

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 01-019-06-1-3-00001
Petitioner: R G Geneva LLC (Red Gold, Inc.)
Respondent: Adams County Assessor
Parcel: 01-11-29-401-080.000-019
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

PROCEDURAL HISTORY

1. R G Geneva, LLC (Red Gold, Inc.) filed a petition asking the Adams Property Tax Assessment Board of Appeals (“PTABOA”) to reduce the subject property’s assessment for the 2006 assessment year. On April 4, 2008, the PTABOA mailed notice of its determination in which it reduced the property’s assessment, although not by as much as Red Gold apparently wanted.
2. On May 16, 2008, Red Gold filed a Form 131 petition with the Board. Although its appeal did not meet the criteria for the Board’s small-claims procedures (*see* IND. ADMIN. CODE tit. 52, r. 3-1-2(a))¹, Red Gold elected to have the appeal heard under those procedures and the Assessor did not object.
3. On September 9, 2008, the Board held a hearing through its Administrative Law Judge, Patti Kindler (“ALJ”).
4. People present and sworn in at hearing:
 - a) For Red Gold: Troy Martin, Red Gold’s Tax Analyst,
Todd Heath, Tax Representative, Integrity Tax Consulting
John Fiene, Real Estate Appraiser, Interwest Consulting
 - b) For the Assessor: Judith Affolder, Adams County Assessor
Jeffery Kiess, Appraisal Research

¹ Under that rule, the Board presumes that its small claims procedures will apply to appeals involving real- or personal-property assessments of \$1,000,000 or less. 52 IAC 3-1-2(a). Those procedures may be applied in other cases if the petitioner requests them and obtains the other parties’ written consent. 52 IAC 3-1-2(d).

FACTS

5. The subject property contains a building of more than 400,000 square feet that Red Gold used for light manufacturing and storage. It is located at 705 Williams Street in Geneva.
6. The record is a little unclear about the amount of land that the subject property includes. The parties, and an appraisal offered by Red Gold, refer to different sized parcels ranging from 10.26 acres to 24.19 acres. *See Heath testimony; Kiess testimony; Pet'r Ex. 1 at 1.* From what the Board can tell, the subject parcel is one of what in 2006 were multiple parcels relating to Red Gold's plant. As of the March 1, 2006, assessment date, the subject parcel contained 10.26 acres of land. *See addenda to Pet'r Ex. 1.* It was later combined with 18 other parcels for the 2007 assessment date. *Resp't Ex. 2.* That combined parcel now totals 18.7902 acres. *Id.* There remains a separate 5.4-acre parcel (parcel no. 01-11-32-200-004.000-017) that is also part of the overall property that Red Gold uses to operate its plant. *See addenda to Pet'r Ex. 1.* Thus, the larger property totals 24.19 acres. Regardless, for this appeal, the Board is concerned solely with the value of the 10.26-acre subject property as it existed on the March 1, 2006, assessment date.
7. Neither the Board nor the ALJ inspected the subject property.
8. The PTABOA's Form 115 final determination lists the following values:
Land: \$173,600 Improvements: \$4,310,900 Total: \$4,484,500
9. Red Gold requested a total assessment of \$3,073,400.

PARTIES' CONTENTIONS

10. Red Gold offered the following evidence and arguments:
 - a) John F. Fiene, an Indiana certified general appraiser and member of the Appraisal Institute, and Ryan L. Mathews, an Indiana certified residential appraiser and licensed real estate broker, appraised a property that included the 10.26-acre subject property and parcel no. 01-11-32-200-004.000-017 ("parcel 017"), which is not under appeal. Together, those two parcels comprised what the appraisers described as the "key parcel" for the Red Gold plant. *See Fiene testimony; Pet'r Ex. 1 at 1.*
 - b) The appraisers estimated the overall property's value at \$3,400,000, as of January 1, 2005. *Id at 63; Heath, Fiene testimony.* Because parcel 017 is not under appeal, its assessed value (\$326,000) should be subtracted from the appraisers' valuation opinion. That leaves a value of \$3,073,400 for the subject property. *Heath testimony.*
 - c) The appraisers certified that they prepared their appraisal in conformity with the Code of Professional Ethics & Standards of Professional Appraisal Practice of the

Appraisal Institute, which includes the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Pet’r Ex. 1 at 65*. They reached their valuation opinion after applying all three commonly accepted valuation approaches—the cost, sales-comparison, and income approaches. *Id. at 62-63*.

