

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

MERRILLVILLE APARTMENTS, LLC,)	Petition Nos.:	45-030-16-1-4-01238-18
)		45-030-17-1-4-01237-18
Petitioner,)		
)	Parcel No.:	45-12-20-476-008.000-030
v.)		
)	County:	Lake
LAKE COUNTY ASSESSOR,)		
)	Years:	2016, 2017
Respondent.)		

July 10, 2021

FINAL DETERMINATION

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

I. INTRODUCTION

1. The parties offered competing valuation opinions from their respective appraisers—Adam D. Vince for Merrillville Apartments, LLC, and Dale J. Kleszynski for the Lake County Assessor. Both appraisers developed all three valuation approaches—the cost, sales comparison, and income capitalization approaches. After weighing the evidence, we find Kleszynski’s appraisals more credible overall. In keeping with Indiana Code § 6-

1.1-4-39(a), we conclude that the 2016 and 2017 assessments must be changed to reflect the concluded values from Kleszynski’s income approaches, which were the lowest valuations produced by his three approaches.

II. PROCEDURAL HISTORY

2. Merrillville Apartments contested its 2016 and 2017 assessments. The Lake County Assessor determined the following assessments:

Year	Land	Improvements	Total
2016	\$609,600	\$39,390,400	\$40,000,000
2017	\$609,600	\$39,390,400	\$40,000,000

3. On November 19, 2018, Merrillville Apartments filed Form 131 petitions with the Board.¹ Although Merrillville Apartments elected our small claims procedures, we granted the Assessor’s request to remove the appeals from small claims. Beginning on December 18, 2019, our designated administrative law judge, Ellen Yuhan, (“ALJ”) held a two-day hearing on Merrillville Apartments’ petitions. Because the parties were unable to complete their presentations during the time originally allotted for the hearing, we set the matter for three additional days in March 2020. However, because the pandemic affected the ability of some participants to attend the hearing, we granted the Assessor’s Motion for Continuance. The hearing ultimately resumed on August 31, 2020 and concluded on September 1, 2020.
4. Appraisers Adam D. Vince and Dale J. Kleszynski testified under oath.

¹ Merrillville Apartments elected to appeal its 2016 and 2017 assessments directly to us after the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) failed to issue a determination within 180 days of the filing of its Form 130 notices of appeal. *See* Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed).

5. Merrillville Apartments submitted the following exhibits:

- Petitioner Exhibit 1: 2016 Appraisal Report prepared by Adam D. Vince
- Petitioner Exhibit 2: 2017 Appraisal Report prepared by Adam D. Vince
- Petitioner Exhibit 3: Property Records Cards (“PRCs”) for 2016 and 2017
- Petitioner Exhibit 4: Tax bills for 2016 payable 2017 and 2017 payable 2018
- Petitioner Exhibit 5: 2015 Form 113 for the subject property
- Petitioner Exhibit 6: 2015 Form 134 for the subject property
- Petitioner Exhibit 7: Merrillville Lakes, LLC 2015 Tax Asset Detail
- Petitioner Exhibit 8: Rent rolls as of 12/31/15 and 12/31/16
- Petitioner Exhibit 9: Land comparables from the Kleszynski appraisal
- Petitioner Exhibit 10: Kleszynski’s Land Sale #1
- Petitioner Exhibit 11: Permit from the Town of Highland for 2121 45th Street
- Petitioner Exhibit 12: Letter from Dale Kleszynski dated April 18, 2017
- Petitioner Exhibit 13: Letters from Dale Kleszynski dated June 19, 2018
- Petitioner Exhibit 14: 2016 Kleszynski comparables information
- Petitioner Exhibit 15: 2017 Kleszynski comparables information
- Petitioner Exhibit 16: U.S. census information
- Petitioner Exhibit 17: Appraisal Report of Dale Kleszynski for 2010-2015
- Petitioner Exhibit 20: Prior IBTR decision for 2010-2014
- Petitioner Exhibit 21: Construction Loan Agreement (2008)
- Petitioner Exhibit 22: Mortgage Note
- Petitioner Exhibit 23: 1st and 2nd Loan Modifications
- Petitioner Exhibit 24: Kleszynski Land Sale #5
- Petitioner Exhibit 25: 2016 CoStar comparables
- Petitioner Exhibit 26: 2017 CoStar comparables
- Petitioner Rebuttal Exhibit 1: GIS maps with building sizes from the GIS maps and building sizes from the PRCs
- Petitioner Rebuttal Exhibit 2: Close up for Respondent’s measurements from Google Earth
- Petitioner Rebuttal Exhibit 3: Google Earth measurements

6. The Assessor submitted the following exhibits:

Respondent Exhibit 1:	2016 Appraisal Report prepared by Dale J. Kleszynski
Respondent Exhibit 2:	2017 Appraisal Report prepared by Dale J. Kleszynski
Respondent Exhibit 3:	PRCs for 2016 and 2017
Respondent Exhibit 4:	Satellite imagery of the subject property
Respondent Exhibit 5:	Sales disclosure for the subject property
Respondent Exhibit 6:	CoStar information for the subject property
Respondent Exhibit 7:	2017 payable 2018 tax bill for the subject property
Respondent Exhibit 8:	Subject property details
Respondent Exhibit 9:	Website information
Respondent Exhibit 10:	Capitalization rate chart
Respondent Exhibit 11:	Land comparables for Kleszynski appraisals
Respondent Exhibit 12:	Marshall Valuation Service Data
Respondent Exhibit 13:	Sales comparables for 2016 Kleszynski appraisal
Respondent Exhibit 14:	Sales comparables for 2017 Kleszynski appraisal
Respondent Exhibit 15:	Certified Securities and Exchange Commission (“SEC”) Form FWP for Credit Suisse dated 4/30/2015
Respondent Exhibit 16:	Certified Secretary of State filings
Respondent Exhibit 17:	Personal property tax returns (Confidential)
Respondent Exhibit 18:	Mortgage documents and deeds
Respondent Exhibit 19:	CBRE cost approach and income approach
Respondent Exhibit 20:	Excerpts from “The Appraisal of Real Estate”, 14 th Edition
Respondent Exhibit 21:	Excerpt from the Uniform Standards of Professional Appraisal Practice (“USPAP”) Advisory Opinion “The Valuation of Apartment Properties”
Respondent Exhibit 22:	Memo from Dale Kleszynski to Attorney Engle dated 12/12/2019
Respondent Exhibit 23:	Memo from Dale Kleszynski to Attorney Engle dated 12/12/2019
Respondent Exhibit 24:	Maps of land comparables from the Vince appraisal
Respondent Exhibit 25:	Maps of sale comparables from Vince appraisal
Respondent Exhibit 26:	CORE construction cost data
Respondent Exhibit 27:	Memo from Dale Kleszynski to Angela Guernsey dated 6/19/2018
Respondent Exhibit 28:	317 U.S. Highway 41 sold report
Respondent Exhibit 29:	7771 U.S. Highway 41 sold report
Respondent Exhibit 30:	Memo from Dale Kleszynski to Attorney Engle dated August 27, 2020
Respondent Exhibit 31:	Google Earth measurements
Respondent Exhibit 32:	Estimate of cost to construct
Respondent Exhibit 33:	Google map

