

REPRESENTATIVE FOR PETITIONERS:
Tracey Carboni, Taxpayer Representative

REPRESENTATIVES FOR RESPONDENT:
Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kimball International Inc.,)	Petition No.: 59-002-02-1-3-00009
)	Parcel: 002011035000
Petitioner,)	
)	
v.)	
)	County: Orange
French Lick Township Assessor,)	Township: French Lick
)	Assessment Year: 2002
Respondent.)	

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

March 14, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

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

Do an appraisal of the subject property and a multiple regression analysis of sales of comparable properties submitted by the Petitioner demonstrate that the Respondent assessed the subject property for an amount in excess of its market value-in-use?

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Tracey Carboni, tax representative for Kimball International, Inc., filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (“Form 131 Petition”), petitioning the Board to conduct an administrative review of the subject property’s assessment for 2002. The Form 131 Petition was filed on November 19, 2004. The Orange County Property Tax Assessment Board of Appeals (PTABOA) issued its final determination on October 21, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and Ind. Code § 6-1.5-4-1, a hearing was held on August 30, 2005, in Paoli, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Tracey Carboni, Tax Representative
Donald P. Feicht, Jr., Appraiser
Charlotte Schepers, Tax Analyst, Kimball International

For the Respondent:

Tim VanKirk, MAI

5. The following persons attended the hearing but did not present testimony.

Paula Strahle, Property Tax Director, Kimball International
Linda Reynolds, Orange County Assessor
Kirk Reller, Technical Advisor, Orange County
Marilyn Meighen, Attorney for the Respondent

6. The following exhibits were presented for the Petitioner:

- Petitioner Exhibit 1 – Form 11 from 2002,
- Petitioner Exhibit 2 – Original 2002 County Property Record Card,
- Petitioner Exhibit 3 – Copy of Form 130,
- Petitioner Exhibit 4 – Additional issues discussed and submitted to the PTABOA,
- Petitioner Exhibit 5 – Kimball property record card submitted to the PTABOA,
- Petitioner Exhibit 6 – Response to the PTABOA’s request dated July 13, 2004,
- Petitioner Exhibit 7 – Notice of Final Assessment Determination (Form 115),
- Petitioner Exhibit 8 – PTABOA property record card,
- Petitioner Exhibit 9 – Copy of Form 131,
- Petitioner Exhibit 10 – Pages from the Indiana Real Property Assessment Manual and Guidelines,
- Petitioner Exhibit 11 – Hart Corporation Letter dated July 11, 2002,
- Petitioner Exhibit 12 – Hart Corporation Letter dated August 29, 2003,
- Petitioner Exhibit 13 – Hart Corporation Letter dated November 2, 2004,
- Petitioner Exhibit 14 – Various regression analysis reports,
- Petitioner Exhibit 15 - Comparable property sales, listings,
- Petitioner Exhibit 16 – Appraisal.¹

7. The following exhibits were presented for the Respondent:

- Respondent Exhibit 1 – Highlighted page 18 from *USPAP 2005 Edition*.

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

- Board Exhibit A – The Form 131 Petition and attachments,
- Board Exhibit B – Notice of Hearing dated June 29, 2005,
- Board Exhibit C – Notice of Appearance by Marilyn Meighen,²
- Board Exhibit D – Sign-in sheet.

¹ The Petitioner lists the following documents on its Exhibit List that it did not introduce at the hearing: “Brief summaries of the main points[,] Cost Approach analysis using Marshall and Swift[,] Sales comparison analysis[,] and accrued depreciation analysis.”

² Ms. Meighen purported to appear on behalf of both the French Lick Township Assessor and the Orange County PTABOA. *Board Ex. C*. In her appearance, Ms. Meighen contends that the Orange County PTABOA is a named respondent because it made changes to the assessment as a result of the local appeal process. *Id.* The PTABOA, however, is not a party to the appeal. Pursuant to Ind. Code § 6-1.1-15-3(a), “[a] township assessor, county assessor, member of a county property tax assessment board of appeals, or county property tax assessment board of appeals that made the *original determination* under appeal under this section is a party to the review under this section to defend the determination.” I. C. § 6-1.1-15-3(a) (emphasis added). While this language is ambiguous, the Board interprets it to mean that the assessing official that made the initial assessment determination is the appropriate party to the appeal. The French Lick Township Assessor made the original assessment determination in this case and, therefore, is the only Respondent.

