agreed that the building should receive some level of obsolescence depreciation. The first prong of the two-prong test articulated in *Clark* is therefore satisfied.
35. Obsolescence may be quantified using generally recognized appraisal techniques. *Canal Square Limited Partners v. State Board of Tax Commissioners*, 694 N.E. 2d 806, 807 (Ind. Tax 1998).
36. The Petitioner presented evidence of claimed excess operating costs for salaries, energy costs, and an inefficient layout. Rather than basing its quantification of obsolescence on this data, however, the Petitioner's proposed quantification of obsolescence relies on the sales comparison approach to value, a generally recognized method of measuring accrued depreciation.

37. The sales comparison method “estimates cost new of subject property; comparable properties are found and site values deducted; contributory improvement values remain; contributory improvement values are deducted from cost for each sale property, yielding measure of accrued depreciation; accrued depreciation figure is converted to percentage and applied to subject property.” International Association of Assessing Officers (IAAO) Property Assessment Valuation, 183 (2nd ed. 1996).

38. The Petitioner contended that both functional and economic obsolescence, from whatever cause, are measured in this approach:

“To avoid subjective estimates of functional or economic obsolescence, the appraisers have extracted obsolescence percentages directly from sales. Of the nine comparable sales cited, the appraisers were able to estimate accrued rates of depreciation along with the amount of functional and economic obsolescence affecting each...a total accrued rate of depreciation between 78% and 95% was indicated.

The sales analyzed indicate a physical depreciation range from 39% to 72%. The same sales indicate a level of functional and economic obsolescence between 8% and 49%...Based on our analysis as indicated by the sales, the appraisers utilized a functional and economic depreciation rate of 30%.” (Petitioner’s Exhibit 7, pages 32-33).

“Based on the five sales analyzed, a range in functional and economic obsolescence between 80% and 89% is illustrated. For this analysis, 80% has been considered appropriate.” (Petitioner’s Exhibit 8, page 18).

39. In support of its position, ALCOA submitted an appraisal (Petitioner’s Exhibit 7) and a functional and economic obsolescence study (Petitioner’s Exhibit 8), both prepared by Nationwide Consulting Company, Inc.

40. Several discrepancies between these two documents are readily apparent.

41. The appraisal, dated October 4, 1995, used two approaches to value: the cost approach and the sales comparison approach. The cost approach indicated the value of the property to be \$6,670,000. The sales comparison approach indicated the value to be \$6,600,000. The appraisal gave greater weight to the cost approach to value and concluded: “After careful consideration, we have concluded that the true tax value of the subject property, as of March 1, 1995, is: SIX MILLION SIX HUNDRED SEVENTY THOUSAND DOLLARS (\$6,670,000).” (Petitioner’s Exhibit 7, page 1, page 69).
42. In contrast, the functional and economic obsolescence study, dated February 27, 1996, used only the sales comparison approach to value and asserted: “After careful analysis of the aforementioned facts, we have concluded that the true tax value of the subject, as of March 1, 1995, is: \$7,573,000.” (Petitioner’s Exhibit 8, page 21).
43. A comparison of the value obtained from the cost approach (in the appraisal) and the value obtained from the sales comparison approach (in the functional and economic obsolescence study) therefore indicates a significant discrepancy. However, no explanation was offered for this difference of \$903,000 in proposed true tax values.
44. Further, no explanation was offered to explain the reason why the sales comparison approach was deemed the less reliable of the two approaches to value used in the appraisal (Petitioner’s Exhibit 7, page 69), but was the only method used to determine value in the functional and economic obsolescence study (Petitioner’s Exhibit 8, page 18).
45. As discussed, both the appraisal and the functional and economic obsolescence study derived values using the sales comparison approach. However, no explanation was offered to explain the reason why the sales comparison approaches presented in the two documents reached conclusions of value varying in the amount of \$973,000 (\$7,573,000 minus \$6,600,000 [Petitioner’s Exhibit 8, page 21; Petitioner’s Exhibit 7, page 69]).
46. Additionally, using the sales comparison approach in the appraisal ALCOA determined the land value to be \$2,972,333 (Petitioner’s Exhibit 7, page 68). Using the sales

comparison approach in the functional and economic obsolescence study, the land value was determined to be \$3,065,219 (Petitioner's Exhibit 8, page 18). Again, no explanation was offered for this difference of \$92,886.

