

REPRESENTATIVE FOR PETITIONER:
Josh Malancuk, JM Tax Advocates

REPRESENTATIVE FOR RESPONDENT:
Marilyn Meighen, Attorney at Law

**BEFORE THE INDIANA BOARD
OF TAX REVIEW**

500 N. RANGELINE RD., LLC)	Petition Nos.: 73-008-09-1-3-61710
)	73-008-10-1-3-33111
Petitioner,)	73-008-11-1-3-00001
)	
v.)	Parcel No.: 73-04-07-300-033.000-008
)	
SHELBY COUNTY ASSESSOR)	County: Shelby
)	
Respondent.)	Assessment Years: 2009, 2010 & 2011
)	

Appeal from Final Determinations of the
Shelby County Property Tax Assessment Board of Appeals

June 10, 2013

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 these assessment appeals, the parties offered valuation opinions from four experts and evidence of the subject property's sale price from a transaction pre-dating both the relevant valuation dates and intervening damage to the property's main building. Because we find the opinion of 500 N. Rangeline Road, LLC's expert to be the most persuasive, we order the property's assessments to be reduced accordingly.

PROCEDURAL HISTORY

2. 500 N. Rangeline requested that the subject property's assessments for the 2009 through 2011 assessment years be reviewed. The Shelby County Property Tax Assessment Board of Appeals ("PTABOA") held hearings and issued determinations for 500 N. Rangeline's appeals of the 2009 and 2010 assessment years but did not set a hearing for 500 N. Rangeline's appeal of the 2011 assessment year. Dissatisfied with the results below, 500 N. Rangeline filed Form 131 petitions with the Board for all three assessment years.¹
3. On November 28 and December 12, 2012, the Board's administrative law judge, David Pardo ("ALJ"), held a hearing on 500 N. Rangeline's petitions. The following people testified under oath at that hearing:
 - a) Josh Malancuk
 - b) Lawrence Mitchell
 - c) Bradley Berkemeier
 - d) Nick Tillema
 - e) Jon Smith
4. 500 N. Rangeline offered the following exhibits, all of which were admitted into evidence:

¹ Where, as was the case with 500 N. Rangeline's appeal of the 2011 assessment year, a property tax assessment board of appeals fails to hold a hearing within 180 days of a taxpayer filing its request for review, the taxpayer may file a petition for review with the Board without waiting for the PTABOA to make a determination. See Ind. Code § 6-1.1-15-1(k) and (o).

- Petitioner’s Exhibit 1: Spreadsheets with analyses of the subject property, property record cards (“PRCs”), and summary sheets for PRCs (33 pages)
- Petitioner’s Exhibit 2: Background, summaries of merits of appeals, Sales Disclosure Detail (7 pages)
- Petitioner’s Exhibit 3: Scale drawings of the subject property and historical construction history (7 pages in main exhibit binder and 6 separate drawings in second exhibit binder)
- Petitioner’s Exhibit 4: June 16, 2010 letter from Brian Dell of Summit Realty Group to Greg Heuer, cost to cure summaries, Comparative Cost Multiplier Summary, construction and repair estimates, and excerpt from Marshall and Swift comparative cost multiplier tables (9 pages)
- Petitioner’s Exhibit 5: Revised PRCs for the subject property, spreadsheets with “Backup of cost analysis adjustments,” Nexus cost tables, excerpts from the Department of Local Government Finance’s Version A – Real Property Assessment Guideline with dates of December 22, 2011, and November 30, 2011 (16 pages)
- Petitioner’s Exhibit 6: Summary appraisal report prepared by Lawrence W. Mitchell
- Petitioner’s Exhibit 7: Opinion of Value and Marketing Plan prepared by Kevin B. Kempf of Colliers International, Turley Martin Tucker
- Petitioner’s Exhibit 8: Cap Rate Trend Summary, capitalization rate information from published sources, listing information for nearby property (16 pages)
- Petitioner’s Exhibit 9: November 19, 2012 letter from Brad Smith to Jon Smith laying out Brad Smith’s analysis of the subject property’s construction and design together with attachments (45 pages)
- Petitioner’s Exhibit 10: Appeal petitions and attachments (81 pages)
- Petitioner’s Exhibit 11: Copies of photographs of the subject property (10 pages)
- Petitioner’s Exhibit 12: Documents received by 500 N. Rangeline during PTABOA hearing (40 pages)
- Petitioner’s Exhibit 13: Excerpts from 2002 Real Property Assessment Guideline – Version A
- Petitioner’s Rebuttal Exhibit 1: Three graphs comparing the distance from major highways and unadjusted sale prices for properties in Nick Tillema’s appraisal, spreadsheet summarizing distance from interstate for Tillema’s comparables, and spreadsheet summarizing the distance from the interstate and from the subject property for comparables

Petitioner's Rebuttal Exhibit 2: Spreadsheet titled "Comp Verification Notes" together with various documents relating to comparables (146 pages)

5. The Assessor offered the following exhibits, all of which were admitted into evidence:

Respondent's Exhibit A: Self-Contained Appraisal Report prepared by Nick Tillema and Andrew Bryant

Respondent's Exhibit B: Binder with 2009 Assessment Analysis

Tab 1: 2009 "Rolled Original" PRC, 2009 "Corrected Original" PRC, "2009 Post-PTABOA Final Determination" PRC, case summary from PTABOA hearing

Tab 2: Cost Approach Pricing Ladder, supporting cost schedules, supporting depreciation tables, documents relating to cost to cure analysis

Tab 3: Sales Comparison Summary Grid, sales disclosure form for the subject property, listing information for the subject property, sales disclosure forms and PRCs for comparable properties

Tab 4: Income Approach Summary spreadsheet, Properties for Lease (listing information for subject property), lease listing information for comparable properties, Sold Property Comparison Report for Industrial Properties in Indiana with capitalization rate information,

Respondent's Exhibit C: Binder with 2010 Assessment Analysis

Tab 1: 2010 "Rolled Original" PRC, 2010 "Corrected Original" PRC, "2010 Post-PTABOA Final Determination" PRC

Tab 2: Cost Approach Pricing Ladder, supporting cost schedules, supporting depreciation tables, Obsolescence Analysis (Cost to Cure) spreadsheet, documents relating to cost to cure analysis

Tab 3: Sales Comparison Summary Grid, sales disclosure form for the subject property, listing information for the subject property, sales disclosure forms and PRCs for comparable properties

Tab 4: Income Approach Summary spreadsheet, Properties for Lease (listing information for subject property), lease listing information for comparable properties, Sold Property Comparison Report for Industrial Properties in Indiana with capitalization rate information,

Respondent's Exhibit D: Obsolescence Analysis (Cost to Cure) spreadsheet

Respondent's Exhibit E: 2011 Assessment Analysis

Tab 1: 2011 PRC

Tab 2: Cost Approach Pricing Ladder, supporting cost

schedules, supporting depreciation tables, Obsolescence Analysis (Cost to Cure) spreadsheet, documents relating to cost to cure analysis

Tab 3: Sales Comparison Summary Grid, sales disclosure form for the subject property, listing information for the subject property, sales disclosure forms and PRCs for comparable properties

Tab 4: Income Approach Summary spreadsheet, Properties for Lease (listing information for subject property), lease listing information for comparable properties, Sold Property Comparison Report for Industrial Properties in Indiana with capitalization rate information

6. In addition, the Board incorporates into the record all filings by the parties and all orders and notices issued by the Board or the ALJ.
7. Neither the Board nor the ALJ inspected the subject property.
8. 500 N. Rangeline appeals from the following assessments of record:

Assessment Date	Land	Improvements	Total
March 1, 2009	\$177,800	\$1,339,800	\$1,517,600
March 1, 2010	\$177,800	\$1,124,200	\$1,302,000
March 1, 2011	\$177,800	\$1,124,200	\$1,302,000

9. On its Form 131 petitions, 500 N. Rangeline requested the following assessments:

Assessment Date	Land	Improvements	Total
March 1, 2009	\$124,900	\$470,100	\$595,000
March 1, 2010	\$124,900	\$805,100	\$930,000
March 1, 2011	\$177,800	\$752,200	\$930,000

