

REPRESENTATIVES FOR PETITIONER:
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**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Millennium Real Estate)	Petition No.:	04-007-11-1-3-00009 ¹
Investment, LLC,)		
)		
)		
Petitioner,)		
)	Parcel No.:	04-14-13-443-003.000-007
)		
)		
Benton County Assessor,)	County:	Benton
)	Township:	Grant
Respondent.)	Assessment Year:	2011

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

July 1, 2015, 2015

FINAL DETERMINATION

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

¹ At the beginning of the hearing, the Petitioner withdrew petitions 04-007-11-1-1-00012, 04-007-11-1-5-00010, and 04-007-11-1-5-00011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The parties offered competing expert opinions about the subject property's value. The experts dealt with less than ideal data in applying the sales-comparison approach, and each party leveled valid criticisms of the opposing expert's opinion. Ultimately, we are more troubled by the degree to which the Assessor's expert relied on the only marginally adjusted sale price of a clearly superior property than we are by the large adjustments Millennium Real Estate Investment, LLC's expert had to apply to his admittedly thin comparative sales data, or by his failure to develop other generally accepted valuation approaches.

RELEVANT PROCEDURAL HISTORY

2. On August 10, 2011, Millennium filed a Form 130 petition with the Assessor. The Benton County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination on February 29, 2012. Millennium then timely filed a Form 131 petition with the Board.
3. On December 17, 2014, our designated administrative law judge, Ellen Yuhan ("ALJ"), held a hearing on Millennium's petition. Neither she nor the Board inspected the property.
4. The following people were sworn as witnesses and testified: L. Gene McGowen, managing member, Millennium; Dale Webster, appraiser, Cornerstone Appraisal Group; Nick A. Tillema, appraiser, Access Valuation, LLC.
5. Millennium presented the following exhibits:

Petitioner Exhibit 1:	Form 131 petition,
Petitioner Exhibit 2:	Valuation record (property record card ("PRC")) for the subject property,
Petitioner Exhibit 3:	Settlement statement,
Petitioner Exhibit 4:	Appraisal by Dale Webster as of March 1, 2011,

Petitioner Exhibit 5:	School reports for Boswell Elementary School,
Petitioner Exhibit 6:	wlfi.com report on Benton County project and information on Indiana's shovel ready program from IDOE: Compass website,
Petitioner Exhibit 7A– 7FF:	Photographs of the subject property,
Petitioner Exhibit 8:	PRC for 109 N. Old U.S. Hwy. 41, Boswell,
Petitioner Exhibit 9:	PRC for 3093 S. St. Rd 55, Oxford,
Petitioner Exhibit 10:	PRC for 317 N. Old U.S. Hwy. 41, Boswell,
Petitioner Exhibit 11:	PRC and Beacon data for 71 E. County Rd. 400 S., Albion,
Petitioner Exhibit 12:	PRC for 802 Berryman Pike, Tipton,
Petitioner Exhibit 13:	PRC for 1446 N. Gardner, Scottsburg,
Petitioner Exhibit 14A-14C;	Photographs of 109 N. Old U.S. Hwy.41, Boswell,
Petitioner Exhibit 14D-14E:	Photographs of 3093 St. Rd. 55, Oxford,
Petitioner Exhibit 14F:	Photograph of 317 N. Old U.S. Hwy. 41, Boswell,
Petitioner Exhibit 14G-14P:	Photographs of 71 E. County Rd. 400 S. Albion,
Petitioner Exhibit 14Q-14Y:	Photographs of 802 Berryman Pike, Tipton,
Petitioner Exhibit 14Z-14CC:	Photographs of buildings near 802 Berryman Pike, Tipton,
Petitioner Exhibit 14DD:	Photograph of Tipton fire station,
Petitioner Exhibit 14EE-14KK:	Photographs of 1446 N. Gardner, Scottsburg,
Petitioner Exhibit 14LL:	Photograph of Scott Memorial Hospital,
Petitioner Exhibit 15:	Side by side profiles for Benton County and Noble County from StatsIndiana.

6. The Assessor presented the following exhibits:

- Respondent Exhibit A: Appraisal by Nick A. Tillema as of March 1, 2011, March 1, 2012, and March 1 2013,
- Respondent Exhibit B: Transcript of April 7, 2010 Board hearing on Millennium's appeal for 2008,
- Respondent Exhibit C: Asset Purchase Agreement.

7. We recognize the following additional items as part of the record: (1) The Form 131 petition; (2) all motions, memoranda, and briefs filed by the parties; (3) all notices and orders issued by the Board; (4) a digital recording of the hearing; and (5) the hearing sign-in sheet.

8. The PTABOA determined a total assessment of \$576,800. On appeal, however, the Assessor seeks only to defend an assessment of \$485,000—the amount estimated by her appraiser.
9. Millennium requests a total assessment of \$268,000.

