REPRESENTATIVE FOR PETITIONER: Michael Carmin, CarminParker, P.C.

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Shubh Laxmi, LLC,	)	Petitions: 53-006-17-1-4-01541-17
	)	53-006-18-1-4-00617-18
Petitioner,	)	
	)	Parcel No.: 53-11-29-101-003.000-006
v.	)	
	)	County: Monroe
Monroe County Assessor,	)	
	)	Assessment Years: 2017, 2018
Respondent.	)	

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

December 19, 2019

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:

INTRODUCTION

1. The parties offered competing valuation opinions from two appraisers—Rich Correll for Shubh Laxmi, LLC ("Laxmi"), and Wayne Johnson II for the Monroe County Assessor. Both appraisals have some probative value, but they also suffer from problems that detract from their overall reliability. After weighing the evidence, we find the valuations produced by Correll's cost approach to be the most persuasive evidence of the property's true tax value for the 2017 and 2018 assessment years.

PROCEDURAL HISTORY

2. Laxmi contested its 2017 and 2018 assessments. The Monroe County Assessor and the Monroe County Property Tax Board of Assessment ("PTABOA") determined the following assessments[1]:

Year	Land	Improvements	Total
2017	$251,700	$297,500	$549,200
2018	$251,700	$304,200	$555,900

3. On April 25, 2019, our designated administrative law judge, David Smith ("ALJ"), held a hearing on Laxmi's petitions. Neither he nor the Board inspected the subject property.

4. Appraisers Rich Correll and Wayne Johnson II testified under oath.

5. Laxmi submitted the following exhibits:

Petitioner Ex. 1:	2017 Form 11 Notice
Petitioner Ex. 1-18:	2018 Form 11 Notice
Petitioner Ex. 2:	2017 Form 131 Petition
Petitioner Ex. 2-18:	2018 appeal notice
Petitioner Ex. 3:	2017 Form 130 Petition
Petitioner Ex. 3-18:	2018 Agreement to forgo PTABOA review
Petitioner Ex. 4:	2017 Form 115 Notice
Petitioner Ex. 4-18:	2018 Form 131 Petition
Petitioner Ex. 5:	Appraisal Report prepared by Rich Correll
Petitioner Ex. 5-A:	Appraisal correction pages (6)
Petitioner Ex. 6:	Map of Sale #4
Petitioner Ex. 7:	Map/chart of Johnson comparable locations and traffic counts
Petitioner Ex. 8:	Chart comparing cost approaches

6. The Assessor submitted the following exhibits:

Respondent Ex. A:	Appraisal Report prepared by Wayne Johnson II
Respondent Ex. B:	Aerial photo of 5025 S. Production Drive

[1] The parties agreed to forego a hearing before the PTABOA and appeal the 2018 assessment directly to us. *See* Ind. Code § 6-1.1-15-2.5(b)(1) (allowing a taxpayer and county assessor to agree to waive a determination by the county board and submit the dispute directly to the Board).

Respondent Ex. C:	Aerial photo of 1301 W. Markland Avenue
Respondent Ex. D:	Draft appraisal from Correll dated May 22, 2018
Respondent Ex. E:	February 4, 2019 email from Carmin
Respondent Ex. F:	January 25, 2019 emails between Meighen and Carmin
Respondent Ex. G:	Sales Disclosure Form ("SDF") for Sare Road
Respondent Ex. H:	Excerpt from the 14th Edition of The Appraisal of Real Estate
Respondent Ex. I:	SDF for 907 E. Main St., Petersburg, IN
Respondent Ex. J:	Property Record Card ("PRC") for 3603 Sare Road

7. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in this appeal, (2) all orders and notices issued by the Board or our ALJ, and (3) an audio recording of the hearing.

FINDINGS OF FACT

A. THE SUBJECT PROPERTY

8. The subject property is a convenience store and gas station ("C-Store") located at 9198 South Old State Road 37 in Bloomington. Its improvements include a retail building containing 3,262 square feet and associated site improvements located on a 0.52-acre site. There are two gas pump islands with two pumps on each island, and a 1,152 square foot canopy covering the pump islands. The C-Store was built in 2002 and Laxmi purchased the property for $560,000 (including personal property and intangible business assets) in 2012. It lies approximately a half-mile from the Interstate 69 exit for the Monroe Dam and approximately 10 miles from the city center of Bloomington. The parties' appraisers agreed on a number of basic points concerning the property:

- It is in average condition;
- Its highest and best use as vacant is commercial use;
- Its highest and best use as improved is continuation as a C-Store;
- It is zoned general business use; and
- It has an average daily traffic count of about 1,916 vehicles.

Johnson testimony; Correll testimony; Resp't Ex. A at 7, 19-35, 39; Pet'r Ex. 5 at 5-6, 10, 23-25, 51.

B. Expert Opinions

1. Johnson's Appraisal

9. The Assessor engaged Johnson to appraise the market-value-in-use of the fee simple interest of the subject property. Johnson has been a certified appraiser for 30 years. He holds an MAI and RA designations from the Appraisal Institute, is the founder of First Appraisal Group, Inc., and is an active member of various professional organizations related to appraisal practice. In 2018, his firm completed approximately 250 appraisals, of which almost half were in Monroe County. He has appraised C-Stores, big box stores, retail stores, multiple CVS stores, and numerous other types of properties. *Johnson testimony; Resp't Ex. A at 121.*