FINDINGS OF FACT

A. The Subject Property

10. The subject property is comprised of an approximately 142,496-square-foot main building, a separate 4,180-square-foot office building, and other improvements located on 26.903 acres of land. The main building is a pre-fabricated metal structure that was originally built for manufacturing and that has some limited office space. The facility was built in phases, beginning in 1973 or 1974. It was later expanded in 1989 and renovated in 2007. The main building has two truck docks, six drive-in doors, and six overhead doors, although the overhead doors are fenced in and are not usable. The property is located off U.S. 52 in Morristown, more than 10 miles from the nearest interstate. There are railroad tracks nearby, but it would cost approximately \$750,000 to access those tracks. *See Smith testimony; see also Mitchell testimony; Pet'r Ex. 6 at 34-35; Resp't Ex. A at 30-31; Resp't Ex. B a Tab 1.*
11. On December 19, 2006, 500 N. Rangeline bought the property from the Marmon Group,² which was somehow affiliated with Detroit Steel, for \$1,586,995. The Assessor did not check the circle provided on the sales disclosure form to indicate that the transaction was a "valid sale." *Resp't Ex. B at tab 3 (sales disclosure form); see also, Smith testimony.*
12. According to Jon Smith, one of 500 N. Rangeline's principals, he would not pay that same amount for the property now. Instead, Smith claimed to have based the sale price solely on a 20-year, \$10,000-per-month lease that Greenfield Biofuels had signed. Greenfield planned to use the facility as an ethanol plant. Greenfield apparently never occupied the property, although the record does not show the details of what happened. For example, it is not clear whether Greenfield defaulted under the lease, and if so, whether 500 N. Rangeline sought to enforce the lease. In any event, in 2008, 500 N. Rangeline leased 10,000 square feet of the main building to Marmon, which used it to store automotive parts. Volvo also leased a portion of the building in 2008. The record

² That is what Smith identified as the seller's name (although he did not give a spelling). The sales disclosure form lists Marathon Suspension Systems, Inc. f/k/a Detroit Steel Products Co., Inc. as the seller. *Resp't Ex. B at tab 3.*

is silent regarding the terms of that lease, other than that it was month to month. *Smith testimony.*

13. Hammond Storage then leased the entire property for \$21,000 per month until December 23, 2008. Hammond moved out when a water main broke and significantly damaged the main building. All of the sprinkler heads were broken, most of which have not been repaired. The building's sprinkler system is therefore inoperable. *See Smith testimony.*
14. The property has remained largely vacant since Hammond moved out. Since sometime in 2010, Smith Projects, a company owned by Jon Smith, has used a 22,560-square-foot portion of the main building to store equipment. Smith Projects has also used a portion of the office space. Starting in 2011, Pinnacle Environmental, another one of Jon Smith's companies, has occupied two offices. According to Smith, his companies have been using the facility to help offset the costs associated with the property. *Smith testimony.*
15. 500 N. Rangeline has tried to sell or lease the subject property since Hammond moved out. Summit Realty Group listed the property for 13 months and 500 N. Rangeline has also privately listed the property. *Smith testimony.* Among other things, Summit's published listing described the property as a "Manufacturing Facility" and referenced the main building as having "21' warehouse clear height." *Resp't Ex. E at Tab 3.* 500 N. Rangeline's asking price ranged from \$2,000,000 to \$1,300,000. *Smith testimony; Resp't Ex. B at tab 3.* Summit also listed the property as available for lease, with an asking price of \$2.50 per square foot. *Berkemeier testimony.*
16. 500 N. Rangeline also got broker price opinions from Kevin B. Kempf at Colliers International Turley Martin Tucker and from Cushman & Wakefield. In his July 15, 2009 opinion, Kempf estimated the property's market value at \$733,380 to \$1,466,760, assuming that the property was free and clear of any environmental issues and that the roof was in good condition, and he suggested an asking price of \$1,650,000. Kempf broke the value range into two segments: "Highest and Best Use" and "Secondary User." *Pet'r Ex. 7 at 24.* Under highest and best use, Kempf estimated the property's value

range at \$1,173,408 to \$1,466,760, and under secondary user, he estimated the range at \$733,380 to \$1,026,732. In both cases, Kempf's estimate presupposed "basic cleanup" and he listed the following improvements required to maximize value:

1. Thoroughly clean all restrooms.
2. New carpet and paint in office area.
3. Place all electrical, mechanical and HVAC systems in good working order.
4. Replace light fixtures and/or bulbs as required.
5. Scrub warehouse floors throughout; remove oil and material/production residue.
6. Remove all surplus equipment, inventory, furniture, etc.
7. Place drive-in doors in good working order.
8. General exterior clean-up, including removal of trash, pallets, boards, drums, tanks, dumpsters.
9. Repair any roof leaks.
10. Repair any broken and cracked windows.
11. Landscape clean-up/update[.]
12. Paint Exterior of Building where the paid (sic) has chipped.

Id. at 24, 33 (emphasis in original).

17. The listings did not generate offers, so 500 N. Rangeline took the property to auction with Frazier Woodright Auctions. Despite the auctioneer's efforts to advertise the auction on CoStar, in the Wall Street Journal, and through other avenues, the auction had a low turnout and generated a high bid of only \$500,000. *Smith testimony.*
18. There are several problems with subject property:
 - As already explained, the main building's sprinkler system is inoperable.
 - The floors are pitted and unlevel.
 - The walls need to be painted.

In addition, the property's soil is contaminated. Detroit Steel entered into a voluntary remediation program ("VRP") with the Indiana Department of Environmental Management ("IDEM"), which led to monitoring wells being installed. The portion of the main building that was originally designed for manufacturing is not hooked up to city water, and the VRP prohibits using water from the property's wells for human consumption. The remediation is ongoing, and 500 N. Rangeline signed a restrictive covenant to its deed, although the record does not show exactly what that covenant prohibits. *Smith testimony.*

19. Brian Dell, Director of Industrial Advisory Services for Summit, wrote a letter indicating that those problems might be hindering Summit's ability to attract potential tenants and buyers:

Over the last ten months while we have had your property listed, we have closely monitored competing industrial properties, active tenant requirements, and market trends. From this, we are able to determine property characteristics that may hinder our efforts to attract potential industrial tenants and buyers for 500 N. Rangeline Road. In my opinion from observing the market, the condition of the warehouse floor and lack of loading docks have been large deterrents for prospects to the building. While not as great of deterrents, the property would present better to prospects if the 140,000 +/- square feet of warehouse space were repainted, and loading areas were more tightly sealed. I also believe that making repairs to these items would aid in the marketing efforts and help us bring a tenant or buyer more quickly.

Pet'r Ex. 4 at 1. Dell indicated that distressed industrial properties in the area had sold in the \$5-per-square-foot range. Because repair costs would be significant, he believed that the net sale price would be similar even if 500 N. Rangeline made the necessary repairs.

Id.

20. 500 N. Rangeline got the following estimates for the repairs identified in Dell's letter:
- Two bids for repairing, sealing, and leveling the floors: One from VTI Contracting for \$661,840 and one from Level Master Elite for \$852,000.
 - A \$125,555 estimate from Shield for painting the warehouse area's walls and ceilings.
 - An estimate of \$81,640 from Smith Projects for installing two new loading docks.

Smith testimony; Pet'r Ex. 4 at 5-9.

