

**STATE OF INDIANA  
INDIANA BOARD OF TAX REVIEW**

UNITED STATES STEEL CORPORATION,	)	On Appeal of Determination of the Lake County Property Tax Assessment Board of Appeals for Assessment Year 2001.
Petitioner,	)	
v.	)	Docket No: 45-004-01-1-3-00002, <i>et seq.</i> <sup>1</sup>
	)	
CALUMET TOWNSHIP ASSESSOR, LAKE COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS, and LAKE COUNTY ASSESSOR,	)	Lake County, Calumet Township
	)	
Respondents.	)	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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**PROCEDURAL BACKGROUND**

1. In connection with the 1995 General Reassessment, the Calumet Township Assessor assessed the real property of United States Steel Corporation (“US Steel” or “USS”) – Gary Works. Subject to certain changes due to building demolition, this 1995 assessment was carried forward from year to year through the March 1, 2001, assessment. As of March 1, 2001, the aggregate assessed value of the Gary Works real property was \$269,801,300 (land assessed at \$59,582,900 and improvements assessed at \$210,218,400). Lake County and Calumet Township Exhibit 32.

2. On May 9, 2001, US Steel timely appealed the 2001 assessment to the Lake County Property Tax Assessment Board of Appeals (“PTABOA”).<sup>2</sup> The PTABOA denied the appeal and US Steel timely appealed that determination to the Indiana Board of Tax Review (“Indiana Board”), challenging the 2001 Assessment of Gary Works’ real property.

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<sup>1</sup> The complete list of Docket Numbers and Parcel Numbers is contained in Board Exhibit A.

<sup>2</sup> In addition to Lake County and the Calumet Township Assessor, the PTABOA was named as a party and represented by counsel at the hearing. The Board is doubtful as to the PTABOA’s status as a party under Indiana law. Inasmuch as the PTABOA offered no evidence and its counsel joined in many of the objections raised by counsel for Lake County, this Determination does not separately address the PTABOA.

3. The Indiana Board consolidated all petitions and set the matter for hearing during the week of June 26, 2006.

4. Pursuant to Indiana Code § 6-1.1-15-4, the Board conducted a hearing on US Steel Petition Nos. 45-004-01-1-3-00002 through 45-004-01-1-3-00037, from June 26 through June 29, 2006, at the Indiana University School of Law -- Indianapolis.<sup>3</sup>

5. During the hearing, the parties called the following persons, who were sworn as witnesses and presented testimony:

US Steel	Lake County	Calumet Township Assessor
Robert Stall	Eriksen E. Stropp	Booker Blumenberg
Harold "Skip" Perry	Frederick D. Rentschler	
Dean Anderson		
Ronald Sloan		
C. Kurt Barrow		

6. In addition, the parties identified and submitted exhibits at the hearing. Each party's exhibit list is attached to the end of these findings and conclusions. USS Exhibit List (Exhibit 1); Lake County and Calumet Township Exhibit List (Exhibit 2).<sup>4</sup> Exhibits highlighted in bold on that list were admitted into evidence. The remaining exhibits were not admitted.

7. The subject property is an integrated steelmaking facility known as the Gary Works, located at 1 North Broadway, Gary, Indiana 46402 ("Gary Works").

8. On August 15, 2006, the Board conducted an on-site inspection of the Gary Works.

9. US Steel contends the true tax value of the subject real property for the March 1, 2001, assessment should be \$90,000,000.

10. The Respondents contend the true tax value of that property for the March 1, 2001, assessment should be \$269,801,300 as reflected on the assessor's property record cards.

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<sup>3</sup> The Board thanks the school and Professor Jegen for allowing it to use the Moot Court Room to try this case.

<sup>4</sup> Citations to exhibits of US Steel are to "USS Ex. \_\_", and citations to exhibits of Lake County and the Calumet Township Assessor are to "LC Ex. \_\_." The transcript of the hearing is in four volumes. Citations to the transcript are to "Tr." followed by volume number and page number.

## ISSUES

11. The primary issue is determining the true tax value of the real property (land, buildings, and improvements) at the Gary Works integrated steelmaking facility as of March 1, 2001. To resolve that primary issue, the Board must determine several related issues:

**Issue 1: What is the true tax value of the land at Gary Works?**

**Issue 2: Under the 1995 Indiana Assessment Manual, what is the depreciated reproduction cost (the remainder value) of the improvements at Gary Works?**

**Issue 3: Are there causes of functional and/or economic obsolescence that affect the Gary Works?**

**Issue 4: To what extent do functional and economic obsolescence affect the Gary Works?**

**Issue 5: Did the Board properly exclude evidence of a settlement?**

## STANDARD OF REVIEW

12. The Calumet Township Assessor had the statutory responsibility to assess the real property at Gary Works. For each assessment year, taxpayers in Indiana have the right to challenge or appeal their assessment. Ind. Code § 6-1.1-15-1.

13. Whether or not a party appeals an assessment in one year does not affect the taxpayer's right to timely challenge or appeal an assessment in a later year. *See Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 n.14 (Ind. Tax Ct. 1998) (noting that each tax year stands on its own. "Where a taxpayer challenges an assessment, the resolution of that challenge does not depend on how the property was previously assessed.")

14. The party challenging an assessment bears the initial burden. "The party challenging an assessment bears the burden of demonstrating that the assessment is unsupported by substantial evidence, constitutes an abuse of discretion, exceeds the State Board's statutory authority, or is arbitrary or capricious. . . . This burden can be met when the [challenging party] presents a prima facie case in support of its position." *Canal Square Ltd. Partnership v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 804 (Ind. Tax Ct. 1998).

15. A prima facie case is one "in which the evidence is 'sufficient to establish a given fact and which if not contradicted will remain sufficient.'" *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233-35 (Ind. Tax Ct. 1998) (quoting *GTE North Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 887 (Ind. Tax Ct. 1994) (quoting *Thorntown Telephone Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 964 (Ind. Tax Ct. 1994)).

16. In order to establish a prima facie case for obsolescence, a taxpayer must identify the factors that are causing obsolescence and quantify the amount of obsolescence. *See Meadowbrook North Apartments v. Conner*, 854 N.E.2d 950, 954 (Ind. Tax Ct. 2005) (citing *Clark*, 694 N.E.2d at 1241).

17. Once a petitioner has established a prima facie case, the burden of going forward shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276, 281 (Ind. Tax Ct. 2004). More particularly, "when a [petitioner] presents a prima facie case of the existence of obsolescence and introduces evidence quantifying its effect on the property's value, the [assessor] cannot simply ignore such evidence. Instead, 'when a [petitioner] offers probative evidence, that evidence must be dealt with in some meaningful manner.'" *Canal Square*, 694 N.E.2d at 805 (citing *Clark*, 694 N.E.2d at 1235).

18. An assessor fails to impeach or rebut a taxpayer's case by merely asking questions, without offering substantial evidence contradicting the taxpayer's evidence. *See Hometowne Assocs., L.P. v. Maley*, 839 N.E.2d 269, 277-78 (Ind. Tax Ct. 2005) (noting that "open-ended questions" and "conclusory statements . . . fail to impeach or rebut [taxpayer's] evidence identifying and quantifying obsolescence").

19. Assessing officials also fail to rebut a taxpayer's prima facie case by presenting witness testimony based on "feelings" or prior "experience." They are not "substantial evidence." *See Rinker Boat Co. v. State Bd. of Tax Comm'rs*, 722 N.E.2d 919, 925 (Ind. Tax Ct. 1999) (feelings are not probative evidence or substantial evidence); *Canal Square*, 694 N.E.2d at 807 (reversing State Board determination that was based on subjective "experience" and "expertise" rather than substantial evidence).

20. Finally, the Board may not "simply rely on the findings of lower assessing officials as substantial evidence." *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 n.10 (Ind. Tax Ct. 1998) (citing *Loveless Constr. Co. v. State Bd. of Tax Comm'rs*, 695 N.E.2d 1045, 1048 (Ind. Tax Ct. 1998)). Accordingly, the assessor must do more than simply present the property record cards and a summary of the assessment. Otherwise, the Board "would put a taxpayer's right to judicial review at the mercy of the [Board] simply deciding to go along with what was determined below." *Id.*

21. Findings of the Board must be based on a "preponderance of the evidence." Ind. Code § 6-1.1-15-4(1).

22. The Board may not make a case for either side. *See Hometowne*, 839 N.E.2d at 280 ("perhaps most importantly, the burden was on the Assessor, and not the Indiana Board, to rebut [the taxpayer's] prima facie case.").

23. Where a taxpayer makes a prima facie case and the assessor fails to rebut it, the Board must accept the taxpayer's valuation.

## **WITNESS BACKGROUNDS, CREDENTIALS AND QUALIFICATIONS**

24. Robert Stall. Mr. Stall is the National Director of the Capital Equipment and Evaluation Practice for Ernst & Young, a practice that specializes in valuation of heavy manufacturing facilities such as steel mills, mining operations, refineries, and oil and gas properties. He has a Bachelor of Science in Economics and Finance. Mr. Stall has served as an appraiser for Valuation Research Corporation in KPMG, as well as for Ernst & Young. He holds an ASA designation from the American Society of Appraisers. He has been personally involved with the valuation of at least nine steel mills. Mr. Stall was accepted as an expert in appraisal of industrial facilities. Tr. Vol. I at 36-37.

25. Harold "Skip" Perry. Mr. Perry is a national partner in the transactional real estate practice with Ernst & Young's Real Estate Advisory Services Group. He has an MBA from Loyola University. He holds the MAI designation from the Appraisal Institute and is a CPA. He has been an appraiser for more than 30 years. He is a licensed appraiser in Illinois and Wisconsin. He has applied for a reciprocal license in Indiana. He also possesses a Counselor of Real Estate designation. Mr. Perry was accepted as an expert in appraisal. Tr. Vol. I at 195.

26. Dean Anderson. Mr. Anderson is a Registered Professional Engineer in Indiana. US Steel has employed him for 30 years (since 1983 at Gary Works). Mr. Anderson worked as an engineer in every major process area of Gary Works. He was the manager of engineering between 1995 and 2003 with responsibilities for the entire Gary Works. With more than 23 years as a design engineer, Mr. Anderson has detailed personal knowledge and familiarity with the plant's history, technology, layout, design, and functional inefficiencies. He is currently the Regional Manager of Engineering for US Steel. Mr. Anderson was accepted as an expert in engineering and steelmaking facilities. Tr. Vol. II at 266-67.

27. Ronald Sloan. US Steel has employed Mr. Sloan for the past 37 years. He has worked in US Steel's accounting and financial analysis areas since 1978. Mr. Sloan held various positions within the financial analysis department at Gary Works over a period of about 6½ years. He has been the controller of Gary Works since January 1, 2004. His primary functions are to supervise and oversee the accounting and financial analysis departments. He has personal knowledge of the plant layout problems and their financial impact on Gary Works and the company. Mr. Sloan was accepted as an expert in accounting and financial analysis at Gary Works. Tr. Vol. II at 506-11.

28. C. Kurt Barrow. Mr. Barrow is the policy analyst/advisor to the Commissioner of the Department of Local Government Finance ("DLGF"). Except for a few months in 2001, he was the Director of the Assessment Division from 1998 to 2005. He was responsible for oversight of assessments and provided training on the Manual and administrative rules to assessment officials throughout the state. Mr. Barrow is a graduate of Illinois State University with a degree in economics. He was an appraiser for the Illinois Department of Local Government Affairs, and eventually became Deputy Director of the Illinois Department of Revenue with oversight duties for the property taxation functions of that agency. He has been employed by a large appraisal firm, operated his own appraisal firm, and has appraised real estate ranging from single-family homes to complex industrial properties. He served for five years as Education Director for the International Association of Assessing Officials. The Board

accepted Mr. Barrow as an expert in assessment and appraisal standards as well as the *1995 Indiana Assessment Manual*, and the assessment guidelines for 2002. Tr. Vol. III at 669.

29. Eriksen Stropp. Mr. Stropp is a vice president of Pomeroy Appraisal Associates where he has been an appraiser since his graduation from Clark University with a degree in economics. He is a member of the Appraisal Institute. He is a licensed appraiser in New York and Michigan. He has a temporary license in Indiana. Mr. Stropp has never prepared an appraisal that estimated the value of an Indiana property. He has never used the Indiana Assessment Manual to determine replacement cost, physical depreciation, or obsolescence. He did not know whether physical depreciation or obsolescence should be measured as of 2001 or some other year. Mr. Stropp twice admitted that he was *not* an expert on the Manual. Tr. Vol. IV at 830-31. He did not know how a steel mill should be valued for Indiana tax purposes:

- Q: And another of your jobs, perhaps your primary, was to develop an opinion as to whether E&Y's estimate of true tax value for Gary Works was appropriate and reasonable; correct?
- A: That's correct.
- Q: But, sir, you didn't even know how a steel mill should be valued for Indiana tax purposes, did you?
- A: That's correct.