A. Cost Approach

- d) In their cost-approach analysis, the appraisers used data from Marshall & Swift to estimate the cost of replacing the subject building and other improvements. They used costs for lightweight construction similar to most of the building’s recent additions. *Fiene testimony*. To estimate depreciation, the appraisers determined that the building had an effective age of 18 years and an economic life of 30 years. Mr. Fiene felt that a 30-year economic life more accurately reflected the lightweight construction than the 35-year life that the Assessor used. *Fiene testimony*.
- e) Because the building was a mix of different ages, construction types, uses and wall heights, the appraisers found that it also suffered from external or functional obsolescence. *Fiene testimony; Pet’r Ex. 1 at 22*. To quantify that obsolescence, the appraisers estimated how much net income the building could generate and subtracted that number from the amount of net income necessary to support the building’s depreciated replacement cost new. They then capitalized that shortfall using a 12.18% capitalization rate. *Pet’r Ex. 1 at 22*.
- f) The appraisers next looked at five sales of vacant land to estimate the subject property’s site value. Those parcels ranged from 3.25 acres to 72.94 acres. They sold for prices ranging from \$4,500 per acre to \$7,390 per acre with the largest properties having the lowest per-acre sale prices. *Fiene testimony; Pet’r Ex. 1 at 45*. The appraisers adjusted the sale price for one parcel because it did not have utilities. They then looked at the two parcels closest in size to the 15.66-acre property that they were appraising. Because the property that they were appraising was closer in size to the 8.57-acre property that sold for \$6,417 per acre than to the 21.48-acre parcel that sold for \$5,700 per acre, they estimated its value at \$6,200 per acre. *Pet’r Ex. 1 at 45-46*.
- g) In preparing a revised cost-approach analysis, the Assessor’s representative, Mr. Kiess, pointed to other vacant and improved parcels that sold for higher prices. But unlike the subject property, none of those parcels sat in a flood zone. *Fiene testimony*. In fact, Mr. Fiene testified that a city seeking job creation would likely give vacant land to a manufacturer. *Id.*
- h) After adding the improvements’ depreciated replacement costs to the value of the land as vacant, the appraisers estimated the property’s value at \$3,700,000 under the cost approach. *Pet’r Ex. 1 at 23*.

B. Sales-Comparison Approach

- i) For their sales-comparison analysis, the appraisers found six comparable improved properties located in areas other than major cities. *Fiene testimony; Pet'r Ex. 1 at 24-46.* Because they focused on each property's improvement value, they subtracted what they believed to be the effective land value from each sale price. *Id. at 41.* The unadjusted residual building values ranged from \$.63 per square foot to \$7.45 per square foot. *Pet'r Ex. 1 at 26-38.* The appraisers then adjusted those residual building values to reflect differences between the comparable buildings and the subject building in terms of size, amount of office area, height, age, and condition. The adjusted sale prices ranged from \$2.61 to \$7.36 per square foot. *Pet'r Ex. 1 at 44.* The appraisers gave the most weight to the sixth comparable, which had an adjusted sale price of \$7.36, and estimated that the subject building was worth \$7.00 per square foot. *Id.* They then added the land value that they had estimated from the comparable vacant land sales to arrive at a value of \$3,000,000 under the sales-comparison approach. *Fiene testimony; Pet'r Ex. 1 at 46.*
- j) Once again, Mr. Kiess prepared his own sales-comparison grid. But three of the four sales that Mr. Kiess used were not comparable to the subject property. *Fiene testimony.* The A.O. Smith property (Mr. Kiess's comparable #2) included an enormous piece of personal property—the largest e-coating bay ever installed. *Id.* The same is true for the Kendallville property (Mr. Kiess's comparable # 1). That sale included a very expensive paint line and a press bay that accommodated 4,000-ton injection molding presses. *Id.* Similarly, the Berne Apparel building in New Haven (Mr. Kiess's comparable #4) was better than the subject building and had no add-on construction. Unlike the subject building's lightweight construction, the Berne Apparel building had heavy interior framing with masonry construction. And it was close to a major highway. *Id.*