B. Valuation Opinions

1. Lawrence Mitchell

21. 500 N. Rangeline hired Lawrence Mitchell, a certified general appraiser and Member of the Appraisal Institute ("MAI"), to appraise the subject property. Mitchell is also a Level II assessor-appraiser certified by the Department of Local Government Finance

(“DLGF”). Mitchell has 20 years of experience as an appraiser and specializes in appraising manufacturing and industrial properties. *Mitchell testimony; Pet’r Ex. 6 at 70-71.*

22. Mitchell prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”). He considered all three generally accepted valuation approaches—the cost, sales-comparison, and income approaches—but ultimately relied on the sales comparison approach. Mitchell decided that the cost approach did not apply because participants in the property’s submarket generally view new construction as infeasible. The cost approach would therefore reflect a value beyond what the sales-comparison or income approaches would support. Mitchell similarly decided that the income approach was not a primary method for valuing properties in the submarket. That was especially true because the subject property did not have a lease, and in Mitchell’s view, people would not generally buy it as an investment property. Also, there was a distinct lack of data to support a reliable market rental rate, let alone sales of leased-fee interests in similar properties to support an overall capitalization rate. *Pet’r Ex. 6 at 39.*

23. Mitchell looked for the following characteristics when searching for sales to use in his sales-comparison analysis:

- Properties located in secondary areas of Indiana.
- Owner-occupied warehouse buildings with office space that were between 60,000 and 350,000 square feet and that were built before 1980.
- Sales that occurred as close to his appraisal’s valuation dates as possible, but not beyond those dates, so as to comply with USPAP Standard No. 3 governing retrospective valuation opinions.

Pet’r Ex. 6 at 40.

24. Mitchell did a separate analysis for the valuation date governing each assessment year under appeal. For the 2009 assessment year, he first determined the property’s market value-in-use for March 1, 2009, and then expressed that as a value as of January 1, 2008.

For the other two years, he valued the property as of March 1, 2010, and March 1, 2011, respectively.

25. Mitchell selected five sales involving properties that were used for industrial purposes both before and after being sold and that were average within the subject property's market. The sales all occurred from May 2007 to March 2009 for unadjusted prices ranging from \$4.38 to \$11.10 per square foot of building area. The first two sales were from the subject property's immediate area in Morristown, but the properties were less similar to the subject property physically than were the properties from the other three sales. *Pet'r Ex. 6 at 41, 43-46; see also Mitchell testimony*
26. Mitchell examined each sale for relevant ways in which it might differ from the subject property, and he ultimately made adjustments for differences in the buildings' effective ages, sizes, and percentage of office space as well as for differences in land-to-building ratios. For his age adjustment, Mitchell used 2% per year, which he based on straight-line depreciation assuming a 40 – 45 year economic life with 10% of value attributed to land. He used \$15 per square foot as his adjustment to account for differences in percentage of office space; Marshall & Swift's cost guide indicated that cost new for office finish ranged from \$35 to \$45 per square foot, and his adjustment reflected the depreciated contribution to value. As for differences in building-size, even though Mitchell used price-per-square-foot-of-building-area as his unit of comparison, he explained that as size increases, it typically has an inverse relationship to unit price.
27. According to Mitchell, the subject property's 8:1 land-to-building ratio is on the high end for industrial properties. That means that a buyer could expand operations if needed, and buyers therefore would consider that ratio. Mitchell, however, also explained that the portions of the surplus land could not be disturbed because of the environmental contamination. Mitchell therefore increased each comparable property's sale price by \$15,000 per acre, which he based on the assessed value for usable, unused land in the subject property's geographic area. *Pet'r Ex. 6 at 40-47; see also, Mitchell testimony.*

28. Mitchell also examined various other characteristics that might affect value, but found that the properties did not significantly differ along those lines. For example, Mitchell considered a market-condition adjustment to reflect any value differences due to inflation or deflation, changes in income tax laws, or changes in supply and demand. The recent recession, however, began in 2007, and all of Mitchell's comparable sales occurred near or after that date. Mitchell therefore believed that his sales all reflected recession-related declines and he therefore decided against any adjustments.
29. He also decided against adjusting any sale prices to account for the subject property's broken sprinkler system or environmental contamination. Although 500 N. Rangeline told Mitchell that it would cost \$300,000 to repair the building's sprinklers, Mitchell could not verify that cost. As for the contamination, Mitchell explained that its impact on the subject property's value was beyond the scope of his assignment. Mitchell, however, recognized that his lack of adjustment for those items (sprinklers and contamination) might lead to his opinion overstating the subject property's value. *Mitchell testimony; Pet'r Ex. 6 at 7, 44.*
30. After adjustments, Mitchell's comparable sale prices ranged from \$4.37 to \$9.00 per square foot of building area. He used a weighted average, giving the greatest weight to the first two sales because of their location, and settled on a value of \$7.40 per square foot, or \$1,090,000. As additional support, Mitchell also looked at 18 active listings with asking prices ranging from \$2.45 to \$19.42 per square foot of building area, with an average of \$10.41 per square foot. Considering that final sale prices are often 85% to 90% of asking prices, Mitchell felt that those listings provided strong support for his value conclusion. *Pet'r Ex. 6 at 46, 56; see also, Mitchell testimony.*
31. Mitchell, however, further adjusted that price to account for the two items of deferred maintenance and functional obsolescence that Dell identified as impeding 500 N. Rangeline's ability to sell or lease the property—the main building's uneven floor and shortage of loading docks. In Mitchell's view, those things would need to be corrected to make the subject property average within its market.

32. According to Mitchell, the differences in the floor level might not look like much, but they would cause significant wear and tear on fork trucks, which do not have rubberized wheels. Mitchell therefore subtracted \$133,000, which he based on the floor repair estimates that 500 N. Rangeline obtained. Although the total estimates were much higher, they included repairs to the floor beyond simply making it level. In Mitchell's view, those additional repairs would be a super-adequacy and would actually make the subject property better than the comparables that he used in his analysis. *Pet'r Ex. 6 at 46-47; Mitchell testimony.* As for the truck docks, Mitchell examined all of his comparable properties and found that they had between four and fifteen docks, with an average of seven. He therefore found that having only two docks was a form of functional obsolescence. Mitchell observed that the estimate for installing two additional truck docks was "around \$70,000." *Pet'r Ex. 6 at 47.* Thus, Mitchell deducted a total of \$200,000 from his weighted-average sale price to arrive at an estimated value of \$890,000 (rounded). *Id.*
33. Because the valuation date for March 1, 2009 assessments was January 1, 2008, Mitchell considered whether he needed to trend his value estimate to reflect the property's value as of that earlier date. He considered several factors, including (1) changes in the relevant submarket's average effective gross income between the first quarters of 2008 and 2009, (2) changes in asking rent and sales trends between 2008 and 2009, and (3) changes in the consumer price index. The first two factors indicated that values increased between 2008 and 2009, while the third showed that values decreased, although only minimally. Ultimately, Mitchell concluded that the data did not provide any clear indicator, so he used the same value for January 1, 2008, that he found for March 1, 2009. *Pet'r Ex. 6 at 59-61; see also Mitchell testimony.*
34. Mitchell did the same type of analysis for the March 1, 2010 and March 1, 2011 valuation dates. He used different sales for each year, but he applied the same methodology in making his adjustments. The adjusted sale prices for his 2010 analysis ranged from \$5.25 to \$10.88 per square foot of building area and he settled on a weighted average of \$8.10.

Similarly, the adjusted sale prices for 2011 ranged from \$5.57 to \$8.58 per square foot of building area and he settled on a weighted average of \$7.10. In both cases, Mitchell further deducted \$200,000 to account for the costs to repair the floor and to add truck docks. Thus, Mitchell estimated the following values for the three years under appeal:

- March 1, 2009: \$890,000
- March 1, 2010: \$990,000
- March 1, 2011: \$850,000

Pet'r Ex. 6 at 61; see also Mitchell testimony.

35. As further support for his valuation opinions, Mitchell explained that he talked to three different brokers, including Brian Dell, who were active in the market and were familiar with the subject property. All of the brokers said that the subject property would be worth less than \$10 per square foot. Mitchell gave the most weight to what Dell said because Summit had actually listed the property and therefore better understood the opportunities and challenges involved in getting a prospective buyer. *See Mitchell testimony.*

2. Josh Malancuk

36. 500 N. Rangeline's certified tax representative, Josh Malancuk, used the cost approach to estimate a value for the subject property's improvements. Malancuk acknowledged that he was being paid a contingent fee.
37. Malancuk asked Brad Smith, an architect, to assess how the main building was constructed. Smith found that the building displayed "key similarities" to the "Regulation 17 GCK specifications." *Pet'r Ex. 9 at 4.* Based on Smith's findings, Malancuk calculated the building's value using GCK cost schedules for most of the building, but General Commercial Industrial ("GCI") schedules for the office area and two other portions at the back. For 2009 and 2010, Malancuk used Nexus Group, Inc.'s cost schedules. For 2011, however, Malancuk did two calculations—one using Nexus's cost schedules and one using cost schedules from the DLGF.