9. The subject property is classified as an industrial/light manufacturing property, as shown on the property record card for parcel #002011035000.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2002, the PTABOA determined the assessed value of the property to be:
Land: \$164,600 Improvements: \$2,430,600 Total: \$2,595,200.
12. For 2002, the Petitioner contends the assessed value of the property should be:
Total: \$1,685,000.³

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

³ This was the amount requested by the Petitioner at the hearing. *Carboni testimony*. On the Form 131 Petition, the Petitioner requested values of \$164,600 for land and \$1,835,400 for improvements for a total value of \$2,000,000. *Board Ex. A*.

15. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
16. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Parties’ Contentions

17. The Petitioner presented the following evidence and argument in support of its position:
 - a) Donald Feicht, Jr., appraised the subject property and prepared a Summary Report of a Retrospective Complete Appraisal (“Appraisal Report”). *Feicht testimony; Pet’r Ex. 16*. Mr. Feicht’s Appraisal Report is dated August 19, 2005, and he estimates the market value of the subject property to be \$1,685,000 as of March 1, 2002. *Id. at 3*. Mr. Carboni, however, testified that the appraisal valued the subject property as of January 1, 1999, using data in that relative timeframe. *Carboni testimony*.
 - b) Mr. Feicht’s appraisal utilized three methods of valuation: the cost approach, the income approach, and the sales comparison approach. *Pet’r Ex. 16, passim*. Mr. Feicht estimated the market value of the subject property to be \$1,800,000 using the cost approach, \$1,700,000 using the income approach, and \$1,650,000 using the sales comparison approach. *Id. at 41*.
 - c) In estimating the value of the subject property under the income approach, Mr. Feicht obtained a weighted capitalization rate using information from the Investor Survey for 1st Quarter, 2001, available at RealtyRates.com. *Id. at 40*. Mr. Feicht computed a capitalization rate under three scenarios – optimistic, likely, and pessimistic - and assigned a level of probability to each scenario. *Id.* Mr. Feicht arrived at a weighted capitalization rate of 9.3911%. *Id.*

- d) Mr. Feicht added 1.292% to his weighted capitalization rate account for taxes. *Id. at 39-40*. Mr. Feicht also added an additional 2.5% to his weighted capitalization rate to reflect a decrease in tenant desirability. *Id. 40; Feicht testimony*. Mr. Feicht testified that he felt the addition of 2.5% was necessary because the rates he used to determine the weighed capitalization rate were based upon class A and class B buildings, whereas the subject property is not an investment grade property. *Feicht testimony*. After adding all of the above-described components, Mr. Feicht arrived at a capitalization rate of 13.183%, which he used to capitalize the expected net operating income for the subject property. *Pet'r Ex. 16 at 40*.
- e) In reconciling his findings to a final estimation of value, Mr. Feicht gave the greatest weight to the sales comparison approach with support from the income approach, "at least as to a test of reasonableness." *Pet'r Ex. 16 at 41*. Mr. Feicht deemed the cost approach to be the most unreliable of the three approaches based upon the age and location of the subject property and the inability to estimate all forms of depreciation. *Id.*
- f) Fee appraisals, such as the one prepared by Mr. Feicht, may be considered in a property tax appeal if they are based on the market value-in-use standard. *Carboni argument; Pet'r Ex. 10 at 4-5*.
- g) The Petitioner also submitted what the parties refer to as a "multiple regression analysis." *Pet'r Ex. 14*. Mr. Carboni described the multiple regression analysis as a computer generated report that "basically draws your trends, lines, and measures from the trend to the plotted points of the difference of error." *Carboni testimony*. He also indicated that the analysis measures "central tendencies" of listing prices to develop a "measure of property wealth." *Id.; Pet'r Ex. 14*. The multiple regression analysis was based upon asking prices and actual sale prices of industrial properties, as well as upon information concerning the age, size, and height of improvements, the number of offices contained in those improvements, the relative distances of the properites to expressways, and "market conditions." *Carboni testimony; Pet'r Exs. 14-15*. The report further shows that the assessment is excessive and is not based on a measurement of property wealth. *Carboni testimony*. The report shows that the value