Respondent Addenda A:	Source PRCs and sales disclosures for Kleszynski land comparables
Respondent Addenda B:	Source PRCs and sales disclosures for Kleszynski 2016 sale comparables
Respondent Addenda C:	Source PRCs and sales disclosures for Kleszynski 2017 sale comparables
Respondent Addenda D:	Freddie Mac Multifamily Research perspectives
Respondent Addenda E:	Indiana Association of Realtors Monthly Indicators
Respondent Addenda F:	Costar Demographic Data
Respondent Addenda G:	Marcus & Millichap Multifamily Outlook
Respondent Addenda H:	Institute of Real Estate Management 2014 Income/Expenses Analysis

7. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in these appeals, including the parties' post-hearing briefs, (2) all orders and notices issued by the Board or our ALJ, and (3) the hearing transcript.²

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. THE SUBJECT PROPERTY

8. The subject property is a 356-unit, age-restricted (55+) multifamily apartment complex located at 8500 Grant Street³ in Merrillville. It consists of building and site improvements situated on a rectangular corner lot containing approximately 20.08 acres. The property is zoned as a Planned Unit Development. It is located on the west side of Grant Street, which provides access to the site, and south of Lincoln Highway (Route 30). Development in the area surrounding the subject property is primarily residential in character. Commercial and office developments are concentrated along Lincoln Highway, which serves as the main commercial corridor for the neighborhood and provides access to Interstate 65. *Pet'r Ex. 1 at 12, 14; Resp't Ex. 1 at 1, 15, 16, 18; Resp't Ex. 8 at 11; Resp't Ex. 15 at B-115; Tr. at 32-33.*

² The transcript is bound in five volumes, but the pages are numbered consecutively from 1 to 780. We will cite to the transcript, without reference to the volume, using the following format: Tr. at (page number).

³ The parties' appraisers referred to the subject property using two different addresses, with Kleszynski using 8400 Grant Street and Vince using 8500 Grant Street. While both addresses appear to be applicable, the Sales Disclosure Form, PRCs, and tax bills list the property's address as 8500 Grant Street. *See Pet'r Exs. 3, 4; Resp't Exs. 3, 5, 7.*

9. The improvements include four, four-story apartment buildings with one- and two-bedroom units ranging in size from 758 SF to 1,440 SF and eight attached parking garages (2 per building) containing a total of 356 parking spaces. The improvements were constructed in phases between 2009 and 2014. Site improvements include a swimming pool, outdoor parking spaces, a gated entrance, paved drives, curbs, gutters, sidewalks, landscaping, irrigation system, exterior lighting, and fencing. *Pet'r Ex. 1 at 12, 14; Pet'r Ex. 8; Pet'r Ex. 12; Pet'r Ex. 21; Resp't Ex. 15 at B-115; Resp't Ex. 23 at 1-2; Tr. at 33-34.*

B. EXPERT OPINIONS

1. Kleszynski's Appraisal

10. The Assessor offered an appraisal report from Dale J. Kleszynski, MAI, SRA, president and principal shareholder of Associated Property Counselors, Ltd. Kleszynski received a Bachelor of Arts degree from Loyola University of Chicago in 1971. He has been an appraiser since 1977, and he is a licensed appraiser in Illinois, Indiana, and Michigan. Over the years, Kleszynski has taught numerous appraisal and USPAP courses for the Appraisal Institute and for the Appraisal Foundation. He has also held every position in the Chicago Chapter of the Appraisal Institute, including president. During his career, Kleszynski has appraised commercial, residential, and special purpose properties, with commercial properties making up around 80% of his appraisal work. He has also provided litigation support services for law firms and has served as an expert witness in various litigation and arbitration matters in Illinois, Indiana, Michigan, and New York. *Resp't Ex. 1 at 84-89; Tr. at 9-23.*

11. Kleszynski utilized all three approaches to value: the cost approach, the sales comparison approach, and the income capitalization approach. He valued the retrospective market value-in-use of the subject property's fee simple interest as of January 1, 2016 and January 1, 2017. He certified that his appraisals comply with USPAP. *Resp't Exs. 1 and 2 at 1, 2, 8, 78; Tr. at 31.*

a. Kleszynski's Research and Market Overview

12. To develop his valuation opinion, Kleszynski performed an inspection of the property and the surrounding area. He collected information and did research to understand the market economics. His evaluation process involved selecting land sales, collecting rental information and income and expense figures, and reviewing capitalization rate information. *Resp't Exs. 1 and 2 at 7-9; Tr. at 23-27.*
13. Kleszynski determined the highest and best use of the property as vacant was for development in accordance with the current zoning classification, which is a planned unit development. He concluded that the highest and best use of the property as improved was its current use—a mid-rise, age-restricted apartment complex. *Resp't Exs. 1 and 2 at 36-38; Tr. at 36-37, 93-95.*

b. Kleszynski's Income Capitalization Approaches

14. In order to develop his income approaches, Kleszynski requested Merrillville Apartment's financial statements, rent rolls, lease data, and income and expense statements, but the owner's representative told him that the information would not be provided. Kleszynski therefore reserved the right to amend his appraisal after reviewing the information. That opportunity arose a week before the December hearing date, when he was able to review the information contained in Merrillville Apartment's exhibits. He also reviewed a form filed with the SEC that provided information about the subject property, including the number, type, and size of apartment units, their asking rents, and occupancy rates. After reviewing the new information, Kleszynski amended his income

approaches by issuing an Errata Sheet. *Resp't Ex. 1 at 7, 54; Resp't Ex. 23; Tr. at 34-35, 47-50, 95-97.*

15. For 2016, Kleszynski relied on information from the CoStar Multi-family Submarket Report for South Lake County to identify market rates. He selected properties based on their proximity to the subject property, the size of the complex, the average size of the units, and the physical amenities available. He ultimately chose six apartment complexes and compared the rental data from those properties with the subject property. They had average monthly rents ranging from \$647 to \$1,167/unit. Kleszynski concluded that the subject property's actual rents, vacancy rate, and expenses were consistent with the market data he reviewed. He expected that the subject property would continue to have stabilized occupancy and that its rental rates would range from \$850 to \$1,300 per month, with parking garage spaces renting for \$65 per month. *Resp't Ex. 1 at 55-61; Resp't Ex. 23 at 1-2; Tr. at 107-111, 120-121.*

16. Based on the market rates he selected for the 356 units and the rental income he attributed to the parking garages, Kleszynski calculated the subject's total rental income to be \$4,319,040. He then added in \$50,000 for additional services and laundry income, resulting in total potential gross income ("PGI") of \$4,369,040. After deducting 7% for vacancy, Kleszynski estimated an effective gross income ("EGI") of \$4,063,207. He determined the subject's operating expenses were \$1,658,044 or 40.81% of EGI. Deducting the expenses resulted in net operating income ("NOI") of \$2,405,163. This NOI was supported by the financial information reported for the actual operation of the property, which convinced Kleszynski that the contract rents represent market rents. *Resp't Ex. 1 at 54, 61; Resp't Ex. 23 at 2; Tr. at 121-128.*

17. Kleszynski applied a band of investment technique to estimate the overall capitalization rate. This method yielded a 6.50% capitalization rate. In addition to the band of investment analysis, he considered data from published indices. According to a PricewaterhouseCoopers, LLP Investor Survey, overall capitalization rates for national

apartment investments ranged from 3.50% to 8.00% as of the appraisal's effective date. Based on his analysis, Kleszynski selected an overall capitalization rate of 6% (unloaded). Applying the 6% overall capitalization to the NOI produced an estimated value of \$40,086,049. He then deducted \$500,000 for furniture, fixtures, and equipment ("FF&E"), resulting in an indicated value of \$39,600,000 (rounded). *Resp't Ex. 1 at 7, 62-63; Resp't Ex. 23 at 2; Tr. at 128-133.*