38. Malancuk used an effective age of 1977, which he took from Mitchell’s appraisal. Malancuk viewed the property as being in fair condition, which he believed was consistent with Mitchell’s appraisal and with the condition descriptions from the Real Property Assessment Guidelines for 2002 – Version A. Malancuk calculated functional obsolescence of 36% due to the problems with the building’s floor and its lack of truck docks. After applying obsolescence, Malancuk arrived at the following values:

March 1, 2009: \$800,430

March 1, 2010: \$791,970

March 1, 2011: \$701,970 (Nexus schedules)

March 1, 2011 \$484,366 (DLGF schedules)

Malancuk testimony; Pet’r Ex. 5.

3. Bradley Berkemeier

39. The Assessor first offered Bradley Berkemeier’s valuation opinion. Berkemeier is a certified Level I and II assessor-appraiser who has worked for Nexus for eight years. Nexus has a contract with Shelby County to assist with various assessment functions.

40. Berkemeier analyzed the property’s value for each year under all three generally accepted valuation approaches. For his cost-approach analysis, Berkemeier began by determining that the main building fit the Guidelines’ model descriptions for GCI buildings rather than the GCK model. Berkemeier used an effective age of 1980, which he based on the building’s original construction date of 1974 and the renovations from 1989 and 2007.

See Berkemeier testimony; Resp’t Ex. B at Tab 3.

41. Berkemeier considered the building to be in average condition. It needed painting and its floors needed to be leveled and sealed. But the International Association of Assessing Officers (“IAAO”) explains that curable physical depreciation, which is also known as deferred maintenance, means that a building has items that are “100% physically depreciated and in need of immediate repair on the effective date of the appraisal.”

Resp't Ex. B at Tab 2 (Fundamentals of Real Property Appraisal IAAO Course 101); see also Berkemeier testimony. That differs from functional obsolescence. According to Berkemeier, the problems with the building's floor and walls would have been accounted for through the physical depreciation that he assigned to the building. *Berkemeier testimony.*

42. By contrast, Berkemeier acknowledged that a lack of truck docks would not constitute deferred maintenance and therefore would not have been included in his calculation of physical depreciation. But Berkemeier did not view the fact that the building had only two truck docks as functional obsolescence, although he acknowledged that he had not investigated whether the building's number of loading docks was deficient compared to other available properties. To the extent the lack of docks constituted functional obsolescence, Berkemeier explained that the obsolescence would be for the next owner; if it was a deficiency for 500 N. Rangeline's use of the property, 500 N. Rangeline would have corrected the deficiency. *Berkemeier testimony.*
43. Thus, for March 1, 2009, Berkemeier estimated the property's market value-in-use at \$10.34 per square foot of building area, or \$1,517,600. Nonetheless, because 500 N. Rangeline raised obsolescence as an issue, Berkemeier made some corrections to the methodology used by 500 N. Rangeline's experts. Assuming that the new docks would be identical to the existing truckwell, Berkemeier calculated obsolescence of only 5%, which would have reduced his cost estimate by only \$40,860, or 5% of the building's depreciated replacement cost. *Berkemeier testimony; Resp't Ex. D.*
44. Berkemeier felt that the subject property's December 19, 2006 sale price of \$1,586,995 supported his estimate under the cost approach. The sale was only slightly outside the January 1, 2007 – December 31, 2008 window that DLGF regulations specified for ratio studies addressing the March 1, 2009 assessment. One therefore would need to adjust the sale price only slightly to make it fit within that window. Although Berkemeier acknowledged that the sales disclosure form was marked as invalid, he gave several explanations for why that might be the case. For example, the disclosure form lists two

parcels. Berkemeier explained that where multiple-parcels are included in the same sale or parcels have been split, assessors sometimes have trouble making the necessary adjustments to use the sales in their trending analyses. *Berkemeier testimony.*

45. For his sales-comparison analysis, Berkemeier used four sales from Morristown, two of which were from the same industrial park as the subject property. The properties sold between August 9, 2005, and January 21, 2010, for unadjusted prices ranging from \$425,000 to \$1,200,000 or \$6.00 to \$22.00 per square foot of building area. Berkemeier adjusted those prices for the various ways in which the properties differed from the subject property, including differences in effective age, wall height, and relative percentages of office space. Berkemeier based those adjustments on his experience and knowledge working on property tax appeals involving industrial properties. Berkemeier also used a 5%-per-year adjustment to account for differences in market conditions between the sale dates and the January 1, 2008 valuation date that applied to March 1, 2009 assessments. According to Berkemeier, appraisers, tax representatives, and other real estate professionals commonly use that same 5% adjustment in appeals.
46. The adjusted sale prices ranged from \$7.00 to \$20.00 per square foot of building area, with two of the four adjusted prices at \$11.00 per square foot. Ultimately, Berkemeier estimated a value of \$11.00 per square foot, or \$1,614,000. Once again, he felt that estimate was in line with the subject property's sale price. *Berkemeier testimony; see also, Resp't Ex. B at tab 3.*
47. For his analysis under the income approach, Berkemeier first used rent of \$1.80 per square foot to estimate the subject property's potential gross income at \$264,103. That was the lowest asking rent for six comparable properties from various locations throughout Indiana, and it was lower than the \$2.50 per square foot asking rent in Summit's 2010 listing for the subject property. Berkemeier, however, acknowledged that he did not know the rent actually received for any of his comparable properties because he did not have access to that information. He also acknowledged that he did not know whether the comparable properties' asking rents were based on triple net leases or not and

that the lease terms could materially affect value. Berkemeier similarly acknowledged that his analysis did not identify whether the comparable properties were single- or multi-tenant properties. *Berkemeier testimony; Resp't Ex. B at tab 4.*

48. Berkemeier next subtracted vacancy and collection losses and expenses to arrive at the property's net operating income. He estimated vacancy and collection losses at 20%, although he did not explain how he chose that figure. Because Berkemeier assumed that the subject property would be leased on a triple-net basis with the tenant assuming most expenses, he subtracted only insurance, maintenance, and management expenses totaling 11% of effective gross income. *Berkemeier testimony; Resp't Ex. B at tab 4.*
49. For his capitalization rate, Berkemeier examined six sales from various locations throughout Indiana. The sales occurred between January 31, 2007, and December 15, 2008. The capitalization rates from those sales ranged from 8.21% to 12.08%. Berkemeier erred on the side of the taxpayer and therefore chose 12.08%, which he divided into his estimated net operating income to arrive at a value of \$1,548,000. *Berkemeier testimony; Resp't Ex. B at tab 4.*
50. Berkemeier did similar analyses for the March 1, 2010 and March 1, 2011 assessment dates. In fact, his analyses under the cost approach for all three years were identical. For his 2010 and 2011 sales-comparison analyses, Berkemeier used the same comparable sales and largely the same adjustments that he used for 2009. Although Berkemeier still used 5% per year to calculate his market adjustment, the total adjustment for each property changed because the valuation date changed. Under the income approach, Berkemeier used the same capitalization rate but different rent comparables for each valuation date. Thus, he estimated potential gross rent of \$1.49 per square foot for 2010 and \$2.00 per square foot for 2011. In each case, that was the lowest asking rent for any of his comparables. *Berkemeier testimony; Resp't Exs. C, E.*

51. Thus, Berkemeier estimated the following values for each year:

Year	Cost	Sales Comparison	Income
March 1, 2009	\$1,517,600	\$1,614,000	\$1,548,000
March 1, 2010	\$1,517,600	\$1,760,700	\$1,271,000
March 1, 2011	\$1,517,600	\$1,834,100	\$1,727,000

Berkemeier testimony; Resp't Exs. B-C, E.