C. Income Approach

- k) Under the income approach, the appraisers estimate market rent by looking at industrial rental properties from depressed areas with a "rural flavor." *Fiene testimony; Pet'r Ex. 1 at 48-61.* They subtracted vacancy and collection losses based on a rate of 30% that they derived from the market. *Id. at 57.* They also subtracted operating expenses, although those expenses were minimal. *Id.*
- l) The appraisers then extracted a capitalization rate from the market. They found two sales that yielded capitalization rates of 11.74% and 13.61%, respectively. *Id. at 59.* They felt that the subject building's age and condition supported a rate at the lower end of the range, but that its location in a rural, depressed area with protracted marketing periods pulled in the other direction. *Id.* They therefore settled on a rate of 12%. After adding in an effective rate of .42% to account for taxes paid by the owner during periods of vacancy, they arrived at an overall rate of 12.42%. Because of the limited number of sales used in their market extraction,

the appraisers tested their market-extracted rate against the overall capitalization rates in published surveys. *Id. at 59-60*. They were most persuaded by rates published by RealtyRates.com. *Id. at 60*. Using those published rates, the appraisers determined an overall rate of 10.14%.

- m) When applied to the subject property's estimated net operating income, the market-extracted and published rates yielded respective values of \$3,660,145 and \$4,483,136. *Id. at 60-61*. In each case, the appraisers added their estimated land value (\$100,000). Because the market data indicated that the industrial sector was shrinking, the appraisers settled on an income-approach value of \$3,800,000. *Id. at 61*.

D. Reconciliation

- n) In reconciling their conclusions under the three valuation approaches, the appraisers gave the greatest weight to the sales-comparison approach. *Pet'r Ex. 1 at 63*. They used the income approach as a "secondary indicator. *Id.* They viewed their conclusions under the cost approach as the least reliable of the three. *Id.*

11. The Assessor offered the following evidence and arguments:

- a) The Assessor contested the reliability of the appraisers' valuation opinion by pointing to what she viewed as analytical flaws under each valuation approach.

A. Vacant Land Valuation

- b) The appraisers underestimated the subject property's land value, which affected their conclusions under all three valuation approaches. *Kiess testimony*. Their \$6,200-per-acre estimate would have been reasonable for raw land, but it was far too low for vacant developed land. The city of Decatur purchased raw industrial land for \$7,000 per acre and then contracted to spend \$21,890 per acre to develop it. So the city will have \$29,000 per acre in the land before any buildings are constructed. *Kiess testimony; Resp't Exs. 3, 5*. Also, the abstracted land values from the appraisers' own improved sales ranged from \$7,500 per acre to \$20,000 per acre. *Kiess testimony; Pet'r Ex. 1 at 26-38*. The abstracted land value for the sale from Hartford City (comparable # 3) is particularly instructive, because Hartford City is very similar to Geneva. *Kiess testimony; Pet'r Ex. 1 at 31-32*.
- c) Also, two of the vacant parcels that the appraisers used as comparables were very large and therefore were dissimilar to the subject site. The larger a tract of land, the lower its value per-acre. *Kiess testimony*. Thus, Mr. Kiess eliminated the two largest tracts from the appraisers' analysis and added the abstracted land value from the Hartford City sale. *Id.; Pet'r Ex. 3*. He argued that the Hartford City sale, which included 10.26 acres, was the most similar to the subject site, and concluded that its per-acre sale price of nearly \$17,000 supported the property's

existing \$14,380-per-acre land assessment. *Id.* If anything, that assessment is a little low. *Kiess testimony.*

B. Cost Approach

- d) The appraisers also erred in calculating the replacement cost and depreciation for the subject building. First, the building has 412,816 square feet rather than 408,492 square feet as the appraisal says. *Kiess testimony.* Second, the subtotal of refinements per square foot is actually \$21.97, rather than the \$20.865 reported in the appraisal. *Id.*; *see also Pet'r Ex. 1 at 21.* Third, according to a handbook published by Marshall & Swift, the local cost multiplier should be 1.02 instead of 1.00, and the typical building life for a low-cost industrial warehouse should be 35 years instead of 30 years. *Kiess testimony; Resp't Ex. 7.* Finally, Mr. Kiess disagreed with the appraisers' obsolescence calculation, although he did not explain why. *See Resp't Ex. 3 at 2* ("The appraisal used the income analysis to calculate obsolescence. There are some issues with that analysis").
- e) After correcting what he believed to be the appraisers' errors, Mr. Kiess calculated a total value of \$4,314,700 using the cost approach. *Resp't Ex. 6.*