18. As an additional analysis, Kleszynski estimated the NOI while excluding the real estate tax expense as a line item in the calculation. This produced a NOI estimate of \$3,231,779. He then loaded the overall rate of 6% with an effective tax rate of 2.093% (2016), resulting in a loaded cap rate of 8.10% (rounded). After applying the loaded cap rate to the recalculated NOI and deducting \$500,000 for FF&E, he estimated the subject's value to be \$39,400,000 (rounded). *Resp't Ex. 23 at 2-3; Tr. at 133-136.*
19. For 2017, Kleszynski used the same rent comparables he relied on for 2016. Because he believed the market was improving, Kleszynski increased the rents by \$5 per month on the one-bedroom and the smaller two-bedroom apartments. He increased the larger two-bedroom units by \$10 per month, while keeping the largest units and the garages at the same rental rate. He also lowered the vacancy and collection rate to 6%. This resulted in an EGI of \$4,057,717. His expense estimate increased slightly to 42.09%, resulting in a NOI of \$2,349,977. *Resp't Ex. 2 at 55-60; Resp't Ex. 23 at 4; Tr. at 236-241.*
20. Kleszynski used the same 6% overall capitalization rate because he believed the market was relatively stable. Applying the 6% to the NOI produced an estimated value of \$39,166,285. He then deducted \$500,000 for FF&E, resulting in a value of \$38,700,000 (rounded). *Resp't Ex. 23; Tr. at 239-240.*

21. As with 2016, Kleszynski performed an additional analysis that excluded the real estate tax expense from his NOI calculation. This produced a NOI estimate of \$3,226,508. He loaded his 6% cap rate with an effective tax rate of 2.236% (2017), resulting in a loaded cap rate of 8.25% (rounded). After applying the loaded cap rate to the recalculated NOI and deducting \$500,000 for FF&E, he estimated the subject's value to be \$38,600,000 (rounded). *Resp't Ex. 23 at 4-5; Tr. at 240-241.*
22. Applying the lower portion of the ranges, Kleszynski concluded to values of \$39,400,000 for 2016 and \$38,600,000 for 2017. *Resp't Ex. 23 at 3, 5.*

c. Kleszynski's Sales Comparison Approaches

23. For 2016, Kleszynski used the CoStar database to search for three star or better apartment complexes in Indiana that sold in 2015. He selected comps with characteristics that were, in his view, most comparable to the subject property. The five comps he selected have similar physical and locational characteristics, similar rents, and some of the same amenities such as on-site management, garages, workout rooms and swimming pools as the subject. He felt that the comps had a reasonably consistent range of prices from approximately \$90,000 to \$150,000/unit. *Resp't Ex. 1 at 66-73; Tr. at 139-143.*
24. Kleszynski also included the 2015 sale of the subject property as a comp. It sold in what he described as an arm's length transaction about three weeks before the January 1, 2016 assessment date. He felt it would have been an excellent indicator of market value (after deducting personal property) if not for the statute dictating that the assessment is the lowest of the three appraisal approaches. *Resp't Ex. 1 at 67, 73; Resp't Ex. 5; Tr. at 143-145.*

25. Kleszynski's six comparable sales are summarized as follows:

Comp	Address City	Date of Sale	Price	Price per Unit	Acres No. of Units	Rentable Area
Subject	8400 Grant Street Merrillville	1/1/2016			20.08 356	337,368
1	8400 Grant Street Merrillville	12/7/2015	\$40,000,000	\$112,359.55	20.08 356	337,368
2	675 Beacon Street Carmel	10/20/2015	\$47,900,000	\$148,757.76	15.22 322	351,170
3	14637 Handel Drive Carmel	10/13/2015	\$50,000,000	\$125,000.00	40.00 400	444,288
4	11400 Gables Drive Fishers	12/10/2015	\$33,200,000	\$110,666.67	31.37 300	327,396
5	7545 Bayview Club Drive Indianapolis	5/12/2015	\$25,250,000	\$106,991.53	18.45 236	240,450
6	11275 Sportsman Park Lane Fort Wayne	6/12/2015	\$25,000,000	\$94,696.97	26.33 264	275,892

Resp't Ex. 1 at 73; Resp't Ex. 5; Resp't Ex. 23 at 1; Resp't Ex. Addenda B; Tr. at 139-145.

26. Kleszynski considered adjustments for property rights conveyed, financing, condition of sale, changes in market conditions, location, land size, rentable area/unit size, zoning, and physical variations. He applied adjustments ranging from +5% to -15% for land size and rentable area, resulting in an adjusted average of \$107,900/unit and an adjusted median of \$103,495/unit. Kleszynski felt that the adjusted values supported the subject's sale price of \$112,359/unit. He rounded the value to \$113,000/unit and multiplied that by the subject's 356 units, producing a value of \$40,228,000. After deducting \$500,000 for FF&E, he concluded to a value of \$39,725,000 (rounded) for 2016. *Resp't Ex. 1 at 73-76; Tr. at 145-174.*

27. For 2017, Kleszynski followed the same steps and used the same parameters to search for comparable properties. He selected five comps he considered reasonably similar to the subject property that sold during 2016. As with the comps from his 2016 analysis, their characteristics and amenities are similar to those of the subject. He also included the 2015 sale of the subject property. *Resp't Ex. 2 at 66-73; Resp't Ex. 5; Resp't Ex. Addenda B; Tr. at 241-248.*

28. Kleszynski's six comparable sales are summarized as follows:

Comp	Address City	Date of Sale	Price	Price per Unit	Acres No. of Units	Rentable Area
Subject	8400 Grant Street Merrillville	1/1/2017			20.08 356	337,368
1	8400 Grant Street Merrillville	12/7/2015	\$40,000,000	\$112,359.55	20.08 356	337,368
2	500 Bigleaf Maple Way Westfield	2/19/2016	\$32,900,000	\$109,666.67	23.97 300	300,560
3	15800 Navigation Way Noblesville	3/15/2016	\$39,625,000	\$117,931.55	28.39 336	354,814
4	2720 Canyon Club Drive Plainfield	6/30/2016	\$24,000,000	\$116,504.85	18.08 206	197,282
5	7705 Harborside Drive Camby	7/21/2016	\$19,250,000	\$91,232.23	31.10 211	218,216
6	1333-1335 Fenbrook Ln Bloomington	9/19/2016	\$33,350,000	\$116,608.39	52.35 286	329,372

Resp't Ex. 2 at 73; Resp't Ex. 5; Resp't Ex. 23 at 1; Resp't Ex. Addenda B; Tr. at 241-248.

29. Kleszynski considered the same adjustments as in his 2016 appraisal. He applied adjustments ranging from +5% to -20% for land size and rentable area, resulting in an adjusted average of \$99,012/unit and an adjusted median of \$99,471/unit. He ultimately selected a price of \$112,000/unit, which was slightly lower than the subject's sale price of \$112,359/unit. Multiplying his per unit value by the subject's 356 units produced a value of \$39,872,000. After deducting \$500,000 for FF&E, he concluded to a value of \$39,375,000 (rounded) for 2017. *Resp't Ex. 2 at 73-76; Tr. at 248-256.*
30. Because Kleszynski determined that the comps he selected for 2016 and 2017 were leased and operating at market levels, he concluded that the value of their leased fee and fee simple interests are identical. *Tr. at 158, 249-250.*

d. Kleszynski's Cost Approaches

31. Kleszynski started his cost approach by estimating the value of the land as vacant. He looked for comparable land sales using CoStar's database, his personal database, and the multiple listing service database. He selected the following five comparable properties based on their location and their highest and best use and used them to develop a land value for both 2016 and 2017:
- Land Sale 1 is a 4.88-acre site previously used as an auto dealership purchased for \$1,475,000 in July 2013 for development of an apartment complex.
 - Land Sale 2 is a 19.18-acre commercial site purchased for \$4,500,000 in March 2014 for unspecified future development.
 - Land Sale 3 is an 18.91-acre site purchased in two transactions—one in 2013 for \$565,500 and one in 2014 for \$694,500. It was purchased for multi-family residential development and has since been improved with ten 2-story apartment buildings containing a total of 152 units.
 - Land Sale 4 is a 1.40-acre commercial site purchased for \$525,000 in February 2016 for unspecified future development.

