

REPRESENTATIVE FOR PETITIONERS:

Duane Zishka, Certified Tax Representative, Uzelac & Associates, Inc.

REPRESENTATIVES FOR RESPONDENT:

Brian Thomas, Howard County Representative

Marilyn Beroshok, Center Township Assessor

Ann Harrigan, Howard County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

GERBER LEWIS PARTNERSHIP )	Petition Nos.: 34-002-02-1-4-00113
)	34-002-02-1-4-00212
Petitioner, )	
)	Parcel Nos: 34-03-24-426-001.000-002
v. )	34-03-24-430-001.000-002
)	
CENTER TOWNSHIP ASSESSOR )	County: Howard
)	Township: Center
Respondent. )	Assessment Year: 2002
)	

KOKOMO SANITARY POTTERY )	Petition Nos.: 34-002-02-1-4-00114
)	34-002-02-1-4-00211
Petitioner, )	
)	Parcel Nos: 34-03-24-426-013.000-002
v. )	34-03-24-430-012.000-002
)	
CENTER TOWNSHIP ASSESSOR )	County: Howard
)	Township: Center
Respondent. )	Assessment Year: 2002
)	

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

**[DATE OF ISSUANCE]**

## **FINAL DETERMINATION**

The Indiana Board of Tax Review (the “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**

#### **ISSUES**

1. The Board considers the following restated issue presented by the parties:  
*Whether the assessed value of the subject property is higher than its market value-in-use.*

#### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-3, Duane R. Zishka of Uzelac & Associates, on behalf of Gerber Lewis Partnership and Kokomo Sanitary Pottery Corporation (collectively, “Petitioner”), filed four Form 131 Petitions to the Indiana Board of Tax Review for Review of Assessment (“Form 131 petitions”), petitioning the Board to conduct an administrative review of the assessments of the above listed parcels. The Form 131 petitions were filed on May 10, 2004. The Howard County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations on April 12, 2004.

#### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, two hearings were held on September 23, 2004, in Kokomo, Indiana before Patti Kindler, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3. Together, the hearings addressed all four of the petitions and parcels referenced in the caption to this Final Determination, and the parties relied upon the same evidence and arguments at each hearing. The Board therefore has consolidated the petitions for purposes of issuing a final determination.

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

For the Petitioners: Duane Zishka, Uzelac & Associates

For the Respondent: Brian Thomas, Howard County Representative  
Marilyn Beroshok, Center Township Assessor  
Ann Harrigan, Howard County Assessor.

5. The following exhibits were presented for the Petitioner:

Petitioner's Exhibit 1 – Real Estate Appraisal Report performed by Hilco Real Estate, LLC

Petitioner's Exhibit 2 – Letter dated December 2, 2003, addressed to Duane Zishka from W. Todd Haney, President of Hilco Real Estate, LLC's valuation services

Petitioner's Exhibit 3 – Internet document showing an inflation calculation for the period from March 2002 to January 1999

6. The following exhibits were presented for the Respondent:

Respondent's Exhibit A – A document entitled Summary of Testimony

Respondent's Exhibit B – Notes summarizing the Howard County PTABOA hearing, dated March 22, 2004

Respondent's Exhibit C – Summary of assessed values for the four (4) parcels owned by Gerber Lewis Partnership and Kokomo Sanitary Pottery showing a total value of \$4,431,000

Respondent's Exhibit D – Copy of page 6 of the 2002 Real Property Assessment Manual

Respondent's Exhibit E – Copy of page 12 from the 2002 Real Property Assessment Manual (Valuation Date, defined)

Respondent's Exhibit F – Copy of page 26 of the appraisal of the subject property prepared by Hilco Real Estate, LLC ("Hilco Appraisal"), showing the Respondent's proposed revisions to the Comparable Sales Summary and Analysis Chart

Respondent's Exhibit G – Copy of page 27 from the Hilco Appraisal, showing the Respondent's proposed revisions to the appraiser's comparable sales analysis

Respondent's Exhibit H – Copy of the Respondent's calculations of the subject property's value-in-use utilizing the income capitalization approach

Respondent's Exhibit I – Copy of the Respondent's calculations trending its opinions of value for the subject property to January 1999.