- for the subject property as of January 1, 1999, should be \$1,860,000. *Id.*; *Pet'r Ex. 14.*
- h) The Petitioner also submitted several letters from Robert H. Blackman, President of Hart Corporation. *Pet'r Exs. 12-14.* Hart Corporation is the company that listed the subject property for sale beginning in 2002. *Id.*; *Carboni testimony.*
 - i) In a letter dated July 11, 2002, Mr. Blackman indicated that it would be difficult to market the subject property. *Pet'r Ex. 11.* Among other things, Mr. Blackman indicated that adding so much space to the market in a small industrial community such as French Lick “is a real problem.” *Id.* Mr. Blackman further indicated that, pending a tour of the facility, it appeared that the subject property ultimately would sell “in the \$4.00 per square foot range.” *Id.*
 - j) In a letter dated August 29, 2003, Mr. Blackman indicated that, based on comparable sales around February 2002 the value of the subject property was “\$12.00 per square foot for a Mr. Right, \$10.00 to the general market, and \$6.00 per square foot on the low side.” *Pet'r Ex. 12.* Based on that analysis, the asking price had been set “just above the Mr. Right value.” *Id.* Mr. Blackman further indicated that the market had changed dramatically since that time. *Id.* According to Mr. Blackman, the continued closing of manufacturing plants in the country had caused “a great deterioration in values,” particularly in smaller, more remote areas. *Id.* Mr. Blackman concluded that it was time to change the asking price for the subject property and suggested that \$8.00 per square foot would be a good “starting point.” *Id.*
18. The Respondent presented the following evidence and argument in support of its position:
- a) Neither the appraisal report nor the multiple regression analysis submitted by the Petitioner is credible or reliable. *Meighen argument.* Moreover, in presenting its evidence, the Petitioner is looking at the property as it is “today.” *Id.* The rules governing assessment of real property, however, require the subject property to be valued as it existed on March 1, 2002, and for that March 1, 2002, value to be related to a value as of January 1, 1999. *Meighen argument.*

- b) Mr. Feicht is a salaried employee of Baden Tax Management (Baden). *Feicht testimony*. The Petitioner's representative, Mr. Carboni, is also employed by Baden, and Baden is being compensated on a contingency basis. *See Schepers testimony; Feicht testimony*. Moreover, Mr. Feicht does not have an Indiana appraiser's license. *VanKirk testimony*.
- c) Mr. Feicht assumed that the highest and best use of the subject property, as vacant, would be for industrial development. *VanKirk testimony; Pet'r Ex. 16 at 22*. Mr. Feicht further assumed a vacancy rate of 35% in determining a net operating income for the subject property under his income approach. *VanKirk testimony; Pet'r Ex. 16 at 40*. No developer would look at a property and think that its highest and best use would be as industrial property if the developer assumed that an industrial building would be relegated to 65% occupancy. *VanKirk testimony*.
- d) Nowhere in his Appraisal Report did Mr. Feicht explain why he added a 2.5% increment to his capitalization rate. *VanKirk testimony*. The lack of any explanation in that regard renders the Appraisal Report misleading. *Id.* The Uniform Standards of Professional Appraisal Practice (USPAP) require that an appraisal report not be misleading. *Id.* Moreover, although Mr. Feicht testified at the hearing as to his reason for adding the 2.5% increment, that testimony was insufficient to justify his actions. Mr. Feicht testified that he based the 2.5% increment on the fact that the subject property was not an investment grade property. *Feicht testimony*. Mr. Feicht, however, already used a pessimistic assumption in computing his weighted capitalization rate, and he assigned a forty percent (40%) probability to that assumption. *VanKirk testimony; Pet'r Ex. 16 at 40*.
- e) Mr. Feicht's obsolescence calculation under the cost approach depends directly on his calculation under the income approach. *VanKirk testimony*. Mr. Feicht simply deducted the amount he derived under the income approach from the amount he derived under the cost approach to determine obsolescence. *Id.*
- f) Mr. Feicht did not inspect the subject property before signing the Appraisal Report. *Van Kirk testimony*. An appraiser is required under USPAP to look at a property before completing his or her appraisal. *Id.* Mr. VanKirk testified that, if Mr. Feicht could not gather information about the subject property himself, he was required to