OBJECTIONS

A. Millennium's Objection

10. Millennium objected to Respondent's Exhibit B—the entire transcript of our hearing on Millennium's appeal of its 2008 assessment. Millennium conceded that the Assessor could offer portions of that transcript in an attempt to impeach Gene McGowen, Millennium's managing member. But it argued that the remainder of the transcript, which related to the property's value for the 2008 assessment year rather than for any of the years currently under appeal, was inadmissible. *Withered argument.*
11. The Assessor asked us to take official notice of the record of the 2008 proceedings. She explained that she was offering the entire transcript to avoid being accused of taking anything out of context. *Meighen argument.*
12. The ALJ overruled Millennium's objection while advising the parties that the Board had the final say on whether to admit the exhibit. We adopt the ALJ's ruling but clarify that we admit the exhibit solely for purposes of impeaching McGowen through specific prior statements that the Assessor alleges contradict his testimony in the current proceedings.

B. The Assessor's Objection

13. The Assessor objected to Petitioner's Exhibits 14Q-LL—photographs of two properties that her appraiser, Nick Tillema, used to estimate the subject property's value for 2012 and 2013—on relevance grounds. The ALJ overruled the objection, reasoning that it went to the exhibits' weight rather than to their admissibility.

14. We adopt the ALJ's ruling. Millennium argues that Tillema's sales-comparison analysis is unreliable because he gave the greatest weight to the sale of a property that was clearly superior to the subject property. As discussed below, Millennium offered the photographs to show a pattern by Tillema of using superior properties when he performs sales-comparison analyses. Thus, the exhibits are at least marginally relevant to Tillema's credibility as an expert although we ultimately give them little weight.

SUMMARY OF THE PARTIES' CONTENTIONS

A. Summary of Millennium's Contentions

15. The property is a 6.511-acre site located at 209 W. Mauzy Street in Boswell.² It has what Millennium's witnesses alternately described as three separate buildings or one large building in three sections. For purposes of these findings, we will refer to the structure as one large building. In any case, hallways connect the three sections. According to the dimensions from the Assessor's sketches, the building is approximately 52,980 square feet. There are also three Quonset huts. *McGowen testimony; Pet'r Exs. 2, 4 at 19.*
16. The large building's sections appear to have been constructed at three different times. An area that Webster described as a barn was built around 1940—the same time as the Quonset huts. The barn is in poor condition and is used for storage. The floor is cracked and worn to the point where aggregate is showing. The barn has minimal electricity and no heat; although there is a hanging furnace, it appears not to have been used for years. *Webster testimony; Pet'r Ex. 4 at 19.*
17. A 1,280-square-foot hallway connects the barn to the middle of a manufacturing area, which was built around 1960. The manufacturing area is 12,200 square feet. The floor is worn at the front where raw materials are brought in. The area includes a 530-square-foot office on the main floor and a 288-square-foot office upstairs. The main-floor office

² The appraisers listed different addresses. Webster used 205 W. Mauzy Street, which he said was the mailing address. Tillema used 209 W. Mauzy Street, the address on the property record card.

is small and outdated, and it has been infiltrated by blacksmith dust. There is no privacy for dealing with personnel issues. A 1,760-square-foot hallway connects the manufacturing area to an approximately 31,500-square-foot warehouse area, which appears to have been built in 1978. *McGowen testimony; Webster testimony; Pet'r Ex. 4 at 19-20; Pet'r Exs. 7N-O.*

18. The Quonset huts are in as poor condition as buildings can be and remain standing. They have no heat or insulation and only minimal overhead lighting. They also have holes where animals get in. The area immediately surrounding the property includes deteriorated and unoccupied homes and mobile homes. *McGowen testimony; Pet'r Exs. 4 at 19, 7H-M.*

19. In June 2008, Millennium and another entity in which McGowen has an ownership interest, American Garden Works, Inc., bought the property from McGowen's acquaintance, who ran a business out of the building. The sale included other real estate, accounts receivable, inventory, equipment, goodwill, and non-compete agreements from the seller's principals. Although the seller was having financial difficulties and needed to sell the property and other assets, McGowen described the sale as an arm's-length transaction. At the hearing on Millennium's appeal of its 2008 assessment, McGowen testified that he thought he was getting a "deal" on the property. At the hearing on the current appeal, McGowen explained that he did not mean that he was getting a bargain, but rather had used the term "deal" to describe a situation where a buyer and seller come together and conclude a transaction. *McGowen testimony; see also, Resp't Exs. Ex. B at 348, C.*

20. Accountants allocated the overall sale price between the various assets involved and assigned \$193,817 to the subject property. According to McGowen, the accountants complied with a formula from the Internal Revenue Service. He did not know the formula, but he believed their assignment was reasonable. *McGowen testimony; Pet'r Ex. 3; Resp't Ex. C.*