Respondent's Exhibit J – Respondent's reconciliation of value based on its income capitalization and sales comparison calculations  
Respondent's Exhibit K - Respondent's rebuttal to the December 2, 2003, letter from W. Todd Haney to Duane Zishka

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board's Exhibit A – The Form 131 Petitions
  - Board's Exhibit B – Notices of Hearings on Petitions
  
8. The four contiguous parcels at issue in this consolidated appeal comprise one facility. *Zishka testimony*. Parcel nos. 34-03-24-426-013.000-002 and 34-03-24-430-012.000-002 are vacant land. *Id.*; *Board's Exhibit A*. Those parcels are listed on property tax assessment records as being owned by Kokomo Sanitary Pottery Corporation, although the Petitioner's representative testified that the parcels actually are owned by Gerber Lewis Partnership. *Id.* Parcel nos. 34-03-24-426-001.000-002 and 34-03-24-430-001.000-002 are owned by Gerber Lewis Partnership. *Id.* The first of those two parcels contains improvements and the second is vacant land. *Board's Exhibit A*. All four parcels have a street address of 2500 North Union Street, Kokomo, Indiana. *Id.*; *Zishka testimony*. For purposes of this Final Determination, the Board will refer to the four parcels collectively as the "subject property."
  
9. The ALJ did not conduct an on-site inspection of the subject property.
  
10. For 2002, the PTABOA determined the assessed values of the parcels under review in this appeal to be:

Petition # 34-002-02-1-4-00113 - Parcel #340324426001000002

Land: \$177,400     Improvements: \$4,213,900

Petition # 34-002-02-1-4-00212 - Parcel #340324430001000002

Land: \$35,500     Improvements: \$ 0

Petition # 34-002-02-1-4-00114 - Parcel #340324429013000002

Land: \$2,100    Improvements: \$0

Petition # 34-002-02-1-4-00211 - Parcel #340324429012000002

Land: \$2,100    Improvements: \$ 0

11. For 2002, the Petitioner contends that the assessed value of the subject property should be \$3,150,000.

### **JURISDICTIONAL FRAMEWORK**

12. 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**

13. A petitioner seeking review of a determination of a county Property Tax Assessment Board of Appeals 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).
14. 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”).

15. 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

16. The Petitioner contends that the subject property’s assessment is excessive in comparison to the value estimated in a certified real estate appraisal prepared by Sharon J. Williams and approved by Todd Haney of Hilco Real Estate, LLC (“Hilco Appraisal”). The Hilco Appraisal estimates a market value for the subject property of \$3,150,000, which is 29% less than the current assessed value. *Zishka testimony*.
17. The Respondent contends that the Petitioner failed to establish a prima facie case of error in assessment, because the Hilco Appraisal is not relevant for tax appeal purposes. *Thomas testimony; Respondent’s Exhibit A*. The Respondent also offered its own opinion of value based upon revisions to the Hilco Appraisal, which the Respondent contends supports the current assessment. *Thomas testimony; Respondent’s Exhibits F-J*.

#### Petitioner’s Contentions

18. The Petitioner presented the following evidence and argument in support of its position:
  - a. The Hilco Appraisal estimates the market value of the subject property to be \$3,150,000 as of March 22, 2002. *Zishka testimony; Petitioner’s Exhibit 1*. The purpose of the appraisal was to assist the Petitioner in making an internal business

decision regarding which of two facilities owned by the Petitioner should be closed.  
*Id.*

- b. The Petitioner requests that an obsolescence factor of 29% be applied to adjust the subject property's assessed value to reflect the appraised value of \$3,150,000. *Zishka testimony; Board's Exhibit A*. The issue at hand does not pertain to obsolescence in any form, but rather to the use of an obsolescence adjustment on the property record card (PRC) as a mechanism to reduce the assessment to reflect its appraised value.  
*Id.*
- c. The Hilco Appraisal employs both the sales comparison and income capitalization approaches to value. *Zishka testimony; Petitioner's Exhibit 1*. In applying the sales comparison approach, the appraiser examined the sales of five (5) comparable properties to arrive at an approximate value of ten dollars (\$10.00) per square foot for the subject building. *Petitioner's Exhibit 1, at 24*. The appraisal estimates the subject property's market value to be \$3,185,000 pursuant to the sales comparison approach.  
*Id.*
- d. The Hilco Appraisal estimates the subject property's market value to be \$3,110,000 under the income capitalization approach to value. *Zishka testimony; Petitioner's Exhibit 1, at 28*. The appraisal's income capitalization analysis is based, in part, upon an estimated base rental income of one dollar and fifty cents (\$1.50) per square foot for the subject building. *Petitioner's Exhibit 1, at 25*. The appraiser established that rate based upon a comparison of the subject building to four (4) industrial rental properties from smaller communities in Northern Indiana. *Id.* Three of the properties had been owner occupied buildings but subsequently were converted to multi-tenant buildings. *Id.* The appraiser indicated that such a scenario is typical of large owner occupied industrial facilities, because there is a limited demand for single tenant users for those facilities. *Id.* The comparable properties rented for between \$1.50/sq. ft. and \$2.60/sq. ft. *Id.* The appraiser used the low end of that range to value the subject