47. Two widely different results obtained by using the same approach to value serve to further undermine the credibility of each of these analyses.
48. A review of the sales data of the purported comparable properties discloses still more inconsistencies.
49. For example, the Petitioner contended that a property in Mentor, Ohio, was comparable to ALCOA's facility. Data from the sale of this Ohio property was used in both sales comparison approaches (Petitioner's Exhibit 7, pages 39 – 41; Petitioner's Exhibit 8, pages 7 – 8).
50. In the appraisal, the Petitioner concluded that the Ohio property had experienced total depreciation, from all causes, of 91%. The appraisal further concluded that the physical depreciation experienced by the property was 55%. (Petitioner's Exhibit 7, page 41).
51. The Petitioner offered no explanation as to the method used to determine the "Indicated Physical Depreciation," in this case 55%. The Petitioner's conclusory statements concerning the amount of depreciation experienced by the property do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
52. Additionally, five purported comparable sales were presented in both the appraisal (Petitioner's Exhibit 7) and the functional and economic obsolescence study (Petitioner's Exhibit 8). (The Petitioner's purported comparable sales are identified in Petitioner's Exhibit 7, pages 34 – 69 and Petitioner's Exhibit 8, pages 7 - 17).
53. As indicated below, a comparison of the data contained in these two exhibits again indicates several inconsistencies (For convenience, the Board will refer to the properties by the city and state of their location):

	Exhibit 7	Exhibit 8	Difference (Exhibit 7 minus Exhibit 8; a minus sign indicates the values in Exhibit 8 exceed the values in Exhibit 7)
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Mentor, OH

Total Cost New (SF)	\$33.77	\$33.77	\$0
RCN	37,499,617	37,496,182	3,435
Improvement Value	3,419,750	3,419,750	0
Total Depreciation	34,079,867	34,076,432	3,435
Physical Depreciation	20,624,789	20,622,900	1,889
Functional & Econ Obsol	13,455,078	13,453,532	1,546

Bowling Green, KY

Total Cost New (SF)	24.97	24.97	0
RCN	16,212,647	16,214,170	-1,523
Improvement Value	742,135	742,135	0
Total Depreciation	15,470,512	15,472,034	-1,522
Physical Depreciation	11,673,106	11,674,202	-1,096
Functional & Econ Obsol	3,797,406	3,797,832	-426

Springfield, MO

Total Cost New (SF)	23.13	23.13	0
RCN	38,758,776	38,765,695	-6,919
Improvement Value	4,154,000	4,154,000	0
Total Depreciation	34,604,776	34,611,695	-6,919
Physical Depreciation	16,278,686	16,281,592	-2,906
Functional & Econ Obsol	18,326,090	18,330,103	-4,013

Framingham, MA

Total Cost New (SF)	30.53	30.58	-0.05
RCN	88,540,352	88,682,000	-141,648
Improvement Value	4,177,000	4,177,000	0
Total Depreciation	84,363,352	84,505,000	-141,648
Physical Depreciation	50,468,001	50,548,740	-80,739
Functional & Econ Obsol	33,895,351	33,956,260	-60,909

Davenport, IA

Total Cost New (SF)	19.67	19.67	0
RCN	50,274,131	50,263,046	11,085
Improvement Value	6,248,540	6,248,450	90
Total Depreciation	44,025,681	44,014,596	11,085
Physical Depreciation	19,606,911	19,602,588	4,323
Functional & Econ Obsol	24,418,770	24,412,008	6,762

54. For example, the data for the Framingham, Massachusetts, property indicates a discrepancy of more than \$140,000 in total depreciation and a difference in excess of \$60,000 in claimed functional and economic obsolescence. Inconsistencies exist as well in all of the other purported comparable sales values, albeit to a lesser extent.