21. American Garden Works uses the property to manufacture lawn and garden accessories such as shepherd's hooks, trellises, and baskets. The business has not made any money since American bought it. American is working to increase sales, but the building is not suitable for manufacturing. A building similar to an automotive plant—where steel comes in one end, is processed, and goes out the other end—would be more efficient. *McGowen testimony.*
22. Millennium hired Dale Webster, a certified general appraiser, to appraise the property. Webster has been an appraiser since 1976 and has appraised approximately 50 commercial properties per year since 2000. He has a master's degree in business. He also holds SRA and MAI designations from the Appraisal Institute and a CCIM designation through the Board of Realtors. *Webster testimony; Pet'r Ex. 4 at 10.*
23. Webster prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). As part of his assignment, he extensively toured the property with a representative of Millennium. They discussed American's manufacturing process and various issues with the buildings. *Webster testimony; Pet'r Ex. 4 at 2, 7, 38-49.*
24. Webster considered the main building's condition as fair. Among other things, he pointed to the floor's deterioration in the barn and manufacturing areas. He also saw functional inutilities. The building's sections are narrow and connected by hallways, which hampers production. The production lines serpentine through heavy equipment and proceed down hallways for packaging and storage. The manufacturing area is too small for a forklift to operate, so American must use hand trucks to move product in and out of the area multiple times. The hallway connecting the manufacturing area to the warehouse is likewise too narrow to accommodate forklifts. Production equipment blocks the manufacturing-area dock door, and the warehouse's overhead door and docks cannot be used at the same time. *McGowen testimony; Webster testimony; Pet'r Ex. 4 at 27, 41, 42, 45, & 7N-Z.*

25. The parking lot and truck driveway leading to the warehouse loading docks are gravel and are frequently soft. That creates problems given the heavy loads of steel brought to the property. American constantly has to work on the driveway, which is difficult to do in the winter. Because the building is below the driveway's level, American cannot simply add gravel without diverting water into the building. The driveway is also too narrow; incoming and outgoing trucks have to compete for the same lane, and there is not enough room to expand the lane. *McGowen testimony; Webster testimony; Pet'r Ex. 4 at 23, 38, 39; Pet'r Exs. 7A-D.*
26. When asked specifically to identify any functional obsolescence, Webster pointed to American's inability to use the warehouse area's overhead door and docks at the same time and its difficulty mixing incoming and outgoing truck traffic on the driveway. *Webster testimony.*
27. Webster saw external obsolescence as well. The adjacent properties are in poor condition and are inconsistent with the subject property's use. There are no nearby businesses, such as restaurants, truck repair shops, or stores to buy things American needs on a day-to-day basis. Similarly, there are no stores nearby that sell American's products. The roads leading to the property are small town roads that are too narrow for semi-trailer trucks to pass each other. Similarly, the area's economic climate, its declining population and school enrollment, and its stagnant real estate market all affect the property's value. According to Webster, a nearby industrial park along the U.S. 41 corridor in Kentland has been having difficulties with foreclosures. He also testified that a new industrial park was being built in Boswell. In his view, the planned project would have affected property values as far back as 2011 because there would have been some discussion as to the park's necessity. *Webster testimony; Pet'r Ex. 4 at 13-14, 28; Pet'r Ex. 7J-M.*
28. Webster analyzed the property's highest-and-best use both as vacant land and as improved. He found that the land's maximally productive use as vacant would be agricultural. He also found that the property's highest and best use as improved would be industrial. He did not believe that the property's current use, which he described as an

agricultural and industrial building, was its highest and best use, but he also indicated that no alternative uses had as high a demand as the current use. *Webster testimony; Pet'r Ex. 4 at 25-26.*

29. Webster considered all three generally accepted valuation approaches—the cost, sales-comparison, and income approaches—but ultimately developed only the sales-comparison approach. He decided against developing the cost approach because of (1) the property's age, including its staggered construction dates and various renovations; (2) its significant obsolescence, which can be difficult to measure, particularly in older buildings where age starts to bleed into functional obsolescence; and (3) current market conditions. *See Webster testimony; see also, Pet'r Ex. 4 at 26-28.*
30. Webster similarly believed that the income approach was unreliable for properties in such a low price range. His sales-comparison analysis indicated a market price of about \$5.64/sq. ft, which he believed was frequently the leasing range for superior industrial buildings from larger towns. According to Webster, a reasonable businessperson would prefer to buy a building rather than rent it for the same price. He further explained that the income approach becomes less reliable for properties with low rents, because those rents are highly negotiated. *Webster testimony; Pet'r Ex. 4 at 29.*
31. Webster acknowledged that the subject property had a superior “market niche.” *Pet'r Ex. 4 at 36.* There were few properties of similar size in Benton County, and there were no reported sales for those properties. With that in mind, he settled on four sales of industrial properties from the following Indiana locations: Boswell, Rennselear, Frankfort, and Cromwell. He considered adjusting the sale prices for conditions of sale and market conditions as well as for differences between the sold properties and the subject property in terms of building size, construction quality, age/condition, utility, wall height, number of outbuildings, zoning, and site size. Webster quantified his adjustments based on his experience and on matched-pair analyses, although he did not include those analyses in his report. *Webster testimony; Pet'r Ex. 4 at 31, 36.*