- property based upon conversations with area real estate professionals and the comparatively large size of the subject building. *Id.*
- e. The appraiser did not utilize the cost approach to value, finding that the age of the improvements would have rendered any estimate of depreciation highly subjective. *Id. at 20.*
  - f. The appraiser afforded the value derived by the sales comparison approach the most weight, stating that the sales comparison approach is particularly appropriate for properties of the subject's type, which typically are purchased and occupied by owner/users. *Id. at 29.* The appraiser found the value derived from the income approach to be supportive of the sales comparison value and reconciled the two to reach a final estimate of value in the amount of \$3,150,000. *Id.*
  - g. The Petitioner also submitted a letter dated December 2, 2003, from W. Todd Haney, MAI and President of Hilco Real Estate, LLC's ("Hilco") valuation services. *Petitioner's Exhibit 2.* The letter asserts that Hilco appraised more than 30 industrial facilities in Indiana in 2002 and 2003, and that Haney is confident of the value conclusion presented in the Hilco Appraisal. *Id.* The letter includes an attachment containing sales and listing data for 17 additional industrial buildings of over 150,000 square feet in size, which Haney maintains supports the value estimate set forth in the Hilco Appraisal. *Id.*

#### Respondent's Contentions

19. The Respondent presented the following evidence and argument in support of the current assessment:
  - a. The Hilco Appraisal is "categorically flawed," because the appraisal values the subject property as of March 22, 2002, a date well beyond the January 1, 1999,



valuation date mandated for the 2002 general reassessment. *Thomas testimony; Respondent's Exhibit A.*

- b. The Hilco Appraisal further lacks probative value, because it is based upon individual evidence of property wealth rather than upon aggregate data, and it was prepared for internal decision making purposes rather than for property tax assessment purposes. *Thomas testimony; Respondent's Exhibits A, K.* The use of such an appraisal in a property tax assessment appeal runs counter to the Indiana Supreme Court's decision in *Town of St. John v. State Bd. of Tax Comm'rs*, 702 N.E.2d 1034 (Ind. 1998)
- c. The Hilco Appraisal suffers from additional shortcomings aside from the above mentioned flaws. The appraisal includes an *auction sale* in its sales comparison analysis. *Thomas argument; Petitioner's Exhibit 1, at 26; Respondent's Exhibit A.* The appraiser should not have included that sale in her analysis, because auction sales are not indicative of fair market value. *Thomas argument; Respondent's Exhibit A.*
- d. Because the Hilco appraisal is not appropriate for property tax appeal purposes, the Respondent developed its own opinion of value. The Respondent based its opinion on the data and analysis contained in the Hilco Appraisal after making revisions designed to correct the appraisal's flaws. *See Thomas testimony; Respondent's Exhibits A, F-H.*
- e. The Respondent removed the auction sale from its analysis under the sales comparison approach. After removing that sale, the average price per square foot for the comparable properties listed in the Hilco Appraisal increases to \$15.00. *Thomas testimony; Respondent's Exhibit F.*
- f. The Respondent developed a "correlative factor" of .939 through dividing the value per square foot from the auction sale (\$9.39) by the appraiser's final estimation of value per square foot for the subject building ( $\$10.00 \div 9.39 = .939$ ). *Thomas*

- testimony; Respondent's Exhibit G.* The Respondent then took \$13.26/sq. ft. - the lowest sale price reflected in the appraisal after omission of the auction sale - and divided that price by the correlative factor of .939. *Id.* This yielded a price of \$14.12/sq. ft. for the subject building ( $13.26/\text{sq. ft.} \div .939 = \$14.12/\text{sq. ft.}$ ). *Id.*
- g. The Respondent then multiplied the \$14.12/sq. ft. price described above by the total area of the subject building (318,585 sq. ft.) to arrive at a non time-adjusted total value of \$4,498,400. *Id.*
- h. The Respondent applied a similar formula to compute a revised valuation under the income capitalization approach to value. First, the Respondent derived a correlative factor of .1554728 through dividing the proposed lease price (\$2.95/sq.ft.) of a building it deemed comparable to the subject building by the listing (sale) price (\$18.95/sq. ft.) of that same building ( $\$2.95/\text{sq. ft.} \div \$18.95/\text{sq. ft.} = .1554728$ ). *Thomas testimony; Respondent's Exhibit H.* The building in question is a 131,000 square foot kit-type rectangular building. *Id.* The exact age of that building is unknown. *Id.*
- i. The Respondent then multiplied that correlative factor by two estimations of value – the 14.12/sq. ft. obtained through its revised sales comparison analysis, and the \$15.00/sq. ft average value of the comparable properties identified in the Hilco Appraisal after omission of the auction sale. *Id.* This resulted in rental values of \$2.20/sq. ft. and \$2.30/sq. ft., respectively. *Id.* The Respondent multiplied those amounts by the total area of the subject building to arrive at base rental income estimates of \$700,887.00 and 742,303.00. *Id.* Those estimates are significantly larger than the \$477,878 used by the Hilco Appraisal in its income capitalization analysis.
- j. The Respondent applied its base rental income numbers to the other data used by the Hilco Appraisal in its income capitalization analysis to arrive at non time-adjusted