Tr. Vol. IV at 838. Mr. Stropp was offered as an expert, in part, to testify about his appraisal review and to critique the E&Y appraisal. The E&Y appraisal estimates the true tax value of an Indiana steel mill, a topic on which Mr. Stropp lacks knowledge. The Board finds that he lacks knowledge and experience regarding Indiana's assessment system. His work and testimony on the subject of true tax value have no weight or credibility.

30. Booker Blumenberg. Mr. Blumenberg is the Calumet Township Assessor, a position he has held since 1991. He served as chief deputy assessor from 1979 to 1988. During that time, he assisted with the administration of the office. He holds a Level I and Level II assessment designation from the Department of Local Government Finance. Mr. Blumenberg never personally assessed a steel mill, nor did he visit the Gary Works for purposes of assessment. He last visited Gary Works more than 15 years ago and did not recall any details of his visit. Mr. Blumenberg is not a licensed real estate appraiser.

31. Frederick Rentschler. Mr. Rentschler held numerous positions in the steel industry since 1962 and worked for several steel companies. At AK Steel's Middletown Works in Ohio, Mr. Rentschler had various engineering assignments. He was the area superintendent for maintenance and services, manager of operations, manager of primary production and the corporate director of technology. He has no real estate appraisal experience or training. He last worked in a steel mill 13 years ago. Mr. Rentschler was admitted as an expert regarding excess costs generally, but not regarding what is sufficient or reliable for appraisal practice. Tr. Vol. IV at 960.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### **ISSUE 1:     What is the true tax value of the land at Gary Works?**

32. By stipulation of all parties, “the total area of the land at Gary Works is 3,154.57 acres.” The parties also stipulated, “the assessed value of the land was \*\*\*\*\* prior to adjustments upward or downward, if any, to account for influence factors applicable to the property.” USS Ex. 3 at 1; LC Ex. 2 at 1.

33. The Calumet Township Assessor (the “assessor”) assessed the land at Gary Works at \$59,582,900. LC Ex. 32 at 26.

34. US Steel contends that the land should be assessed at \$42,290,000, which would be a reduction of \*\*\*\*\* based on the existence of known, specific environmental contamination of the portion of the Grand Calumet River running through the Gary Works. USS Ex. 4 at 31-32; Tr. Vol. I at 206-212.

35. Influence factors may be “applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative ...” 50 IAC 2.2-4-1(13).<sup>5</sup> Environmental contamination is among the factors that can constitute a negative influence factor. Tr. Vol. III at 688; Tr. Vol. IV at 939. The list of influence factors in the *1995 Manual* is illustrative rather than all-inclusive. Tr. Vol. III at 687.

36. As noted above, the parties stipulated to a land value of \*\*\*\*\* before consideration of influence factors. For anything less, US Steel must establish a prima facie case as to the existence of negative influence factors that reduce the value of the land.

37. Environmental contamination can justify application of a negative influence factor.

38. US Steel claimed a deduction for the costs associated with cleanup of environmental contamination directly related to the operation of Gary Works. USS Ex. 4 at 31-32. As described in the E&Y Appraisal and explained by its appraiser, US Steel accrued in-plant spending of \*\*\*\*\* related to the environmental cleanup of the Grand Calumet River as of March 1, 2001. Tr. Vol. I at 206; USS Ex. 4 at 32. The \*\*\*\*\* was to be spent during the next two years and that amount was spent. Tr. Vol. I at 207.

39. As Mr. Perry explained, the known, quantified costs of remediation would affect the price demanded by the seller and the price a buyer would pay for the subject property. Potential buyers of industrial property are sensitive to the fact that they may be liable for cleanup costs for existing contamination. That sensitivity affects the negotiation of sales prices for contaminated properties. Tr. Vol. I at 211. This concern would have been particularly true for buyers of steel mills because in 2001 the steel industry was in “shaky” financial condition. Tr. Vol. I at 209. E&Y took the environmental deduction only for the known, specific

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<sup>5</sup> Citations to the Indiana Administrative Code and references to the 1995 Manual apply throughout this determination because the 2001 assessment is in dispute. It should be noted that those provisions were repealed for subsequent tax years.

environmental conditions affecting this land. E&Y did not take any deductions for generalized environmental contamination or conditional liability for future cleanup. USS Ex. 4 at 32.

40. The Board finds that US Steel made a prima facie showing of the existence of environmental contamination and quantified it in the amount of \*\*\*\*\*. This determination is consistent with the Board's finding on the same issue in the 2002 appeal for the same property. *See US Steel v. DLGF; Lake County v. DLGF*, Docket Nos. 45-001-02-9-3-00001, *et seq.*, 45-001-02-9-3-00036A (IBTR Final Determination Findings Conclusions) (March 29, 2005) ¶¶ 99-101.

41. Accordingly, the Board finds that US Steel established a prima facie case for land value of \$42,290,000 as of March 1, 2001.

42. Lake County counters that the environmental deduction is not appropriate because although US Steel was required to pay the expense associated with cleanup of the Grand Calumet, that cost would not have been "passed on" to a subsequent buyer because existing governmental orders make it a liability of US Steel alone. LC Ex. 19 at 10. The Respondents presented no provision under which the EPA surrenders its right to pursue a subsequent owner of the Gary Works for environmental cleanup costs. Lake County's analysis on this issue is not persuasive.

43. Assessments should reflect the actual physical condition of the property on the assessment date, including both positive and negative characteristics. To ignore the known, specific environmental contamination would be to ignore the actual physical characteristics of the property. On March 1, 2001, the Grand Calumet River flowing through the Gary Works was contaminated and in need of remediation. At that point, US Steel had accrued a cleanup obligation of \*\*\*\*\*. Tr. Vol. I at 206, 211.

44. Lake County contends that the \*\*\*\*\* deduction should have been reduced to its "present value" because the "costs could occur as of one day or could occur five years down the road." Tr. Vol. III at 768. Speculation that unspecified costs might occur "five years down the road," however, is not probative evidence.

45. As with other portions of their case, Lake County and the township assessor attempted to rebut US Steel's prima facie case with open-ended questions and unsubstantiated opinions rather than facts. For example, Mr. Stropp's report states, "Buyers and Sellers of heavy industrial property are also well-aware of environmental laws and do not devalue property where there are consent decrees in effect and/or indemnification agreements from responsible parties." LC Ex. 41 at 6. Mr. Stropp's report and his testimony contain no supporting facts for that statement, which lacks credibility.

46. Lake County also contends that the \*\*\*\*\* of environmental expenditures on in-plant spending "was money spent on the adjoining property". Tr. Vol. III at 769. The weight of the evidence does not support the Respondents' position. The evidence in the record indicates that the total of accrued environmental expenditures for the Grand Calumet cleanup was \*\*\*\*\* , of which approximately \*\*\*\*\* was to remediate environmental conditions within the boundaries of the Gary Works, while another \*\*\*\*\* was to remediate conditions outside the plant boundaries. USS Ex. 4 at 31, Tr. Vol. I at 206.



47. US Steel made a prima facie case for a negative influence factor based on generally recognized appraisal methodology. Neither Respondent offered substantial, probative evidence to contradict the testimony of US Steel's witnesses regarding the costs associated with cleanup.

48. As of March 1, 2001, US Steel had an \*\*\*\*\* obligation to cover the "in-plant" costs to cleanup the portions of the river running through the Gary Works. Accordingly, the Board concludes that after deducting for the negative influence factor, the value of the land was \$42,290,000 as of March 1, 2001.

49. The Respondents claim positive influence factors increase the land value above the stipulated amount. Lake County suggested that the land is more valuable because of the access to water. That claim is not persuasive for three reasons.

50. First, the Respondents offered no substantial evidence to quantify the impact, if any, that water access might have. Lake County's appraiser stated that "one could argue" that access to Lake Michigan helped explain why Gary Works avoided bankruptcy while other steel plants went into bankruptcy. Tr. Vol. III at 752. This statement does not constitute substantial evidence.

51. Second, the existence and location of waterways, including lakes, were express considerations in the development of Land Value Maps and the base rates in the Land Valuation Order. 50 IAC 2.2-4-4(c). The Board refuses to believe that the Lake County Land Value Commission was unaware of the existence of Lake Michigan. Assuming that fact was reflected in the base rates for lake-front property, there should be no additional "positive influence" on the land value based on proximity to (or use of water from) Lake Michigan.

52. Finally, the Manual specifies that influence factors are "to account for characteristics of a particular parcel of land that are peculiar to that parcel." 50 IAC 2.2-4-1(13). Proximity to Lake Michigan is not peculiar to the Gary Works.

53. The Board concludes that Lake County and Calumet Township Assessor failed to offer substantial evidence regarding positive influence factors. Accordingly, the Board finds that the true tax value of the Gary Works land was \$42,290,000 as of March 1, 2001.

**ISSUE 2: Under the 1995 Manual, what is the depreciated reproduction cost (remainder value) of the improvements at Gary Works?**

54. Under the assessment law in effect on the date of assessment, the term reproduction cost did not refer to the actual cost of constructing an improvement. It meant the cost of the property as calculated through application of the State Board's rules, regulations, and cost schedules. *Dawkins v. State Bd. of Tax Comm'rs*, 659 N.E.2d 706, 709 (Ind. Tax Ct. 1995).

55. The first step in making that calculation is to determine reproduction costs of the improvements. The cost tables in the manual are the "sole source of estimating reproduction costs." See *1995 Manual*, Rule 10 and 11, 50 IAC 2.2-10-5, 10-6, 11-6. Tr. Vol. III at 670, 675-

76. Those reproduction costs are based on the physical characteristics such as area, age, grade, and condition. *See 1995 Manual*, Rule 10-5, -6, 50 IAC 2.2-10-5, 10-6.

56. Next, the proper amount of physical depreciation must be determined from the depreciation schedules. *See 1995 Manual* Rule 10-7 and 11-7, 50 IAC 2.2-10-7, 11-7. Tr. Vol. III at 670. These schedules account for physical deterioration, but not functional or economic obsolescence. *See* 50 IAC 2.2-10-7(f) (“Obsolescence depreciation is applied after application of physical depreciation.”)

57. The depreciated reproduction cost yields remainder value. *See* 50 IAC 2.2-10-5(d)(15) (“‘Remainder value’ is the reproduction cost minus physical depreciation rounded to the nearest ten dollars.”)

58. The parties generally would have to establish reproduction cost and physical depreciation as distinct steps. US Steel submitted a Complete Summary Appraisal Report of the Gary Works’ real property prepared by Ernst & Young, LLP (the “E&Y Appraisal”). USS Ex. 4.<sup>6</sup> It addresses these points, but the parties’ stipulation to the value of improvements after scheduled depreciation eliminates the need for those two steps.

59. Specifically, the parties stipulated that the Board “should use \$203,000,000 as the value of all improvements at Gary Works after application of scheduled depreciation pursuant to the Assessment Manual,” subject to two additional stipulations. USS Ex. 2; LC Ex. 3.

60. The additional stipulations are “that U.S. Steel may introduce evidence at the hearing, if otherwise admissible, of additional obsolescence it contends existed at the Gary Works property as of March 1, 2001” and “that Lake County and the Calumet Township Assessor may introduce evidence at the hearing, if otherwise admissible, of additional obsolescence they contend is already factored into the above value of Gary Works’ real property.” USS Ex. No. 2 at 1-2; LC Ex. 3 at 1-2.

61. The parties agreed on a figure (\$203 million) for the improvements, but disagree as to what that figure represents. US Steel contends that \$203 million represents remainder value and that additional obsolescence must be considered to arrive at true tax value. By contrast, Lake County and the assessor contend that \$203 million is true tax value.

62. The Board has reviewed the definition of remainder value as well as the evidence and arguments of the parties. It finds that the \$203 million figure is remainder value.

63. When a property suffered no obsolescence, its remainder value and true tax value would be the same. True tax value is less than remainder value when obsolescence is present. Thus, US Steel is entitled to a further reduction to the extent it proves additional functional and/or economic obsolescence.

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<sup>6</sup> The E&Y Appraisal is comprised of two documents: USS Ex. 4 (Volume I) and Ex. 5 (Volume II).

**ISSUE 3: Are there causes of functional and/or economic obsolescence that affect the Gary Works?**

**Functional Obsolescence**

64. According to the *1995 Manual*, "[f]unctional obsolescence may be caused by, but is not limited to, the following:

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

50 IAC 2.2-10-7(e)(1). There may be other causes of functional obsolescence if they are internal to the property and reduce the value of the improvement.

65. "Functional obsolescence is either a physical element that buyers are unwilling to pay for or a deficiency that impairs the utility of a property when compared to a more modern replacement, leading to a loss in value." *Inland Steel v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 210 (Ind. Tax Ct. 2000) (footnote omitted). It is a "form of depreciation resulting in loss of value due to lack of utility or desirability inherent in the design of the property." *Inland Steel*, 739 N.E.2d at 210 n.3 (quoting the INSTITUTE OF PROPERTY TAXATION, PROPERTY TAXATION 114 (Jerrold F. Janata ed., 2d ed. 1993)).