55. The Board may properly consider all of these inconsistencies and contradictions when weighing the credibility of either of these obsolescence analyses.

56. As discussed, the Petitioner identified five purported comparable properties that were used in both the appraisal and the functional and economic obsolescence study.

57. Merely characterizing properties as comparable is insufficient for appeal purposes. *Blackbird Farms Apartments, LP v. Department of Local Government Finance*, 765 N.E. 2d 711 (Ind. Tax 2002). In determining whether properties are truly comparable, “Factors and trends that affect value, as well as the influences of supply and demand, should be considered. The greatest comparability is obtained when the properties being compared are influenced by the same economic trends and environmental (physical), economic, governmental, and social factors. There may not be any comparability when one property is heavily influenced by one set of factors and another property is significantly affected by dissimilar factors.” IAAO Property Assessment Valuation, 103 (2nd ed. 1996).

58. When utilizing the sales comparison approach to value, “the IAAO Manual states that the comparative sales data method ‘requires ample sales data of truly comparable properties.’ (citation omitted) In addition, [the Petitioner must] explain how the improvements that are the subject of the so- called ‘comparable sales’ are similar in age, condition and

desirability to the subject improvements.” *Canal Realty-Indy Castor v. State Board of Tax Commissioners*, 744 N.E.2d 597, 603, n. 9 (Ind. Tax 2001).

59. Although asserting the comparability of the properties, the Petitioner did not identify the factors causing obsolescence in the purported comparable properties, demonstrate that the same factors are also present in the property under appeal, and then demonstrate that the market reaction to the causes of obsolescence is similar.
60. The record does not indicate that any of the purported comparable properties were used in the manufacturing of aluminum products. Additionally, several other significant differences among the properties are readily apparent.
61. For example, Petitioner’s Exhibit 7 indicated that nine sales were initially analyzed in the preparation of the appraisal: “The sales analyzed indicate a physical depreciation range from 39% to 72%. The same sales indicate a level of functional and economic obsolescence between 8% and 49%.” (Petitioner’s Exhibit 7, page 32). “After adjusting the sales, a range from \$0.74 per square foot to \$5.29 per square foot is indicated. This is far too wide a range and further analysis is needed.” (Petitioner’s Exhibit 7, page 67).
62. ALCOA then eliminated two sales from the analysis. “The remaining sales after adjustments, range from \$0.74 per square foot to \$3.66 per square foot.” (Petitioner’s Exhibit 7, page 68).
63. The Petitioner failed to offer any explanation as the manner in which properties experiencing such wide ranges of physical depreciation and obsolescence are comparable, either to each other or to the property under appeal.
64. In contrast, the functional and economic obsolescence study relied on only five purported comparable properties; again, however, significant differences are apparent among these properties.