- estimated values of \$4,932,800 and \$5,271,664, which the Respondent then reconciled to \$5,100,000. *Id.*
- n. The Respondent developed a factor to “trend” its revised estimates under the sales comparison and income capitalization approaches to the January 1, 1999, valuation date. The Respondent derived its factor of 1.012% through dividing the capitalization rate from the Korpacz Real Estate Investor Survey for the first quarter of 2002 (9.25%) by the capitalization rate from that same survey for the first quarter of 1999. *Thomas testimony; Respondent’s Exhibits I, J.*<sup>1</sup>
- o. The Korpacz rate is a capitalization rate for industrial facilities used by real estate investors and is therefore an appropriate method for use in trending the value of the subject property. *Thomas testimony.* The inflation factor used by the Petitioner to trend the value of the property to January 1, 1999, (*see*, ¶ 20(c), *infra*) is irrelevant, because the Petitioner did not explain whether that factor is based upon a national average, state average, or something else. *Thomas argument; Petitioner’s Exhibit 3.*
- p. The Respondent applied its trending factor to arrive at time-adjusted values under its sales comparison and income capitalization calculations. *Thomas testimony; Respondent’s Exhibit J.* The Respondent’s time-adjusted sales comparison calculation indicates a value of \$4,552,400 ( $\$4,498,400 \times 1.012 = \$4,552,400$ ). *Id.* Its time adjusted income capitalization calculation indicates a value of \$5,161,200 ( $\$5,100,000 \times 1.012 = \$5,161,200$ ). *Id.* Both of those values exceed the current assessment of \$4,431,000.
- q. The December 2, 2003, letter from Haney with its attached list of comparable sales and listings is of limited value, because the Petitioner did not explain how that

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<sup>1</sup> Respondent’s Exhibit I shows the percentage of change between the 1<sup>st</sup> quarter 1999 cap rate (9.14%) and the 1<sup>st</sup> quarter of 2002 cap rate (9.25%) to be 1.20%. ( $9.25\% / 9.14\% = 1.20\%$ ). This percentage represents a mathematical error. However, the Respondent used the correct percentage of 1.012 in its actual time adjustment calculations. *See Respondent’s Exhibit J.*

evidence relates to the appeal or whether Haney had inspected the properties listed in the attachment. *Thomas testimony; Respondent's Exhibit K.*

### Petitioner's Response

20. The Petitioner provided the following response to the Respondent's contentions.
- a. The Petitioner objected to the Respondent's contention that the Hilco Appraisal was not trended to reflect the January 1, 1999, valuation date set forth in the Assessment Guidelines. *Zishka testimony.* The PTABOA did not deny the petition due to the Petitioner's failure to trend the Hilco Appraisal, nor did it ask the Petitioner for trending information. *Zishka testimony.*
  - b. The Department of Local Government Finance's ("DLGF") Winter 2004 Newsletter, THE COMMUNICATOR, suggests that the percentage used by assessors when time-adjusting neighborhood factors, equalization studies and ratio studies is appropriate for use in trending appraisals to the January 1, 1999, valuation date. *Zishka testimony.* The Petitioner, however, does not have access to county records setting forth those percentages. *Id.*
  - c. Due to the lack of availability of county trending data, the Petitioner developed a trending factor using a national inflation rate from an Internet source titled INFLATIONDATA.COM. *Zishka testimony; Petitioner's Exhibit 3.* That source shows an inflation rate of -8.11% from March 2002 to January 1999. *Id.*
  - d. The Petitioner also contests the Respondent's attack on the Hilco Appraisal's use of a sale price resulting from an auction in its sales comparison analysis. The Petitioner contends that there is nothing "written in stone" prohibiting the use of an auction sale price in a sales comparison analysis. *Zishka argument.* The appraiser, through her experience and expertise in valuing properties, felt the auction sale was a reasonable