- use an extraordinary assumption pursuant to USPAP Standard Rule 1-2(g). *VanKirk testimony; Resp't Ex. 1*. Mr. Feicht's failure to state in his appraisal report that he was using an extraordinary assumption was misleading. *VanKirk testimony*.
- g) Under USPAP Standard Rule 1-2(f), the scope of an appraiser's work is acceptable only when it is consistent with the expectations of participants in the market for the same or similar appraisal services. *Van Kirk testimony; Resp't Ex. 1*. Market participants expect appraisers to examine properties that they are engaged to appraise. *VanKirk testimony*. Mr. VanKirk has been appraising properties for twenty-eight (28) years, and there were only two properties that he did not examine, both of which involved fire losses. *VanKirk testimony*.
- h) Mr. Feicht's appraisal also is misleading because, although it purports to be retrospective to 2002, it is tempered with information from 2003-2005. *VanKirk testimony; Meighen argument*. An appraiser may use information developed subsequent to the valuation date if those trends were apparent as of the valuation date. *VanKirk testimony*. In this case, the trends relied upon by Mr. Feicht were not apparent as of the valuation date. *Id.* Mr. VanKirk sold buildings containing a half-million square feet approximately three months prior to the valuation date. *Id.* Hart Corporation is a respected marketer, and it would not have listed the subject property for \$2.5 million in 2002 if it did not think that it could sell the property for that amount. *Id.* In fact, Hart Corporation listed the subject property at \$2.5 million until the last part of 2004. *Meighen argument*. The 2002 Real Property Assessment Manual states that the true tax value of a property may be thought of as the "ask price" of the owner, because that price represents how much utility must be replaced in order to induce the owner to abandon the property. *Meighen argument*. Thus, the Petitioner's ask price of \$2.5 million supports the current assessment of \$2,595,200. *Id.*
- i) The multiple regression analysis submitted by the Petitioner does not use some of the comparable properties submitted by the Petitioner. *VanKirk testimony; Pet'r Ex. 14*. The broader the sample used in regression analysis, the better the analysis. *VanKirk testimony*.

19. The Petitioner presented the following evidence and argument in rebuttal to the Respondent's position.
- a) Mr. Feicht testified that he was not required to obtain a temporary Indiana appraiser's license because the appraisal did not involve a federally regulated transaction. *Feicht testimony*.
 - b) Mr. Feicht also testified that qualified individuals often assist appraisers by inspecting properties. *Feicht testimony*. In this instance, Mr. Feicht relied upon information provided by Mr. Carboni, an Indiana tax representative who is experienced in making property inspections. *Id.*
 - c) Mr. Feicht testified that his use of a "pessimistic" scenario in computing his weighted capitalization rate did not completely account for the fact that the subject property is not an investment grade property. *Feicht testimony*. Mr. Feicht, however, acknowledged that it was a mistake not to explain in his report the basis for his addition of 2.5% to the weighted capitalization rate. *Id.*
 - d) Although Hart Corporation listed the subject property for \$2.5 million Mr. Blackman's letter of August 29, 2003, indicates that Hart Corporation had viewed the sales range as being between \$6.00 and \$12.00 per square foot when it originally looked at the subject property in February 2002. *Carboni argument*. Everything the Petitioner has presented indicates a value within that range. *Id.*

Discussion

20. The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real property as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, the appraisal profession traditionally has used the following three methods to determine a property's market value-in-use: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (Guidelines), to assess real property.

21. A property's market value-in-use, as ascertained through application of the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *see also Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 2006 Ind. Tax LEXIS 4 (Ind. Tax 2006). A taxpayer, however, may use an appraisal prepared in accordance with the Manual's definition of true tax value and Uniform Standards of Professional Appraisal Practice (USPAP) to rebut the presumption that an assessment is correct. MANUAL at 5; *Kooshtard Property VI*, 836 N.E.2d at 505, 506, n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with [USPAP].”).
22. The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. This provision has significant consequences for appraisals performed substantially after that date. In order for such an appraisal to constitute probative evidence of a property's true tax value, there must be some explanation as to how the appraisal relates to the property's market value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
23. The Petitioner submitted a Summary Report of a Retrospective Complete Appraisal (Appraisal Report) prepared by Mr. Feicht, a certified appraiser licensed in Ohio and Florida. *Pet'r Ex. 16*. On its face, the Appraisal Report indicates that it was prepared in accordance with USPAP. *Pet'r Ex. 14, at 42*. Moreover, Mr. Feicht estimated the market value of the subject property using the cost approach, the income approach and the sales comparison approach, all of which the Manual expressly recognizes as generally accepted methods of appraisal. MANUAL at 3, 13-15.

