

REPRESENTATIVE FOR PETITIONER:
Brad Matheidas, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Assisted Living Concepts, Inc.,)	Petition Nos.: 27-017-09-1-4-00001
)	27-017-10-1-4-00001
Petitioner,)	
)	Parcel No.: 27-07-30-200-001.102-017
v.)	
)	County: Grant
Grant County Assessor,)	Township: Mill
)	
Respondent.)	Assessment Years: 2009 and 2010

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

June 20, 2012

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

Introduction

1. In this assessment appeal, Assisted Living Concepts, Inc. (“ALC”) offered a valuation opinion from its certified tax representative that was based solely on the cost approach. The tax representative, however, made several key errors and omissions in performing his

analysis and did not even attempt to apply any other generally accepted valuation approach. Under those circumstances, the tax representative's opinion has no probative value.

Procedural History

2. ALC filed Form 130 petitions with the Grant County Assessor contesting the subject property's March 1, 2009 and March 1, 2010 assessments. On November 17, 2010 and August 31, 2011, the Grant County Property Tax Assessment Board of Appeals ("PTABOA") issued its respective determinations denying ALC any relief.¹ ALC timely filed Form 131 petitions with the Board concerning both assessment dates. The Board has jurisdiction over ALC's appeals under Indiana Code §§ 6-1.1-1-15 and 6-1.5-4-1.
3. On March 22, 2012, the Board's administrative law judge, Joseph Stanford ("ALJ"), held a consolidated hearing on ALC's petitions. Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

4. The following people were sworn in and testified:
 - For ALC: Brad Matheidas, certified tax representative
 - For the Assessor: Leo Lichtenberg, appraiser
Anthony Garrison, Nexus Group
Tamara Martin, Grant County Assessor
5. ALC submitted the following exhibit:
 - Petitioner Exhibit 1: Complex Property Advisors Corporation's valuation opinion, prepared by Brad Matheidas

¹ The PTABOA's November 17, 2010 determination indicates an "effective date of assessed value" of March 1, 2010. *Board Ex. A*. At hearing, the parties agreed that was a typographical error, and that the determination was for the March 1, 2009 assessment date.

6. The Assessor submitted the following exhibits:
 - Respondent Exhibit A: Property record cards for the subject property
 - Respondent Exhibit B: Consulting report prepared by Leo Lichtenberg
 - Respondent Exhibit C1: York House –Assisted Living Concepts Income Expense Analysis Unadjusted for Medical Ancillary Income Expenses
 - Respondent Exhibit C2: York House –Assisted Living Concepts Income Expense Analysis Adjusted for Medical Ancillary Income Expenses
 - Respondent Exhibit C3: Income and expense information for the subject property,
 - Respondent Exhibit D: ALC’s business tangible personal property returns for March 1, 2009 and March 1, 2010²

7. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A: Form 131 petitions
 - Board Exhibit B: Hearing notices
 - Board Exhibit C: Hearing sign-in sheet
 - Board Exhibit D: Notice of Appearance for Marilyn S. Meighen

8. The subject property is a 3.19-acre parcel of land improved with a 26,736-square-foot assisted living facility known as York House Assisted Living. It is located at 725 West 50th Street in Marion.

9. The PTABOA determined the following assessment for both March 1, 2009 and March 1, 2010:

Land: \$87,700	Improvements: \$2,708,000	Total: \$2,795,700
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10. At hearing, ALC requested an assessment of \$1,675,000 for both years.³

Administrative Review and the Parties’ Burdens

11. Generally, a taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that the property’s assessment is incorrect and what the

² This exhibit includes ALC’s Form 103 personal property returns for both years. The Form 103 is confidential under Ind. Code § 6-1.1-35-9.

³ On its Form 131 petitions, ALC requested assessments of \$87,700 for the land and \$1,787,700 for the improvements (\$1,875,400 total) for both years. At hearing, however, Mr. Matheidas indicated that the value requests listed on the petitions were based on a stipulation agreement for the March 1, 2007 assessment rather than on Mr. Matheidas’s valuation opinion.

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).