- indicator of value for the subject property. *Id.* Moreover, the original appraisal's estimation of value was supported by four (4) other comparable sales. Those comparable sales were supplemented by seventeen (17) additional comparable sales listed in the attachment to Haney's December 2, 2003, letter to Duane Zishka. *Zishka testimony; Petitioner's Exhibit 1, at 21-24; Petitioner's Exhibit 2.*
- e. The mathematical correlation used by the Respondent to arrive at a conclusion of value after removing the auction sale is not a valid methodology. *Zishka argument.* The correlation is purely a mathematical formula, which does not consider the professional judgment of the appraiser. *Id.*
  - f. The Respondent's calculation under the income approach to value is premised upon a base rental income rate derived solely from a single kit-type square building. *Zishka testimony; Respondent's Exhibit H.* That building is not comparable to the subject property, which is much larger than the building in question, has numerous additions and an irregular "footprint," and was constructed in 1943. *Id.* In addition, the Respondent provided no supporting information about the building in question to allow for an adequate determination of whether it truly is comparable to the subject building. *Zishka argument.*
  - g. The trending factor relied upon by the Respondent is based on a capitalization rate, which is relevant to the income capitalization approach to value, but not to the sales comparison approach. *Zishka argument; Respondent's Exhibit I.* By contrast, the Petitioner's use of an inflation factor is an approved method for time adjusting the value of property. *Id.*
  - h. Even though the Hilco Appraisal initially was developed for internal business decisions, it is still a valid indicator of the property's worth, and there is no reason the appraisal cannot be used for assessment purposes. *Zishka testimony.*

## Discussion

### *Petitioner's Prima Facie Case*

21. The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real estate 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 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use evidence consistent with the Manual’s definition of true tax value, such as appraisals that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case for a change in assessment based upon an appraisal that quantifies the market value of a property through use of generally recognized appraisal principles. *See Meridian Hills*, 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through the cost and income capitalization approaches to value).
22. There are three generally accepted methods of determining market value: the cost approach, the sales comparison approach, and the income capitalization approach. MANUAL, at 13.
23. Regardless of the approach used to establish the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Id.* at 4; *see also*, *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Consequently, a party relying on an appraisal that values a property as of a date substantially removed from the relevant valuation date must offer some explanation as to how the appraised value demonstrates or is relevant to the property’s market value-in-use as of January 1, 1999. *See Long*, 821 N.E.2d at 471-72 (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).

24. The Petitioner submitted evidence that is relevant to the subject property's true tax value under the requirements outlined in the Manual. Specifically, the Petitioner presented the Hilco Appraisal, which was prepared by Sharon Williams, a Certified General Appraiser, and reviewed by W. Todd Haney, the President of Hilco Real Estate LLC's valuation services. *Petitioner's Exhibit 1*. That appraisal estimates the subject property's market value based upon the sales comparison and income approaches to value. *Id.* at 21-29. The Hilco Appraisal, on its face, was conducted in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP") and Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"). *Petitioner's Exhibit 1, at April 2002 letter from Williams & Haney.*<sup>2</sup> The purpose of the appraisal was to estimate the market value of the subject property as of March 22, 2002, for use by the owner in making an internal business decision. *Zishka testimony; Petitioner's Exhibit 1, at 1.*
25. Moreover, although the Hilco Appraisal estimates the market value of the subject property as of a date more than three years after the relevant valuation date of January 1, 1999, both parties presented evidence demonstrating how the appraised value may be related to the property's value as of January 1, 1999. The Petitioner presented evidence from INFLATIONDATA.COM showing an 8.11% rate of inflation between 1999 and 2002, while the Respondent developed a factor of 1.012 from the Korpacz Real Estate Investor Survey. *Zishka testimony; Petitioner's Exhibit 3; Thomas testimony; Respondent's Exhibits I-J*. At a minimum, this shows a fairly narrow range of time adjusted values that may be derived from the Hilco Appraisal, and all of the values in that range are substantially less than the current assessed value of \$4,431,000.
26. Based on the foregoing, the Petitioner established a prima facie case of error in assessment.

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<sup>2</sup> Petitioner's Exhibit 1, the Hilco Appraisal, consists of thirty-three (33) numbered pages as well as multiple pages without any numerical designation. Citations to unnumbered pages will be identified by additional descriptive information.

### *Respondent's Rebuttal*

27. The burden therefore shifted to the Respondent to present evidence to rebut or impeach the Hilco Appraisal. *Meridian Towers*, 805 N.E.2d at 479.
28. The Respondent attacks the Hilco Appraisal on the following grounds: (1) the appraisal is based upon individual evidence of property wealth rather than aggregate data; (2) the appraisal was prepared for internal decision making purposes rather than for property tax assessment purposes; (3) the appraiser relied upon an auction sale in performing her sales comparison analysis; and (4) the appraisal is “categorically flawed,” because it values the subject property as of a date well beyond the relevant valuation date of January 1, 1999. The Respondent also submitted its own opinion of value, which it based largely on the Hilco Appraisal after making certain revisions designed to correct the above described flaws.