32. The Boswell property was originally a John Deere dealership. A farmer bought it in December 2010 and used it for storage. Thus, it was compatible with the subject property in a general sense. Because the seller was motivated, Webster adjusted for conditions of sale. He also adjusted for differences in size and age. He felt that the comparable property, which included rectangular rather than disjointed construction like the subject building, had superior utility. Unlike Tillema, who used the same property in his sales-comparison analysis, Webster did not adjust for environmental contamination; he spoke to the listing broker who suggested the environmental hazard was very light.³ Webster made gross adjustments equaling 80% of the property's original sale price. Some of the adjustments were negative and others were positive, which left a net adjustment of -18% and an adjusted price of \$4.10/sq. ft. *Webster testimony; Pet'r Ex. 4 at 31.*
33. The Rensselaer property was bought by the city in December 2009 and used for truck maintenance. Rensselaer is larger than Boswell. The building is smaller than the subject building. Although the site is also smaller, it backs up to railroad tracks, which Webster considered a superior location. He made gross adjustments of 85%, with a net adjustment of -33% and an adjusted price of \$10.50/sq. ft. *Webster testimony; Pet'r Ex. 4 at 31.*
34. The Frankfort property sold in December 2008. Webster did not know what the buyer used the property for because there was no broker to contact. The seller had used it to process stone. Because he felt the market was down for that type of property Webster adjusted the sale price by 10% (\$20,000) for market conditions, but he acknowledged that his report does not show how he arrived at that adjustment. Although Frankfort is a larger city than Boswell, he judged the location as similar. He noted that the surrounding roads had to be good because the seller was moving heavy stone on them. He made gross adjustments of 55% with a net adjustment of -35% and an adjusted price of \$3.20/sq. ft. *Webster testimony; Pet'r Ex. 4 at 31.*

³ McGowen testified that the property's owner, whom he knows personally, was unaware of any contamination issues. *McGowen testimony.*

35. The Cromwell property also sold in December 2008. Webster once again adjusted the sale price by 10% (\$16,000) to account for the inferior market conditions. Cromwell is similar in size to Boswell, and he rated the location as similar. He made gross adjustments of 70% with a net adjustment of -18% and an adjusted price of \$4.70/sq. ft. *Webster testimony; Pet'r Ex. 4 at 31.*
36. Webster acknowledged that the market was “thin” in terms of “sales of highly similar properties.” *Pet'r Ex. 4 at 36.* He similarly acknowledged that a comparable sale’s usefulness decreases as the number and size of adjustments increase. Nonetheless, he felt the sales were good indicators of the subject property’s value. In reconciling his data, Webster gave each sale equal weight and arrived at a value of \$268,000 as of March 1, 2011. *Webster testimony; see also, Pet'r Ex. 4 at 36.*
37. Millennium argues that Webster’s appraisal is more accurate than Tillema’s. Tillema inspected the property on August 13, 2013, but did not issue his report until 16 months later. And he did not include photographs in his report. Tillema also used what Millennium characterized as exclusively superior properties in his analysis. His sales were mostly from counties with larger populations than Benton County. Even the two sales from Boswell involved properties located off Old U.S. 41, which Millennium argues is superior to the subject property’s location. Yet Tillema made few adjustments to any of his comparable properties’ sale prices. *See Pet'r Ex. 4 at 31; Pet'r Post-Hearing Brief at 8.*
38. The sale to which Tillema gave the greatest weight is from Albion in Noble County. Noble County is more populous and has a higher employment rate than Benton County. It also has four times the business establishments of Benton County. The Albion property includes a large, rectangular building that is 70% climate controlled. Thirty percent of the building is office space. Millennium offered photographs to show the various ways in which the Albion property is better than the subject property, including the Albion property’s landscaping, brick façade, paved parking lot, multiple loading docks, radio tower, and extensive HVAC and air-handling units. Indeed, Tillema

acknowledged that the Albion property is far superior to the subject property and probably has better functional utility. Yet he made only one adjustment to its sale price—a -10% adjustment for office build-out. *McGowen testimony; Pet'r Exs. 14G-P, 15; Pet'r Post-Hearing Brief at 8-10.*

39. According to Millennium, Tillema's comparable property from Oxford is likewise superior to the subject property. It contains two large rectangular buildings. Again, Tillema made only two offsetting adjustments: -5% for building area and +5% for site size. *Pet'r Exs. 14D-E; Pet'r Post-Hearing Brief at 9.*
40. Tillema determined a value of \$9.25/sq. ft. Not only is that higher than three of his four comparable sales, it is more than double the sale prices for his two comparable properties that were actually from Boswell. Thus, argues Millennium, Tillema essentially ignored the two sales from the same town as the subject property in favor of a sale involving a much better building located 150 miles away in a superior business community. *Pet'r Post-Hearing Brief at 11.*
41. Millennium claims that those types of judgments are not isolated and that Tillema has a pattern of selecting inappropriate comparable sales, as evidenced by his sales-comparison analyses for 2012 and 2013.⁴ For example, in 2012, he used an all-brick building from Tipton with railroad access and a paved parking lot. Similarly, for 2013, he used a former Coca-Cola plant from Scottsburg. That building is made of steel. It is also located across from a hospital and only eight-to-ten minutes from Interstate 65. *Resp't Ex. A at 40, 42; Pet'r Exs. 14Q-LL; Pet'r Post-Hearing Brief at 12.*

B. Summary of the Assessor's Contentions

42. As explained above, the Assessor hired Nick Tillema to appraise the property. Tillema is an Indiana general appraiser. He has a master's degree in business administration as well as a law degree. He holds SRA, MAI, and AI-GS designations from the Appraisal

⁴ Those years are included in Tillema's appraisal report but are not at issue in this appeal.