4. Nick Tillema and Andrew Bryant

52. The Assessor also engaged Nick Tillema and Andrew Bryant of Access Valuation, LLC to appraise the subject property. Bryant did less than 20% to 25% of the work and Tillema did the rest. Tillema and Bryant are both Indiana general certified appraisers. Tillema is also an MAI, a real estate broker, and an attorney. He has taught various appraisal courses both in the United States and abroad. In addition to Tillema's experience in appraising commercial and industrial properties, he has also appraised conservation easements and contaminated property. *Resp't Ex. A; Tillema testimony.*

53. Like Mitchell, Tillema and Bryant prepared their appraisal in conformity with USPAP. Also like Mitchell, they developed only one of the three generally recognized valuation approaches—the sales-comparison approach. Their explanations for choosing not to develop the cost and income approaches varied, however. In their appraisal report, Tillema and Bryant said that they did not develop the cost approach because the age of the improvements made any estimate of physical depreciation highly subjective and because investors are not concerned with costs, but rather with obtaining a required return or ensuring that the sale price is commensurate with similar property sales. Similarly, Tillema and Bryant said they did not develop the income approach because of a lack of rental data in the local market. *Resp't Ex. A at 4, 40, 47.*

54. But Tillema offered different explanations at the Board's hearing. As to his and Bryant's decision to forego the cost approach, Tillema testified (1) that while he would normally

do an analysis under the cost approach, he and Bryant had only been engaged to do a sales-comparison analysis, and (2) that he understood other people would be doing analyses under the cost and income approaches. Tillema therefore believed that it was unnecessary for him to do a cost-approach analysis. As to the income approach, Tillema testified that, although finding leased properties like the subject property was difficult, he and Bryant found three or four properties that were leasing for \$1.50 to \$2.00 per square foot. In fact, Tillema testified that he did a quick calculation of what income and expenses might be and applied a 10% or 11% capitalization rate, which yielded a value that was generally in the same area as his sales-comparison conclusions. Tillema, however, added that he and Bryant did not go forward with that approach. *Tillema testimony.*

55. In any case, Tillema used true tax value as his valuation standard. Tillema testified at length about his understanding of true tax value, and that understanding heavily informed his value estimates. According to Tillema, unlike market value, true tax value is not a matter of what a typical buyer and seller would understand a property's value to be, but rather what the seller thinks the value might be. To illustrate, Tillema pointed to hypothetical farmland adjacent to industrial land in an area where industry is starting to boom. Under true tax value, the property must still be valued as a farm rather than at its highest-and-best use, which would be as industrial land. Conversely, an industrial property might be so specialized that it is worth more to the seller than what the market says. *Tillema testimony.*

56. According to Tillema, the Indiana's assessment guidelines discuss both value-in-use and value-in-exchange. Tillema explained that value-in-exchange is really sale price, and that is where the sales-comparison analysis comes into play. But according to Tillema, where properties do not sell frequently, or when they do, the sales include a lot more than just real estate, one must understand the limits of value-in-exchange. Thus, Tillema explained, special purpose properties like funeral homes or steel mills that do not sell in the normal course of business are valued using a value-in-use standard, while it makes sense to use value-in-exchange for properties that do sell frequently. *Tillema testimony.*

57. Even though Tillema did not believe that they were required to do so under true tax value, he and Bryant determined the subject property's highest and best use as if vacant and improved. In both cases, they viewed the property's highest and best use as manufacturing. In their report, Tillema and Bryant described the property's actual use as improved as a "warehouse," which they believed was less than ideal because of the property's lack of close interstate access. *Resp't Ex. A at 38; see also Tillema testimony.* At the Board's hearing, however, Tillema rejected the notion that the subject property was being used as a warehouse. Instead, he testified that the property owner was using the facility to store and repair construction equipment and that he and Bryant therefore valued the property as a massive repair shop. *See Tillema testimony.*
58. For their sales-comparison analysis, Tillema and Bryant looked for vacant facilities with between 75,000 and 150,000 square feet of manufacturing space located in smaller communities. They wanted the facilities to be vacant because the subject property was vacant when 500 N. Rangeline bought it, and they felt that vacant facilities would give a better bottom-line value for the subject property. *Tillema testimony; see also Resp't Ex. A at 41-46.*
59. Tillema and Bryant considered adjusting their comparable properties' sale prices for various relevant ways in which those properties differed from the subject property, including the age, area, clear height, condition, and percentage of office build-out for the buildings, and the relative sizes of the sites. At the Board's hearing, Tillema acknowledged that he and Bryant erred in either making or failing to make some adjustments. For example, Tillema acknowledged several errors concerning 616 Harcourt Way, Rushville, which he and Bryant used as comparable 5 in their analyses for both the March 1, 2010 and March 1, 2011 valuation dates. First, Tillema and Bryant did not adjust the property's sale price in either year even though 53,315 square feet of the building was air-conditioned. Tillema admitted that he probably would have adjusted the sale price downward by 5% had he known that fact. Similarly, Tillema and Bryant increased that property's sale price by 5% for March 1, 2010, based on its 22-foot clear

height even though the subject building had only 18 – 20 feet of clear height. Tillema acknowledged that he and Bryant should actually have adjusted comparable 5's sale price downward in that instance. And Tillema could not explain why he and Bryant adjusted comparable 5's sale price for building age, condition, and clear height in their March 1, 2010 analysis but did not adjust the sale price for those characteristics in their March 1, 2011 analysis. *Resp't Ex. A at 40-46; Tillema testimony.*

60. As far as Tillema knew, his and Bryant's comparable buildings all had level floors. But Tillema did not notice any major problems with the main building's floor either. Although Tillema admitted that he inspected the main building in the late afternoon when the light was not at its best, he did not see any significant holes or what he believed was a truly unlevel floor. Tillema acknowledged that the floor had what he characterized as "speed bumps" and that those might be a concern if the building was a warehouse requiring the use of fork trucks. *Tillema testimony.* But for its actual use as a repair shop, Tillema did not believe that the floor was a major concern. *Id.*
61. Tillema viewed the need for painting and the lack of an operational sprinkler system in much the same way, although he and Bryant apparently did not know that the sprinkler system had been damaged and was inoperable. But Tillema testified that he would have been surprised if the sprinkler system was still on. According to Tillema, the sprinkler system likely was installed when the building was a manufacturing facility with inventory and major equipment and the possibility of electrical fires. In Tillema's view, however, the building did not need a fire system for the way it was being used on the assessment dates. *Tillema testimony.*
62. Tillema and Bryant similarly did not make any adjustments for differences between the main building and any of the comparable buildings in the number of docks and overhead doors or the presence or level of environmental contamination. Although many of the comparable buildings had more docks, drive-in doors, and overhead doors than the subject building, Tillema and Bryant viewed them as generally similar given the subject property's use as a massive repair shop. Again, Tillema explained that the analysis might

be different if he and Bryant had valued the subject property based on its market value, considering a typical buyer and seller, instead of based on its true tax value. According to Tillema, if 500 N. Rangeline had cared about having additional docks or overhead doors, it would have installed the extra docks, and would have opened up the existing doors that were welded shut and fenced in. *Tillema testimony; see also Resp't Ex. A at 40-46.*

63. In explaining his decision-making process, Tillema acknowledged that some of the comparable properties that he and Bryant relied on likely were used for manufacturing purposes post sale, and that the sale prices might have included premiums for the presence of additional docks. Tillema further acknowledged that those premiums might be a problem if Indiana's true tax value system looked only at value-in-exchange. But Tillema explained that true tax value looks first to the cost approach and that value-in-exchange and the income approach are simply used to add credibility. *Tillema testimony.*
64. Similarly, when asked why, in light of his view about the utility derived from the subject property's use as a repairs shop, it was necessary to have such a large building. Tillema answered that, while Smith Projects was only using approximately 22,000 square feet, it had the capacity to expand in the winter. When it was pointed out that Smith Projects did not actually do so, Tillema responded that maybe 500 N. Rangeline bought the property for a price that it thought was equivalent to what 22,000-square-foot buildings sold for, or that 500 N. Rangeline could parcel off some of the ground and lease out other parts of the main building. *Tillema testimony.*
65. Tillema did not know anything specific about environmental contamination at the subject property that gave him major concerns. 500 N. Rangeline did not give him copies of any VRP agreements and he did not research the question on his own. He instead assumed that 500 N. Rangeline performed due diligence when it bought the property because contaminated properties only sell after contamination issues have been addressed. Tillema assumed that his and Bryant's comparable properties—all of which had been closed down or abandoned—would have had the same types of environmental concerns

and would have gone through the same due diligence unless otherwise indicated in listing information or when Bryant confirmed the sales. Tillema, however, acknowledged that use restrictions caused by contamination, such as the inability to access well water, might impair the subject property's value, at least if sufficient water was not available. But if that was the case, Tillema questioned why the representative who guided his inspection did not tell him about those restrictions. *Tillema testimony.*