C. Sales-Comparison Approach

- f) The appraisers' sales-comparison analysis was similarly flawed. Four of their six comparable sales may not have been arm's-length transactions. *Resp't Ex. 3 at 2.* Comparable #2 sold at auction and was used in a "1031 tax deferred exchange." *Kiess testimony; Pet'r Ex. 1 at 28-30.* And the property may have been contaminated with PCBs. *Id.* Comparable #3 was a "flip sale"—the seller bought the property for \$300,000 in 2005 and resold it for \$775,000 just 17 months later. *Id.* Comparable #4 may have had heavy-metal-contamination stigma attached to its building. *Id.* And Comparable #5 appears to have been another "flip sale," because the seller bought that property for \$1,500,000 and sold it one year later for \$2,700,000. *Kiess testimony; Resp't Ex. 3 at 2.* That sale also had financing issues, because the buyer purchased it on contract. *Id.* Also, three of the appraisers' comparable sales were from Anderson and one was from Hartford City. Both of those areas are economically depressed. *Id.*
- g) The appraisers' decision to abstract out land values from each comparable sale and then add back in a land value from their separate analysis of vacant land sales was atypical. *Kiess testimony; Resp't Ex. 3 at 2.* Also, they used a wall-height adjustment taken from Marshall & Swift, which was based solely on differences in construction costs. But the market would not recognize the full difference in construction costs in valuing buildings with different wall heights. *Id.*
- h) Mr. Kiess offered his own revised sales-comparison analysis. He included the six comparable sales that the appraisers used, although he "restated" their adjustments. *Kiess testimony; Pet'r Ex. 8.* And he added four other industrial-

property sales. *Resp't Exs. 8- 9.* Mr. Kiess made additional adjustments to his sales-comparison analysis to reflect differences in location, land, wall-height and sale date. *Id.* Six of the ten sales that Mr. Kiess relied upon had adjusted sale prices between \$8.00 and \$13.22 per square foot, which led him to conclude that the subject building was worth \$10.88 per square foot. *Kiess testimony.* That translated to \$4,493,500 for the entire property, which under Mr. Kiess's analysis, included 24.19 acres. *Kiess testimony; Resp't Ex. 8.*

D. Income Approach

- i) Finally, the appraisers' income-approach analysis was flawed. They leaned toward a higher overall capitalization rate based on their sixth comparable sale, because it included a higher risk. But the appraisers had already accounted for that higher risk when they chose a 30% vacancy and collection loss factor rather than the normal 15%. *Kiess testimony.* Mr. Kiess offered a revised analysis using an average of "national publications" and the appraisers' second comparable sale. *Kiess testimony; Resp't Ex. 10.* With those changes, and adding back the assessed value of the land, Mr. Kiess came to a value of \$4,479,300, or \$10.85 per square foot. *Id.*

RECORD

12. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: Appraisal of property as of January 1, 2005,
Petitioner Exhibit 2: 2007 Property record card for adjoining parcel 01-11-32-200-004.000-017,

Petitioner Exhibit 3: Sales data for 3301 Cline Road, Corydon Indiana,

Petitioner Exhibit 4: Sales data for 2620 Marion Drive, Kendallville, Indiana,

Petitioner Exhibit 5: Sales data for 11228 Summit Street, New Haven, Indiana,

Respondent Exhibit 1: Photographs of the subject property,

Respondent Exhibit 2: 2008 property record card for the subject property,

Respondent Exhibit 3: Summary of Assessor's analysis,

Respondent Exhibit 4: PTABOA's Final Determination, Form 115,

Respondent Exhibit 5: Sales disclosure form for parcel 005-140-00000600,

Respondent Exhibit 6: Unsigned document entitled "Cost Approach,"

Respondent Exhibit 7: Three pages from the Marshall & Swift Cost Index,
Respondent Exhibit 8: Grid entitled “Sales Comparison,”
Respondent Exhibit 9: “Loopnet” sales data for four properties
Respondent Exhibit 10: Unsigned document entitled “Income Approach,”
Respondent Exhibit 11: Notice of Appearance of Consultant on Behalf of the Assessor,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet,

d) These Findings and Conclusions.