Institute and a CCIM designation through the Board of Realtors. He is currently vice president of the Appraisal Institute's Hoosier State Chapter. *Tillema testimony; Resp't Ex. A at 62, 63.*

43. Like Webster, Tillema prepared his appraisal in conformity with USPAP and valued the property as of March 1, 2011. Although he inspected the property, he inadvertently failed to include his photographs of the property in his report. Regardless, Tillema believes that his report contains all the data and background necessary to support his valuation opinion. *Tillema testimony; Resp't Ex. A.*
44. Before applying the three valuation approaches, Tillema analyzed the market area. He considered the national market because national and international events, such as recessions or changes in interest rates or the consumer price index, can affect property values. His analysis showed that the economy was still in recovery with a guarded outlook. He judged the regional market, which he described as Benton County, as stable at the times relevant to his appraisal. He described the local market as the town of Boswell and the surrounding markets on the U.S. Highway 41 corridor that would compete for the attention of market participants. Tillema was cautiously optimistic about the local market's short-term outlook, concluding that it benefits from relatively good transportation linkages, modest population, and expected household and employment stability. *Tillema testimony; Resp't Ex. A at 14-18.*
45. Again, like Webster, Tillema analyzed the property's highest and best use both as vacant and improved. He viewed light manufacturing as its highest and best use as vacant. Considering the property's location, with easy access to U. S. Highway 41 and a relatively inexpensive labor force, he viewed the property's current industrial use as its highest and best use as improved. *Tillema testimony; Resp't Ex. A at 28.*
46. Tillema then turned to the three valuation approaches. He believed all three approaches were necessary. Although Tillema acknowledged he might not have developed the cost approach if he were appraising the property's market value, he believed Indiana's true tax

value standard required him to develop that approach. He also explained that the sales-comparison approach requires a large number of sales in order to analyze what particular property characteristics are worth in the market. Because there may be only 30 or 40 sales of industrial properties like the subject property in a five-year period, he felt the need to develop other approaches to check his conclusions under the sales-comparison approach. *Tillema testimony.*

47. Tillema began his cost approach analysis by determining the value of vacant industrial land. He could not find sales of similar industrial land within the local market, so he expanded his parameters to include industrial tracts from comparable communities throughout Indiana. He found 18 comparable tracts in communities with 5,000 people or fewer. They sold for prices ranging from \$6,400/acre to \$94,900/acre. Given the subject site's location in Boswell, as well as its size and appeal, Tillema felt its value would fall near the mean or the median prices, which were \$36,464/acre and \$29,728/acre, respectively. He settled on \$30,000/acre, or \$195,000 (rounded) for the entire 6.51-acre site. *Tillema testimony; Resp't Ex. A at 30-31.*
48. Tillema next used costs and multipliers from Marshall & Swift Valuation Service to calculate a replacement cost new for the improvements of \$1,784,385. He applied 78% physical depreciation and 10% external obsolescence to that cost, which reduced the value to \$214,125. He then added the costs for site improvements (\$43,336) and an allowance of 12% entrepreneurial profit to reach a total improvement cost of \$288,358. After adding the land value of \$195,000 and adjusting by a factor for the first quarter of 2011, he ended up with a value of \$489,000. *Tillema testimony; Resp't Ex. A at 32-34.*
49. Tillema explained his decisions to adjust for external obsolescence but not for functional obsolescence. He believed that external obsolescence applied because the national, regional, and local economies were still pulling out of the recession of 2008. As for functional obsolescence, Tillema explained in his report that, "a thorough inspection of the subject failed to indicate any significant functional problems." *Resp't Ex. A at 33.* But at the hearing, he testified that by using replacement (instead of reproduction) costs,

he estimated the cost to construct a building without any functional problems and therefore did not need to adjust for functional obsolescence. *Tillema testimony.*

50. For his sales-comparison approach, Tillema selected four comparable properties that sold before March 1, 2011. Two were from Boswell, one was from Oxford, and one was from Albion. They sold for unadjusted prices ranging from \$4.57/sq. ft. to \$11.70/sq. ft. *Resp't Ex. A at 40.*
51. Tillema described the first Boswell sale, which Webster also used in his appraisal, as a distressed, short sale, meaning that the sale price was less than the outstanding balance on the seller's mortgage. Like Webster, Tillema adjusted the sale price by 10% to account for that fact. He learned from the seller that the property also had an environmental condition and therefore adjusted the sale price by 20%—the general estimate for remediating the immediate concern. He further adjusted for differences in building size and office area. His adjustments increased the sale price from \$4.57/sq. ft. to \$5.53/sq. ft. *Tillema testimony; Resp't Ex. A at 38, 40, 55.*
52. Tillema adjusted the Oxford sale, which occurred in March 2009, for building and site size. Because Oxford is a small community close to Boswell, he did not adjust for location. As explained above, his adjustments offset each other and his adjusted sale price of \$9.16/sq. ft. was the same as the property's unadjusted price. *Tillema testimony; Resp't Ex. A at 38.*
53. The second Boswell sale was from October 2008, which concerned Tillema because it was 2½ years before his appraisal's valuation date. Nonetheless, he did not adjust the sale price for time-related differences in market conditions. The building was much older than the subject building, so he adjusted the price upward by 20%—from \$4.16/sq. ft. to \$4.99/sq. ft. *Tillema testimony; Resp't Ex. A at 38.*
54. The Albion property sold just one month before the March 1, 2011 assessment date at issue in this appeal. Albion is located in northern Indiana and has fewer than 2,000