12. The taxpayer must explain how each piece of evidence relates to its 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”).
13. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Summary of Parties’ Contentions

A. ALC’s Evidence and Contentions

14. ALC contends that the subject property is assessed too high in light of the valuation opinion of Mr. Matheidas, a certified tax representative who has spent the last 17 years primarily valuing healthcare-related properties.⁴ According to ALC, the assessment fails to recognize any depreciation. Indeed, claims ALC, because the Assessor relied on the income approach instead of the cost approach, her assessment improperly values intangible interests, such as business enterprise value, in addition to the subject real estate. *Matheidas argument; Pet’r Ex. 1*.
15. To avoid the Assessor’s error, Mr. Matheidas chose not to use the sales-comparison and income approaches to value when performing his own valuation analysis. In Mr. Matheidas’s view, applying the income and sales-comparison approaches to the subject property would mingle real-estate and non-real-estate interests. The subject property does not earn any income directly attributable to the real estate; instead, ALC’s income is

⁴ It is unclear whether Mr. Matheidas is a licensed appraiser. He referred to appraising properties, but he did not offer anything to show that he is licensed in any state.

based on services provided inside the property's walls. In 1998, Mr. Matheidas's firm pioneered using the income approach to value hospitals, but it abandoned that approach four years ago because courts never relied on it and instead used the cost approach. There is no reason to think that the result would be different for nursing homes like the subject property. *Matheidas testimony*. In any case, ALC's income fluctuated too much from 2006 to 2010 for that income to be useful in determining the subject property's value. *Id.*; *Pet'r Ex. 1 at 2006 Income and 2010 Income tabs*.

16. Similarly, according to a report by Irving Levinson & Associates, sales of assisted living facilities include business value. The parties to those transactions generally do not allocate the sale price between real estate value and the value of non-real-estate interests. Even if Mr. Matheidas had used the income and sales-comparison approaches, courts have generally ruled that those approaches must yield a value close to the cost approach to be deemed reliable. *Matheidas testimony*.
17. Mr. Matheidas therefore relied solely on the cost approach to estimate the subject property's market value-in-use. He got all of his costs and multipliers from Marshall Valuation Service ("MVS"). He priced the subject building under the MVS category of "Multiple Residences – Elderly Assisted Living," using three different but closely related "classes," or building types that he felt best represented the building. After determining the cost per square foot for each of the three classes, Mr. Matheidas applied a "current multiplier," which adjusted MVS costs to a specific date and a "local multiplier," which adjusted the costs to Marion, Indiana. Mr. Matheidas then multiplied the indicated cost per square foot for each class by the building's total area to determine its replacement cost new. *Matheidas testimony*.
18. Mr. Matheidas next considered depreciation. While he did not believe that the subject building suffered from any functional or economic obsolescence, it was built in 1997 and therefore had some physical depreciation. Based on an effective age of 12 years and an estimated useful life of 50 years, Mr. Matheidas estimated that depreciation at 24%. *Matheidas testimony*; *Pet'r Ex. 1 at Cost Analysis tab*.

19. Mr. Matheidas then added the depreciated building value for each class to the Assessor's land value. He was comfortable with the Assessor's land value because assessors generally have enough sales to come up with accurate values. The total values that Mr. Matheidas computed for the three building classes ranged between \$1,598,472 and \$1,665,334. He settled on a base market value of \$1,600,000. To that number, Mr. Matheidas added \$1.50 per square foot for sprinklers and \$33,420 for estimated site improvements for a rounded value of \$1,675,000 as of January 1, 2010. *Matheidas testimony; Pet'r Ex. 1 at Cost Analysis tab.* According to Mr. Matheidas, if he were to go back to March 1, 2009, or forward to March 1, 2010, the difference would be "pennies," or possibly \$1 per square foot according to MVS. *Matheidas testimony.*

20. Mr. Matheidas also did cost-approach analyses using ten- and five-year effective ages and one with no physical depreciation at all. Of course, as the estimated effective age decreased, Mr. Matheidas' value estimate increased. But even when he did not factor in any depreciation, the property was still worth only \$2,223,524. Thus, not only does the assessment fail to recognize any physical depreciation, the property is not even being assessed as an assisted living facility. *Matheidas testimony; Pet'r Ex. 1 at Cost Analysis & Zero Depreciation tabs.*