66. In this case, US Steel claims functional obsolescence based on superadequate construction, excess construction, and excess operating costs resulting from an inefficient layout. The Indiana Tax Court has explained these three forms of functional obsolescence. "Superadequate construction 'represents the existence of past construction practices that are not currently used to build facilities of a like utility.'" *Inland Steel*, 739 N.E.2d at 213 (citations omitted). "Excess construction, in turn, 'represents the existence of current building volume that is [neither] currently nor likely to be used in the future.'" *Id.* (citations omitted). Finally, "[f]unctional obsolescence from excess operating costs is present when the subject property's 'design results in operating inefficiencies that cause higher expenses for the owner or occupant.'" *Id.* at 217 (citations omitted). "'Some elements of excess operating cost include labor, material, equipment, utilities, and taxes.'" (quoting Michael D. Larson, *Identifying, Measuring, and Treating Functional Obsolescence in an Appraisal*, 10 J. PROP. TAX MGMT. 42, 48 (1999)). An example of excess operating expenses is the additional material-handling costs associated with moving raw or finished materials between multiple buildings; in a replacement facility, the operations would be adjacent to each other." *Inland Steel*, 739 N.E.2d at 217 n.15.

67. A taxpayer must identify the causes of obsolescence and quantify the amount of obsolescence. *Meridian Towers East and West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003) (citing *Clark v. State Bd. of Tax Comm'rs*, 742 N.E.2d 46, 51 (Ind. Tax Ct. 2001)).

68. US Steel contends that the Gary Works real property suffers functional obsolescence from (1) excess construction costs, (2) under-utilized space, and (3) excess operating and material handling costs.<sup>7</sup> US Steel Ex. 4 at 36-41. Tr. Vol. I at 203-206.

69. To gather information regarding the causes of functional obsolescence, US Steel's appraisers, Ernst & Young, visited the Gary Works, spending approximately 10 "people days" inspecting buildings and conducted interviews with management. Tr. Vol. I at 196. They also reviewed detailed property record cards listing physical characteristics of each building. Where necessary, they corrected information based on their own site inspection. USS Ex. 4 at 32-33. Through these steps, the appraisers developed detailed information regarding construction characteristics, excessive clearances and building sizes. They incorporated that information into Volume II of the E&Y Appraisal. USS Ex. 5.

70. US Steel submitted an appraisal and testimony identifying functional obsolescence due to excess construction costs because certain structures have materials that would not be used today. Specifically, US Steel identified brick buildings that now would be block or corrugated steel construction. USS Ex. 4 at 36; Tr. Vol. I at 203. US Steel identified a number of block buildings that now would be steel corrugated siding construction. *Id.* at 37 and Addendum D; Tr. Vol. I at 203. In support of its claim of functional obsolescence due to excess construction, US Steel offered a detailed breakdown of each building affected by this form of obsolescence and the impact of the obsolescence. See USS Ex. 4 (Addendum D), Ex. 5 (Volume II of E&Y Appraisal, Addendum A).

71. The Board finds that US Steel made a prima facie case showing the existence of functional obsolescence due to excess construction costs. USS Ex. 4 at 37-38; Tr. Vol. I at 204-5.

72. US Steel also claimed functional obsolescence due to under-utilized space. USS Ex. 4 at 37; *see also* Tr. Vol. I at 204-5. Specifically, US Steel identified two forms of under-utilized space: excessive clearance (*e.g.*, clearance was 40 feet but clearance actually used was 20 feet) and excessive building size (*e.g.*, building size was excessive for today's needs). USS Ex. 4 at 37-38. In support of its claim of functional obsolescence due to under-utilized space, US Steel offered a detailed breakdown of each building affected by this form of obsolescence and the impact of the obsolescence on value. *See* USS Ex. 4 (Addendum D), and Ex. 5 (Volume II of E&Y Appraisal, Addendum A).

73. The Board finds that US Steel made a prima facie case showing the existence of functional obsolescence due to under-utilized space. USS Ex. 4 at 37-38; Tr. Vol. I at 204-5.

74. US Steel contends that the Gary Works suffers functional obsolescence based on the inefficient layout, which causes excess operating and material handling costs. USS Ex. 4 at 38-41; Tr. Vol. II, III at 256-580. US Steel introduced aerial photographs of the entire facility, together with detailed schematics of the Gary Works facilities (drawn to scale) as they exist and as they would exist if reconfigured into a modern replacement layout with facilities adjacent to

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<sup>7</sup> US Steel uses the term "excess construction costs" to describe the functional obsolescence due to superadequate construction, and uses the term "under-utilized space" to describe the functional obsolescence that the Tax Court identifies as "excess construction." For ease of reference and to avoid confusion, the Board's decision will use the terms "excess construction" and "under-utilized space" as US Steel has referred to them.

each other. (USS Ex. 10A-D, 11A-H; USS Ex. 14). US Steel also introduced a detailed Excess Cost Report explaining the impact of the existing layout on its operations and detailing the excess operating costs attributable to each major facility (USS Ex. 6).

75. In support of its claims regarding the causes of excess operating costs, US Steel offered the expert testimony of Mr. Dean Anderson, the Regional Manager of Engineering for US Steel. Mr. Anderson has worked in every major process area of the plant, and has personal knowledge of production processes and existing layout of the buildings and improvements at Gary Works. Tr. Vol. II at 257-260. As Regional Manager of Engineering, Mr. Anderson has been responsible for developing and implementing capital and major cost projects throughout the plant. He also has been responsible for providing technical assistance to operating staff throughout the plant. Tr. Vol. II at 259-260.

76. Mr. Anderson testified about the existing layout, about how the layout evolved over time with the addition of new processes, and about how the existing distances between process areas impose transportation, material handling, and other operational burdens. Tr. Vol. II at 271-304. He testified that the steelmaking operations would be adjacent to each other in a modern replacement facility, which would be much more “logistical friendly” and efficient for material and product handling. Tr. Vol. II at 308-31.

77. Mr. Sloan also testified about the excess operating and material handling costs imposed on Gary Works because of the inefficient layout. Tr. Vol. II, III at 501-580. His excess cost calculations were based on the operations of Gary Works and on the actual costs of operations (including actual material handling costs) from within the Gary Works financial system for the year 2000. Tr. Vol. II at 514-15.

78. The Board finds that US Steel made a prima facie case as to the existence of functional obsolescence due to excess construction costs, under-utilized space and excess material handling and operating costs. Witnesses for the Respondents did not dispute the existence of functional obsolescence identified by US Steel, but only disagreed with the quantification.

79. The Respondents failed to offer any evidence about excess construction costs.

80. No witness rebutted the existence of under-utilized space. The Respondents agreed that Gary Works has 674,582 square feet of space that it does not use. USS Ex. 2; LC Ex. 3. Mr. Stropp attributed no value to that space, implicitly admitting the functional obsolescence. There is no dispute about the existence of this cause of functional obsolescence.

81. The township assessor testified that excess operating and material handling costs due to inefficient layout and building layout “could be a cause” of functional obsolescence. Tr. Vol. IV at 928, 944. Although he testified as the office-holder and record keeper with respect to the property record cards, the assessor had no personal knowledge of the facts upon which the property record cards were based. Tr. Vol. IV at 932-33. He could not identify or substantiate the basis for any particular item, including alleged deductions for functional obsolescence, on the property record cards. Tr. Vol. IV at 930-35. He offered no testimony rebutting the existence of the causes of functional obsolescence.

82. Mr. Stropp did not address functional obsolescence due to excess operating costs in his report. LC Ex. 39 at 3.

83. Additionally, there are many flaws in Mr. Stropp's report. His "Replacement Cost and Depreciation Analysis" states it was prepared in compliance with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). LC Ex. 39 at 1. USPAP Standards Rule 2-1 requires each written or oral real property appraisal report to clearly and accurately set forth the appraisal in a manner that will not be misleading. This rule is a binding requirement from which departure is not permitted.

84. Mr. Stropp's analysis states: "Our scope of work is to estimate Replacement Cost New, estimate and deduct depreciation in order to arrive at a depreciated cost estimate as of January 1, 1991 (see attached.)" LC Ex. 39 at 1. Mr. Stropp testified that the word depreciation means "loss of property value from any cause." Tr. Vol. IV at 782-83. The report also states, "This analysis arrives at a depreciated cost of the building improvements by deducting total accrued depreciation from replacement cost new. LC Ex. 39 at 2. Its concluding section states, "Allocations of total cost new, and all forms of depreciation, are shown in the table below." Lake County Ex. 39 at 4. The table then reflects that "Curable and Incurable Functional Obsolescence" is "\$0", and that the "Depreciated Value of the Building" is \$333,756,628, rounded to \$333,800,000. *Id.*

85. The Board finds that Mr. Stropp's analysis violates USPAP Rule 2-1 and is misleading for several reasons. Despite its explicit representations, this analysis does not arrive at a depreciated cost estimate. It does not deduct total accrued depreciation. It does not show all forms of depreciation. Mr. Stropp's estimate of curable and incurable functional obsolescence was not \$0. It was "I don't know." (Tr. Vol. IV at 791-96). The depreciated value of the building was not as shown in the report, but actually it was undetermined. These misrepresentations are not offset or adequately clarified by the one sentence disclaimer (buried in the body of the report) that, "Any remaining functional obsolescence (e.g. extraordinary functional such as inadequate or inefficient plant layout) may be present but is not addressed in this study." LC Ex. 39 at 3. Mr. Stropp's testimony did not resolve the problems. When asked how much he allocated for incurable functional obsolescence due to excess operating costs, he answered "Undetermined, question mark." Tr. Vol. IV at 794-96. Mr. Stropp's failure to consider the issue is not a rebuttal of US Steel's prima facie case about the causes of functional obsolescence.

86. None of the Respondents' witnesses disputed that the layout of facilities causes US Steel to incur additional material handling costs. Importantly, Lake County's primary witness on this issue, Mr. Frederick Rentschler, agreed that the location of buildings and processes affects the operating costs of the plant. Tr. Vol. IV at 1024. As an example, he agreed that there are transportation costs, labor costs and maintenance costs associated with the movement of slabs from the casters to the hot strip mill that would be lower at a steel mill where the casters and hot strip mill were closer together. Tr. Vol. IV at 1024-25.

87. Mr. Rentschler also specifically agreed that the inefficient layout of buildings imposes excess material handling and operating costs on Gary Works as compared to the replacement layout:

Q: Assuming the Gary Works were reconfigured from the existing layout to the replacement layout, you agree that there would be some reduction of material handling costs?

A: Yes, there would be.

Q: But you didn't conduct a study to determine how much of a reduction there would be?

A: I did not.

Tr. Vol. IV, at 1026.

88. In light of Mr. Rentschler's agreement that the location of buildings at a steel mill affects operating costs and that there would be "some reduction of material handling costs" associated with layout changes at Gary Works, there is no disagreement that the existing layout inefficiencies impose excess material handling costs and cause functional obsolescence.

89. As the Tax Court explained, when parties agree on the causes of obsolescence, it "obviates [taxpayer's] burden of offering probative evidence showing that the subject improvements experience obsolescence." *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1102 (Ind. Tax Ct. 1999). Thus, the only real issue is whether US Steel quantified obsolescence. *See also Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).

90. US Steel made an un rebutted prima facie case as to the existence of functional obsolescence because Gary Works suffers excess construction costs, under-utilized space and excess operating and material handling costs.

### **Economic Obsolescence**

91. External factors cause economic obsolescence. Pursuant to the *1995 Manual*, "Economic obsolescence may be caused by, but is not limited to . . . [d]e creased market acceptability of the product for which the property was constructed or is currently used." 50 IAC 2.2-10-7(e)(2) (identifying specific, non-exclusive causes of economic obsolescence). *See also Kemp v State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 402 n.7 (Ind. Tax Ct. 2000).

92. US Steel offered substantial evidence demonstrating the existence of economic obsolescence based on a number of contributing causes. Appraisers explained that the Gary Works competes in a global market with steel companies around the world. The E&Y Appraisal describes in detail the market conditions of the steel industry during the period leading up to and extending beyond March 1, 2001. USS Ex. 4. Mr. Stall gave an extensive explanation of these market conditions. Tr. Vol. I at 40-45.

93. Mr. Stall is an expert in the valuation of steel mills. He was the only witness who possessed a comprehensive knowledge about the steel industry as well as valuation principles and techniques. His testimony was credible, informed and persuasive. His report and testimony

indicated that substantial “excess global capacity” existed in the period leading up to and including 2001. USS Ex. 4; Tr. Vol. I at 42-43. “World steel makers annually produce more mill products than the manufacturing economies can absorb . . . the effective crude steel making capacity worldwide increased from about 927 million tons in 1997 to 1 billion tons in 2001. Annual consumption for this time period grew only 36.5 million tons, thus widening the gap of excess capacity.” USS Ex. 4 at 7. This situation resulted in lower steel prices. USS Ex. 4 at 7. Mr. Stall reinforced this point at trial, “They [subsidized foreign steel makers] had more capacity than they had demand in their home countries. And they ran product with these subsidies and actually were dumping this product in the United States...” Tr. Vol. I at 42-43.