24. In addition, there is at least some evidence in the record to relate Mr. Feicht's opinion of value for the subject property to a value as of January 1, 1999. While Mr. Feicht rendered an opinion of value as of March 1, 2002, he used data "in the relative time frame of 1999." *Carboni testimony*. For example, Mr. Feicht examined economic rents received by comparable properties in determining an appropriate level of net operating income to capitalize in computing the subject property's market value under the income approach. Mr. Feicht, however, adjusted those rents to January 1, 1999, values using the consumer price index. *See Pet'r Ex.16 at 38*. Similarly, in preparing his sales comparison analysis, Mr. Feicht adjusted the sale prices of comparable properties to reflect values as of January 1, 1999. *Pet'r Ex. 16 at 28, 30*.
25. Thus, the Appraisal Report prepared by Mr. Feicht constitutes probative evidence of the market value-in-use of the subject property.
26. In addition, the Petitioner was unable to sell the subject property for \$2.5 million, despite listing the property with what the Respondent's witness conceded was a respected marketer of industrial properties. *Pet'r Exs. 11-13; see also, VanKirk testimony*. The Petitioner first listed the subject property at that price in 2002, near the time of the relevant assessment date of March 1, 2002. The subject property was vacant both at the time of listing and on March 1, 2002. Thus, the Petitioner's inability to sell the subject property for \$2.5 million is at least some evidence that the subject property's market value-in-use was less than its assessed value of \$2,595,200. The Board, however, gives little weight to the Petitioner's continued inability to sell the subject property over the next several years. The continued vacancy of the property likely affected its market value, and the market for industrial properties may have changed as time passed. Thus, the Board assigns no weight to the fact that the Petitioner subsequently lowered its asking price to \$1.5 million in 2004.
27. The Petitioner's reliance on its multiple regression analysis is problematic. Mr. Carboni testified that a computer software program generated the regression analysis based upon information he provided for various properties throughout Indiana. *Carboni testimony*;

Pet'r Exs. 14-15. That information included things such as sale prices, building areas, building heights, and relative distances to expressways. *Id.* Mr. Carboni, however, did not adequately explain the methodology applied by the software program in preparing the multiple regression analysis. Mr. Carboni testified that the software program “basically draws your trends, lines, and measures from the trend to the plotted points of the difference of error,” and that the multiple regression analysis measures “central tendencies” of listing prices to develop a “measure of property wealth.” *Carboni testimony.* Moreover, Mr. Carboni did not profess to have any significant expertise either in statistical analysis generally or in the application of the software used to create the multiple regression analysis specifically. Instead, Mr. Carboni testified that he had taken some courses in statistics from the IAAO⁴ and that he had done “a little training” with the software. *Carboni testimony.*

28. The multiple regression report, however, appears to represent a sophisticated statistical analysis of the data supplied by Mr. Carboni. Indeed, the Seventh Circuit Court of Appeals has observed that a multiple regression analysis is “subject to misuse, and thus must be employed with great care.” *Griffin v. Bd. of Regents of Regency Universities*, 795 F.2d 1281, 1289 n. 15 (7th Cir. 1986) (quoting *Wilkins v. University of Houston*, 654 F. 2d 388, 407 (5th Cir. 1981) (addressing the use of a multiple regression analysis in an employment discrimination action). Mr. Carboni’s failure to explain coherently the methodology employed by the software program in generating the multiple regression analysis deprives both the Board and the Respondent of the ability to assess its reliability. The Board therefore assigns no evidentiary weight to the multiple regression analysis.
29. Nonetheless, the Petitioner established a prima facie case of error in assessment based upon the Appraisal Report and Hart Corporation’s unsuccessful attempts to sell the subject property for \$2.5 million. The burden therefore shifted to the Respondent to impeach or rebut the Petitioner’s evidence.

⁴ Although Mr. Carboni did not provide the full name of the organization, the Board assumes he was referring to the International Association of Assessing Officers.