21. Mr. Matheidas admitted that, had he performed an appraisal, he would have included indirect costs and entrepreneurial profit and followed MVS "to a tee." *Matheidas argument.* But appraisals of assisted living facilities are very expensive, and requiring an appraisal is against the spirit of filing appeals. Further, while an appraiser could have performed the very difficult task of separating the business value from the real estate value, an appraiser's estimate of value would have been roughly the same as what Mr. Matheidas determined in his cost-approach analysis. *Matheidas testimony.* Making the corrections Mr. Lichtenberg suggested in his review of Mr. Matheidas's analysis would only raise Mr. Matheidas's valuation opinion by about \$200,000. *Matheidas argument.*

22. In fact, when the Assessor did a computer-generated mass-appraisal cost approach, she came up with a depreciated improvement value of \$2,002,160, using an effective age of 13 years and 29% depreciation. The Assessor, however, overrode that valuation and relied on sales that included non-real-estate interests. *Matheidas argument; Resp't Ex. A.*
23. Finally, while Mr. Matheidas conceded that comparing assessments may not be a valid approach, he noted that the subject property had the highest improvement value out of the approximately two dozen facilities that ALC owns in Indiana. That is true even though other ALC-owned nursing homes had undergone major renovations while the subject property had not. *Matheidas testimony; Pet'r Ex. 1 at Renovations Since 2008 & Assessment Comparison tabs.*

B. The Assessor's Evidence and Contentions

24. Although the Assessor agrees that requiring appraisals is against the spirit of filing appeals and further agrees that it is possible for analyses under the income and sales-comparison approaches to include business value, the Indiana Tax Court and Indiana Supreme Court have held that strict reliance on the cost approach is unconstitutional because it provides no connection to the real world. *Meighen argument.* While it may be difficult to separate business enterprise value from real estate value when performing the sales-comparison or income approaches, the Board has held that such an undertaking must be performed. *Id. (citing Demotte U-Lock, LLC v. Jasper County Assessor, Pet. No. 37-024-06-1-4-00004 (November 17, 2008)).* In fact, the Assessor did not use the cost approach to value the subject property; she sound valued it.⁵ Because the cost approach did not match the consistent square-foot values that properties were selling for, the Assessor used sales data instead. *Garrison testimony.*

⁵A "sound value estimate" is "an estimate of the depreciated value of an improvement made directly by comparing the improvements of a comparable condition, desirability, and usefulness without first estimating its replacement cost new." 2002 REAL PROPERTY ASSESSMENT GUIDELINES, Glossary at 19 (incorporated by reference at 50 IAC 2.3-1-2) (2009)).

25. The Assessor hired Leo Lichtenberg to review Mr. Matheidas's analysis. Mr. Lichtenberg is a Member of the Appraisal Institute ("MAI") and a certified general appraiser. He also holds a broker's license. The consulting report that Mr. Lichtenberg prepared complies with Standard 5 of the Uniform Standards of Professional Appraisal Practice ("USPAP"), which governs real property appraisal consulting. *Lichtenberg testimony; Resp't Ex. B at 13, Addendum D.*
26. While Mr. Lichtenberg was clear that he was not engaged to provide his own estimate of value, he pointed to deficiencies in Mr. Matheidas' analysis that, when corrected, lead to a significantly higher value estimate. Specifically, Mr. Matheidas failed to use a size multiplier, used an incorrect sprinkler adjustment, did not adjust costs to the correct valuation dates, and failed to account for both indirect costs and entrepreneurial incentive. *Lichtenberg testimony; Resp't Ex. B.*
27. Regarding Mr. Matheidas's failure to apply a size multiplier, the subject property has 39 units. According to MVS, a nursing home of that size requires a 2.2% multiplier. Also, the MVS sprinkler adjustment is closer to \$2.26 per gross square foot than to the \$1.50 per square foot that Mr. Matheidas used. And the sprinkler adjustment should be applied to the total base price, rather than at the end of the cost analysis, which is how Mr. Matheidas applied it. *Lichtenberg testimony; Resp't Ex. B at 9-10.*
28. Similarly, Mr. Matheidas used a current cost multiplier for April 1, 2011, which indicates a valuation as of that date. Using that current cost multiplier in conjunction with area multipliers of 1.01-1.02 and a local multiplier of .94 resulted in Mr. Matheidas adjusting MVS's costs downward by four to five percent. But Mr. Matheidas needed to value the subject property retrospectively as of January 1, 2008 and March 1, 2010. To do that, Mr. Matheidas should have divided his multipliers by the historical multipliers for the retrospective valuation dates. That calculation would have yielded a multiplier of .9886 for January 1, 2008 and a multiplier of .9774 for March 1, 2010. *See Lichtenberg testimony; see also Resp't Ex. B at 10.*