94. A “key structural change was the increased level of imports. Contributing factors to the success of imports included a strong U.S. dollar, an open market (which provided an opportunity for dumping by foreign producers), cheap labor, and subsidization of foreign producers by their respective governments. Foreign steel has exacted a severe toll on the U.S. industry’s domestic market since the early 1960’s.” USS Ex. 4 at 7. To demonstrate the point, E&Y highlighted the fact that, “in 1960, steel imports into the United States totaled 3.4 million tons, or 4.7% of that year’s consumption”; by contrast, “in 2000, steel imports totaled 38 million tons, or 26.9% of 141.1 million tons consumed.” USS Ex. 4 at 7.

95. Competition from mini mills and reduced consumption of steel products by the automobile industry also caused economic obsolescence at Gary Works. USS Ex. 4 at 6, 8; Tr. Vol. I at 41, 44.

96. In combination, these external market forces caused “unprecedented turmoil in the market” for steel. US Steel Ex. 4 at 7. As a result, numerous steel making companies entered bankruptcy and, particularly, “[d]uring the period of 2001 to 2004, five of the seven integrated U.S. steel companies filed for bankruptcy protection. Over 67% of the total U.S. integrated steel capacity, of 67.4 million tons, was in bankruptcy during this period.” USS Ex. 4 at 8; Tr. Vol. I at 41. These economic conditions impacted steel products generally and Gary Works in particular.

97. “The pressures caused by the combination of excess global capacity, increased import volumes and low-cost mini mill competition, and the resulting severe price declines for hot rolled coiled steel were taking a heavy toll on domestic integrated steel producers in particular.” USS Ex. 4 at 12. Hot rolled coiled steel was the primary product produced by Gary Works. Tr. Vol. II at 329. Accordingly, Gary Works felt the impact of those severe price declines. See LC Ex. 9, Exhibit I-10 (\*\*\*\*\*).

98. The 1995 Manual expressly recognizes that economic obsolescence may be caused by, among other things, “Decreased market acceptability of the product for which the property was constructed or is currently used.” 50 IAC 2.2-10-7(e)(2)(D). US Steel identified causes contributing to “decreased market acceptability” of steel products produced at Gary Works, including excess global capacity and supply of steel, increased imports of steel products and decreased demand by key consumers of steel, namely the automotive industry.



99. The Board finds that US Steel made a prima facie case as to the existence of economic obsolescence due to excess global capacity, competition from mini-mills, competition from foreign imports and reduced demand from the automobile industry.

100. Mr. Stropp admitted in his report that “poor business climate” can be a cause of “external obsolescence,” although he did not include in his report or testimony any analysis of the business conditions or their impact on the Gary Works. LC Ex. 39 at 3. He analyzed the portion of E&Y Appraisal that discussed the economic conditions affecting the steel industry, but he found no factual errors in that section of the report. Tr. Vol. IV at 823. Nevertheless, Mr. Stropp concluded that there was no economic obsolescence. Tr. V III at 788-89. He provided no relevant facts to support that conclusion. In discussing the topic of economic obsolescence, Mr. Stropp’s Replacement Cost Report identifies two facts that purportedly support his conclusion. Lake County’s population has grown at about one-fifth of the rate for the entire state. Furthermore, employment in Lake County has only grown at one third of the statewide average. LC Ex. 39 at 3. He failed to establish how those facts support his conclusion. The remainder of the discussion in the report consists of conclusions or observations concerning the cyclical nature of the steel industry, favorable long-term interest rates, the trained labor market, the surrounding community, and access to millions of gallons of virtually free process water. Again, how these points might support his conclusion was not established.

101. The township assessor agreed that excess steelmaking capacity “could be a cause of economic obsolescence.” Tr. Vol. IV at 929. Nothing in the assessor’s testimony was inconsistent with Mr. Stall’s testimony. The assessor offered no evidence to contradict Mr. Stall’s statistics regarding the existence of excess global capacity as in 2001. He agreed, “[t]he decrease in demand for products produced at the property can cause economic obsolescence.” Tr. Vol. IV at 929. He offered no evidence countering the existence of the identified causes.

102. US Steel carried its burden of proving the existence of both functional obsolescence and economic obsolescence. Neither Respondent rebutted the substantial evidence regarding the existence of both forms of obsolescence.

**ISSUE 4: To what extent do functional and economic obsolescence affect the Gary Works?**

103. After a cause of obsolescence is established, the next step is quantification. “Indiana’s property assessment regulations . . . require the recognition of obsolescence and ties the definition of obsolescence directly to that applied by professional appraisers under the cost approach.” *Lacy Diversified Indus., Ltd. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1225 n.12 (Ind. Tax Ct. 2003). Accordingly, a market value estimate is appropriate in the context of obsolescence. There is really no choice in this matter. Quantifications that use market concepts are acceptable. *Canal Square*, 694 N.E.2d at 806 n.8.

104. The Tax Court has recognized alternative approaches to quantify obsolescence: one used in *Inland Steel* and the other used in *Canal Square*. Both methodologies rely on generally recognized appraisal methods. The *Inland Steel* analysis approaches the components of obsolescence separately, while the *Canal Square* analysis considers all forms collectively. US Steel used both methodologies independently to establish the amount of functional and economic obsolescence. Consequently, the Board will also consider both approaches.

## **Quantification of Obsolescence According to the *Inland Steel* Analysis**

105. US Steel established three causes of functional obsolescence: (1) excess construction costs, (2) under-utilized space, and (3) excess material handling and operating costs due to plant layout inefficiencies.

### Excess Construction Costs and Under-utilized Space

106. US Steel offered the E&Y Appraisal Report and testimony of Mr. Perry who explained the steps employed to quantify the amount of functional obsolescence caused by excess construction costs and unused space.

107. For brick and block buildings that today would be replaced with corrugated steel siding, E&Y calculated reproduction costs for the buildings as they exist today (brick or block construction) under the *1995 Manual* and then depreciated them using the actual age. E&Y calculated what the reproduction cost would have been if the buildings had been constructed with corrugated steel siding and then applied depreciation, again, using actual age. The difference in the two depreciated costs was converted to a percentage of functional obsolescence for the appropriate buildings. The appraisal provided building-by-building details. USS Ex. 4 at 36 & Addendum D; Tr. Vol. I. at 203-04.

108. For functional obsolescence due to excessive clearance, E&Y first determined the reproduction cost less physical depreciation for the buildings using the actual ceiling heights. Next, E&Y determined what the wall height would be if US Steel were to re-build the structure today, and determined the reproduction cost less depreciation (using the same age) for the structures with the lower ceilings. The difference in remainder values was converted to a percentage of functional obsolescence. The appraisal provided building-by-building details. USS Ex. 4 at 37 & Addendum D; Tr. Vol. I. at 205.

109. For functional obsolescence caused by excessive building size (unused space), E&Y determined the reproduction cost for the buildings using the actual building areas and converted it to a per square foot amount. Next, E&Y determined what areas of the buildings actually were used and applied the per square foot reproduction cost to those areas. The reproduction cost of both the “as built” buildings and the actually used portion of the buildings were depreciated at the same rate, using the actual ages of the buildings. The difference in remainder values was converted to a percentage of functional obsolescence. The appraisal provides building-by-building details. USS Ex. 4 at 38 & Addendum D; Tr. Vol. I. at 205.

110. Mr. Perry’s testimony was informed and credible. His quantification was consistent with the requirements of the *1995 Manual*. See 50 IAC 2.2-10-7(e), (f). Thus, US Steel made a prima facie case that the total functional obsolescence caused by excess construction costs and under-utilized space was \$9,544,352.

111. As with the causes of excess construction costs, the Respondents failed to offer probative evidence to rebut the quantification of excess construction costs.

112. With respect to under-utilized space, the Respondents agreed that Gary Works has 674,582 square feet of space that it does not use. USS Ex. 2; LC Ex. 3. Additionally, the county's appraisal witness attributed no value to that space and implicitly admitted both that the unused space suffers from functional obsolescence and that the obsolescence is 100%.

113. In fact, Mr. Stropp's report did not address quantification of functional obsolescence from any cause in a meaningful way. "Some functional obsolescence is taken into consideration by the application of the economic age-life concept. Any remaining functional obsolescence (e.g. extraordinary functional such as inadequate or inefficient plant layout) may be present but is not addressed in this study." LC Ex. 39 at 3. On cross-examination, Mr. Stropp admitted that he did not know the amount of incurable functional obsolescence. Tr. Vol. IV at 792. The Respondents failed to supply any meaningful evidence and, therefore, failed to rebut the prima facie case. *Canal Square*, 694 N.E.2d at 805 (an assessor cannot simply ignore taxpayer's evidence. "[W]hen a taxpayer offers probative evidence, that evidence must be dealt with in some meaningful manner.")

114. Based on the foregoing, the Board finds that the Respondents failed to rebut the \$9,544,352 of functional obsolescence caused by excess construction costs and under-utilized space. The assessment should be reduced by that amount.

#### Excess Operating Costs Resulting from Inefficient Layout

115. US Steel also claims that Gary Works suffers functional obsolescence due to excess operating costs associated with the inefficient plant layout. It offered the testimony of Dean Anderson. He has personal knowledge of production processes and existing layout of the buildings and improvements at Gary Works. Tr. Vol. II, at 257-260. As Manager of Engineering, Mr. Anderson has been responsible for developing and implementing capital and major cost projects throughout the plant. He also has been responsible for providing technical assistance to operating staff throughout the plant. Tr. Vol. II at 259-260.

116. This facility first broke ground in 1906, and the first heat of steel was poured in 1909. Tr. Vol. II at 267. When construction began in 1906, the plant was laid out as a direct flow process to promote smooth and efficient steel making in accordance with the existing technology on unimproved land. USS Ex. 4 at 38. For the plant to keep up with changes in technology over time, expansions and new facilities were needed. Tr. Vol. II at 267-68, 284-85, 304-05.

117. US Steel introduced an engineering schematic, drawn to scale, showing the existing layout of the buildings and improvements at Gary Works. USS Ex. 10-A. It also introduced a compilation of aerial photos (essentially a video) of Gary Works. USS Ex. 14; Tr. Vol. II at 269-70. Both exhibits show the major buildings and production facilities. Using the existing layout and the aerial photos, Mr. Anderson described the existing layout of buildings in detail, including how the layout evolved over time with the addition of new production facilities. He also testified about how the distances between existing operations cause substantial operating costs associated with the movement of raw materials, semi-finished and finished product through the plant, and about other operating inefficiencies associated with the existing layout. Tr. Vol. II at 271-304.

118. Over the years, the process of making steel changed substantially. Until the 1960's, prevailing technology involved "open hearth" furnaces. Since then, steel has been made in BOP (basic oxygen process) shops. Until the 1970s and 80's, steel was poured into ingots. Since then, steel has been "continuously cast" in slab casters. Tr. Vol. II at 267-68, 285-87. Additionally, the technology and accepted production methods for thinning and rolling slabs into sheets of steel changed with the introduction of hot strip mills in the late 1960's. Tr. Vol. II at 305-06. As technologies and production methods changed, the buildings, improvements and processes at Gary Works developed and changed substantially to keep up with the market. Tr. Vol. II at 305-06; USS Ex. 4 at 38-39.

119. Using the Existing Layout (USS Ex. 10-A) and the aerial photos (USS Ex. 14), and beginning with the coke production, Mr. Anderson described each area of the steelmaking process at Gary Works. He described how raw and semi-finished materials are handled and transported between process areas (*e.g.*, by rail, by "slab haulers," by conveyor, by truck). He described the products (*e.g.*, flat sheet, plate, tin) and the markets for them (*e.g.*, automotive, appliance, construction, rail). Tr. Vol. II at 271-304.

120. In addition, Mr. Anderson testified about how changes in steelmaking processes affected the layout of plant facilities. For example, at one time, the coke plant had 16 batteries to feed the blast furnaces. Although the coke plant still occupies the same total area (roughly 15 million square feet), now there are only 4 batteries. Tr. Vol. II at 273-76. The excess space between coke batteries and between the coke plant and the next operation (the blast furnaces), causes infrastructure maintenance costs and material-handling costs that would not exist if the coke plant were designed to operate with only 4 batteries in a much smaller area. Tr. Vol. II at 274, 276-79; USS Ex. 6 at 1-2.

121. Mr. Anderson testified about the evolution of, and inefficiencies associated with, the remaining production facilities at Gary Works. Those facilities include the blast furnaces (in the past, there were 12, today there are 4), the #1 and #2 BOP shops, the casters, the plate mill, the hot strip mill, the pickle lines, the electro-galvanizing lines and other downstream lines where steel slabs or coils are finished. Tr. Vol. II at 280-304.