30. The Respondent attacks the reliability of the Appraisal Report and the credibility of the appraiser, Mr. Feicht, on a number of grounds. First, the Respondent points to the fact that Mr. Feicht does not possess an Indiana appraiser's license. The Respondent did not clarify why Mr. Feicht's lack of an Indiana license detracts from his credibility, other than Mr. VanKirk's testimony that licensed Indiana appraisers are required to conform to USPAP. *VanKirk testimony*. Any failure by Mr. Feicht to conform to USPAP, however, would detract from his credibility regardless of whether he was licensed in Indiana. This is especially true given that Mr. Feicht purports to comply with USPAP in his Appraisal Report. Nonetheless, Mr. Feicht's failure to obtain even a temporary license shows at least some lack of care on the part of Mr. Feicht and detracts somewhat from the reliability of his opinion of value.
31. Next, Mr. Feicht testified on cross-examination that he is a salaried employee of Baden Tax Management, which is being compensated by the Petitioner on a contingency fee basis. *Feicht testimony; Schepers testimony*. The Respondent apparently contends that this compensation arrangement detracts from Mr. Feicht's credibility because his employer has a financial stake in the outcome of the case. While in the abstract this employment relationship poses at least a danger that Mr. Feicht would not be able to appraise the subject property objectively, the Respondent's own witness testified to his belief that such an arrangement would not prevent Mr. Feicht from rendering an objective opinion of value as long as he followed USPAP. *See VanKirk testimony*. The Board therefore assigns little weight to the fact that Mr. Feicht is employed by an entity that stands to gain financially from a determination reducing the subject property's assessment.
32. The Respondent next attacks the reliability of Mr. Feicht's opinion of value on grounds that he did not personally inspect the subject property. The Respondent points to the comment following USPAP Standards Rule 1-2(e)(v), which states, in part, "[a]n appraiser must obtain the necessary information before proceeding, or where possible, in compliance with Standards Rule 1-2(g), use an extraordinary assumption about such information." *Resp't Ex. 1*. According to Mr. VanKirk, if Mr. Feicht could not inspect

the property himself, USPAP required him to state that he was using an extraordinary assumption. *VanKirk testimony*. In Mr. VanKirk's opinion, Mr. Feicht's failure to do so rendered the Appraisal Report misleading. *VanKirk testimony*.

33. Mr. Feicht's reliance on information provided by Mr. Carboni in lieu of personally inspecting the property does not render his opinion of value inherently unreliable. As explained by Mr. Feicht, Mr. Carboni is an Indiana tax representative with many years experience in inspecting buildings. *Feicht testimony*. Moreover, the Board credits Mr. Feicht's testimony that appraisers commonly rely upon the assistance of qualified individuals to inspect properties. *Id.*

34. Given Mr. Feicht's testimony, his actions appear to be consistent with the comment following USPAP Standards Rule 1-2(e)(v). Indeed, when read in its entirety, that comment provides:

If the necessary subject property information is not available because of assignment conditions that limit research opportunity (such as conditions that preclude an onsite inspection *or the gathering of information from reliable third-party sources*), an appraiser must:

- obtain the necessary information before proceeding, or
- where possible, in compliance with Standards Rule 1-2(g), use an extraordinary assumption about such information.

An appraiser may use any combination of a property inspection and documents, such as a physical legal description, address, map reference, copy of a survey or map, property sketch, or photographs, to identify the relevant characteristics of the subject property. Identification of the real property interest appraised can be based on a review of copies or summaries of title descriptions or other documents that set forth any known encumbrances. *The information used by an appraiser to identify the property characteristics must be from sources the appraiser reasonably believes are reliable.*

Resp't Ex. 1(emphasis added). Thus, the comment appears to allow appraisers either to inspect a property themselves or to rely upon information provided by third parties in lieu of personally inspecting the property, as long as that information is reliable. Only where

an appraiser is unable to obtain information through one of those methods must he resort to using an extraordinary assumption about the missing information.