66. For Tillema and Bryant's March 1, 2009 analysis, the comparable properties sold for adjusted prices ranging from \$6.06 to \$13.40 per square foot. For March 1, 2010, that range was \$6.06 to \$12.48, and for March 1, 2011, the range was \$2.96 to \$11.03. Ultimately, Tillema and Bryant estimated the following values for the subject property:
- January 1, 2008 (March 1, 2009): \$1,475,000 (\$10.00 per square foot)
 - March 1, 2010: \$1,400,000 (\$9.50 per square foot)
 - March 1, 2011: \$1,250,000 (\$8.50 per square foot)
67. Tillema explained that the subject property's sale in December 2006 should not have, and did not influence his and Bryant's value conclusions. They had looked for the sale and could not find the sale price, so they did not use it as a benchmark. Nonetheless, Tillema found it hard to understand why someone would pay \$1.5 million for a \$1 million property. According to Tillema, a property has two sources of income—annual income and appreciation. Tillema suspected that when 500 N. Rangeline bought the property, it assumed that a lease was going to be in place but that 500 N. Rangeline also needed to make a contingency plan if the lease went away. Apparently, the plan was to use the property for the purposes of one of 500 N. Rangeline's principals with the possibility that the property might turn out to be a good investment. *See Tillema testimony.*
68. In addition to preparing his own valuation opinion, Tillema reviewed Mitchell's appraisal report. The Assessor did not offer a copy of Tillema's review appraisal, and Tillema did not testify about his conclusions in any detail. Tillema, however, did not believe that Mitchell applied the true tax value standard in his report. According to Tillema,

Mitchell's report initially indicates that he is estimating value-in-use and later defines true tax value, value-in-use, and value-in-exchange; but the report never says that Mitchell is estimating the property's true tax value. Tillema also felt that Mitchell double dipped when Mitchell first generally adjusted his comparable sale prices based on their condition relative to the subject property and then subtracted an additional \$200,000 for the costs to level the main building's floor and to add docks. *Tillema testimony*. In any case, given 500 N. Rangeline's use of the facility as a massive repair shop, Tillema did not believe that the facility's comparatively unlevel floors and lack of loading docks mattered under the true tax value standard. *Id.*

69. Indeed, Tillema explained that the main difference between his and Bryant's appraisal on the one hand and Mitchell's appraisal on the other was that Mitchell valued the property as a warehouse while Tillema and Bryant valued it as a massive repair shop. According to Tillema, tax value requires one to ask what an owner, as the seller, has to do to replace the utility gained from its property. Because 500 N. Rangeline was using the property as a repair shop, it would have to find a vacant facility that it could use for the same purpose. Unlike someone looking for a warehouse, the seller would not want to pay a premium for being near an interstate. Indeed, because of the subject property's distance from interstates, Tillema believed that it would be ill suited for use as a warehouse. *See Tillema testimony*.

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of proof

70. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is wrong 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 a taxpayer meets that burden, the assessor 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 at all times with the taxpayer. *Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).

71. The taxpayer's burden of proof, however, must be viewed in the context of Indiana's assessment system. 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 (2009)). To determine a property's true tax value, 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. That Guidelines-based determination is presumed to be accurate. *See* MANUAL at 5; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006). A taxpayer, however, 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. *Id.*; *Eckerling*, 841 N.E.2d at 678. Parties may also offer actual construction costs, sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principals. MANUAL at 5.

72. By contrast, a taxpayer does not necessarily rebut the presumption that a property's assessment is correct simply by contesting the methodology that the assessor used to compute it. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id.* And strictly applying the Guidelines typically is not enough to make that showing. *See id.*

73. Regardless of the type of evidence that a party offers, however, the 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). For March 1, 2009 assessments, that valuation date was January 1, 2008. 50 IAC

21-3-3(b) (2009). For the other two assessment years at issue—2010 and 2011—the assessment date and valuation dates were the same. *See* I.C. § 6-1.1-4-4.5(f).

B. Discussion

74. Between them, the parties offered four expert opinions, two of them by licensed appraisers who testified that they followed USPAP in reaching their conclusions. Thus, each party generally met its burden of production, and we must weigh those various opinions to determine which one most reliably estimates the subject property's market value-in-use.

1. Malancuk and Berkemeier's opinions

75. We start with Malancuk's valuation opinion. First, we note that Malancuk was being paid a contingent fee. An expert's opinion should be unbiased. Where the expert has a financial interest in the outcome of a case, such as when he is paid a contingent fee, that fact is an appropriate consideration in weighing the credibility of the expert's opinion. *See Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874, 876 (Ind. Tax Ct. 1993). Thus, we find that Mr. Malancuk's fee arrangement detracts from the credibility of his valuation opinion.

76. Regardless, there is a more compelling reason to disregard Malancuk's valuation opinion—he simply re-calculated the subject property's assessments using GCK rather than GCI cost schedules for a significant portion of the main building. Thus, his opinion amounts to little more than a challenge to the Assessor's methodology and a strict application of the Guidelines. The Tax Court cautioned against that type of approach in *Eckerling*. Malancuk's valuation opinion therefore carries little or no probative weight. The same is true for at least part of Berkemeier's valuation opinion. He too did a cost-approach analysis using the Guidelines and Nexus's cost tables.

77. Berkemeier, however, also analyzed the subject property's value under the sales-comparison and income approaches. Berkemeier generally followed the basic

methodology underlying the sales-comparison approach, at least in form. He identified properties that he believed were similar to the subject property, relying most heavily on their close proximity to each other. And he adjusted each property's sale price to account for arguably relevant ways in which the property differed from the subject property. But Berkemeier did little to explain how he quantified his adjustments, saying only that he relied on his experience and knowledge in working on property tax appeals. For example, Berkemeier justified his 5%-per-year market adjustment on grounds that appraisers, tax representatives, and other real estate professionals commonly use that same adjustment in appeals, even though both Tillema and Mitchell explained that the valuation dates at issue in these appeals spanned a significant recession. Berkemeier's sales-comparison analyses therefore carry little or no probative weight.

78. Berkemeier's analyses under the income approach similarly lack persuasive force. Berkemeier did little to support several key judgments underlying his conclusions. For example, Berkemeier based his rent estimates solely on listings without knowing if any of those asking rents were actually realized. He did not even know whether the listings were for single-tenant or multi-tenant properties. Similarly, Berkemeier assumed that the listings were for triple net leases without knowing anything about the lease terms that accompanied the listings. And Berkemeier did even less to support his estimates for vacancy and collection losses and expenses.

2. Mitchell's appraisal

79. That leads us to the appraisals from Mitchell and Tillema/Bryant. We start with Mitchell's appraisal. Mitchell is an MAI with significant experience appraising industrial properties. He certified that he complied with USPAP. And he considered all three generally accepted valuation approaches while reasonably explaining why he ultimately decided not to develop the cost or income approaches. Mitchell walked the Board through his sales-comparison analyses and generally explained both how the properties that he relied on compared to the subject property and why he adjusted the comparable

properties' sale prices. Thus, we find Mitchell's valuation opinion to be generally reliable.