- Land Sale 5 is a 9.50-acre commercial site purchased for \$750,000 in August 2016. Kleszynski originally listed the site as having only 3 acres, but he later learned that it actually contains 9.50 acres after speaking with an appraiser who had appraised the property.

Resp't Exs. 1 and 2 at 39-46, 49; Resp't Ex. 11; Resp't Ex. Addenda A; Tr. at 175-205, 524.

32. Kleszynski considered adjustments for property rights conveyed, financing, condition of sale, changes in market conditions, location, zoning, land area, and physical variations. He ultimately made market condition, location, and land area adjustments. After adjustments, the average value was \$5.74/SF, and the median value was \$5.92/SF. Kleszynski reconciled his adjusted values to \$6.00/SF, which resulted in a land value of \$5,250,000 (rounded). *Resp't Exs. 1 and 2 at 46-49; Tr. at 181-205.*
33. Kleszynski acknowledged that Land Sale 5 was incorrectly shown on the CoStar report as a 3-acre parcel when it is actually 9.5 acres. The difference was too insignificant to make him change his opinion of value because, while the price per acre might be less, his adjustments would be different. *Resp't Ex. 29; Tr. at 524-527.*
34. According to Kleszynski, the subject property is a high-end apartment complex with a gross building area of 645,160 square feet. Of that, 517,160 square feet is residential apartment buildings, and 128,000 square feet is garage area. He reviewed several sources to help him determine the replacement cost of the improvements, including Marshall Valuation material for 2016-2018, actual verified cost statements from other apartment complexes, and contractor opinions. *Resp't Exs. 1 and 2 at 50; Resp't Ex. 6; Resp't Ex. 19; Tr. at 215-222, 227.*
35. For 2016, Kleszynski determined the base cost to construct an Average Class C Multi-Family, Mid/High-Rise building was \$72.30/SF, while the garage area was \$22.00/SF.

He adjusted the base cost using multipliers for the number of stories, building height, perimeter, and local and current costs for materials and labor. He estimated the costs of the apartment buildings and garage buildings to be \$37,466,767 and \$2,821,731, respectively, producing a total building improvement cost of \$40,288,499. *Resp't Ex. 1 at 50; Resp't Exs. 12, 15; Tr. at 224-227.*

36. To determine the cost of site improvements, Kleszynski relied on data from Marshall & Swift Cost Service, internal files for similar projects, and contractor interviews. He estimated the site improvements would cost \$750,000, or approximately \$0.85/SF. To that, he added soft costs for engineering, architecture, permits, and legal fees totaling \$569,231. Finally, Kleszynski applied entrepreneurial profit of 10%, or \$4,160,773, producing a total improvement cost of \$45,768,503 before depreciation. *Resp't Ex. 1 at 51; Tr. at 228-231.*
37. Kleszynski estimated the physical depreciation of the improvements at 20% based on an effective age of 10 years and an estimated life of 50 years. He estimated physical depreciation of the site improvements at 40% based on an effective age of 8 years and an estimated life of 20 years. Based on his property inspection and review of new and existing apartment facilities, he concluded that the utility and design of the subject met market standards. So, he did not apply any functional obsolescence. And because he found the market for similar properties in the Merrillville area to be strong, Kleszynski also decided against applying any external obsolescence. His estimate of total depreciation was \$9,318,701, resulting in a depreciated value for the improvements of \$36,449,802. Adding Kleszynski's land value of \$5,250,000 and subtracting \$500,000 for FF&E from the improvements' depreciated value produced an estimated value of \$41,200,000 (rounded) for 2016. *Resp't Ex. 1 at 52-53; Tr. at 231-233.*
38. For 2017, Kleszynski used the same land sales as for 2016, and his land value estimate remained at \$5,250,000. In his opinion, the base cost for the apartment buildings and the garages increased slightly over the one-year period. Rather than increase the multipliers

and retain the \$72.30/SF, he felt that, based on his review of actual contractor statements, he should increase the base costs for the apartment buildings to \$74.25/SF and increase the garages to \$23.00/SF. Using those values, Kleszynski estimated the costs of the apartment buildings and garages to be \$38,477,282 and \$2,949,992, respectively, producing a total building improvement cost of \$41,427,274. *Resp't Ex. 2 at 50; Tr. at 256-258.*

39. After determining the improvement cost, Kleszynski made additional adjustments for hard costs and soft costs. He increased the site preparation cost to \$775,000, or \$0.90/SF. He then added soft costs for engineering, architecture, permits, and legal fees totaling \$583,363. Finally, Kleszynski applied entrepreneurial profit of 10%, or \$4,278,593, producing a total improvement cost of \$47,064,520 before depreciation. *Resp't Ex. 2 at 51; Tr. at 258-259.*
40. Kleszynski increased the effective ages of both the building improvements (11 years old) and the site improvements (10 years old), resulting in physical depreciation of 22% for the building improvements and 50% for the site improvements. As with 2016, he found no functional or external obsolescence. After applying the physical depreciation percentages, he estimated total depreciation to be \$10,592,894, resulting in a depreciated value for the improvements of \$36,471,625. Adding Kleszynski's land value of \$5,250,000 and subtracting \$500,000 for FF&E from the improvement's depreciated value produced an estimated value of \$41,220,000 (rounded) for 2017. *Resp't Ex. 2 at 52-53; Tr. at 260-261.*
41. There was a difference in the building area Kleszynski used in his report and the building area claimed by Merrillville Apartments. Although Kleszynski did not accept their building area estimates, he nevertheless prepared two additional cost estimates for 2017 using the estimates advanced by Merrillville Apartments. In his first estimate, Kleszynski applied all of the same inputs used in his 2017 cost approach but allocated 462,296 square feet to the apartment buildings and 130,622 square feet to the garages.