29. Mr. Matheidas also failed to include certain indirect or “soft” costs. *Lichtenberg testimony*. Soft costs can include things like “property taxes on the land during construction; marketing costs generally associated with the initial lease-up; professional service fees for engineers, architects, and appraisers; costs of acquiring financing; carrying costs until stabilization; and builder’s profit.” *Resp’t Ex. B at 10*. MVS cost data includes professional fees, cost of financing acquisition, and builder’s overhead and profit. It, however, does not include other soft costs. *Lichtenberg testimony; Resp’t Ex. B at 10-11*. Mr. Lichtenberg testified that those omitted soft costs “could be 5%” of hard costs. *Lichtenberg testimony; see also, Resp’t Ex. B at 11* (“Let’s say that the remaining indirect costs are estimated at 5.0 percent of the project’s hard costs.”).
30. Entrepreneurial incentive is “the reward to an individual for selecting and securing the subject site, evolving a development program, negotiating with consultants and city agencies, negotiating construction finance, and assuming the risks of construction and initial marketing.” *Resp’t Ex. B at 10-11*. Those costs are not included in MVS costs. Entrepreneurial incentive varies, but it often ranges between 0% and 20%. For the subject property, Mr. Lichtenberg assumed 10%. *Lichtenberg testimony; Resp’t Ex. B at 11*. Both indirect costs and entrepreneurial incentive are assessable as part of the property’s value. *Meighen argument (citing REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Intro. at 1)*.
31. After making the corrections that Mr. Lichtenberg identified, Mr. Matheidas’s value estimates range from \$2,707,532 (Class D (stucco) building type) to \$2,865,090 (Class C building type) for January 1, 2008, and from \$2,679,612 to \$2,835,385 for March 1, 2010. Those values could be higher if the property was well maintained, as the building’s effective age would be less than its actual age. *Lichtenberg testimony; Resp’t Ex. B at 11-12*.
32. Ultimately, sale prices for properties like the subject property are not based on the cost approach; buyers and sellers instead determine prices by applying the sales-comparison and income approaches. There are instances where those last two approaches include

intangibles, but appraisers and analysts still need to apply them. The cost approach can be used as a tool to allocate intangible value. But when Irving Levinson Associates, Inc. prepares *The Senior Care Acquisition Report*, it uses sales. According to Irving Levinson, assisted living facilities sold for an average of \$124,900 per unit in 2008 and an average of \$103,300 per unit in 2010. The capitalization rate was 9.6% in 2010. *Lichtenberg testimony; Resp't Ex. 12.*

33. In addition to Mr. Lichtenberg's critique of Mr. Matheidas's analysis, the Assessor offered an independent valuation opinion from Anthony Garrison. Mr. Garrison is a Level III certified assessor-appraiser who works for Nexus Group, a company that the Assessor uses to assist with assessments. He previously worked for the Department of Local Government Finance and its predecessor agency. *See Garrison testimony; Resp't Ex. C.*
34. Mr. Garrison applied the income approach to estimate the subject property's value. He used ALC's actual income and expenses. Because Mr. Garrison agreed that business enterprise value could exist, however, he attempted to remove that value by excluding various income and expense items, such as income from medical and food service and certain salaries that were unrelated to the real estate. He also excluded personal property and real estate taxes as expenses. *Garrison testimony; Resp't Ex. C.*
35. Mr. Garrison then chose a capitalization rate. He used an unloaded rate of 9.6%, which he took from Mr. Lichtenberg's consulting report, and which Mr. Garrison found to be in line with other properties of similar use. He then added a tax rate of 2.3% to get a loaded capitalization rate of 11.9%. *Garrison testimony; Resp't Ex. C.* Using the unloaded capitalization rate, Mr. Garrison arrived at values of \$3,391,111.58 for 2009 and \$4,683,098.25 for 2010. Using the loaded capitalization rate, his value conclusions were \$2,711,700 for 2009 and \$3,750,900 for 2010. *Garrison testimony; Resp't Ex. C-2.*

Discussion

36. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
37. A property’s market value-in-use, as determined using 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 rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to USPAP often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
38. Regardless of the method used to rebut an assessment’s presumed accuracy, a party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *See id.* (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing on 2002 assessment values without some explanation as to how those values relate to January 1, 1999 value.”). For March 1, 2009 assessments, the valuation date was January 1, 2008. 50 IAC 21-3-3(b) (2009). For March 1, 2010 assessments, the valuation date was March 1, 2010. *See* I.C. § 6-1.1-4-4.5(f); *see also*, 50 IAC 27-5-2(c).