#### 1. Individual Evidence of Property Wealth

29. The Respondent is mistaken in its assertion that the Hilco Appraisal lacks probative value because it is based upon individual evidence of property wealth rather than upon aggregate data. The Respondent relies upon the following language from the Indiana Supreme Court’s decision in *Town of St. John v. State Bd. of Tax Comm’rs*, 702 N.E.2d 1034 (Ind. 1998) (“*St. John V*”): “[the Indiana Constitution] does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment,” nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant.” *Id.* at 1039-40. Though not quoted by the Respondent, the Court also stated that the Indiana Constitution “does not establish an entitlement to individual assessments for abstract evaluation of property wealth, nor does it mandate the



consideration of independent property wealth evidence in individual assessments or tax appeals.” *Id.* at 1040.

30. The quoted language from *St. John V*, however, refers only to whether a taxpayer has a *constitutional right* to present independent evidence of property wealth in individual tax appeals. It does not preclude the existence of the right to present such evidence pursuant to a statute or administrative rule. Thus, following the Court’s ruling in *St. John V*, the State Board of Tax Commissioners adopted new administrative rules governing the assessment of real property. Those rules provide that, beginning with the 2002 general reassessment: “[t]axpayers may offer evidence relevant to the fair market value-in-use of . . . property . . . to establish the actual true tax value of the property as long as such information is consistent with the definition of true tax value provided in this manual and was readily available to the assessor at the time the assessment was made. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles.” *Id.* at 2, 5. Thus, the administrative rules governing the assessment of real property recognize the relevance of appraisals, such as the Hilco appraisal, that are performed in accordance with generally accepted appraisal practices and are consistent with the Manual’s definition of true tax value.

## 2. Purpose of Hilco Appraisal

31. The Respondent next attacks the Hilco Appraisal on grounds that it was prepared for internal decision making purposes rather than for tax assessment purposes. The Respondent points out that the appraisers do not purport to have expertise in property tax assessments or in preparing property tax assessments on industrial facilities. *Respondent’s Exhibit A*. Thus, reasons the Respondent, the Hilco Appraisal does not show the property’s value-in-use or “whether the system prescribed by statute and

regulations was properly applied to individual assessments.” *Id.* (quoting *St. John V*, 702 N.E.2d at 1039-40).

32. Once again, the Respondent relies upon language from *St. John V* delineating the scope of a taxpayer’s constitutional rights without addressing the relevant administrative rules that govern the types of evidence that are relevant to a property’s true tax value in an assessment appeal. While Indiana’s property tax assessment system previously may have limited taxpayers to contesting assessments based upon whether the assessor correctly applied the mass appraisal system set forth in the State Board of Tax Commissioners’ administrative guidelines, that is no longer the case. As explained above, the Manual explicitly recognizes that a taxpayer may demonstrate error in an assessment through use of an appraisal that is relevant to the market value-in-use of the subject property. MANUAL at 5. If an appraisal of the subject property is a better measure of that property’s market value-in-use than the assessment, the taxpayer will prevail. This is true even if the assessor properly applied the mass appraisal system adopted by its county.
33. The Respondent, however, is correct that an appraisal must be relevant to a property’s market value-in-use in order to be probative of its true tax value. In some instances, a property’s market value-in-use may differ from its fair market value. Thus, “[i]n markets in which sales are not representative of utilities, either because the utility derived is higher than indicated sale prices, or in markets where owners are motivated by non-market factors, such as the maintenance of a farming lifestyle even in the face of a higher use value for some other purpose, true tax value will not equal value in exchange.” MANUAL at 2. In many other instances, such as markets in which there are regular exchanges so that ask and offer prices converge, however, true tax value will equal value in exchange. *Id.*
34. The record is devoid of probative evidence that, in the market in question, sales are not representative of utilities or that there is anything unique about the Petitioner’s use of the subject property that would render its value-in-use to be something in excess of its value

in exchange. The Hilco Appraisal is based upon the subject property's highest and best use, which the appraisal finds is the same as the use to which it currently is devoted. *Petitioner's Exhibit 2, at 19.* Consequently, the Hilco Appraisal is consistent with the Manual's definition of true tax value.