122. As new facilities were added, they could not be placed in locations that appear to be vacant because at the time facilities were added, the areas were "totally consumed with facilities and operations" such as merchant mills. Because new facilities take years to construct, they required locations not devoted to then-existing processes in order to maintain production. Tr. Vol. II at 305-07. For example, the 84-inch hot strip mill receives steel slabs from the casters that are approximately \*\*\*\*\* away. Tr. Vol. II at 295. The hot strip mill was constructed in 1967, but it could not be placed adjacent to the casters because at that time the area was completely occupied with merchant mills. Tr. Vol. II at 292, 305-06. Shutting down production of existing facilities in order to construct a new facility in a more efficient location would not have been economically feasible. Tr. Vol. II at 307-08. Within the limitations of existing operations, US Steel built each new facility and building in the most efficient location possible. Tr. Vol. II at 453. Mr. Anderson provided similar detail for each process of the plant, describing how facilities/buildings were constructed outside the direct flow and how the location of each process created logistical, transportation and material-handling problems and costs. Tr. Vol. II at 280-307.

123. US Steel introduced engineering schematics, drawn to scale, showing the existing buildings and processes configured in a more efficient layout for a modern replacement plant. USS Ex. 10-B (Modern Replacement Layout); USS Ex. 10-C (Overlapping Layout showing Existing and Replacement Layouts); Tr. Vol. II at 308-314. The Modern Replacement plant was developed by a team comprised of an engineering firm with extensive experience in the steel industry (Eichleay Engineering), a former employee of the Gary Works engineering department, operations managers from throughout the Gary Works plant, and Mr. Anderson, who oversaw the project and checked the work of the team. Tr. Vol. II at 308-312.

124. Lake County objected to the introduction and use of USS Ex. Nos. 10-B and 10-C because they were purely hypothetical layouts that US Steel had no plans to construct. It also objected because Mr. Anderson lacked experience designing steel mills, and he lacked appraisal experience. Tr. Vol. II at 265, 310.

125. The Board rejects each of these objections and finds that the Replacement Layout (USS Ex. 10-B) represents a “modern replacement” appropriate for use in measuring excess operating costs.<sup>8</sup>

126. First, the Indiana Tax Court has explained that functional obsolescence must be measured by comparing existing buildings to “fictitious” buildings. *See Inland Steel*, 739 N.E.2d at 215. Thus, the fact that Gary Works’ buildings have not actually been reconfigured or constructed is not a legitimate criticism. In any event, Lake County’s characterization of USS Ex. 10-B as entirely hypothetical is inapt. The buildings in Ex. 10-B are actual Gary Works buildings that were repositioned to locations that reduce material handling and related costs. Tr. Vol. II at 332, 355. This concept is entirely consistent with the Tax Court’s discussion of functional obsolescence caused by excess operating costs, “[a]n example of excess operating expenses is the additional material-handling costs associated with moving raw or finished materials between multiple buildings; in a replacement facility, the operations would be adjacent to each other.” *Inland Steel*, 739 N.E.2d at 217 n.15.

127. Second, while the reconfigured Modern Replacement Layout does not currently exist, that layout reflects market norms applicable to modern facilities. Mr. Anderson testified, without contradiction, that market “norms” for integrated steel mills built today have facilities with locations that optimize handling between processes. Tr. Vol. II at 409-10. The Replacement Layout conforms to these norms by putting buildings adjacent to each other in a more compact arrangement that reduces operating costs, while permitting the same production and service. Tr. Vol. II at 355-56, 409-410; USS Ex. 6.

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<sup>8</sup> The Board notes that, in a hearing on US Steel’s 2002 real property taxes, the same Modern Replacement Layout was used as a basis to determine excess operating costs for Gary Works. *US Steel v. DLGF; Lake County v. DLGF*, Docket Nos. 45-001-02-9-3-00001, *et seq.*, 45-001-02-9-3-00036A (IBTR Final Determination Findings Conclusions, ¶92). Referring to the same layout in the 2002 hearing, this Board specifically found that “U.S. Steel introduced an engineering schematic, drawn to scale, showing the existing buildings and processes configured in a direct flow layout as *would be found in a modern replacement plant.*” ¶ 92 (emphasis added).

128. Mr. Anderson also compared the Modern Replacement Layout (USS Ex. 10-B) with an existing integrated steel mill, Bethlehem Burns Harbor (USS Ex. Nos. 12, 15), that conformed to the market norms of optimizing material handling between processes. Tr. Vol. II at 335-356. US Steel did not use Burns Harbor as the baseline layout in measuring Gary Works' excess costs because existing laws prohibit US Steel from obtaining production cost information at Burns Harbor. This prohibition makes comparison to Burns Harbor impossible. Comparing Gary Works to a reconfigured layout, however, permitted US Steel to measure excess costs against a known, actual base. Tr. Vol. II at 355-56.

129. As for Lake County's additional objections regarding Mr. Anderson's lack of experience, the Board finds that his 30 years of engineering experience with 23 years of engineering projects throughout the Gary Works provides ample expertise for him to testify about the development of the Modern Replacement and market norms applicable to steel mill design.

130. Mr. Rentschler seemed to agree with Mr. Anderson regarding market norms for steel mill layouts. He testified that steel mills must compete globally and that they try to operate as efficiently as possible, which would include minimizing material handling costs. Tr. Vol. IV at 1021-24. Moreover, the Respondents did not develop any facts or data showing that the distances between facilities at Gary Works should be different from those shown in the replacement layout. Tr. Vol. IV at 1015. The Respondents thereby failed to rebut the validity of the Modern Replacement Layout as a basis for comparing operations or calculating excess costs.

131. Using the Modern Replacement Layout, Mr. Anderson explained how raw materials and product would flow through such a plant. The coke plant would be much more compact and closer to the blast furnaces. The coke plant would be reduced to 4 batteries, eliminating miles of extra pipelines and utilities and rail track. Blast furnaces would be pivoted to facilitate a railroad track layout to run through the furnace. The #1 BOP shop would be located adjacent to the # 2 Q-BOP shop, eliminating a "liquid steel highway" currently needed to transport hot metal. The liquid steelmaking capabilities would be in closer proximity to the casters, reducing the need for steel reheating and the Ladle Metallurgy Facility. The distance for transporting slabs would be cut by about \*\*\*\*\* round trip, with the bulk of slabs (\*\*\*) going to the closer hot strip mill and the remainder (\*\*\*) going to the plate mill. These changes would eliminate most of the double handling of slabs. A short conveyor running about \*\*\*\*\* from the discharge end of the strip mill to the coil storage yard for the pickle lines would eliminate miles of conveyors with numerous turnarounds. Both pickle lines would be consolidated in the one building. The galvanizing facility would be relocated to the exit end of the cold mill facility, rather than being \*\*\*\*\* away. The tin mill would be relocated closer to the coil supply source. The changes would reduce scrap hauling distances throughout the plant. The overall plant area would be approximately 46 percent smaller. Tr. Vol. II at 314-331; USS Ex. Nos. 10-A, 10-B, 10-C, 10-D.

132. As a result of the more compact arrangement of operations in the Replacement Layout, Gary Works would be able to:

- (a) Eliminate two of four major electrical (138KV) feeds, eliminate the entire 69 KV loop that presently surrounds portions of the plant as well as all gear (substations,

- transformers, circuit breakers, switchgear) associated with that 69KV loop,<sup>9</sup> and eliminate additional electrical lines, resulting in an overall reduction of approximately 50% of electrical lines and gear (Tr. Vol. II at 391-98, USS Ex. 11-A);
- (b) Reduce linear footage of storm sewers and sanitary sewers between facilities by 32.7% (Tr. Vol. II at 378-89, USS Ex. 11-C, 11-D, 11-E);
  - (c) Reduce the total EJE railroad tracks in the Coke Plant from 133,492 feet to 40,473 feet, representing a 69.7% reduction in rail track footage in the Modern Replacement Layout (Tr. Vol. II 400-08 , USS Ex. 11-F, 11-G, 11-H).

These points demonstrate the legitimacy and reasonableness of the adjustments identified in the Excess Cost Study (USS Ex. 6).

133. Mr. Anderson's analyses confirmed the reasonableness of the percentage reductions found in the Excess Cost Report for energy line maintenance (46% vs. 50%), sewer line maintenance (30% vs. 32.7%) and lineal track reduction of EJE (62.5% vs. 69.7%). Lake County complained that the additional analyses were performed after the original Excess Cost Report, but Lake County did not offer any probative evidence contradicting the additional evidence that was developed and shared with Lake County several months before trial.

134. None of the foregoing would affect operations or output, which was assumed to be the same as it currently is. Tr. Vol. II at 331.

135. In sum, the consolidation of operations into a more compact and modern arrangement would reduce the amount of material and product handling, in-plant transportation, scrap hauling, energy line maintenance, sewer line maintenance, and have other positive impacts on efficiency. Tr. Vol. II at 308-31; USS Ex. Nos. 6, 10-A, 10-B, 10-C, 10-D, 11-A, 11-C, 11-D, 11-E, 11-F, 11-G, 11-H.

136. To quantify the excess operating costs associated with the Existing Layout as compared to the Modern Replacement, Mr. Anderson and his department assisted in the preparation of an Excess Cost Report. Tr. Vol. II at 357-62; USS Ex. 6.<sup>10</sup> It incorporated information on the differences – in raw material, product and scrap hauling distances, electrical and sewer lines, maintenance, road paving/salting and product damage – between the Existing Layout and the Modern Replacement plant. USS Ex. 6 at 3-17.

137. Lake County objected to the Excess Cost Report because some distances in the report were provided after the deadlines the Board established, and because the Report was not “scientific.”

138. The Board denies both objections.

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<sup>9</sup> Rather than utilizing the 69KV loop, Gary Works would be able to place a substation and transformer in a location central to the reconfigured steelmaking facilities and “step down” the power directly from the 138KV level and eliminate the intermediate 69KV loop.

<sup>10</sup> The Excess Cost Report (USS Ex. 6) is essentially the same as Addendum E to US Steel's appraisal (USS Ex. 4), but reflects certain distance corrections.

139. US Steel provided the distance corrections to the Respondents several months before the hearing. The Board provided the Respondents with the opportunity for additional time to review and additional discovery to address whatever issues the corrected distances raised. They declined this opportunity, thereby foreclosing the issue of prejudice caused by time.

140. More fundamental, however, is the fact that the Respondents' sole witness on the issues of excess costs, Mr. Rentschler, admitted that he never disputed the distances in the original Excess Cost Report or the corrections supplied in April 2006. Tr. Vol. IV at 1014-15. Mr. Rentschler also admitted that the corrections did not "substantively or materially" affect his analysis or conclusions. Tr. Vol. IV at 1021.

141. Additionally, the net result of the distance corrections reduced the total annual excess operating cost penalty by approximately \$3 million. Tr. Vol. III 579. The changes are favorable to Lake County and Calumet Township by reducing the amount of functional obsolescence attributable to excess operating costs. Thus, there was no substantive prejudice to the Respondents.

142. The Board also denies the objection that the Excess Cost Report should be excluded because it is not "scientific." Indiana Rule of Evidence 702(a) permits expert opinion testimony on matters that are "scientific," "technical" or "other specialized knowledge," so long as the testifying expert has "knowledge, skill, experience, training or education" relevant to the testimony. Mr. Anderson's testimony and experience clearly satisfied the requirements of the rule. The questions raised by Lake County go to the weight, not the admissibility, of the testimony and the Excess Cost Report. Neither generally recognized appraisal principles nor the Indiana Assessment Manual require excess costs to be calculated to a degree of precision greater than the cost estimates used in determining replacement costs, and those are not "scientific." Tr. Vol. III at 683. Furthermore, findings of the Board must be based on a "preponderance of the evidence" rather than the proposed "scientific" standard, which implies a much higher degree of exactitude. *See* Ind. Code § 6-1.1-15-4(l).

143. Mr. Ronald Sloan calculated the amount of excess operating costs attributable to the plant layout inefficiencies. He used information about distances, material and product flow, and operations that Mr. Anderson's engineering department and operations managers provided. He also used actual production costs for the relevant year from the financial data and accounting systems. Tr. Vol. II, III at 501-667; USS Ex. 6.

144. The production and cost information used in the Excess Cost Report was derived from the Gary Works financial accounting system and is the same information that is audited annually by Price Waterhouse Coopers for SEC statements. The underlying financial and production cost information was not created for the Excess Cost Report. Tr. Vol. II at 514-15. The cost information was tracked on a monthly, quarterly and annual basis, so that US Steel could track the costs and efficiency of the Gary Works operations. Tr. Vol. II at 515.

145. The Excess Cost Report identified excess operating costs by production area and plant-wide "miscellaneous" impacts. Mr. Sloan and members of his department segregated all costs associated with each separate "production unit" (*e.g.*, Coke Operations, Iron Producing, Steel Producing, Hot Strip Mill, Pickle Operations, Sheet Operations, Hot Roll Finishing, Plate



Operations and Tin Mill Operations). There was no double counting of costs because costs were identified with a specific production area or plant-wide category. Tr. Vol. II at 518-19; USS Ex. 6 at 1-10.