people. It is as far away from a metropolitan area as Boswell is. The building is similar in size to the subject building, but Tillema adjusted the sale price downward by 10% to account for its larger degree of office build-out. That reduced the price from \$11.70/sq. ft. to \$10.53/sq. ft. Although Tillema agreed that the Albion property was much better than the subject property, he explained that his reconciled estimate for the subject property (\$9.25/sq. ft.) was over \$1/sq. ft. lower than the Albion property's adjusted price. *Tillema testimony; Resp't Ex. A at 38.*

55. To reconcile his adjusted sale prices, Tillema looked at the quality of his sales information. The sale conditions for the first Boswell property bothered Tillema, so he gave that sale less weight. In his report, he indicated that, although dated, he considered the Oxford and second Boswell sales as appropriate indicators of the subject property's value. At hearing, he testified that he gave the second Boswell sale less weight and the Oxford sale some weight. In any case, he relied most heavily on the Albion sale based on its overall comparability to the subject property, its similar rural location, and the fact that it sold immediately before the March 1, 2011 valuation date. Tillema settled on a value of \$9.25/sq. ft., or \$485,000 (rounded) for the subject property. He did not use an average or weighted average to arrive at his conclusion. He instead explained that his reconciliation was a subjective determination that he gets to make as an appraiser because he is the one who has selected the comparable sales and adjusted their prices. *Tillema testimony; Resp't Ex. A at 39.*
56. For his income approach, Tillema researched rent for industrial or manufacturing facilities of similar design, size, age, and overall appeal as the subject property that were located in comparable Indiana markets. Based on that data, he determined that rents of \$1.75/sq. ft for the main building and \$1/sq. ft. for the Quonset huts were reasonable. Those rents generated potential gross income of \$100,971. Tillema deducted 25% for vacancy and collection loss, which he believed was appropriate given (1) the property's rural location, (2) its position in the marketplace, and (3) economic conditions at the time. That left effective gross income of \$75,728. *Tillema testimony; Resp't Ex. A at 45-47.*

57. From that effective gross income (“EGI”), Tillema deducted expenses. He posited a triple-net lease, with the following typical landlord expenses: insurance (2% of EGI) and management fees (3% of EGI). That left net operating income of \$71,942. *Tillema testimony; Resp’t Ex. A at 46-47.*
58. Tillema then chose what he believed was an appropriate capitalization rate. Data from recent industrial property sales indicated rates between 6.9% and 12.1% with an average of 8.8%. Although his report does not reference them, Tillema testified that he also considered capitalization rates from national publications. Based on that data, and considering the property’s rural location, overall physical condition, and economic conditions, he chose a capitalization rate of 11.5%. He then added an effective tax rate of 2.9844%, which yielded a loaded capitalization rate, and he divided the loaded rate into the property’s projected net operating income to arrive at a value of \$500,000 (rounded). *Tillema testimony; Resp’t Ex. A at 46-47.*
59. In reconciling his conclusions under the three approaches, Tillema settled on \$485,000—the value indicated by his sales-comparison analysis. He believed that the income and cost approaches—which he developed independently both of each other and of the sales-comparison approach—added credibility to his conclusion. *Tillema testimony.*
60. By contrast, argues the Assessor, Webster relied solely on the sales-comparison approach. He chose properties requiring large adjustments without offering any objective support for those adjustments. And he assigned his comparable sales equal weight, even though they required significantly different levels of adjustment. For those reasons, the Assessor characterizes Tillema’s appraisal is a more thorough, complete, and supportable valuation opinion. Although Millennium tried to discredit Tillema by claiming that he used sales from larger markets, Tillema focused on the size of the city or town instead of the county’s size. *Resp’t Post-Hearing Brief at 13-14, 16.*
61. Finally, the Assessor argues that the 2008 transaction in which Millennium bought the subject property is not probative of its true tax value. According to the Assessor, we

previously decided that the sale was not an arm's length transaction based on the same evidence offered in this appeal. Although Tillema referred to the sale as an arm's-length transaction in his report, that reference was a mistake. He did not know the reported sale price was an allocation. Similarly, Webster testified that he ignored the sale because his investigation started to show there might have been extenuating circumstances. *Resp't Post-Hearing Brief at 12 (citing Millennium Real Estate Investment, LLC v. Assessor, Benton County, 979 N.E.2d 192, 195, (Ind. Tax Ct. 2012)); Resp't Ex. A at 4, 11; Tillema testimony; Webster testimony.*

ANALYSIS

A. Burden of Proof

62. Generally, a taxpayer challenging an assessment must prove the assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to an assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase" I.C. § 6-1.1-15-17.2(d).
63. Neither circumstance applies here. The property's assessment actually decreased between 2010 and 2011, dropping from \$582,100 down to \$576,800. Thus, Millennium has the burden of proof. In any event, in an appeal like this, where both sides offer generally probative appraisals from qualified experts, we must weigh the evidence to determine what most persuasively shows the property's true tax value.