65. The Mentor, Ohio plant was constructed in 1970; the ALCOA facility was built during World War II. The Mentor plant was “encumbered by two leases, one for 90,000 square feet and a second for 50,000 square feet.” (Petitioner’s Exhibit 8, page 8). No such encumbrances were identified in the ALCOA facility.
66. The Bowling Green, Kentucky plant was constructed during the period 1968 through 1971. Additionally, the “facility had been closed for several years prior to this transfer.” (Petitioner’s Exhibit 8, pages 9 - 10). In contrast, the ALCOA facility is an operating company and was constructed approximately 25 years earlier.
67. The Springfield, Missouri plant was constructed in 1967 with additions to the facility built in 1973 and 1981. (Petitioner’s Exhibit 8, page 11). “The entire facility is sprinklered and was observed to be in good overall condition.” (Id, page 12). The Petitioner failed to explain the manner in which a property in “good overall condition” is comparable to ALCOA’s facility, where, “on the majority of the exterior walls, bricks have separated resulting in significant patch work and repairs. The roofs are constantly leaking and being repaired.” (Petitioner’s Exhibit 7, page 19). Further the Petitioner contended the Springfield site had “adequate on-site land area for truck access and on-site maneuverability. (Petitioner’s Exhibit 8, page 12). In contrast, the transportation situation at the ALCOA plant is described as follows: “Furthermore, the growth of the city of Lafayette surrounding the plant, has obviously put greater demand on the local roadway serving the subject’s neighborhood. The added traffic demand on the local roads, has certainly affected truck maneuverability to and from the site.” (Petitioner’s Exhibit 7, page 14). Again, no explanation was offered to explain the comparability of plants with such obvious differences in transportation facilities.
68. The Framingham, Massachusetts facility was constructed in 1947 (with an addition built in 1987) as an automobile assembly plant. This property had been closed for approximately five years at the time of sale. The Petitioner contended that this facility was also “in good condition.” (Petitioner’s Exhibit 8, pages 13 – 14). As discussed, ALCOA is an on-going business that the Petitioner contends suffers from significant physical deterioration and obsolescence.

69. The Davenport, Iowa facility was constructed in 1980. Additionally, this sale was “under contract as of 1995.” (Petitioner’s Exhibit 8, page 15). However, market value is defined as a sales price that “represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.” (Uniform Standards of Professional Appraisal Practice, The Appraisal Foundation, page 163 (1998)). A contract sale therefore is not evidence of the market value of the property.
70. The Petitioner cannot reasonably contend that these properties are comparable while ignoring such fundamental differences as wide disparities in construction dates, condition of the structures, and special financing arrangements. ALCOA has therefore failed to “explain how the improvements that are the subject of the so- called ‘comparable sales’ are similar in age, condition and desirability to the subject improvements.” *Canal Realty-Indy Castor*, 744 N.E.2d at 603.
71. The Petitioner’s conclusory statements concerning the comparability of the properties do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119.
72. Further, when analyzing the purported comparable sales, the Petitioner made adjustments in the sale price ranging from a negative 40% to a positive adjustment of 10%. (Petitioner’s Exhibit 7, page 61).
73. “Adjustments are usually made for market conditions (time of sale), location, and physical characteristics.” IAAO Property Assessment Valuation, 105 (2nd ed. 1996).
74. “It cannot be overemphasized that the amount of any adjustment is to be derived from the real estate market.” *Id* at 106.
75. The Petitioner asserted that its adjustments were “based on the appraiser’s observations of the facilities, on-site inspections of the comparables, along with discussions of the parties involved with the various transactions.” (Petitioner’s Exhibit 7, page 67). However, the Petitioner failed to explain how any of the proposed adjustments reflect the

market reaction to the various categories of adjustment, as required by generally accepted standards of assessment and appraisal practice.

76. Finally, the Petitioner contended that its calculation indicated combined economic and functional obsolescence within a range of 80% - 89%. (Petitioner's Exhibit 8, page 18). Clearly, the application of 80% obsolescence would produce a far different property value than the application of 89% obsolescence (The Board of Review determined that the assessed value of the improvements is \$4,150,000 [Board Exhibit A, Form 131 petition]). ALCOA may not reasonably contend that obsolescence has been quantified when its calculations result in only a range of almost ten percent of the value of a multi-million dollar property.
77. Summarizing, the Board finds that the Petitioner has failed to establish that the purported comparable properties are, in fact, comparable either to each other or to the property under appeal. Further, the Petitioner's evidence contains numerous contradictions and discrepancies, including different determinations of the property's value and depreciation. Therefore, the Petitioner's analyses of these properties do not quantify the claimed functional and economic obsolescence, as required by the second prong of the two-prong test articulated in *Clark*.
78. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Final Determination

ISSUE: *Whether additional functional and economic obsolescence is warranted.*

79. The Petitioner did not meet its burden in this appeal. Accordingly, there is no change in the assessment as a result of this issue.

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

Betsy Brand, 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.