80. The Assessor, and her expert witness, Tillema, challenged Mitchell's appraisal on two main grounds: (1) that Mitchell determined the subject property's market value rather than its true tax value, and (2) that Mitchell double dipped in making his adjustments for the main building's uneven floor and relative lack of loading docks. We disagree on both counts.
81. To support his claim that Mitchell determined the subject property's market value instead of its true tax value, Tillema asserted both that Mitchell did not clearly lay out his valuation standard in his appraisal report and that Mitchell's adjustments for the main building's uneven floor and relative lack of loading docks were unnecessary in light of 500 N. Rangeline's use of the facility as a massive repair shop. Contrary to Tillema's reading of Mitchell's appraisal report, however, Mitchell expressly estimated the property's "market value-in-use." See e.g. *Pet'r Ex. 6 at 61* ("Therefore, it is the opinion of the appraiser that the retrospective *market value in use* of the fee simple in the subject property was expected to have been . . .") (emphasis added).
82. We likewise see no incongruity between Mitchell's adjustments and the true tax value standard. Mitchell adjusted for things such as the main building's comparative lack of loading docks and uneven floor because those things matter for warehouses. Although Tillema believed that the property's location away from interstates made it an unlikely candidate as a warehouse, the property's leasing history showed that tenants had used it both as a manufacturing facility and as a warehouse. Indeed, Summit advertised the property as a manufacturing facility with warehouse space. And Dell explained that the lack of loading docks and the uneven floor had both been deterrents to Summit leasing or selling the property. We recognize that Kempf did not identify those concerns in his separate broker's opinion. Indeed, the "basic cleanup" that Kempf identified as being necessary to maximize the property's value involved less drastic repairs. *Pet'r Ex. 7 at 24, 33*. But as Mitchell explained, Summit was the broker that actually listed the

property and Dell therefore had a fuller understanding of how potential lessees and buyers viewed the property.

83. Thus, we disagree with the Assessor's claim that Mitchell's adjustments somehow violated the standard of true tax value by looking at the value of the property to a "second generation" user rather than to 500 N. Rangeline. We believe that the Assessor's position misunderstands both the facts of this case and Indiana's true tax value standard. 500 N. Rangeline was motivated purely by market considerations; it was actively trying to lease or sell the property to the highest bidder. And those bidders likely cared about the main building's floor and the number of docks.

84. In *Meijer Stores Ltd. P'ship v. Wayne Twp. Assessor*, 926 N.E.2d 1134 (Ind. Tax Ct. 2010), the Tax Court rejected a position similar to the Assessor's protestations about a "second generation" users in this case. In that case, Meijer, which operated "big box" stores, appealed from the Board's determination rejecting the opinion of the taxpayer's appraiser, who also happened to be Lawrence Mitchell. *Meijer*, 926 N.E.2d at 1337. The Board had rejected the appraisal because Mitchell's sales-comparison analysis did not establish what another Meijer or comparable big box retailer would have paid for the property. *Id.* The Tax Court, however, explained,

This rejection was improper. Indeed, in formulating an estimate of value under the sales comparison approach, an appraiser need only "locate[] sales of comparable [] *properties* and adjust[] the selling prices to reflect the subject property's total value. Here, Meijer's appraisal utilized five big-box properties in Indiana that were used for retail purposes both pre- and post-sale. Wayne County's cross-examination of Mitchell did not solicit any testimony as to any other sales. Accordingly, it was improper to discount the appraisal's sales comparison approach because "**secondary users**" purchased vacated big-box properties instead of entities like Wal-Mart.

Id. (citations omitted) (italicized emphasis in original, bold emphasis added).

85. We also put little stock in Berkemeier and Tillema's claims that if having more loading docks and a more even floor were important to the main building's use, 500 N. Rangeline would have added docks and repaired the floor. There are many reasons, such as a lack

of funds, why a property owner might not cure an inutility. Indeed, functional obsolescence—a concept that the Tax Court, Guidelines, and generally accepted appraisal principles all recognize—presupposes that buildings might have both curable and incurable inutilities that are not captured by assigning normal depreciation. *See* GUIDELINES, app. F at 4, 8-11; *Canal Square Ltd. P’ship v. State Bd. of Tax Comm’rs*, 694 N.E.2d 801, 806 (Ind. Tax Ct. 1998); *Westwood Lanes, Inc. v. Garwood Borough*, 24 N.J. Tax 239, 262 (N.J. Tax Ct., 2008) (quoting THE APPRAISAL OF REAL ESTATE (12th ed. 2001) (“functional obsolescence, which may be curable or incurable, can be caused by a deficiency, which means that some aspect of the property is below standard in respect to market norms.”)). Taken to its logical conclusion, Berkemeier and Tillema’s position would preclude an appraiser from ever accounting for curable functional obsolescence; a building would never have a curable inutility because the owner’s failure to cure automatically means that there is no inutility.³

86. Second, Tillema believed that Mitchell double dipped when he first adjusted each comparable property’s sale price to account for various ways in which it differed from the subject property and then subtracted an additional \$200,000 from the weighted average of his adjusted sale prices to account for the main building’s uneven floor and relative lack of loading docks. While we find Mitchell’s approach unusual—it is unclear why he made the \$200,000 adjustment to the weighted average of his adjusted sale prices rather than adjusting each comparable property’s sale price independently—we do not agree that he adjusted for the same differences twice. Mitchell compared the subject property to other properties that were average within the relevant market while the main building’s uneven floor and lack of loading docks made it below average. He therefore adjusted for

³ We do not suggest that Mitchell directly deducted an amount for functional obsolescence in his appraisal—that is something done under the cost approach rather than the sales-comparison approach. *See Millennium Real Estate Investment, LLC v. Assessor, Benton County*, 979 N.E.2d 192, 198 (Ind. Tax Ct. 2012) (noting that the sales-comparison and income approaches account for functional obsolescence implicitly rather than explicitly). To the contrary, Mitchell recognized that the main building’s uneven floor and relative lack of loading docks made the subject property inferior to his comparable sales and further adjusted the weighted average of his adjusted sale prices accordingly. Instead, we are simply illustrating what we see as the conceptual weakness inherent in Berkemeier and Tillema’s position.

those characteristics to make the properties truly comparable. There is nothing to suggest that Mitchell's other adjustments somehow already accounted for those differences.

87. That being said, Mitchell's choice of comparable properties gives us some pause. He focused on properties with predominately warehouse uses rather than manufacturing uses. But the subject property was located at least 10 miles from the nearest interstate. And the property was originally built as a manufacturing facility. Similarly, it was leased by an ethanol manufacturer when 500 N. Rangeline bought it, and as explained above, Summit advertised the property as a manufacturing facility with warehouse space. As already explained, there is nothing in the record to indicate that 500 N. Rangeline was motivated by non-market factors in using the property; to the contrary, it sought to sell or lease the property for the highest amount it could get, which presumably might include bids from buyers who planned to use the property for manufacturing. Nonetheless, the property's leasing and listing history demonstrates that market participants used, and likely would continue to use, the property at least partly as a warehouse. Thus, to the extent that Mitchell's somewhat narrow view of the property's use might have caused him to exclude otherwise comparable sales from his analysis, it does not detract too greatly from his opinion's reliability.

3. Tillema and Bryant's appraisal

88. That leaves Tillema and Bryant's appraisal. Like Mitchell, Tillema is an MAI with significant knowledge and experience in appraising industrial properties, and he and Bryant certified that they prepared their appraisal in conformity with USPAP. Also like Mitchell, Tillema and Bryant developed only the sales-comparison approach in estimating the subject property's value.
89. Unlike Mitchell, however, the explanation that Tillema gave at the Board's hearing for his and Bryant's decision to develop only the sales-comparison approach differed from what he and Bryant had indicated in their appraisal report. At the hearing, Tillema testified that while he would ordinarily develop the cost approach, he and Bryant were

engaged to develop only the sales-comparison approach and that he understood the Assessor had gotten someone else develop the cost and income approaches. But Tillema emphasized that true tax value looks first to the cost approach and that value-in-exchange and the income approach are used to add credibility. That is inconsistent with Tillema and Bryant's appraisal, where they explained that the cost approach was not a good indicator of the subject property's true tax value. And that inconsistency detracts from the reliability of Tillema and Bryant's valuation opinion.