ANALYSIS

15. Red Gold proved that the subject property’s assessment should be reduced to \$3,400,000. We reach this conclusion for the following reasons:

Burden of Proof

- a) A taxpayer seeking review of an assessing official’s determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). If the taxpayer meets that burden, the assessing official must 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. But the burden of persuasion remains with the taxpayer. *See Thorntown Tel. Co. v. State Bd. of Tax Comm’rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).
- b) Of course, that begs the question of how a taxpayer may go about meeting its burden of proof. To answer that question, we turn to the 2002 Real Property Assessment Manual and the basic principles underlying Indiana’s assessment system.
- c) 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). The appraisal profession traditionally has 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 value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

- d) 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 Ct. 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 the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d 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.
- e) Regardless of the method that it uses to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject 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); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006 assessment, that valuation date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.

Discussion of the Evidence

A. Red Gold Made a Prima Facie Case

- f) Red Gold offered an appraisal estimating the value of two parcels, including the subject property, at \$3,400,000 as of January 1, 2005. The appraisers certified that they prepared the appraisal in conformity with USPAP and they considered the cost, sales-comparison, and income approaches to value. Thus, Red Gold offered precisely the type of evidence that the Manual and Tax Court decisions describe as relevant to rebut the presumption that an assessment is accurate.
- g) Red Gold, however, did not request an assessment of \$3,400,000. It instead asked the Board to subtract from that number the assessed value for parcel 017, which is not under appeal. The Board denies that request. The appraisers did not separately estimate how much parcel 017 contributed to the property's overall value. And Red Gold did not offer any other independent evidence to quantify that parcel's market value-in-use.
- h) Thus, Red Gold made a prima facie case rebutting the subject property's existing assessment and showing that the property's true tax value was no more than \$3,400,000.

B. The Assessor did not Significantly Impeach or Rebut Red Gold's Appraisal

1. The Assessor did not significantly impeach the appraisal

The appraisers' land valuation

- i) The Assessor, through its representative, sought to impeach the appraisers' valuation opinion by attacking each of its major components. He began with the appraisers' estimate of the subject land's value as if vacant. He mainly argued that the appraisers improperly considered raw, rather than developed, land. Indeed, he noted that the improved properties that the appraisers used in their sales-comparison analysis all had higher abstracted land values than the \$6,200 per acre that they estimated for the subject property. And he claimed that the comparable improved sale in Hartford City, which had an abstracted land value of almost \$17,000 per acre, was the most like the subject property.
- j) Mr. Kiess raised some valid points. In particular, Mr. Kiess's point about the appraisers using "raw" rather than "developed" land gives us pause. Although Mr. Kiess did not explain what goes into developing land for industrial use, we infer that it entails something more than what had been put into the properties that the appraisers used as comparables. Mr. Fiene acknowledged as much, saying that those comparable properties were basically "enhanced farmland." *Fiene testimony.*
- k) In the end, though, we are not especially troubled by the appraisers' land valuation. Mr. Fiene testified that the parcels that Mr. Kiess relied upon differed from the subject property because they were not located in flood zones. He also explained that cities such as Decatur will essentially give away developed manufacturing sites in order to attract jobs. What concerns we do have are offset by the relatively insignificant effect that any undervaluing of the subject land would have had on the appraisers' ultimate valuation opinion.