146. After segregation by production unit, the variable costs of operations associated with material handling, product flow, scrap hauling, etc., were “unitized” (*i.e.*, reduced to a unit of measurement, such as dollars per linear foot) to allow a comparison of material handling costs under the Existing Layout with the costs of material handling under the Modern Replacement Layout. Tr. Vol. II at 521-25 (describing methodology employed in the context of “Central Shops” adjustment); USS Ex. 6 at 3. They employed a similar methodology to calculate excess costs associated with scrap hauling. Tr. Vol. II at 535-38; USS Ex. 6 at 4.

147. In addition to costs that could be unitized by distance (*e.g.*, linear foot, square foot), Mr. Sloan described a number of excess cost calculations based on eliminating or changing operations according to the Replacement Layout. For example, by moving the #1 BOP and #2 Q-BOP shops together, Gary Works would eliminate the dedicated train line that is currently used to transport liquid steel between them. By eliminating this dedicated train line, Gary Works would simply not incur costs of maintenance associated with the locomotives (\*\*\*\*\*) or the track (\*\*\*\*\*). Tr. Vol. II at 525-27; USS Ex. 6 at 3. Additionally, moving the #1 & #2 shops together would reduce the usage (and costs) of the Ladle Metallurgy Facility (LMF) and pre-heaters (used to reheat liquid steel) presently needed for heats of steel traveling from the #1 BOP shop. Tr. Vol. II at 527-29, 531-32; USS Ex. 6 at 3.

148. In addition to costs associated with its own material-handling personnel, US Steel incurs operating costs by contracting with outside vendors for particular functions. For example, an outside vendor (IMS) hauls slabs at Gary Works. IMS charged set rates to move a certain tonnage of slabs from point to point. The rates were set by contract and included all costs associated with the slab-hauling operation (*e.g.* labor, transportation, vehicle maintenance, fuel, etc.). US Steel calculated the excess costs attributable to slab hauling by comparing the costs for slab hauling under the existing layout with the cost that would be incurred according to contract rates if the distances were as identified under the Replacement Layout. Tr. Vol. II 532-35; USS Ex. 6 at 4.<sup>11</sup>

149. In addition to excess costs for specific production units, US Steel also tracks plant-wide costs that are not identified to any individual production area. Tr. Vol. III at 518-19; USS Ex. 6 at 11-17. Examples of plant-wide costs include electrical line/gear maintenance, labor reductions in operations services, sewer line maintenance, damaged coils, road paving/salting, security, and plant-wide truck hauling. To account for these miscellaneous impacts in the Excess Cost Report, Mr. Sloan and his department worked with other personnel to identify how operations would change in the Modern Replacement Layout. Tr. Vol. II, III at 544-72; USS Ex. 6 at 16-23. They calculated the cost savings from each operational change, including reductions in truck hauling/maintenance, maintenance of fewer electrical lines and

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<sup>11</sup> In most cases, the costs associated with materials handling under the Replacement layout were less than the costs associated with the Existing Layout. In a few instances, the costs were greater under the Replacement Layout (*i.e.*, with the new location of the Pickle Lines and Plate Mill). In those instances, US Steel recorded the cost increase (and thereby reduced its excess costs) associated with the Modern Replacement. USS Ex. 6 at 6 (Pickle-to-Tin coil hauling costs increased) and at 9 (Plate Operations all increased).

associated gear, reductions of damaged coils, reductions in labor force in operations services, reductions of road paving/salting, reductions in sanitary and storm sewer line maintenance, and reductions of security personnel related to the fewer security gates. Tr. Vol. II, III at 544-572; USS Ex. 6 at 11-17.

150. Using the Excess Cost Report, Mr. Sloan described how he and his department calculated “excess costs” by comparing actual operating costs under the Existing Layout with the operating costs as they would be with the Modern Replacement Plant. Tr. Vol. II, III at 518-580; USS Ex. 6. All individual and plant-wide excess operating costs were summarized and totaled on the second page of the Excess Cost Report. The total annual “excess operating cost” penalty associated with the current layout is \*\*\*\*\*. Tr. Vol. III at 578-79; USS Ex. 6.

151. The Board finds that US Steel presented a prima facie case that Gary Works’ design results in operating inefficiencies that cause higher expenses (*i.e.*, \*\*\*\*\*) for US Steel than it would experience if Gary Works were configured in a Modern Replacement Layout where the operations would be adjacent to each other.

152. US Steel’s appraisers, E&Y, converted the annual excess cost penalty into a total excess cost penalty over the Gary Works’ remaining useful life, consistent with generally accepted appraisal methods. The excess operating costs are incurable, that is, the cost to cure far exceeds the annual penalty. Tr. Vol. I at 91-92; USS Ex. 4 at 39-40. Cost indices published by the Bureau of Labor Statistics for iron and steel mills producing the products made at Gary Works, and trends in the steel industry indicate that the excess operating costs are likely to increase by \*\*\* per year. Tr. Vol. I at 94-95; USS Ex. 4 at 40. E&Y determined the period over which the excess operating costs are likely to continue (\*\*\*\*\*) taking into account historical maintenance and capital expenditures. Tr. Vol. I at 96; USS Ex. 4 at 40. To avoid double counting of tax benefits, E&Y reduced the annual excess operating costs by the applicable tax rates. Tr. Vol. I at 97; USS Ex. 4 at 41. E&Y calculated a \*\*\* discount rate in accordance with generally accepted appraisal standards by determining the Weighted Average Cost of Capital for participants in the steel industry as of the assessment date. Tr. Vol. I at 98-99; USS Ex. 4 at 41, Addenda G and H. Because functional obsolescence was calculated based on excess operating costs for the assessment year at issue, the functional obsolescence was trended back to 1991 in order to put it on the same footing as the reproduction cost numbers. Tr. Vol. I at 100; USS Ex. 4 at 41. The Respondents did not rebut any of the foregoing steps or calculations.

153. The net result of these calculations was a total excess operating cost penalty over the remaining economic life of the Gary Works that was \*\*\*\*\* times the annual excess operating cost penalty. Tr. Vol. I at 104. A functional obsolescence penalty of \$130,441,234 is \*\*\*\*\* times the annual excess operating costs of \*\*\*\*\*, after applying generally recognized appraisal principles to determine the net present value of the operating cost penalty.

154. While the Board previously determined that Mr. Stropp’s review appraisal has no credibility, the Board also notes his review did not raise any issues about how E&Y converted the annual excess operating costs into a total amount of functional obsolescence.

155. The Board finds that US Steel made a prima facie case that the Gary Works suffered functional obsolescence of \$130,441,234 as of the assessment date due to excess operating costs associated with the existing layout.<sup>12</sup>

156. While the Respondents disagreed with US Steel's quantification of functional obsolescence due to excess operating costs, neither Lake County nor the township assessor offered any probative facts or data that might rebut the factual basis of US Steel's quantification. Although Mr. Rentschler has steel mill experience, he has no relevant qualifications regarding generally accepted appraisal standards or what those standards require to quantify obsolescence. Tr. Vol. IV at 957-60. He was not qualified to testify about the reliability or sufficiency of the Excess Cost Report for appraisal purposes.

157. With respect to the Excess Cost Report itself, the Respondents failed to offer probative facts or data – on cost information, on layouts, on distances, or otherwise – to rebut US Steel's evidence. With respect to the cost data contained in the Excess Cost Report, Mr. Rentschler did not dispute the accuracy of any cost information and he did not develop any facts or data showing the year 2000 cost information was different from what was contained in the Excess Cost Report. Tr. Vol. IV at 1013. Similarly, Mr. Rentschler did not dispute the accuracy of the distance information in any of the layouts or the Excess Cost Report. Tr. Vol. IV at 1014-16. He did not dispute the accuracy of, nor develop any facts or data suggesting alternative distances for the existing layout, the replacement layout, or any distances within the Excess Cost Report. He did not suggest that US Steel's Replacement Layout was incorrect. He did not propose an alternative layout. He did not attempt to determine the extent to which US Steel's calculation of excess costs might be incorrect. Tr. Vol. IV at 1010-11. Although Mr. Rentschler admitted that Gary Works would incur "some reduction in material handling costs" if it were reconfigured into the modern replacement layout, he offered no evidence suggesting what that reduction would be. Tr. Vol. IV at 1026; LC Ex. 36 at 13 ("The writer made no attempt to determine if there would be any potential saving with the hypothetical Gary Works. Such calculations are beyond the scope of this analysis.")

158. Rather than offering probative evidence, Mr. Rentschler offered vague criticisms about US Steel's Excess Cost Report regarding the relationship of distances between facilities and the costs of material handling. Such generalized criticisms fail to rebut the prima facie case. Mr. Rentschler did not support his criticisms with probative facts or data about actual operations. For instance, he complained that US Steel's excess cost study failed to take into account the time drivers spend waiting to load and unload, but he offered no probative facts or data about how much time, if any, drivers spend waiting. He did not perform any time studies or otherwise test his assumptions that they spend substantial time waiting. Tr. Vol. IV at 1017. His unsubstantiated assumptions, experience, and conclusory statements do not constitute substantial evidence against the prima facie case. See *Canal Square*, 694 N.E.2d at 807; *Thorntown Telephone*, 629 N.E.2d at 964. Mr. Rentschler attempted to tie his experience and assumptions to an example of "waiting time" he witnessed at Gary Works in November 2005. He saw a large "refuse truck" that he believed to be a "scrap truck" waiting to unload scrap "that ha[d] been spilled or poured on the floor of the melt shop..., they were hosing [it] with water to cool it off

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<sup>12</sup> The E&Y report originally quantified this figure at \$140,940,001. USS Ex. 4 at 41. The Board finds that US Steel only proved \$130,441,234, based on the testimony and exhibits provided at the hearing.

because the load ...[was] very hot molten steel.” Tr. Vol. IV at 990-91. In other words, Mr. Rentschler witnessed a truck loaded with molten scrap that came from one of the steel shops to a scrap yard. This example, however, was not among the excess costs identified and calculated in US Steel’s Excess Cost Report. The only scrap hauling costs relating to the steel shops in the Excess Cost Report were for scrap hauled to the steel shops, where the scrap was “consumed.” Tr. Vol. II at 536. The only scrap hauling costs associated with moves of scrap to the scrap yard were for scrap collected in bins at the hot strip mill, the pickle lines, sheet mill, hot roll finishing, plate mill and the tin mill. USS Ex. 6 at 5-10; Tr. Vol. II at 535-36. Thus, whatever Mr. Rentschler described was not within the scrap hauling category, nor was it accounted for as an excess cost by US Steel.

159. Mr. Sloan testified that the Excess Cost Report excluded the actual costs of loading and unloading because such costs are accounted for within the individual operating divisions that were not included in the central shops or scrap hauling cost centers on which the excess costs were based. Tr. Vol. III at 588-589. In contrast to Mr. Rentschler’s unsupported hypothesis that waiting time is “substantial,” Mr. Sloan offered facts to explain a strong linear relationship between hauling costs and distances. Approximately \*\*\*\*\* of the transportation costs captured in the report were for “costs related to the truck,” such as maintenance, gasoline, tires, etc. The other \*\*\*\*\* of costs was for labor. The linear relationship between truck-related costs and mileage is strong because those costs (e.g., gas, maintenance, tires, etc.) are based on mileage. Therefore, when trucks drive fewer miles, they incur proportionately lower gas and maintenance costs. With respect to the other \*\*\*\*\* of truck hauling costs attributable to driving labor, Mr. Sloan testified that drivers spend the “vast majority” of their time “driving the vehicle,” which would decrease with reductions in distances. Tr. Vol. III at 664-665; *see also* Tr. Vol. II, at 537-38 (explaining scrap hauling process and minimal time spent loading/unloading bins). Aside from offering “analogies” and questions, the Respondents offered no facts or data that contradict Mr. Sloan’s testimony.

160. Although Mr. Rentschler’s report nominally raises questions about the validity of certain adjustments in the Excess Cost Report such as energy line maintenance costs, sewer maintenance costs, EJE rail costs, and damaged coil reductions, he failed to offer any probative facts contradicting the percentage reductions in the Excess Cost Report or Mr. Anderson’s subsequent analyses confirming their reasonableness.

161. In sum, the generalized critique of US Steel’s Excess Cost Report was not supported by substantial evidence and amounted to little more than conclusory statements. It failed to impeach or rebut the prima facie case for functional obsolescence due to excess operating costs. *See Hometowne*, 839 N.E.2d at 278.

162. Moreover, the Board will not reject the Excess Cost Study because it was not “scientific.” Under generally accepted appraisal standards, appraisers use estimates for many things. Tr. Vol. III at 678-87. It is acceptable appraisal practice to use estimates in calculating replacement cost, the age-life method of depreciation, effective age, grade, and condition. Mr. Barrow’s testimony was clear:

Q: So under accepted appraisal practice, estimated costs are accepted rather than requiring the scientific data?

A: That is correct.

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Q: Do generally accepted appraisal techniques require the appraiser, in estimating functional obsolescence, [to] be any more precise or scientific than the data used in estimating replacement cost?