He also increased the perimeter multiplier from 0.85 to 0.90 to accommodate the inlet measurements. This resulted in an estimated value of \$39,700,000 (rounded). In his second estimate, Kleszynski again used the same inputs from his 2017 cost approach but allocated 437,654 square feet to the apartment buildings, 130,622 square feet to the garages, and 24,642 square feet to exterior features. And he adjusted the perimeter multiplier from 0.85 to 0.90. This scenario resulted in an estimated value of \$39,000,000 (rounded). Kleszynski concluded that these two additional estimates supported his original value conclusions. *Resp't Ex. 30; Tr. at 481-486, 555-558.*

e. Kleszynski's Reconciliation

42. Kleszynski originally performed standard reconciliations as part of his 2016 and 2017 appraisal reports. However, after issuing the reports he invoked a jurisdictional exception and revised his reconciliations in order to comply with the Indiana law requiring the assessed value of apartment complexes like the subject to be the lowest value indicated by the three valuation approaches. The value conclusions produced by his amended income approaches were the lowest. Kleszynski therefore reconciled to final value conclusions of \$39,400,000 for 2016 and \$38,600,000 for 2017. *Resp't Exs. 1 and 2 at 77; Resp't Ex. 23 at 3, 5-6; Tr. at 233-236, 261-262.*

2. Vince's Appraisal

43. Merrillville Apartments offered an appraisal prepared by Adam D. Vince, MAI, MRICS, managing principal of Vince Associates, LLC. Vince has a Bachelor of Arts degree from Valparaiso University. He holds certified general appraiser licenses in Illinois, Indiana and Michigan and has been appraising property for 17 years. Vince has experience working in commercial and complex residential real estate, including the appraisal of investment grade apartments, student housing, hotels, self-storage, and special purpose properties. His clients include commercial lenders and financial institutions, REITs, attorneys, private investors, insurance companies, and local governments. *Pet'r Exs. 1, 2, Addenda H; Tr. at 589-597.*

44. Vince appraised the subject property's true tax value as of January 1, 2016 and January 1, 2017. He valued the "as is" market value of the fee simple estate and leased fee interest and certified that his appraisals comply with USPAP. Vince relied on all three traditional appraisal methods: the cost approach, the sales comparison approach, and the income capitalization approach. He also followed the specific guidance contained in Indiana Code § 6-1.1-4-39, which requires valuing residential rental units of four units or more at the lowest value produced by the three approaches. *Pet'r Exs. 1 and 2 at Transmittal Letter, 14-15; Tr. at 605-608, 659.*

a. Vince's Research and Market Overview

45. To develop his valuation opinions, Vince collected relevant information about the subject property from the owner and public records. He inspected portions of the property and the surrounding area on the effective date of the appraisal. He reviewed the market with respect to physical and economic factors relevant to the valuation process. Vince also researched applicable tax data, zoning requirements, flood zone status, demographics, income and expense data, and comparable listing, sales, and rental information. *Pet'r Exs. 1 and 2 at 17-18; Tr. at 608-612, 659.*

46. Vince determined the property was in the Chicago-Naperville, IL-IN-WI CSA, which is a primary influence. Northwest Indiana experiences a trickle-down effect because of its proximity to the Chicago market. Over the past few years, that effect has seen Indiana receiving the benefits of Chicago's economic recovery but without the budget crisis that has plagued Illinois. Vince felt that the subject property would continue to benefit from its proximity to Chicago. After completing his neighborhood analysis, Vince expected the area's median household income, disposable income, and per capita income to increase over the next 4 years. He also concluded that the data on households, population, median age, and median home values all pointed to a stable market area. *Pet'r Exs. 1 and 2 at 20-30; Tr. at 609-612, 659.*

47. As part of his review of the subject's site, Vince developed ratings to help him express his opinions on the subject's access, visibility, proximity to highways and transportation linkages, the compatibility of surrounding land uses, proximity to the employment base, and the availability of utilities. He concluded that the subject has an average location. He performed a similar analysis to rate the subject's improvements, focusing on the quality of construction, overall condition, design and appearance, on-site parking, and the quality of the interior finish. Vince did not find anything about the interior finishes that would lead him to describe the subject as a luxury property, such as granite countertops, stainless steel appliances, or tile/slate showers. He rated the subject's improvements as average and concluded that their overall condition was average to good. *Pet'r Exs. 1 and 2 at 31-35; Tr. at 612-615, 659-661.*
48. Vince concluded that the subject's highest and best use as if vacant was for development of an apartment building or complex. He concluded that its highest and best use as improved was to continue its current use as an apartment complex. *Pet'r Exs. 1 and 2 at 38-39; Tr. at 615, 661.*

b. Vince's Cost Approaches

49. Vince started by estimating the value of the land using comparable land sales, but he had difficulty finding land comps from the relevant time. He primarily focused on finding comps close to 20 acres in size to ensure that they could be developed with something similar to the subject property. He also felt that it was important to find comps with dates of sale closer to the valuation date. Vince selected the following land sales of large vacant properties and used them to develop a land value for both 2016 and 2017:
- Land Sale 1 is an 18-acre agricultural parcel purchased for \$871,000 in September 2015 that was later divided into 5 commercial parcels.

- Land Sale 2 is a 15.04-acre site (multiple parcels) purchased for \$780,000 in December 2016 from the Town of Munster School Corporation after it decided not to build a new school.
- Land Sale 3 is an 18.91-acre site purchased in two transactions—one in 2013 for \$565,500 and one in 2014 for \$694,500. It was subsequently improved with a multi-building apartment complex.

Pet'r Exs. 1 and 2 at 42-43, 45, Addenda E; Tr. at 640-645.

50. Vince considered adjustments for real property rights conveyed, financing terms, conditions of sale, expenditures after purchase, sale date/market conditions, location, land area, shape and topography, and zoning and other factors. Land Sale 3 received a -15% adjustment for location because Vince thinks that Valparaiso is a better market than Merrillville. After adjustments, the average value was \$52,296/acre and the median value was \$51,862/acre, from which Vince concluded to a value of \$50,000/acre. Applying his concluded value to the subject's 20.08 acres resulted in a land value of \$1,004,000 (rounded) for both 2016 and 2017. *Pet'r Exs. 1 and 2 at 43-46, Addenda E; Tr. at 643-648, 671-673.*

51. To estimate the replacement cost new of the improvements, Vince used the actual costs provided by developer George Novogroder and adjusted them for time using the consumer price index ("CPI"). Although he considered using Marshall & Swift, Vince believes the builder's costs are more reliable and property specific. Marshall & Swift has multiple classifications and refinements and, as a result, is highly subjective. Therefore, he found the actual costs of the subject to be a more compelling argument and one he noted the Board found in favor of in a prior appeal. Novogroder provided general contractor supervision that would normally have to be paid for, but Vince adjusted for that by adding in "a fair amount" for that supervision—while the actual building costs were reported as \$14,263,538.96, Vince used the higher reported cost of \$15,012,597.92. *Pet'r Exs. 1 and 2 at 47, Addenda C; Tr. at 648-653.*

52. The total cost of the improvements as of March 1, 2014 was \$15,012,597.92. The site improvements were completed in 2013 at a cost of \$3,172,908.20. To bring these costs up to the effective date of value for 2016, Vince used the Bureau of Labor Statistics' CPI inflation tool. He trended the cost of the building improvements by 1.00263656 and the cost of the site improvements by 1.01779846, resulting in a total replacement cost new of \$18,281,561. *Pet'r Ex. 1 at 47-50, Addenda C; Tr. at 649-650.*
53. Vince estimated the physical depreciation of the improvements by dividing the subject's effective age of 3.5 years by an estimated economic life of 65 years, resulting in total depreciation of 5.38%. He did not note any functional or external obsolescence. Applying his estimate of physical depreciation to the replacement cost new resulted in a depreciated value for the improvements of \$17,297,169. Adding Vince's land value of \$1,004,000 to the improvements' depreciated value produced an indicated value of \$18,301,000 (rounded) for 2016. *Pet'r Ex. 1 at 48-50; Tr. at 650-651.*
54. For 2017, Vince used the same costs for the building and site improvements that he relied on for 2016. He then trended them to the effective date for 2017 using the same CPI inflation tool. Applying trending factors of 1.02770289 for the building improvements and 1.04324385 for the site improvements produced a total replacement cost new of \$18,738,607. He then determined an effective age of four years for the improvements, resulting in total depreciation of 6.15% when divided by their expected life of 65 years. He again found no functional or external obsolescence. The resulting depreciated value for the improvements was \$17,585,462. After adding in his land value conclusion, Vince's cost approach produced an indicated value of \$18,589,000 (rounded) for 2017. *Pet'r Ex. 2 at 47-50, Addenda C; Tr. at 670-674.*

c. Vince’s Sales Comparison Approaches

55. For his sales comparison approach, Vince developed an opinion of value by comparing the subject property to similar, recently sold properties in the surrounding or competing area. He selected the following five comparable sales based on their date of transfer, size, location, condition, and overall similarity to the subject and used them to develop an indicated value for both 2016 and 2017:

Comp	Address City	Date of Sale	Price	Price per Unit	Acres No. of Units
Subject	8500 Grant St. Merrillville, IN				20.08 356
1	3944 77 th Place Merrillville, IN	4/2016	\$17,300,000	\$65,530	15.31 264
2	8300 Polo Club Drive Merrillville, IN	8/2013	\$35,500,000	\$56,529	41.40 628
3	400 N. Lake Park Ave. Hobart, IN	10/2015	\$11,250,000	\$60,484	10.70 186
4	30011 Waukegan Rd. Lake Bluff, IL	8/2015	\$22,000,000	\$98,214	13.50 224
5	316 W. 34 th Street Steger, IL	1/2015	\$49,300,000	\$73,363	20.96 672

Pet’r Exs. 1 and 2 at 51-52, 54, Addenda F; Tr. at 617-618.

56. Vince considered the full range of adjustments, but he ultimately applied adjustments for conditions of sale, location, number of units, age, condition, and occupancy. Because his income analysis showed the subject had higher revenue and NOI during 2016, Vince also applied an “other factors/economic adjustment” of +15% to Sales 1-3 and +5% to Sale 4. Vince’s net adjustments ranged from 0% to 55%. After adjustments, the comps had an adjusted average of \$92,671/unit and an adjusted median of \$93,750/unit. Vince selected

a value of \$98,000/unit. After multiplying that value by the subject's 356 units, he concluded to a value of \$34,888,000 for 2016. *Pet'r Ex. 1 at 53-55; Tr. at 617-632.*

57. For 2017, Vince applied the exact same adjustments as 2016 except for the other factors/economic adjustment, which he found was not required. His net adjustments ranged from -5% to +40%. After adjustment, the comps had an adjusted average of \$86,165/unit and the adjusted median of \$84,677/unit. Vince selected a value of \$87,500/unit, which produced a concluded value of \$31,150,000 for 2017. *Pet'r Ex. 2 at 53-55; Tr. at 661-665.*

d. Vince's Income Capitalization Approaches

58. Vince also prepared income capitalization approaches. Instead of trying to find different types of market rents, he relied on the subject's actual income numbers that were provided by his client. Vince thinks that using the actual numbers reflects the market. In particular, it reflects what is actually happening at the subject, which is part of the market. For 2016, the subject property had effective gross income of \$4,145,973 and total operating expenses of \$1,267,178, producing an NOI of \$2,878,794. Vince then added in the reported real estate tax expense of \$510,836, resulting in a loaded NOI of \$3,389,630. *Pet'r Ex. 1 at 56-58, Addenda D; Tr. at 634-635, 668.*
59. To develop a capitalization rate, Vince reviewed rates reported for the first quarter of 2016 by a Realty Rates Investor Survey, a RERC Investor Survey, and by market participants. The overall capitalization rates from the national investor surveys ranged from 4.25% to 12.47%. The low end of the range is indicative of investment grade properties, while the high end represents non-investment grade properties. He also developed the band of investment method using statistics from the 2016 Realty Rates Survey-First Quarter. The band of investment method produced an average rate of 8.22%, while the debt coverage ratio method produced an average rate of 7.55%. Vince concluded that an overall capitalization rate of 7.50% was reasonable and would be

typical of a larger apartment property in the local area. He then loaded his base capitalization rate with the subject's effective tax rate of 2.07%, resulting in a loaded capitalization rate of 9.57%. Applying Vince's loaded cap rate to the loaded NOI resulted in an indicated value of \$35,432,000 (rounded) for 2016. *Pet'r Ex. 1 at 56-59; Tr. at 632-637.*

60. For 2017, Vince used the same methodology. The subject property had effective gross income of \$3,934,369 and total operating expenses of \$1,302,813, producing an NOI of \$2,631,556. Adding in the real estate tax expense resulted in a loaded NOI of \$3,021,565. *Pet'r Ex. 2 at 58; Tr. at 665.*

61. For his cap rate, Vince reviewed rates for the first quarter of 2017 from the same national investor survey sources. Those rates ranged from 4.31% to 12.69%. He also developed the band of investment method using statistics from the 2017 Realty Rates Survey-First Quarter. The band of investment method produced an average rate of 8.36%, while the debt coverage ratio method produced an average rate of 7.47%. Vince ultimately concluded to the same overall capitalization rate of 7.50% for 2017. He then loaded his base capitalization rate with the subject's effective tax rate of 2.19%, resulting in a loaded capitalization rate of 9.69%. Applying Vince's loaded cap rate to the loaded NOI resulted in an indicated value of \$31,178,000 (rounded) for 2017. *Pet'r Ex. 2 at 56-59, Addenda D; Tr. at 665-670.*

e. Vince's Reconciliation

62. Vince feels that the cost approach reflects the true fee simple approach to valuing the subject, while the sales comparison and income capitalization approaches valued the leased fee interest. According to Vince, the large difference in the value of the fee simple estate and the leased fee interest reflects an investor's return after spending four years constructing and leasing up the subject property. Although he gave the most weight to the income approach and gave some consideration to the sales comparison approach,

Vince ultimately reconciled to the values produced by his cost approaches because they were the lowest. Accordingly, Vince reconciled to final value conclusions of \$18,301,000 for 2016 and \$18,589,000 for 2017. *Pet'r Exs. 1 and 2 at 60; Tr. at 651-652, 674-675.*

IV. ANALYSIS

A. OBJECTIONS

63. During the course of the hearing, our ALJ ruled on multiple objections to questions posed to witnesses. We need not revisit those objections, and we adopt our ALJ's rulings.
64. The Assessor objected to the admission of Petitioner Exhibits 18 and 19, a Release of Guaranty and a Loan Payoff Statement. She contends that Merrillville Apartments failed to timely exchange them, a claim that Merrillville Apartments did not dispute. Our ALJ took the objection under advisement. Parties are required to exchange copies of documentary evidence at least five business days prior to hearing. 52 IAC 4-8-1(b)(1). Failure to comply with the exchange requirement may serve as grounds to exclude the evidence. 52 IAC 4-8-1(f). Because Merrillville Apartments did not timely exchange the challenged exhibits, we sustain the Assessor's objection and exclude Petitioner Exhibits 18 and 19.
65. Merrillville Apartments objected to a portion of Respondent Exhibit 15, a Certified SEC Form that contains a variety of information about the subject property. Specifically, Merrillville Apartments argued that the appraised value for the subject property reported in the form is speculative. The Assessor countered that the exhibit was previously admitted into the record without objection. Further, the Assessor stated that she was not arguing the appraised value from the form was the correct value for the subject property. Our ALJ took the objection under advisement. Because Merrillville Apartments failed to object to the exhibit's admission when it was offered and then belatedly objected to a

single piece of information within that exhibit that neither party even elicited any testimony on, we overrule the objection.