35. The Respondent also takes issue with Mr. Feicht's application of the income approach in valuing the subject property. Specifically, the Respondent's chief witness, Mr. VanKirk, questioned both Mr. Feicht's use of a vacancy rate of 35% and his addition of an unexplained 2.5% increment to his weighted capitalization rate. *VanKirk testimony*. Mr. VanKirk's chief complaint regarding the 35% vacancy rate is that Mr. Feicht based that rate upon a survey of industrial properties that included the years 2003-2005. *VanKirk testimony; Pet'r Ex. 16 at 38-39*. This is one aspect of the Respondent's more general criticism that Mr. Feicht's appraisal is based largely upon information from years subsequent to the assessment date of March 1, 2002, when the market for industrial properties had diminished. The Board addresses that argument in more detail below.
36. The Board, however, finds merit in Mr. VanKirk's criticism of Mr. Feicht's addition of a 2.5% increment to his weighted capitalization rate. As an initial matter, Mr. Feicht admitted that he erred by failing to include in his Appraisal Report an explanation of his decision to add the 2.5% increment. *See Feicht testimony*. Moreover, the explanation Mr. Feicht proffered at the hearing for using that increment – that it reflects a decrease in tenant desirability – is vague. Mr. Feicht did not explain how the subject property is less desirable than the “investment grade” properties upon which his weighted capitalization rate was based, or why he quantified that difference as 2.5%. The Board recognizes that, at some level, all appraisals are based upon the judgment of the appraiser. That judgment, however, must be informed by something, and the degree to which an appraiser is able to articulate the basis underlying his exercise of judgment affects the probative value of his expert opinion.
37. Finally, the Respondent attacks the reliability of the Petitioner's evidence on grounds that such evidence, including Mr. Feicht's Appraisal Report, is tempered with information from 2003-2005. *Meighen argument; VanKirk testimony*. According to the Respondent, for the 2002 general reassessment, real property is to be valued on March 1, 2002, and

that value must be related to January 1, 1999. *Meighen argument*. The Respondent contends that Mr. Feicht's erroneous use of information from 2003-2005 is significant because the market for industrial properties declined following the assessment date of March 1, 2002. *Id*; *VanKirk testimony*.

38. The Board agrees that for purposes of the 2002 general reassessment, real property must be valued as it physically existed on March 1, 2002, and its value must be related to January 1, 1999. *See Manual at 5; see also Long, supra 821 N.E.2d at 471*. The Board further agrees that some of the Petitioner's evidence relates to the physical condition of the property, as well as to the economic market in which the property existed, as of dates substantially removed from the assessment date of March 1, 2002, and the valuation date of January 1, 1999. For example, in performing his analysis under the income approach, Mr. Feicht relied upon a survey of leased industrial properties beginning on March 19, 2002, and extending into 2005. *See Pet'r Ex. 16 at 38-39*. The Petitioner's evidence concerning Hart Corporation's marketing of the property over a three year period suffers from the same shortcoming, at least to the extent that the Petitioner relies upon the fact that it was forced to lower its asking price to \$1.5 million in 2004.
39. Much of the Petitioner's evidence, however, does not suffer from that shortcoming. For example, Mr. Feicht based his sales comparison analysis upon the sales of comparable properties occurring between July 22, 1999 and October 18, 2002, and he adjusted all sale prices to January 1, 1999. *Pet'r Ex. 16 at 28, 30*. This is particularly significant given that Mr. Feicht relied most heavily upon his sales comparison analysis in arriving at his final estimation of value. *Pet' r Ex. 16` at 41* ("In developing the final estimate of value, the greatest consideration has been given to the sales comparison approach with support from the income approach, at least as to a test of reasonableness.").
40. In sum, Mr. Feicht's appraisal, in combination with the Petitioner's inability to sell the subject property for \$2.5 million in 2002, demonstrates that the current assessment of \$2,595,200 exceeds the subject property's market value-in-use. The Board believes that the Respondent successfully impeached the credibility of portions of Mr. Feicht's

analysis, particularly his analysis under the income approach. Mr. Feicht, however, gave the greatest weight in his analysis to market value of the subject property as indicated by the sales comparison approach. *Id.* Thus, despite its flaws, the Board finds that Mr. Feicht's opinion of value is the best evidence of the subject property's true tax value. This is especially true in light of the fact that the Respondent offered no countervailing appraisal.

41. Based upon the foregoing, the Petitioner established, by a preponderance of the evidence, that current assessment of \$2,595,200 is incorrect and that the correct assessment should be \$1,685,000, as set forth in Mr. Feicht's Appraisal Report.

Summary of Final Determination

42. The Petitioner demonstrated by a preponderance of the evidence that the current assessment is in error and that the correct assessment is \$1,685,000.

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

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/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.