A: No.

Q: Did the assessment guidelines in place in 2001 require the data used in estimating functional obsolescence to be any more precise or scientific than the data used in estimating replacement costs?

A: No, it did not.

Q: Is an appraiser who is measuring functional obsolescence held to a higher standard[] of accuracy than an appraiser measuring replacement cost?

A: No, the standard would be the same.

Tr. Vol. III at 682-683.

163. If every factor in calculating assessments had to be proved to a scientific degree of accuracy, it would be impossible to operate a mass appraisal system. While accuracy of data should always be pursued, scientific precision is neither required nor attainable. The degree of detail and accuracy of data within the Excess Cost Report was sufficient for generally accepted appraisal practices and for assessment purposes. It stands unimpeached by contrary facts or data.

164. Mr. Blumenberg offered the property record cards with a summary to support his contention that the improvements received all the functional obsolescence to which they are entitled. LC Ex. 31, 32. While the Board appreciated Mr. Blumenberg's candor, the evidence failed to rebut US Steel's prima facie case quantifying functional obsolescence. Mr. Blumenberg never personally assessed a steel mill, nor has he visited the Gary Works for purposes of assessment. He last visited Gary Works more than 15 years ago (for purposes unrelated to assessment) and could not recall any details. Tr. Vol. IV at 923-24. Mr. Blumenberg testified that he could not recall any of the facts (including obsolescence-related facts) upon which the 2001 property record cards were based. Tr. Vol. IV at 930-33. Mr. Blumenberg was competent to testify regarding the record-keeping practices of his office, but he had no personal knowledge regarding the basis of the 2001 assessment. He did not know or explain the basis for obsolescence relating to Gary Works. Tr. Vol. IV at 932-33. He did not justify any of the obsolescence percentages on the property record cards. He could not testify whether the obsolescence percentages contained in the property record cards were low, high, right or wrong. Moreover, Mr. Blumenberg's testimony related to the 1995 assessment – the last year his office undertook any affirmative assessment of the property (other than to remove buildings that had been demolished). Tr. Vol. IV 865-66. He did not address any of the specific conditions of the property as of 2001. Reliance on the previous assessment is not substantial evidence to rebut US Steel's quantification of obsolescence. *Whitley Prods.*, 704 N.E.2d at 1119 n.10.

165. In sum, US Steel established an un rebutted prima facie case for the causes and quantification of functional obsolescence. US Steel quantified the functional obsolescence due to operating inefficiencies resulting from the layout of buildings at \$130,441,234. US Steel identified and quantified functional obsolescence caused by excess construction costs and under-utilized space totaling \$9,544,352.

Economic Obsolescence  
(Business Enterprise Valuation)

166. As originally submitted, the E&Y Appraisal quantified economic obsolescence at \*\*\*\*\*, using the Business Enterprise Valuation Method ("BEV"). USS Ex. 4 at 53. That appraisal used gross revenues of approximately \*. Shortly before trial, Ernst & Young learned that there had been a miscommunication and the revenue information provided by US Steel was incomplete. It should have been approximately \*. Tr. Vol. I at 108. The revised revenues increased the value of the business, including all tangible and intangible assets, from \* to \*. Tr. Vol. I at 165.

167. Only the BEV analysis of the E&Y Appraisal used the erroneous revenues. While those revenues impact the quantification of economic obsolescence under the *Inland Steel* approach,<sup>13</sup> they were not a part of, nor did they affect, any other adjustments or calculations, including functional obsolescence due to excess construction costs or underutilized space, functional obsolescence due to excess operating costs, and calculations under the *Canal Square* alternative methodology of quantifying obsolescence. Tr. Vol. I at 109-10.

168. Typically, the BEV methodology compares companies based on net earnings (profits) as well as revenues. USS Ex. 4 at 43-46. As of the assessment date, however, the steel industry was experiencing one of the most dramatic market downturns in the past 20 years. Five of the 7 largest integrated producers had negative earnings for 2000 and 2001. USS Ex. 4 at 5; Tr. Vol. I at 40. Because many of the companies used in the BEV method "did not have positive earnings, comparisons of earnings could not be used." USS Ex. 4 at 45. Given the market conditions of the steel industry, there simply were no profits to compare. That fact diminishes the ability of the approach to measure economic obsolescence.

169. When the correct revenues were used, the BEV analysis alone did not quantify economic obsolescence. Tr. Vol. I at 108-09. Accordingly, the Board finds that US Steel did not quantify economic obsolescence under the *Inland Steel* methodology.

170. The failure of the BEV methodology to quantify economic obsolescence based on gross revenues does not necessarily mean that economic obsolescence did not exist in the Gary Works in 2001. Furthermore, gross revenues of approximately \* do not automatically dispose of the claim for economic obsolescence.

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<sup>13</sup> *Inland Steel* did not involve claims of economic obsolescence, but US Steel used the term "*Inland Steel* methodology" to describe the first half of the E&Y Appraisal (USS Ex. 4 at 36-53) quantifying each source of obsolescence independently based on generally recognized appraisal principles, as opposed to the *Canal Square*-based quantification in the second half of that appraisal (USS Ex. 4 at 54-63).

171. In fact, consistent with the economic market conditions affecting the steel industry, Gary Works experienced negative operating income. \*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*. LC Ex. 9, Ex. I-10 attached. Clearly, market conditions during this period were severe and negatively impacted Gary Works.

172. The following facts are not in dispute. Between 1998 and 2001 31 steel companies filed for bankruptcy protection. USS Ex. 4 at 5. Five of the 7 largest integrated steel producers reported negative earnings for 2001 and 2002. *Id.* \*\*\*\*\*  
\*\*\*\*\*. These facts strongly support the existence of economic obsolescence, notwithstanding the failure of the BEV methodology to quantify it independently.

173. Lake County suggested that a portion of US Steel's appraisal discussing the business enterprise value (BEV) of Gary Works demonstrates that US Steel suffered no economic obsolescence and negated the functional obsolescence claim.

174. During the hearing, Mr. Stropp attempted to offer testimony regarding the BEV analysis, arguing that the corrected revenue figures indicated that Gary Works had no obsolescence whatsoever. He argued that the value was actually higher than its depreciated replacement cost. The Board gives no credence to his testimony on a topic well outside his expertise. Tr. Vol. III at 763.

175. Lake County's proposed increase to the value of the improvements above their replacement cost less physical depreciation is based upon a misunderstanding of both business enterprise valuation and the Indiana assessment system.

176. First, the BEV methodology employed by E&Y converted the gross revenues of Gary Works into an indication of value for the total assets of the business: real and personal property as well as tangible and intangible assets. USS Ex. 4 at 42-43; Tr. Vol. I at 114. The Respondents provided no basis to attribute an overall increase in business value entirely to real estate improvements.

177. The replacement cost of buildings and the physical depreciation experienced by buildings does not depend on whether a business with an enterprise value of \*\*\*\*\* or \*\*\*\*\* is the owner. Mr. Barrow explained that to the extent a business has an enterprise value in excess of its tangible asset values, the *1995 Manual* does not allow that value to affect the depreciated replacement cost (*i.e.*, remainder value) of improvements. Tr. Vol. III at 670-71.

178. If Lake County's contention that increased business values should be attributed to real property were to be accepted, then identical structures could be valued at widely different values, not based on the physical characteristics of the structures, but on the owner's wealth. There is nothing in the *1995 Manual* or Indiana case law that would support such a result.

179. There is no indication that functional obsolescence relates to the total assets of the owner. *See*, 50 IAC 2.2-10-7(e) and (f). As Mr. Stall explained, the BEV calculations "do not have anything to do with" either the excess construction costs or excess operating costs. Tr. Vol.

I at 109. Business enterprise values (total assets of the business) do not affect functional obsolescence, although they may under certain, limited circumstances demonstrate economic obsolescence. Tr. Vol. I at 114-17.

180. The *Inland* and *Canal Square* methodologies are independent, distinct methods of analyzing depreciation and obsolescence. The *Canal Square* analysis does not use the BEV calculation in any way.

### **Quantification of Obsolescence According to the *Canal Square* Analysis**

181. According to *Canal Square*, taxpayers can quantify a percentage of obsolescence by using generally recognized appraisal principles. *Meridian Towers*, 805 N.E.2d at 478 (citing *Clark*, 694 N.E.2d at 1242 n.18). An appraisal that quantifies obsolescence consistent with generally recognized appraisal principles satisfies the burden of establishing a prima facie case. See *Canal Square*, 694 N.E.2d at 807. After that point, it is incumbent on the Respondent to rebut the prima facie case. *Meridian Towers*, 805 N.E.2d at 479. See also *Hometowne*, 839 N.E.2d at 277.

182. Mr. Barrow verified that the E&Y Appraisal is a good appraisal that conforms to the Uniform Standards of Professional Appraisal Practice. It used the methodology that he recommended and that he would use. Tr. Vol. III at 675. He possesses a comprehensive knowledge of both market value and true tax value principles and techniques. His testimony was unbiased, credible and helpful.

183. An accepted methodology for quantifying obsolescence is to compare the fair market value of a property (as calculated under the income or sales comparison approach) with the depreciated replacement cost as calculated under the cost approach. See *Meridian Towers*, 805 N.E.2d 475; *Lacy Diversified Indus.*, 799 N.E.2d 1215; *Canal Square*, 694 N.E.2d at 805-07.

184. In its “Alternative Quantification of Obsolescence Based on Generally Recognized Appraisal Methods” section, E&Y “started with the replacement cost new of each of the buildings and improvements ... based on cost data from Marshall Valuation Services[.]” USS Ex. 4 at 54 Addendum L; USS Ex. 5 (Addendum B for supporting building detail). Then E&Y determined and deducted the amount of physical depreciation, concluding that “the 2001 replacement cost less physical depreciation [was] \$213,528,364.” *Id.* The E&Y Appraisal determined the value of the improvements under the Sales Comparison Approach was \$37,000,000. USS Ex. 4 at 54-62. The difference between the depreciated replacement cost and the value indicated by the sales comparison approach was \$176,528,364 and indicated that the improvements had a total obsolescence of 83%. E&Y explained its analysis in terms nearly identical to those used by the Tax Court in *Canal Square*: “we calculated the amount of obsolescence (from all causes) by computing the difference between the replacement cost less physical depreciation of the improvements and the value of the improvements as determined by the Sales Comparison Approach.” USS Ex. 4 at 54. Detailed testimony and analysis contribute to the credibility of the work and the conclusion it reached about obsolescence. Tr. Vol. I at 46-73; USS Ex. 9; USS Ex. 4 at 54-62 Addendum L; USS Ex. 5 Addendum B.



185. That obsolescence percentage applies to the remainder value. As the Tax Court has explained, “[b]ecause the definition of obsolescence under the Assessment Manual is identical to that promulgated by the appraisal profession, it is appropriate to apply [the percentage] obsolescence factor to the equivalent replacement cost less depreciation derived for [the property]... under the Assessment Manual [*i.e.*, remainder value].” *Canal Square*, 694 N.E.2d at 806-07. *See also Meridian Towers*, 805 N.E.2d at 479; *Lacy Diversified Indus.*, 799 N.E.2d at 1225. Accordingly, E&Y applied the 83% obsolescence factor to the stipulated remainder value to arrive at a true tax value for the improvements of \$34,510,000. *See USS Ex. 8*; *Tr. Vol. I* at 73. This methodology is a valid way to determine obsolescence. *Hometowne*, 839 N.E.2d at 275; *Meridian Towers*, 805 N.E.2d at 479; *Lacy Diversified Indus.*, 799 N.E.2d at 1225; *Canal Square*, 694 N.E.2d at 806-07.

186. Mr. Barrow testified regarding the specific approach followed by E&Y and outlined in *USS Ex. 9*. He reviewed each step used to quantify obsolescence under *Canal Square* and testified that “the procedure followed here would have been an acceptable method under the department’s interpretation of its rules, to quantify obsolescence using an acceptable appraisal methodology.” *Tr. Vol. III* at 678.

187. The Board finds that US Steel made a prima facie case that its improvements were entitled to an 83% obsolescence adjustment.

188. The Respondents presented no relevant, probative evidence refuting the replacement cost or depreciation for the improvements as determined by E&Y. Lake County presented a Replacement Cost and Depreciation Analysis, but it is not clear that analysis was offered to rebut E&Y’s calculation under the *Canal Square* approach. *LC Ex 39*. To the extent it might have been offered for that purpose, it is unreliable, unpersuasive and irrelevant. It does not rebut US Steel’s prima facie case for several reasons.

189. First, the cost estimate offered by Respondents is not an estimate of the replacement cost of the improvements at the Gary Works. It is for a nonexistent, far different amalgam of industrial space conceived by Mr. Stropp. *Tr. Vol. IV* at 807-11.