The appraiser's cost-approach analysis

- l) Mr. Kiess next focused on how the appraisers determined both the subject building's replacement cost new and the amount of depreciation to apply to that replacement cost. He testified that the building had 4,000 more square feet than the appraisers reported. He also disputed the appraisers' choice of a cost multiplier and their economic-life estimate for the subject building. And he or the Assessor referred to "issues" with the appraisers' obsolescence calculations.
- m) All those points lack merit. Mr. Kiess did not explain why his measurements were more accurate than the appraisers' measurements. And he relied on data from 1998 and 1999 to support his choice of a local cost multiplier and an economic life for the subject building. The appraisers, however, were valuing the

property as of January 1, 2005, and they used data relating to that date. *See Pet'r Ex. 1 at 21* (The replacement costs new have been estimated using those supplied by the Marshall Valuation Service. *As of January 1, 2005*, these totaled . . . \$8,507,835)(emphasis added). Similarly, neither Mr. Kiess nor the Assessor identified their “issues” with the appraisers’ obsolescence calculation.

- n) Mr. Kiess did raise one significant point about the appraisers’ cost-approach calculations. The appraisers made what appears to have been a mathematical error. They determined a base cost of \$20.97 to which they added \$.12 for storage mezzanines and \$.875 for office finish. That should have yielded a subtotal of \$21.965, but the appraisers used a subtotal of \$20.865 instead. *Pet'r Ex. 1 at 21*. That miscalculation appears to have carried through to their final cost-per-square-foot estimate. *See id.*
- o) In the scheme of the entire appraisal, however, that miscalculation was relatively minor. Had the appraisers used the correct subtotal, it would have increased the building’s replacement cost new by over \$400,000. But they applied 46% physical depreciation plus a significant amount of functional obsolescence to the building’s replacement cost new thereby reducing the error’s impact to well under \$200,000. And of the three approaches that the appraisers considered, they gave the least weight to their conclusions under the cost approach.

The appraisers’ sales-comparison analysis

- p) Mr. Kiess challenged four of the six sales that the appraisers’ used in their sales-comparison analysis. He argued that the four sales were not arm’s-length transactions: two of the properties were involved in “flip” sales, one sold at auction and was involved in a “1031 tax deferred exchange,” another sold on contract, and two, including the one sold at auction, may have had stigma from contamination.
- q) Contrary to Mr. Kiess’s assertions, all of the sales appear to have been arm’s-length transactions. Mr. Kiess did not claim that any of the parties to those sales were related to each other. Also, we fail to see how characterizing two of the sales as “flip” sales casts doubt on their relevance to the appraisers’ sales-comparison analysis. In each instance, the appraisers used the second sale in the “flip”—the sale with the higher value. *See Pet'r Ex. 1 at 31, 35*. Without more, the mere fact that seller had quickly turned the property for a profit does little to detract from the sale’s reliability as an indicator of the subject property’s value. The appraisers’ use of properties with potential stigma from environmental contamination similarly gives us little pause. The appraisers adjusted the properties’ sale prices to account for the effects of that contamination.
- r) The appraisers’ use of a property that sold at auction and was then part of a “1031 tax deferred exchange” bears closer examination. For a sale price to reflect a property’s market value, the sale must have involved typically motivated and

informed parties, the property must have been exposed to the open market for a reasonable time, the payment must have been made in terms of cash or comparable financial arrangements, and the price must have been unaffected by special financing or concessions. *See* MANUAL at 10 (defining “market value”).

- s) Thus, in some instances, a property’s sale price at auction may not reflect its market value either because the property was not sufficiently exposed to the market or because the seller was under duress. Here, though, the property was marketed for 96 months before it was sold. Nonetheless, the appraisers did not explain what a “1031 tax deferred exchange” was or whether that amounted to special financing or concessions. If the appraisers had relied more heavily on that sale, we might be concerned. But they did not give it controlling weight. *See Pet’r Ex. 1 at 44*. The appraisers similarly discounted the sale (comparable # 5) that Mr. Kiess claimed was made “on contract.” *Id.*
- t) We, however, agree with Mr. Kiess that the appraisers’ decision to focus only on improvements in their sales-comparison analysis was “atypical.” The properties that they examined were sold as a whole, not as separate land and improvement components. And as the Manual explains, the sales-comparison approach assumes that “buyers will pay no more for the subject property, hence they set the subject’s value, than it would cost them to purchase an equally desirable *substitute improved property* already existing in the marketplace.” MANUAL at 13 (emphasis added). There may have been valid reasons for the appraisers to abstract-out land values from the improved sales that they examined and to add back in the value that they determined from vacant land sales. Their approach may even have complied with generally accepted appraisal principles. But they did little to explain how.
- u) Ultimately, while we harbor some doubts about the appraisers’ methodology, their analysis plainly shows that the bulk of the subject property’s value lay in its improvements. Thus, the unexplained irregularity in their methodology does not significantly impeach their overall value conclusion.