3. Use of Auction Sale

35. The Respondent next argues that the Hilco Appraisal lacks probative value on grounds that the appraisal relies upon an auction sale of a comparable property in arriving at its estimation of value under the sales comparison approach. The Respondent contends that the appraisal's reliance on that sale is inappropriate, because the price paid for a property at auction does not reflect its market value.

36. The Manual, defines "Market Value" as:

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed or advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

MANUAL at 10.

37. It is apparent from this definition that, in some instances, a property's sale price at auction may not reflect its market value for reasons such as a lack of exposure to the open market or the seller being under some type of compulsion. The same may be true,

however, with regard to any sale. The Board does not read the Manual's definition of market value as creating a presumption that a sale at auction is not indicative of a property's market value. The Respondent did not present any evidence that the seller in the transaction at issue was under compulsion or was not otherwise typically motivated. In fact, the Respondent did not present any evidence whatsoever regarding the circumstances of the auction in question or elaborate as to which elements of a market value sale may have been missing from the transaction.

38. The Board therefore finds that the fact that the Hilco Appraisal relied, in part, on an auction sale in its sales comparison analysis does not deprive the appraisal of probative value.

4. Respondent's Opinion of Value

39. The Respondent also offered a competing opinion of value for the subject property. The Respondent arrived at its opinion by making certain revisions to the Hilco Appraisal in order to cure what the Respondent viewed as the appraisal's improper reliance on the auction sale. *Thomas testimony; Respondent's Exhibits F-H.*
40. As an initial matter, the Respondent's revised opinion is of questionable value, because it is premised upon the incorrect assumption that an auction sale can never be probative of market value. The Respondent's opinion also suffers from additional flaws, as set forth below.
41. The Respondent based its valuation under the sales comparison approach on a "correlative factor." *Thomas testimony; Respondent's Exhibit G.* The Respondent derived that factor by comparing the sale price of the property sold at auction to the value per square foot used by the appraiser in computing the overall value of the subject property. *Id.* In the Respondent's view, because the auction sale was 93.9% of the

\$10/sq. ft. price ultimately determined by the appraiser as being an appropriate value for the subject property, the appraiser would have determined the subject property's value to bear the same relation to the next lowest comparable sale price once the auction sale was removed from her analysis. *Id.* Thus, concludes the Respondent, because the lowest comparable sale price after removal of the auction sale is \$13.26/sq. ft., the appraiser would have arrived at a price of \$14.12/sq. ft. for the subject property ( $\$13.26/\text{sq. ft.} \div .939 = \$14.12$ ).

42. There is no evidence, however, that the appraiser utilized any such mathematical calculation in arriving at her estimate of value. The appraiser utilized five (5) sales of comparable properties in her analysis. All of the sales, except for the auction sale, resulted in prices well above the \$10.00/sq. ft. value for the subject property estimated by the appraiser. The record lacks any proof that removing the auction sale necessarily would have changed the appraiser's determination of value. Even if removal of the auction sale would have changed the appraiser's determination, there is no evidence that it would have done so according to the mathematical formula posited by the Respondent.
  
43. The Respondent's income capitalization analysis also suffers from fatal shortcomings, which can be better understood in context of a summary explanation of the Respondent's calculations. First, the Respondent derived a correlative factor of .1554728 through dividing the proposed lease price (\$2.95/sq.ft.) of a building it deemed comparable to the subject building by the listing (sale) price (\$18.95/sq. ft.) for that same building. *Thomas testimony; Respondent's Exhibit H.* The Respondent then multiplied that correlative factor by two estimations of value – the 14.12/sq. ft. obtained through its revised sales comparison analysis, and the \$15.00/sq. ft average value of the comparable properties identified by the Hilco Appraisal after removal of the auction sale. *Id.* This resulted in rental values of \$2.20/sq. ft. and \$2.30/sq. ft., respectively. *Id.* The Respondent then multiplied those amounts by the total area of the subject building (318,585 sq. ft.) to arrive at base rental income estimates of \$700,887 and 742,303. Finally, the Respondent applied its base rental income numbers to the other data used by the Hilco Appraisal in its

income capitalization analysis to arrive at non time-adjusted values of \$4,932,800 and \$5,271,664, which the Respondent reconciled to \$5,100,000. *Id.*

44. As an initial matter, the Respondent's analysis lacks probative value because it is based, in part, on the \$14.12/sq. ft. and \$15.00/sq. ft. sale prices for the subject property derived from its unsupportable revision of the Hilco Appraisal's sales comparison analysis.
45. Moreover, the Respondent presented no support for the validity of its use of a correlative factor as a valid method by which to estimate base rental income for the subject property. This stands in stark contrast to the Hilco Appraisal, which, on its face, was prepared in accordance with USPAP standards. The Respondent similarly failed to provide any support for its selection of the purportedly comparable building from which it derived its correlative factor. The Respondent did not provide any evidence regarding that building from which a determination of comparability to the subject property could be made, beyond the fact that both it and the subject property are used for industrial purposes.