39. ALC offered Mr. Matheidas's valuation opinion of the subject property, which he based solely on the cost approach. Mr. Matheidas took his cost data from a nationally recognized service and generally explained how he reached his valuation opinion, albeit without much detail. Thus, at least at first blush, Mr. Matheidas's valuation opinion is prima facie evidence that the subject property's true tax value was \$1,675,000 as of April 1, 2011—the date for the current cost multiplier that Mr. Matheidas used in his analysis. And while Mr. Matheidas did little to explain how his opinion related to the March 1, 2010 and January 1, 2008 valuation dates at issue in these appeals, Mr. Lichtenberg supplied information from which Mr. Matheidas's opinion could be related to those dates.
40. The Assessor, however, impeached Mr. Matheidas's valuation opinion through Mr. Lichtenberg's testimony and consulting report. Mr. Lichtenberg, who is an experienced MAI appraiser, credibly pointed to several problems with Mr. Matheidas's analysis, including Mr. Matheidas's failure to apply a size multiplier and his use of an insufficient sprinkler adjustment. Had Mr. Matheidas used the appropriate adjustments, his improvement values would have been higher, ranging from \$1,621,688 to \$1,725,317 for January 1, 2008 and from \$1,603,198 to \$1,705,810 for March 1, 2010.⁶ Without those adjustments, Mr. Matheidas found depreciated improvement values ranging from \$1,510,772 to \$1,577,634.
41. The bigger problem with Mr. Matheidas's cost-approach analysis lays in his failure to include (1) soft costs that were not otherwise included in MVS cost data, and (2) entrepreneurial incentive.
42. It is not a foregone conclusion that every cost-approach valuation must necessarily include an amount for entrepreneurial incentive. Neither party cites to, nor does the Board find, any Indiana cases dealing with that question. But courts in other states, most notably New Jersey, have addressed disputes where experts differed over whether to

⁶ The Board got those numbers by (1) taking the corrected base values, (2) multiplying those values by the total building area (26,736 square feet), and (3) applying 24% depreciation, as determined by Mr. Matheidas.

include entrepreneurial profit or entrepreneurial incentive in their cost-approach analyses. *E.g., Meijer, Inc. v. City of Midland*, 240 Mich. App. 1, 610 N.W.2d 242 (2000); *Potters II v. State Highway Comm'n*, 608 So. 2d 1227 (Miss. 1992); *Westwood Lanes, Inc. v. Garwood Borough*, 24 N.J. Tax 239 (2008); *American Cyanamid Co. v. Wayne Twp.*, 17 N.J. Tax 542 (1998); *Twin Oaks Assoc. & Health Resources of Morristown, Inc. v. Town of Morristown*, 9 N.J. Tax 386 (1987). Those courts cite various editions of an authoritative treatise, *The Appraisal of Real Estate*, to explain the concepts of entrepreneurial incentive and entrepreneurial profit. For example, the 11th edition of that treatise provides the following:

Entrepreneurial incentive is a market-derived figure that represents the amount an entrepreneur expects to receive as repayment for his expenditure (direct and indirect costs) and as compensation for providing coordination and expertise and assuming the risks associated with the development of a project. Entrepreneurial profit is the difference between the total cost of development and marketing and the market value of a property after completion and achievement of stabilized occupancy. Entrepreneurial incentive is what motivates an entrepreneur—the reward the entrepreneur anticipates receiving. The frame of reference for entrepreneurial incentive is forward-looking. The amount the entrepreneur actually achieves by the end of the development and marketing periods is entrepreneurial profit. The frame of reference for entrepreneurial profit is backward-looking.