The appraisers’ income-approach analysis

- v) Finally, Mr. Kiess did little to impeach the appraisers’ conclusions under the income approach. The appraisers carefully explained how they extracted a capitalization rate from comparable sales of rental properties, and they checked their conclusions against published surveys. Mr. Kiess attacked the appraisers’ choice of capitalization rate mainly because he thought that they relied most heavily on the rate extracted from the sale of comparable #6. Mr. Kiess, however, was mistaken in claiming that the appraisers gave the greatest weight to comparable #6. In fact, they chose a capitalization rate that was closer to the rate extracted from comparable #2 than to the rate extracted from comparable #6.

- w) In sum, Mr. Kiess pointed to facts that tended to impeach some of the appraisers' conclusions. But those facts did not significantly take away from the overall reliability of their valuation opinion.

2. *The appraisers' opinion was more persuasive than Mr. Kiess's opinion*

- x) Of course, the fact that Mr. Kiess did not significantly impeach the appraisers' valuation opinion does not end our inquiry. Mr. Kiess offered his own valuation conclusions. We must therefore examine the reliability of his conclusions and weigh them against the appraisers' valuation opinion.
- y) Initially, we note that Mr. Kiess arrived at his opinion largely by revising the appraisers' analyses. That approach, however, seriously risks distorting the appraisers' analyses. Those analyses were not purely mathematical—one cannot simply plug in different data and automatically say what result the appraisers would have reached had they used that revised data.
- z) Aside from that basic criticism, we find serious flaws with Mr. Kiess' analyses under all three valuation approaches. As already explained, Mr. Kiess used data from 1998 and 1999 in his cost-approach analysis while the relevant valuation date was January 1, 2005. He also ignored functional obsolescence. The appraisers, by contrast, credibly found that the subject building's add-on construction created significant functional obsolescence.
- aa) Similarly, in his sales-comparison analysis, Mr. Kiess relied on two sales that included significant personal property without deducting the amount attributable to that personal property. And he did not even attempt to explain how he quantified any of his adjustments to the comparable properties' sale prices. While the appraisers' sales-comparison analysis raised questions of its own, they explained most of their adjustments.
- bb) Mr. Kiess said little about his conclusions under the income approach. Indeed, he simply adopted most of the appraisers' analysis, disagreeing only with their choice of a capitalization rate. But he did little to justify his alternate rate. Instead, he simply averaged the rate extracted from the sale of the appraisers' comparable #2 and the aggregate industrial rate from *RealtyRates.com*. True, the appraisers did not say much more than Mr. Kiess in explaining why they relied more heavily on their limited market-extracted rates than on the rates reported by the commercial services. In the end, however, the appraisers' choice was backed by their expertise and experience. Mr. Fiene is a member of the Appraisal Institute as well as a Level II Certified Indiana Assessor-Appraiser. He has 29 years of experience as an appraiser. Mr. Kiess, by contrast, said little about his qualifications or experience beyond his certification as a Level II Certified Indiana Assessor-Appraiser.

cc) Indeed, Mr. Fiene's experience, and the fact that he and Mr. Mathews certified that they prepared their appraisal in conformity with USPAP, generally lend weight to their ultimate valuation opinion. So too does the fact that Mr. Kiess largely relied on the appraisers' research and analysis in forming his own opinion. Thus, while the appraisers' valuation opinion was far from perfect, it was the best evidence of the subject property's market value-in-use. We therefore find that the subject property's 2006 assessment was wrong and that its true tax value was no more than \$3,400,000.

CONCLUSION

16. While the appraisers' valuation opinion was far from perfect, we find it more persuasive than Mr. Kiess's competing valuation opinion. We therefore find that Red Gold proved by a preponderance of the evidence that the subject property's March 1, 2006, assessment was wrong, and that the property's true tax value was no more than \$3,400,000.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be reduced to \$3,400,000.

ISSUED: **December 11, 2008**

Commissioner,
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>