B. True Tax Value

64. Indiana assesses real property based on its true tax value, which for most property types is 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. A party's evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also*, *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use). With that guidance in mind, we turn to the evidence in this appeal.

C. Valuation Evidence

The 2008 allocated sale price

65. Millennium first points to the price it paid for the property in 2008. We agree with the Assessor that the sale price has little or no probative weight. The sale was remote in time, albeit no more so than some sales used by both Webster and Tillema in their appraisals. And the evidence shows that the seller was under duress. The sales disclosure statement, which McGowen signed under oath, indicates as much. While McGowen attempted to distance himself from the disclosure statement and to downplay the extent of the duress, the Assessor successfully impeached his testimony on those points.⁵ More importantly, the sale involved multiple assets, and the sale price Millennium points to was an amount allocated to the property by unidentified accountants

⁵ McGowen's testimony in the current proceedings also appears to conflict with the Tax Court's characterization of his testimony from the hearing on the 2008 appeal. *See Millennium Real Estate Inv., LLC v. Benton County Assessor*, 979 N.E.2d 192, 195 (Ind. Tax Ct. 2012) ("McGowen repeatedly testified that the seller, an acquaintance, was experiencing financial difficulties, that he had not been able to sell or refinance the property for over two years, and that his lender was threatening foreclosure.").

using an unexplained formula. Indeed, neither appraiser relied on that allocated sale price in reaching his valuation opinion.

The Appraisals

66. Both appraisers are highly qualified experts who prepared their appraisals in conformance with USPAP. Both relied on the sales-comparison approach to value, although Tillema checked his conclusions using the cost and income approaches. But the appraisers largely used different properties in their analyses and made considerably different adjustments. We will therefore address each appraisal's merits in turn.

Webster's appraisal

67. Webster was familiar with both the property's physical characteristics and American's manufacturing process. He also persuasively described functional problems with the property. For example, the buildings are segmented and narrow, making it inefficient to move materials between different stages in the manufacturing process. And there are design problems both with the gravel drive and with the placement of docks and overhead doors. Both McGowen's testimony and photographs of the property corroborated Webster's testimony about those problems.
68. Webster also found external obsolescence. He attributed the obsolescence to (1) what he described as a "soft" market, and (2) influences in the area immediately surrounding the property, such as what Webster and McGowen described as inadequate roads and inconsistent surrounding property uses. Tillema agreed, at least to some extent, on the first point—he also recognized external obsolescence based on the weakened market.
69. But Tillema disagreed with Webster on the second point, and there is little objective evidence to resolve that disagreement. Webster's aerial photographs show what appear to be narrow roads immediately adjacent to the property. On the other hand, Webster rated his comparable property in Frankfort as having a location similar to the subject property, even though he testified that the surrounding roads had to be good because the

seller had been moving heavy stone. Similarly, while we agree that the lack of supporting property uses in the immediate area might affect the subject property's value, there is little evidence to show the extent of that effect.

70. Webster accounted for the property's functional obsolescence by significantly adjusting the sale prices for his comparable properties to account for their superior utility. Yet he did not account for any environmental contamination when he analyzed his Boswell sale, explaining that the listing broker told him the contamination was very light. That evaluation of the contamination conflicts with Tillema's testimony about the approximate costs of remediation. We credit Tillema's slightly more-detailed testimony on that point.⁶ In any case, Webster's omission of a single adjustment, albeit a relatively significant one, to one of his four comparable properties does not by itself detract significantly from the reliability of his value conclusion.
71. Webster also adjusted his sale prices for a host of other factors. The gross adjustments ranged from 55% to 83%, and the net adjustments ranged from -18% to -33%. Despite those ranges, Webster gave equal weight to each comparable sale. The sheer magnitude of Webster's adjustments points to weaknesses in his comparable sales data. Webster himself described the sales data as "thin." *Pet'r Ex. 4 at 36.*
72. Despite those weaknesses, Webster chose not to develop either of the other two generally accepted approaches to value. He convincingly explained his reasons for rejecting the cost approach: the building is old and appears to suffer from functional and external obsolescence, making depreciation difficult to estimate. But his reasons for not developing the income approach are less convincing. They are based largely on the fact that the price indicated by his sales-comparison approach—\$5.64/sq. ft.—was within the range for leasing an industrial property in a larger town with superior utility, condition, and age. Under those circumstances, Webster explained, a reasonable businessperson

⁶ We give little weight to McGowen's testimony that the buyer did not know about any contamination. Both the listing broker and seller spoke about the contamination when Webster and Tillema confirmed the sale. We doubt they would have disclosed the existence of contamination to appraisers who were unrelated to the transaction while keeping that information from the buyer.

would rather buy the building than rent it. In researching data for his income approach, however, Tillema, found various comparable industrial properties that were rented.