If the cost of developing a property is used to provide an indication of value, the appraiser must recognize the contribution of the entrepreneur and consider the inclusion of entrepreneurial profit in addition to direct and indirect costs. An entrepreneur pays no more for land and improvements than is needed to provide an appropriate profit on the specific project. If realizing a profit does not appear feasible, the entrepreneur will not proceed with the project. This does not mean that the entrepreneur is guaranteed a reward for his or her efforts. There is no certainty that any component of cost will create commensurate value, and the residual nature of an entrepreneurial reward makes it far from certain. Nevertheless, entrepreneurship represents a legitimate cost of development and should be included in the estimate of development cost.

American Cyanamid, 17 N.J. Tax at 560-61 (quoting THE APPRAISAL OF REAL ESTATE 347-348 (11th Ed.)).

43. Although most courts recognize that entrepreneurial incentive or profit may be a legitimate cost, they do not typically hold that it must be included in every instance. *See Westwood Lanes*, 24 N.J. Tax at 253-260 (summarizing New Jersey Tax Court decisions that have included entrepreneurial profit when applying the cost approach and those that have not). Thus, some courts have identified factors to look at in deciding whether to include entrepreneurial profit or incentive, such as whether “(1) the property is of the type that is developed to make a profit as a direct consequence of the development and (2) there is some evidence that the market will bear the inclusion of such a profit.” *Meijer*, 610 N.W. at 249 (finding that tax tribunal erred in including entrepreneurial profit in its calculation where there was no evidence that the market would bear entrepreneurial profit to develop a 180,000-square-foot building for use by single retailer).⁷
44. The Board need not delve too deeply into the issue here, because both experts apparently recognized that generally accepted appraisal principles require including some amount for entrepreneurial incentive or profit when valuing the subject property. Indeed, in his closing argument, Mr. Matheidas acknowledged that had he done an appraisal, he would have included indirect costs and “some entrepreneurial profit.” *Matheidas argument*. Thus, Mr. Matheidas’s failure to include those things detracts significantly from the credibility of his valuation opinion. And contrary to Mr. Matheidas’s testimony, the sum of excluded indirect costs and entrepreneurial profit or incentive together with Mr. Lichtenberg’s other corrections amounts to far more than \$200,000.
45. Mr. Matheidas’s errors are even more troubling in light of his decision to rely solely on the cost approach despite the fact that market participants do not rely on that approach when buying and selling properties like the subject property. Mr. Matheidas justified his decision to forego the income approach primarily on grounds that ALC does not get any income from the subject real estate itself but instead makes its money from services provided at the property. Even if ALC does not operate the subject property to generate

⁷ Interestingly, in a case involving the valuation of a nursing home, the New Jersey Tax Court added entrepreneurial profit of 10% to the cost-approach estimate of the taxpayer’s appraiser. *Twin Oaks*, 9 N.J. Tax at 397.

income from the real estate itself, however, that does not automatically hold true for comparable facilities from which one might draw market income and expense information. But the record says little about whether such data exists, so Mr. Matheidas's justification for not applying the income approach arguably has at least some merit.

46. That cannot be said about Mr. Matheidas's justification for ignoring the sales-comparison approach—that sales of assisted living facilities almost always include intangible property, such as business enterprise value. Granted, the fact that sales may include non-real-estate interests likely makes for a difficult valuation problem—allocating comparable sale prices between real-estate and non-real-estate interests. But it is a problem that appraisers and analysts are called on to solve. Blanket statements that most sales include business value and that allocation is too complex do little to justify ignoring a valuation approach on which market participants heavily rely.
47. Mr. Matheidas also reasoned that it is against the spirit of property assessment appeals to require appraisals. He is right; the Indiana General Assembly has made it clear that a taxpayer need not have an appraisal to initiate or prosecute an assessment appeal. I. C. § 6-1.1-15-1(m); I.C. § 6-1.1-15-3(f). But that does not mean that a taxpayer may ignore generally accepted valuation principles on grounds that applying them would be too complex or expensive.
48. That being said, the Board emphasizes that it does not hold that a taxpayer may never rely solely on the cost approach. But here, Mr. Matheidas provided a fairly bare-bones cost approach analysis in which he made substantial errors and did nothing to shore-up his opinion by examining any other valuation approach. Under those circumstances, the Board finds Mr. Matheidas's valuation opinion too unreliable to carry any probative weight.

SUMMARY OF FINAL DETERMINATION

49. For the reasons set forth, the Board finds for the Assessor, and affirms the subject property's March 1, 2009 and March 1, 2010 assessments.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.