90. In any case, Tillema and Bryant identified what they felt were comparable properties, and they adjusted those properties' sale prices for various ways in which the properties differed from the subject property. Tillema, however, acknowledged several errors in his and Bryant's adjustments. While those errors may not have greatly affected Tillema and Bryant's ultimate valuation opinion, they do at least show a degree of carelessness.
91. But Tillema and Bryant's valuation opinion suffers from problems that are more fundamental. Given Tillema's belief that 500 N. Rangeline was using the property as a massive repair shop, Tillema and Bryant did not make any adjustments to account for differences in the number of loading docks or the presence or absence of an operable sprinkler system. We find that position a little curious, given that Tillema and Bryant described the property's use as "warehouse space" in their appraisal report. *Resp't Ex. A at 38*. Regardless, as already explained, the record does not support Tillema's understanding of the subject property's use as a massive repair shop.⁴ If operators using the property for manufacturing or as a warehouse would find the number of loading docks or the lack of an operational sprinkler system significant, Tillema and Bryant needed to consider adjusting their comparable properties' sale prices on those grounds.⁵
92. Tillema and Bryant's failure to make those adjustments is even more troubling given Tillema's acknowledgment that some of his and Bryant's comparable properties were

⁴ Indeed, Smith Projects did not even begin using the main building until after the March 1, 2009 assessment date.

⁵ Mitchell similarly failed to make any adjustments to account for the inoperable sprinkler system. But Mitchell at least acknowledged that it likely affected the property's market value-in-use, and any harm for his failure to adjust only hurts 500 N. Rangeline—the party who offered his appraisal.

probably used for manufacturing post sale and that the sale prices may have included premiums for the presence of additional loading docks. Tillema off-handedly justified his and Bryant's decision by arguing that the premiums would only be a problem if one was concerned with a typical buyer and seller and that, in any case, the sales-comparison approach is only used as support for the cost approach under Indiana's true tax value system.

93. We do not agree with Tillema's willingness to so easily brush off the concerns of typical buyers and sellers. 500 N. Rangeline was motivated by the same concerns as a typical market participant. Indeed, we believe that Tillema unduly focused on language in the Manual indicating that market value-in-use "may be thought of as the ask price of property by its owner, because this value more clearly represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property." MANUAL at 2. As the Tax Court has explained, however, "[i]n markets where property types are frequently exchanged and used by both the buyer and seller for the same general purpose, a sale will be representative of utility, and market value-in-use will equal value-in-exchange." *Stinson v. Trimas Fasteners*, 923 N.E.2d 496, 501 n. 10 (Ind. Tax Ct. 2010) (citing MANUAL at 2-3). While the Tax Court recognized that the Manual makes exceptions for special purpose properties where sales generally will not represent utility, there is nothing in the record to even remotely suggest that the subject property is a special purpose property.⁶
94. In any case, Tillema's view of true tax value still does not excuse his and Bryant's failure to account for premiums in their comparable properties' sale prices that were associated with the presence of additional docks. If anything, those premiums tend to show that Tillema and Bryant's purportedly comparable sales were not sufficiently comparable because the sale prices were not based on uses that were similar to use that Tillema and Bryant ascribed to the subject property. Indeed, given that ascribed use, where Smith

⁶ The Guidelines define a special purpose property as "[a] limited-market property with unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built." Guidelines, App. F at 17.

Projects was occupying 22,560 square feet of the main building to store construction equipment, it is difficult to see why Tillema and Bryant sought out sales of facilities with between 75,000 and 150,000 square feet of manufacturing space. While Tillema gave several answers to that question, none of them was persuasive.

4. The subject property's sale and listing prices

95. Thus, while far from perfect, we find Mitchell's valuation opinion the most persuasive of the various opinions offered at the hearing. But that does not end our inquiry; we still need to address the following two things: (1) the property's listing history during which 500 N. Rangeline offered the property for sale at asking prices ranging from \$1.3 million to \$2 million, and (2) subject property's December 19, 2006 sale price of \$1,586,995.
96. The property's listing history does little to show its actual market value-in-use, or even a reasonable range of values. The broker listings, however, were for substantially more than Mitchell's value estimates for each year. And Mitchell himself recognized that final sale prices are often 85% to 90% of list prices. Thus, the list prices arguably at least tend to impeach Mitchell's valuation opinion. Nonetheless, the listings proved unsuccessful, and Dell's letter reflects his belief that the property would be unlikely to bring much more than \$5 per square foot in its then-current condition (or to net \$5 per square foot after the cost of necessary repairs). Under those circumstances, we give little weight to the list prices either as independent evidence of the property's market value-in-use or as impeaching Mitchell's valuation opinion.
97. That leaves us with the property's actual sale price. Like a USPAP-compliant appraisal, a property's sale price is often compelling evidence of its market value-in-use. But the sale price must not include consideration for things excluded from ad valorem taxation, or if it does, the price must be allocated between the various interests included in the sale. Similarly, the sale must have been at arm's length and must reflect other important indicia of a market value transaction. Thus, for example, the sale should involve typically motivated, well-informed parties and the property should be exposed to the

market for a commercially reasonable period. *See* MANUAL at 10 (setting forth a definition of market value that includes typically motivated parties and a reasonable time for exposure to the market). And like any other evidence in an assessment appeal, there must be something to relate the sale price to the sold property's market value-in-use as of the relevant valuation date.

98. The record contains little information about the December 19, 2006 sale beyond the parties' names and the sale price. Smith testified that the price was based solely on Greenfield Biofuel's long-term lease and that he would not pay anywhere near the same price without that lease. But Smith did little to back up his claim. We recognize that the sale price for a leased property might involve interests beyond the fee-simple interest in real property. For example, the sale price might include consideration for personal property or contractual interests in an above-market lease. But there is no evidence of that here. We therefore give little weight to Smith's self-serving testimony.
99. Of course, the Assessor did not treat the sale as valid. But nobody actually identified the Assessor's underlying reason for invalidating the sale. Berkemeier's speculation as to why the Assessor might have treated the sale as invalid is just that—speculation. And while there is nothing to imply that the parties to the sale were related to each other, the record is silent regarding the various other indicia of a market value sale.
100. The sale also occurred more than a year before any of the valuation dates at issue in these appeals, and the Assessor did little to relate the sale price to those valuation dates. Berkemeier testified that property generally appreciated at an annual rate of 5%. But the basis for his conclusion—that appraisers, tax representatives, and other professionals often use that adjustment in tax appeals—does nothing to address the rate of appreciation in the subject property's market during the specific period in question. On the other hand, both Mitchell and Tillema used sales from 2007 in their respective analyses for the March 1, 2009 assessment date without making any time-related adjustments. Indeed, Tillema even used one sale from May 2007 in his analysis for the March 1, 2010 assessment date.

101. Of course, market conditions are not the only thing that can change between a sale date and an assessment date—the property itself may change. That happened in this case when water pipes froze in December 2008 causing significant damage to the main building. The Assessor did nothing to address how that damage affected the property’s market value-in-use. Granted, the damage that Smith most clearly identified—the disabling of the building’s sprinkler system—did not actually figure in Mitchell’s valuation conclusion and therefore might not fully explain the difference between his opinion and the property’s sale price. But considering (1) the intervening damage to the property, (2) the general lack of information about the sale and the reasons that the Assessor viewed it as invalid, and (3) the sale’s tenuous relationship to the valuation dates at issue (especially for the March 1, 2010 and March 1, 2011 assessments), we are more persuaded by Mitchell’s valuation opinion. Thus, we find that the subject property’s true tax value was no more than what Mitchell estimated for each assessment date and that the property’s assessments must be adjusted accordingly.

Summary of Final Determination

102. After weighing all of the evidence, including valuation opinions from four experts, the subject property’s listing history, and its December 19, 2006 sale price, we find the opinion of 500 N. Rangeline’s appraiser, Lawrence Mitchell, to be the most persuasive. We therefore order that the subject property’s 2009 through 2011 assessments be changed to the following amounts:

- March 1, 2009: \$890,000
- March 1, 2010: \$990,000
- March 1, 2011: \$850,000

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- 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>>