5. Time Adjustment of Hilco Appraisal's Estimated Value

46. Finally, the Respondent contends that the Hilco Appraisal is "categorically flawed," because it values the subject property as of March 22, 2002, rather than January 1, 1999. As discussed above in ¶ 25, *supra*, both parties presented evidence from which the appraised value can be related to the subject property's value as of January 1, 1999. The Board therefore must determine which of the two methods offered by the parties is the most appropriate method for "trending" the value estimated by the Hilco Appraisal to January 1, 1999.
47. The Petitioner's proposed method of adjustment appears to rely simply upon the time value of money, i.e. what the 2002 appraised value would represent in 1999 dollars. By contrast, the Respondent's proposed method looks to the difference in capitalization rates

from the real estate investment market at two distinct times – the first quarter of 1999 and the first quarter of 2002.

48. The Petitioner’s method is consistent with what appears to be an underlying basis for the Manual’s use of January 1, 1999, as the relevant valuation date. That date is tied to the fact that the mass appraisal system represented by the Real Property Assessment Guidelines for 2002 – Version A utilizes cost information drawn from 1998 and 1999 publications of Marshall & Swift, L.P. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, intro at 1 (incorporated by reference at 50 IAC 2.3-1-2). Because construction costs change over time, market data from dates substantially removed from January 1, 1999, necessarily will reflect time related differences in construction costs. In order to maintain uniformity and equality in assessments, it is important that differences in value attributable solely to the date of valuation be nullified. This is accomplished through adjusting market evidence to reflect 1999 costs. Thus, a measurement of inflation, even if a general one, accomplishes at least to some degree the ends sought by the requirement that market data be “trended” to the valuation date of January 1, 1999.
  
49. By contrast, the Respondent’s methodology for adjustment bears little relationship to what the Board perceives as the underlying purposes of the “trending” requirement. A capitalization rate represents one component of the calculation of a property’s value under an income capitalization approach. The rate is not, by itself, a measurement of the property’s value at any given time. A capitalization rate instead measures the level of return necessary to motivate investors to purchase a property in light of the relative risks involved in such ownership. Thus, while a difference in capitalization rates for a particular category of property on two different dates may show a change in the relative risk associated with investment in that type of property, such difference, by itself, does not demonstrate the extent to which the property appreciated or depreciated in value over time.

50. The Respondent argues that the Petitioner's trending method is irrelevant, because it is based on a national inflation factor average and lacks both supporting documentation and the necessary link to the subject property. For the reasons set forth above, the Board finds that the Petitioner's factor generally accomplishes the purpose behind the "trending" requirement. To the extent that the Respondent believes that national data does not accurately reflect local conditions, it was the Respondent's burden to demonstrate what the appropriate local rate would be. The Respondent instead chose to rely upon its own methodology, which, for the reasons outlined above, the Board finds not to be in keeping with the underlying purpose behind the Manual's requirement that property be valued as of January 1, 1999. *Respondent Exhibit I.*
51. Based on the foregoing, the Board finds that the Respondent did not rebut or impeach the Hilco Appraisal. The Board further finds that the preponderance of the evidence demonstrates that the assessment is in error, and that the total assessment of the subject property should be \$2,894,500 (\$3,150,000 adjusted by 8.11% to reflect a value as of January 1, 1999, and rounded to the nearest \$100).

#### *Appropriate Remedy*

52. The above finding leaves one question unresolved: Whether it is necessary for the Board to specify how the revised assessment should be divided between the four separate parcels at issue. At first blush, this matter appears to be complicated by the fact that the property tax assessment records reflect the parcels as being owned by different entities. The Petitioner's representative, however, testified without contradiction that the parcels are owned and operated by the same entity. *Zishka testimony.*
53. Moreover, the parties treated the parcels as one property for purposes of all of their evidence and arguments. It is likewise undisputed that the Hilco Appraisal treated the parcels as one property and provided a single estimation of value.



54. Based on those facts, the Board orders that the total assessment of the four (4) parcels at issue be reduced to a total amount of \$2,894,500.

#### **SUMMARY OF FINAL DETERMINATION**

55. The Petitioner presented a prima facie case of error in assessment. The Respondent did not rebut or impeach the Petitioner's evidence. The preponderance of the evidence supports a finding that the current assessment is incorrect, and that the assessment of all four (4) parcels should be reduced to \$2,894,500.

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

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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](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>.