66. Merrillville Apartments objected to the admission of Respondent Exhibit 30, an Errata Sheet prepared by Kleszynski on August 20, 2020, because the Assessor failed to timely exchange it. The Assessor contends Kleszynski prepared it in response to three rebuttal exhibits she received from Merrillville Apartments a week or two before the hearing resumed on August 31, 2020. The Assessor further argued that the exhibit is not an update to Kleszynski's cost approach—it is just a hypothetical that she could present as a demonstrative exhibit instead. We agree that it is primarily demonstrative and overrule the objection.
67. Merrillville Apartments also made two objections to testimony that our ALJ did not rule on. It objected to a portion of Kleszynski's testimony about Respondent Exhibit 19, a cost approach prepared by CBRE for an apartment property that Kleszynski relied on as support for the base cost he selected for use in his own cost approach. Merrillville Apartments questioned whether Kleszynski was claiming that the reported costs in CBRE's appraisal were the actual verified costs. It further questioned whether there were any supporting documents demonstrating that the reported costs were the actual costs.
68. Similarly, Merrillville Apartments objected to a portion of Kleszynski's testimony about Petitioner Exhibit 21, the original construction loan agreement entered into between Merrillville Lakes, LLC, and PNC Bank for the development of the subject property. Kleszynski was recounting the minimum appraised value PNC required the land to appraise for before it would issue the construction loan, but Merrillville Apartments complained that the appraisal valuing the land was not part of the record. For her part, the Assessor stated that she was not claiming the minimum land value required by PNC was correct—her witness was simply reading the value listed in the document. The Assessor also argued that Merrillville Apartments should not be surprised by the testimony given that it submitted the exhibit that Kleszynski was discussing.

69. Because Merrillville Apartments offered no legal grounds for excluding the challenged testimony, we overrule both of its objections.

B. BURDEN OF PROOF

70. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the property, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. IC § 6-1.1-15-17.2(b) and (d). Here, the Assessor stipulated that she has the burden of proof.

C. TRUE TAX VALUE

71. The Indiana legislature has enacted a specific statute for the valuation of rental property. Indiana Code § 6-1.1-4-39(a) provides as follows:

- (a) For assessment dates after February 28, 2005, except as provided in subsections (c) and (e), the true tax value of real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more and that has more than four (4) rental units is the lowest valuation determined by applying each of the following appraisal approaches:
 - (1) Cost approach that includes an estimated reproduction or replacement cost of buildings and land improvements as of the date of valuation together with estimates of the losses in value that have taken place due to wear and tear, design and plan, or neighborhood influences.
 - (2) Sales comparison approach, using data for generally comparable property.
 - (3) Income capitalization approach, using an applicable capitalization method and appropriate capitalization rates that are developed and used in computations that lead to an indication of value commensurate with the risks for the subject property use.

Ind. Code § 6-1.1-4-39(a).

72. Regardless of the method used to prove true tax value, a party must explain how the evidence relates to the property's value as of the relevant date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2016 and 2017, the valuation dates were January 1, 2016 and January 1, 2017, respectively. Ind. Code § 6-1.1-2-1.5(a).

D. Valuation Evidence

73. In Indiana “each assessment and each tax year stands alone” and the Board “evaluates each property's value based on its specific facts and circumstances.” *CVS Corp. v. Monroe Cty. Assessor*, 83 N.E.3d 1286, 1292 (Ind. Tax Ct. 2017). The Board is “not bound to reach the same conclusions regarding the persuasive value of an appraiser's reports and valuation methods for different tax years or different properties.” *Id.* The Tax Court has held that the “valuation of property is an opinion and not an exact science.” *Monroe Cty. Assessor v. SCP 2007-C-26-002, LLC*, 62 N.E.3d 478, 482 (Ind. Tax Ct. 2016).

74. A trier of fact is often “faced with [multiple] qualified experts who presented diametrically opposed opinions, supported by extensive reports and reasoning, as to the value of [certain] real estate.” *Crider v. Crider*, 15 N.E.3d 1042 (Ind. Ct. App. 2014). It is up to the trier of fact to “judge the credibility of the battling expert witnesses.” *Id.* at 1059 (quoting *Goodwine v. Goodwine*, 819 N.E.2d 824, 830 (Ind. Ct. App. 2004)). The Board must determine what portions of an appraisal are supported by the evidence:

The Indiana Board is Indiana's property valuation and assessment expert. Consequently, when the Indiana Board ascertains . . . that parts of an appraisal are not probative, it should not then accept those parts of the appraisal to value the property.

Marion County Assessor v. Wash. Square Mall, LLC, 46 N.E.3d 1, 14 (Ind. Tax Ct. 2015).

1. Kleszynski's Appraisal

75. Kleszynski analyzed the subject's value under all three generally accepted appraisal approaches. While none of his valuation approaches are perfect, we conclude that they all have some probative value.

a. Kleszynski's Income Capitalization Approaches

76. Merrillville Apartments raised two primary criticisms of Kleszynski's income approaches that in its estimation rendered them unreliable. First, it criticized Kleszynski for not using any of the rent comps he relied on in his income approach as comps in his sales comparison approach. However, this criticism simply has no bearing on the credibility of Kleszynski's income approach—it is a criticism directed at Kleszynski's sales comparison approach.

77. The second criticism Merrillville Apartments raised involved the numerous corrections and amendments Kleszynski made to his income approaches. According to Merrillville Apartments, Kleszynski's need to revise his income approaches multiple times demonstrates a lack of knowledge and experience sufficient to undermine his credibility.

78. In the initial income analyses included in his appraisal reports, Kleszynski did erroneously load his base cap rate with the subject's actual tax rate for each year. And in both his first correction attempt (*see Pet'r Ex. 13*) and his final correction (*see Resp't Ex. 23*), we agree that Kleszynski should have divided the total taxes due for each year by the corresponding assessment instead of his concluded value to determine the effective tax rate.

79. These issues are certainly concerning, but Kleszynski's mistakes ultimately had no effect on his value conclusion for 2016 and only a minimal effect on his value conclusion for 2017. Thus, the error in his methodology does little to shake our confidence in the

indicated values produced by his income approaches. And contrary to Merrillville Apartments' assertion, we find Kleszynski's willingness to try and correct his mistakes, including his decision to invoke a jurisdictional exception in order to revise his final value conclusions to bring them into compliance with Indiana Code § 6-1.1-4-39(a), does more to bolster his credibility than to undermine it.

b. Kleszynski's Sales Comparison Approaches

80. Turning to Kleszynski's sales comparison approaches, we find some merit in Merrillville Apartments' argument about the use of the 2015 sale of the subject property. Merrillville Apartments provided no support for its suggestion that appraisers should exclude such sales from consideration, so we take no particular issue with Kleszynski's decision to identify and consider the sale. However, we do question his assertion that the sale was an arm's length transaction. By his own admission, Kleszynski found no indication that the subject was listed for sale on the open market. And while there may be some truth to his claim that the investment community strikes deals for properties like the subject without listing it with a broker, we are not convinced that Kleszynski performed the research necessary to verify whether the sale was truly arm's length.
81. Additionally, the sales disclosure form indicates the sale involved an exchange or trade for other property, which Kleszynski admitted might indicate that the transaction included other consideration. However, he was unsure if the trade was part of a 1031 exchange or what was even being traded. While we recognize that its exclusion would ultimately have had little effect on the adjusted average of his sales comps, we find his inability to explain the details of the sale further undermines his decision to include it as a comp.
82. We are also troubled by the other comparable sales Kleszynski selected for 2016 and 2017. As Merrillville Apartments pointed out, other than the sale of the subject, none of his comps are from the Merrillville area. Given his willingness to use four properties

from Merrillville as rent comps in his income approach, some of which sold during the relevant time periods, we question Kleszynski's decision to ignore those sales and expand his geographic search area to encompass cities as far away as Bloomington.