73. While the income approach may not be an ideal indicator of the property's true tax value—it was owner occupied rather than rented, and Tillema himself did not ultimately give his conclusions under that approach significant weight—it would have helped as a check on Webster's sales-comparison analysis.

Tillema's appraisal

74. Tillema made few adjustments to any of his comparable properties' sale prices, even though, based on the photographs offered by Millennium, none of the properties appear to have segmented construction like the subject property. It is difficult to tell from the photographs whether the Boswell or Oxford properties have any of the other functional problems that Webster and McGowen identified. The only evidence on that point is McGowen's largely conclusory assertions that they do not. For his part, Tillema neither inspected the buildings' interiors nor specifically addressed those functional problems aside from his general statement that the property did not suffer from functional obsolescence.
75. Although Tillema did very little to explain how he reconciled his adjusted sale prices to a value conclusion, he gave the most weight to the sale from Albion. He justified his decision by pointing to its overall comparability and rural location, and because the sale date was one month before the valuation date.
76. Millennium's photographs of that property, however, show what appears to be a building that is far superior to the subject building. Tillema admitted as much. Yet he made only one adjustment to that property's sale price—a -10% adjustment for its office build-out. Maybe that was because he lacked data from which to quantify other ways in which the property was superior, and he therefore accounted for that superiority in a qualitative

manner. But he did not say so. At most, he explained that his reconciled value of \$9.25/sq. ft. was less than the Albion property's \$10.53 adjusted sale price.

77. Tillema did little to explain how he determined that reconciled value, saying only that it was a subjective determination he gets to make as an appraiser. That may be true; appraisal is not an exact science, and appraisers make many subjective judgments when valuing properties. Nonetheless, something must inform those judgments. The degree to which an appraiser explains his judgments and shows how they comport with generally accepted appraisal principles affects the probative weight of his valuation opinion.
78. We recognize that Tillema's valuation opinion is only slightly higher than the \$9.16/sq. ft. adjusted price for his comparable sale from Oxford. Unlike the photographs of the Albion building, the photographs of the Oxford building do not depict a strikingly superior property. But Tillema did not place nearly the same weight on that sale as he did on the Albion sale. Indeed, he did not necessarily give the Oxford sale any more weight than he gave the second Boswell sale. Although he testified differently at hearing, Tillema's report says merely that the Oxford and second Boswell sales were both appropriate indicators of the subject property's value. The adjusted price from the second Boswell sale is significantly lower than both the adjusted price from the Oxford sale and Tillema's reconciled value. Under those circumstances, the Oxford sale does little to mitigate our concerns about Tillema's heavy reliance on the Albion sale.
79. Tillema also developed the cost and income approaches and used them to check his conclusions under the sales-comparison approach. Once again, he did not view the property as suffering from any functional obsolescence, although he explained the underlying basis for his view differently at the hearing than in his report.
80. As already discussed, we are persuaded that the property suffered from some functional inutility. We agree, as Tillema indicated at the hearing, that using replacement cost—which estimates the cost to construct a building of equal utility, but not necessarily of the same design, materials, or quality—likely eliminates some forms of functional

obsolescence, such as excess construction or superadequacy. But it does not necessarily eliminate all forms. *Teledyne Continental Motors v. Muskegon Twp.*, 378 N.W.2d 590, 592-93 (Ct. App. Mich. 1985) (finding that while using replacement costs eliminates the need to calculate some types of functional obsolescence, such as excess construction or superadequacy, other sources of functional obsolescence must at least be considered). Without more explanation, we cannot determine whether, under generally accepted appraisal principles, the inutilities at issue here are the type that would be eliminated by using replacement costs.

81. In any case, Tillema himself did not believe that the cost approach was a particularly reliable method for estimating the property's value. He even testified that he probably would not have developed that approach but for his belief that Indiana's true tax value standard required him to do so.
82. Tillema's views regarding the property's utility may have influenced his analysis under the income approach as well. Millennium, however, did little to challenge Tillema's choice of rent comparables or any of the other judgments underlying his income approach analysis. And his conclusion of value under that approach (\$500,000) lends at least some support to his ultimate valuation opinion.

Our Conclusions

83. On one hand, we have Webster's appraisal, in which he relied on a single valuation approach and used admittedly thin comparative sales data requiring significant adjustments. On the other hand, we have Tillema's appraisal, in which he discounted the subject property's functional inutility and relied significantly on the mostly unadjusted sale price for a property he admitted was far better than the subject property, but in which he checked his sales-comparison analysis by applying an analysis under the income approach that Millennium did little to challenge.

84. We recognize that this likely was not an easy property to value, given its location, segmented construction, and age as well as the relative lack of comparable sales data. Although both appraisals are probative, they are not models of persuasion and each has flaws that detract from its reliability. Ultimately, we are more troubled, if only barely, by Tillema's heavy reliance on the mostly unadjusted sale price of a clearly superior property than we are by the shortcomings in Webster's appraisal.

CONCLUSION

85. After weighing the appraisals and testimony, we are more persuaded by Webster's valuation opinion. We therefore order the Assessor to change the property's 2011 assessment to \$268,000.

Issued: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.