190. Second, Mr. Stropp’s cost estimate as of 1991 is wrong for calculating obsolescence in this case. The year 1991 has relevance to the initial calculation of reproduction cost because the 1995 cost schedules were based on costs prevailing throughout Indiana as of January 1991. The calculation of obsolescence under *Canal Square*, however, is measured as of the current assessment year.<sup>14</sup> The comparison should be between current replacement cost less physical depreciation and current market value. Lake County offered no evidence about 2001 replacement costs.

191. Third, even if Mr. Stropp's estimate of depreciation based on 1991 were relevant, it is not credible. Mr. Stropp based his depreciation estimate on economic age. *LC Ex. 39* at 2. Economic age is synonymous with effective age. While Mr. Stropp admitted that knowledge of both condition and utility were necessary to estimate effective age (and thereby depreciation) he lacked knowledge about either one:

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<sup>14</sup> "Current" relates to the appealed assessment, which in this case is 2001.

Q: But in order to measure effective age you need to know the condition of the buildings, correct?

A: Correct.

Q: And you need to know their utility, correct?

Q: That needs to be measured as of the effective date of the appraisal or estimate; correct?

A: That's correct.

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Q: Now, you estimated an effective age of these buildings as of 1991, didn't you?

A: That's correct.

Q: You don't know what the condition of the buildings were [sic] in 1991; do you?

A: That is correct.

Q: You don't know how useful or what their utility was in 1991; do you?

A: That's correct.

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Q: So you reduced the actual age of the buildings to an effective age based on their condition and utility correct?

A: Correct.

Q: Their condition and utility that [as] they existed 13 years before you saw them?

A: Correct.

Tr. Vol. IV at 819-820.

192. The Board finds that Mr. Stropp's estimate of replacement cost and depreciation of a building that did not exist, conducted in a manner that is not reliable, for an irrelevant date is not relevant or credible evidence. It does not rebut anything.

193. Lake County questioned the use of bankruptcy sales, but offered no evidence demonstrating that the information Mr. Stall relied on from those sales was incorrect or unreliable. Again, mere questioning of a witness, without offering contrary evidence, is insufficient to impeach or rebut anything. *See Hometowne*, 839 N.E.2d at 278 (noting that open-ended questions fail to impeach or rebut evidence identifying and quantifying obsolescence).

194. Both Mr. Stall and Mr. Barrow concluded that good appraisal practice permits considering bankruptcy sales in this case because of the extraordinary conditions of the steel industry and the number of steel mills that were for sale in bankruptcy. As of the appraisal date, bankruptcies in the steel industry were the norm rather than the exception. Tr. Vol. I at 56. Such steel mills are marketed on a global basis, giving them wide exposure and producing bids from both national and international buyers. Tr. Vol. I at 57. Knowledgeable professionals such as investment bankers market them. Tr. Vol. I at 57. Moreover, a bankruptcy court, a bankruptcy trustee, and a creditors committee with an interest in the outcome of the sale and a motive to maximize the price monitor those sales. Tr. Vol. I at 56-57. Bankruptcy sales of steel mills have

produced “bidding wars” that maximized values. For example, the bankruptcy sale of National Steel’s Great Lakes facility, one of the comparable sales used by E&Y, “took place in a bidding war ... between AK Steel and United States Steel,” that produced increasing bids for the property. The former president of National Steel confirmed that the price paid in bankruptcy was over \*\*\*\*\* more than US Steel had offered a year before the bankruptcy. Tr. Vol. I at 56.

195. Mr. Barrow reinforced this point by explaining that “bankruptcy sales played an important part of the market conditions that were existing during that period of time.” Tr. Vol. III at 688. He pointed to the fact that the bankrupt properties were available for purchase during the relevant time and that “a potential buyer who [was] looking for an integrated steel mill would be looking at those mills as potential properties to purchase.” Tr. Vol. III at 688-89.

196. Mr. Stropp stated that it was inappropriate to consider bankruptcy sales, but his statement was completely conclusory. The only support mentioned in his testimony was that the buyer purchased the properties “specifically because they were financially distressed.” Tr. Vol. III at 748. Without more facts or explanation, this point does not rebut US Steel’s case.

197. The use of bankruptcy sales is permissible where the sales are representative of the market conditions affecting the industry and subject property:

Unlike the general rule where bankruptcy sales represent exceptional circumstances, in the steel industry as of the assessment date, bankruptcy was the rule. Approximately 67 percent of the integrated steel making capacity was in bankruptcy, and over 40 steel making companies, including 5 of 7 integrated manufacturers, had gone into bankruptcy. Moreover, there are a number of countervailing reasons that the price obtained in bankruptcy represents the most consideration the property could obtain in the market.

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While an appraiser generally does not rely on or assign significant weight to bankruptcy sales in the sales comparison approach, in light of the conditions in the steel industry on the assessment date, the number of companies in bankruptcy and the fact that bankruptcy sales were in fact the market, it is under these circumstances appropriate to consider bankruptcy sales.

*US Steel v. DLGF; Lake County v. DLGF*, Docket Nos. 45-001-02-9-3-00001, *et seq.*, 45-001-02-9-3-00036A (IBTR Final Determination Findings Conclusions, ¶¶63, 115).

198. Alternatively, even if reliance is placed exclusively on the one non-bankruptcy sale (*i.e.*, the sale of Inland Steel to Ispat), the resulting valuation for the Gary Works improvements would be \$49,000,000. Tr. Vol. I at 71-72.<sup>15</sup>

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<sup>15</sup> The data necessary for that calculation is clearly set forth in the E&Y appraisal, USS Ex. 4 at 60-61. Based solely on the Inland Steel transaction, the value of building and site improvement per ton of capacity would be \*\*\*\*\*  
\*\*\*\*\* Table 4 of USS Ex. 4 at 60). The value of building and site improvements per square foot would be \*\*\*\*\*  
\*\*\*\*\* Table 5 of USS Ex. 4 at 60). Mr. Stall reconciled those values at \$49,000,000. Tr. Vol. at 71-72.

## Reconciliation of the Inland Steel and the Canal Square Approaches to Value

199. Lake County questioned the fact that the appraisal did not originally reconcile the conclusions under the *Inland Steel* approach with the conclusions obtained under the *Canal Square*-based “alternative quantification of obsolescence.” Such questioning alone does not constitute substantial evidence to rebut the unimpeached evidence that the Gary Works suffered an 83% obsolescence depreciation factor based on the causes identified in the appraisal report and established at the hearing.

200. Implicit in Lake County’s questions was the argument that E&Y subsequently could not reconcile to another value conclusion based on additional information. Lake County contends that because E&Y’s conclusion of value originally equaled the value conclusion under the *Inland* approach based on information known at the time USS Ex. 4 was prepared, E&Y must apply that indication of value, regardless of any additional information. Lake County’s argument is unpersuasive.

201. The *Inland Steel* methodology indicated a value of \$85 million. USS Ex. 4 at 53. The *Canal Square* methodology indicated value of \$77 million. USS Ex. 4 at 63 (indicated value of improvements \$34 million plus \$43 million land value equals \$77 million). Mr. Stall considered both approaches and noted that the two values were “quite frankly synonymous.” Tr. Vol. I at 122. With so little difference, he selected the higher value for his ultimate opinion of value.

202. By the time of the hearing, the parties had entered into stipulations concerning land and improvement values, the Excess Cost Report had been revised, and the miscommunication regarding revenues had been discovered. Each of those developments had an effect on the *Inland Steel* methodology. Together they altered the result under the *Inland Steel* method to \$105 million. See USS Ex. 8. Because the *Canal Square* method draws on sales comparisons that were unchanged, the result under the *Canal Square* methodology remained at \$77 million. Consequently, the two value indications became approximately 36% different, as opposed to the 10% difference that existed in the original report. It is not uncommon for two valuation methodologies to deviate. When they do, an appraiser should reconcile the disparate values. Tr. Vol. I at 118.

203. Under these circumstances, Mr. Stall reconciled the two indications of value and selected \$90 million as the ultimate opinion of value. In reconciling, he “looked at the strengths of each of the approaches.” Tr. Vol. I at 119. The strengths of the *Canal Square* method were its basis on “real transactions where real dollars changed hands,” and its “detailed data at the level on comparable sales that is just typically not available. Tr. Vol. I at 119. The strengths of the *Inland Steel* method were its detailed information about the actual buildings and a detailed excess operating cost study. Tr. Vol. I at 120.

204. Given that the two original indications of value were quite close, there was no error (and certainly no prejudice to Lake County) in choosing the higher value in the original report. In addition, there was no error in reconciling the two approaches once the difference between the two became more pronounced.

205. In sum, US Steel made an un rebutted prima facie case quantifying functional obsolescence under *Inland Steel* and quantifying all forms of obsolescence under the *Canal Square* methodology. Specifically, it was not error for US Steel to reconcile those two approaches to establish a final value.

**ISSUE 5: Did the Board properly exclude evidence of a settlement?**

206. Lake County and the Calumet Township Assessor assert that the Board should have allowed them to introduce Lake County Exhibit 30, a copy of the settlement reached by Lake County, the Department of Local Government Finance and U S Steel regarding U. S. Steel's 2001 business personal property appeal. The Board sustained U. S. Steel's objection to admitting the settlement. Tr. Vol. IV at 907-910.

207. The judicial policy of Indiana strongly favors settlement agreements. They allow courts to operate more efficiently and allow the parties to fashion the outcome of their disputes through mutual agreement. See *United States Steel Corp. v. Lake County Property Tax Assessment Bd. of Appeals, et al.*, 45T10-0401-TA-2, 2004 Ind. Tax LEXIS 61, July 26, 2004.<sup>16</sup>

208. Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227, (Ind. 2005).

209. The strong policy justification for denying settlements precedential effect in a property tax case is that allowing parties to use the settlement would have a chilling effect on the incentive of the parties to resolve cases outside of the courtroom. *Id.* at 1228.

210. The settlement involved the assessment of business personal property, not real property. Neither the settlement nor the return that gave rise to the settlement are relevant to the assessment of U. S. Steel's real property. Therefore, the Board properly sustained US Steel's objection at the hearing.

**CONCLUSIONS**

211. The Board concludes that US Steel established a prima facie case for the true tax value of the Gary Works land being \$42,290,000 after taking into account the negative influence factor of known, specific environmental contamination. Expert testimony by appraisers largely corroborated this value. The Respondents failed to offer substantial evidence in rebuttal.

212. The parties stipulated "that the Indiana Board of Tax Review should use \$203,000,000 as the value of all improvements at Gary Works after application of scheduled depreciation pursuant to the Assessment Manual" subject to the submission of evidence

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<sup>16</sup> The Board notes that this decision is designated as "not for publication," which means that it should not be cited as authority. There is ample authority to support this proposition independently (some of which was cited by the Tax Court), but because the same parties were involved, it seems particularly appropriate to cite to what the Tax Court has already told them about the policy favoring settlements.

regarding additional obsolescence by any party. The Board accepts that stipulation as the remainder value and as a starting point for analysis of functional and economic obsolescence.

213. The Board concludes that US Steel presented a prima facie case for the existence of functional obsolescence resulting from excess construction costs, under-utilized space, and excess operating costs due to inefficient layout of buildings. The Respondents failed to rebut the existence of functional obsolescence from these causes.

214. The Board concludes that US Steel presented a prima facie case as to the existence of economic obsolescence resulting from excess global capacity for steel, competition from mini mills and foreign imports and decreased demand from the automotive sector. The Respondents failed to rebut the existence of economic obsolescence from these causes.

215. The Board concludes that US Steel established a prima facie case quantifying obsolescence using two distinct methodologies.

216. Using generally recognized appraisal methods identified in *Inland Steel*, US Steel quantified functional obsolescence due to excess construction costs, under-utilized space and excess operating costs at \$139,985,586. When that is deducted from the stipulated remainder value of \$203,000,000, the resulting true tax value of the improvements is \$63,014,414 for the improvements. Neither Lake County nor the Calumet Township Assessor rebutted the prima facie case quantifying functional obsolescence under *Inland Steel*.

217. Using generally recognized appraisal methods identified in *Canal Square*, US Steel quantified obsolescence from all causes at 83%. When this obsolescence percentage is applied to the stipulated value of \$203,000,000, it indicates total obsolescence of \$168,490,000, leaving a true tax value of \$34,510,000 for the improvements. Neither Lake County nor the Calumet Township Assessor rebutted the prima facie case quantifying obsolescence from all causes under *Canal Square*.

218. Reconciling the two valuations for improvements and including the value for the land, the Board concludes that the true tax value for the real property (land, buildings and site improvements) at Gary Works was \$90,000,000 as of March 1, 2001.

219. Neither Lake County nor the Calumet Township Assessor presented sufficient evidence to convince the Board that US Steel's appraisal evidence or quantification methodologies were erroneous.

220. The law and the facts are with US Steel and against Lake County and the Calumet Township Assessor.

IT IS THEREFORE ORDERED, that the true tax value for the real property at Gary Works for the March 1, 2001 assessment is \$90,000,000.

February 23, 2007

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Terry G. Duga, Commissioner  
Indiana Board of Tax Review

## IMPORTANT NOTICE

- APPEAL RIGHTS -

**You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.**

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