83. More importantly, Kleszynski failed to convince us that the comps he included in his 2016 and 2017 analyses required no location adjustments. The comps generally appear to be good substitutes for the subject. However, Kleszynski's discussion of the similarities they share with the subject in terms of access, employment, shopping, and surrounding development was insufficient to demonstrate that the subject's location in Merrillville is equivalent to the locations of his comps in Carmel, Fishers, Indianapolis, Fort Wayne, Westfield, Noblesville, Plainfield, Camby, or Bloomington. We find his failure to address differences in their demographic attributes in a meaningful way particularly concerning. While Kleszynski tried to shore up his testimony by claiming that any differences in these locations are reflected in their respective sales prices, that is precisely why location adjustments are necessary. We conclude that these problems reduce the persuasive value of his sales comparison approaches.

c. Kleszynski's Cost Approaches

84. In Merrillville Apartments' view, Kleszynski's cost approaches should be afforded no persuasive weight. Merrillville Apartments focused its criticisms on Kleszynski's selection and adjustment of comparable land sales and his determination of the improvements' square footage. While there are some issues, we ultimately conclude that Kleszynski's cost approaches provide probative valuation evidence.
85. We agree with Merrillville Apartments that Kleszynski's land value analysis has a number of problems that weaken its credibility. First, we note that only Land Sales 2 and 3 are large enough to potentially support an apartment development like the subject. Kleszynski also failed to support his meager land area adjustments to Land Sales 1, 4, and 5—the three sales with the highest unadjusted price per square foot. We are also

troubled by his failure to adjust for the fact that Land Sale 1 was improved with an existing car dealership at the time of sale. Finally, Kleszynski admittedly used the wrong acreage for Land Sale 5, but he failed to convince us that correcting this error would have had no effect on his opinion of the subject's land value.

86. As for Kleszynski's square footage calculations, we find his reliance on CoStar as the source for the subject's gross building area ("GBA") to be reasonable. Merrillville Apartments faulted Kleszynski for inaccurately testifying that he relied only on the PRC's and measurements he made using the GIS system to determine the subject's GBA. However, he later clarified that CoStar was the primary source, with the other two sources merely serving as a check. And the fact that Kleszynski was unaware of how CoStar came up with the subject's GBA is not particularly concerning. We recognize that there are differences among the GBA estimates from Kleszynski's three sources, and a difference between the GBA reported by CoStar and the GBA claimed by Merrillville Apartments. However, Merrillville Apartments has failed to convince us that Kleszynski erred in using the CoStar data or that its use led him to produce unreliable value conclusions.

2. Vince's Appraisal

87. Like Kleszynski, Vince analyzed the subject's value under all three generally accepted appraisal approaches. While his sales comparison approach has some merit, Vince's cost and income approaches have serious flaws that render them unreliable.

a. Vince's Cost Approaches

88. While we think Vince's selection of comparable land sales was appropriate, we are concerned by the general lack of adjustments. And we agree with the Assessor that the one adjustment he did make, a -15% location adjustment to Land Sale 3, was unsupported. We are also troubled by the fact that the original construction loan agreement entered into between Merrillville Lakes, LLC, and PNC Bank for the

development of the subject property required a minimum appraised land value of \$4,450,000. Given Kleszynski's credible testimony that land values have increased since the date of the loan in 2008, we agree with the Assessor that it is highly unlikely the subject's land has decreased in value by more than \$3 million.

89. Even more problematic, however, was Vince's decision to rely exclusively on the subject's actual costs of construction as reported to him by the developer. Not only were there discrepancies in the reported total construction costs Vince relied on, but he also failed to convince us that the listed costs actually represent all of the costs incurred to construct the subject's improvements. Although he allegedly adjusted for unreported costs by using the higher of the two total construction costs, we do not find his explanation convincing.
90. Furthermore, the construction costs Vince relied on do not square with the original construction loan agreement, which contemplated a total outlay of more than \$27 million between the loan amount and the required equity contributions from Merrillville Lakes. And the fact that his 2016 and 2017 cost approaches produced valuations approximately \$16.5 million and \$12.5 million less than his next lowest valuation for each year, leaves us with little confidence in his concluded values. Taken together with Vince's failure to incorporate any market data in his estimate of the building and site improvements' replacement cost, we conclude that his cost approaches are unreliable.

b. Vince's Sales Comparison Approaches

91. Vince's sales comparison approaches fair slightly better. His net property adjustments do make us question how comparable the majority of his comps are to the subject. For 2016, four of his comps had net adjustments ranging from 30% to 55%. For 2017, those same four comps had net adjustments ranging from 25% to 40%. And given their ages relative to the subject, which differed by as much as 38 years, we think Vince's age adjustments may be insufficient, which would further exacerbate the net adjustment issue. That said,

Vince's comps were at least in the same geographic market as the subject property unlike Kleszynski's comps, which were considerably farther away. Overall, we conclude that the problems with Vince's sales comparison approaches reduce its persuasive value.

c. Vince's Income Capitalization Approaches

92. Similar to his cost approach, Vince elected to use the subject's actual income and expenses to develop his income approaches. Although examining a property's actual rent is an important step, relying on it exclusively is inappropriate when appraising a property's market value-in-use. *See Indiana MHC, LLC v. Scott Cty. Ass'r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (citing THE APPRAISAL OF REAL ESTATE 493, 501, 509, 511-12 (12th ed. 2001) (“[T]o provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income, expenses and occupancy rates for the subject property, but the income, expenses, and occupancy rates of comparable properties in the market as well.”) (emphasis in original)). Because we conclude that this error alone deprives Vince's income approaches of any probative value, we need not further address his analyses.

E. WEIGHING THE EVIDENCE

93. We have competing appraisals prepared by two well-qualified appraisers, and we have concluded that Kleszynski's three approaches present reliable values in spite of their flaws, while only Vince's sales comparison approach held merit. After weighing the evidence, we find Kleszynski to be the more credible expert overall.
94. Both appraisers struggled to find suitable sales from which to develop their respective sales comparison approaches. Kleszynski selected comps from far away cities but failed to convince us that location adjustments were unnecessary. Conversely, Vince selected comps that were closer to the subject geographically, but his net adjustments were large enough to call their comparability into question. In light of this lack of sufficient data, we reject both appraisers' sales comparison approaches.

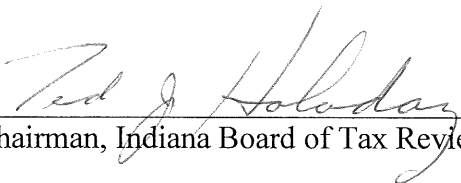
95. While Kleszynski's cost approaches have some minor issues, his income approaches are well-supported. And given the income approach's relevance to valuing an income-producing property like the subject, Kleszynski's income approaches ultimately delivered the most compelling valuation evidence presented to us.

V. CONCLUSION

96. In keeping with Indiana Code § 6-1.1-4-39(a), we conclude that the 2016 and 2017 assessments must be changed to reflect the concluded values from Kleszynski's income approaches, which are the lowest valuations produced by his three approaches. We therefore order the assessments changed to the following values:

Assessment Date	Concluded Value
January 1, 2016	\$39,400,000
January 1, 2017	\$38,600,000

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


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 not later than forty-five (45) days after 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>.