10. Johnson's appraisal estimates the property's true tax value for the January 1, 2017 and January 1, 2018 assessment dates. He used all three approaches to value: the cost approach, sales comparison approach, and the income approach. Johnson valued the fee simple interest and certified that his appraisal complies with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Johnson testimony; Resp't Ex. A at 7, 75, 83, 100.*

a. Johnson's Research and Market Overview

11. Johnson identified the specific market area for the subject as Monroe County, and the sub-market as Clear Creek Township, which includes the unincorporated town of Harrodsburg. He considers the subject property to be in a suburb of Bloomington. Johnson generally described the population, income attributes, housing, and governmental and environmental influences. He specifically noted that the subject is proximate to Lake Monroe, and derives business from the population using Lake Monroe. He further stated that Bloomington and Monroe County are "unique" markets, which is why he used only Monroe County properties in his appraisal. This limit caused him to

use what was available, making his comparable properties less similar than he would have liked. *Johnson testimony; Resp't Ex. A at 43-55.*

12. Johnson defined the regional market as generally Midwestern. The subject would most likely be an investment property as realty only, and was not a branded store as many C-Stores are. Johnson downplayed the importance of traffic count for this assignment, stating that there are many important factors in valuing a C-Store. *Johnson testimony; Resp't Ex. A at 43-55*.

b. Johnson's Cost Approach

13. Johnson described the subject as a difficult piece of property to value due to its small size. He used the sales comparison approach to develop his land valuation, choosing four Monroe County land sales that closed between August 2013 and November 2018. Three of the four properties were located within Bloomington, with the fourth located on State Road 46 near Ellettsville. The properties range in size from 0.90 to 5.22 acres, and sold for prices ranging from $152,299 to $294,444 per acre. He provided traffic count information for Comps 2, 3, and 4, which showed average daily traffic counts of 22,777, 28,170, and 6,012, respectively. Johnson provided no traffic count data for Comparable 1, but indicated that it was heavily travelled. *Johnson testimony; Resp't Ex. A at 60-72.*

14. Johnson made market condition adjustments based on the length of time from each sale to the 2017 and 2018 assessment dates. He made upward adjustments of 40%, 25%, 10%, and 25% for size based on his experience that larger properties sell for less per square foot. However, he made no adjustments for location or traffic count. Based on his analysis, Johnson concluded to land values of $136,000 for 2017 and $138,000 for 2018. *Johnson testimony; Resp't Ex. A at 73-75*.

15. Johnson then valued the improvements (including the store and canopy), while disregarding the gas equipment and other personal property. He used cost schedules published by Marshall & Swift ("M&S") to estimate the replacement cost for a Class C

store in average condition with masonry construction. Johnson added 5% for vacancy, 10% for soft costs, and 15% for entrepreneurial incentive because M&S does not account for those expenses. M&S's estimated average life expectancy for the building is 40 years. Accordingly, Johnson applied depreciation at 2.5% per year to the 15-year-old improvements, producing a depreciation adjustment of 37.5%. He made no adjustment for obsolescence. Johnson also calculated the depreciated costs of site improvements such as landscaping, curbing, concrete walks and parking surface. After adjusting for depreciation, Johnson arrived at replacement cost estimates of $349,000 for 2017 and $355,500 for 2018. *Johnson testimony; Resp't Ex. A at 75-82*.

16. Adding Johnson's land value conclusions to the depreciated replacement costs of the building and site improvements produced the following value conclusions under the cost approach:

Year	**Land**	**Improvements**	**Total**
2017	$136,000	$349,000	$485,000
2018	$138,000	$355,500	$493,500

Johnson testimony; Resp't Ex. A at 81-82.

c. Johnson's Sales Comparison Approach

17. For his sales comparison analysis, Johnson focused on fee simple sales of C-Stores in and around the Bloomington metropolitan area that sold in 2010 or after. However, he also included the sale of one property located in northern Lawrence County. *Johnson testimony; Resp't Ex. A at 83-99.*

18. The most relevant aspects of Johnson's comparable sales are detailed in this chart:

Property	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Location	9198 S. Old SR 37, Bloomington	7148 S. Fairfax Road, Bloomington	601 E. 10th Street, Bloomington	4724 W. SR 46, Bloomington	503 W. Kirkwood Avenue, Bloomington	3983 Old SR 37, Springville
Sale date	Jun-12	Nov-11	Jan-12	Sep-15	Nov-13	Oct-10
Sale price (excluding personal property)	$534,000	$250,000	$438,000	$1,050,000	$600,000	$750,000
Sale price/SF	$167.92	$111.61	$331.07	$329.36	$246.81	$208.33
Rights conveyed	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Site area (SF)	22,651	30,056	17,424	41,513	14,810	181,645
GBA (SF)	3,180	2,240	1,323	3,188	2,431	3,600
Year built	2002	2002	1965	1998	1980	1988
Effective age	10	10	20	15	25	20
Traffic count	1,916	2,448	11,960/6,912	22,570	9,311	18,000
Use	C-Store	C-Store	C-Store	C-Store	C-Store	C-Store

Resp't Ex. A at 97-98.

19. Johnson made various adjustments for date of sale, location, site area, gross building area ("GBA"), and effective age. The adjustments produced adjusted sales prices ranging from $98.66/SF to $262.44/SF for 2017 and from $100.45/SF to $267.38/SF for 2018. After excluding Sale 1 "due to the common ownership with the subject and a potential atypical sale price," Johnson selected correlated values of $190/SF and $195/SF, producing indicated values of $605,000 for 2017 and $620,000 for 2018. He then reduced his indicated values by $66,000 for 2017 and $64,500 for 2018 to account for the cost of depreciated non-realty components (storage tanks, pumps, and fixtures). This resulted in final value conclusions of $539,000 for 2017 and $555,500 for 2018. *Johnson testimony; Resp't Ex. A at 81-82, 97-99.*

d. Johnson's Income Approach

20. Johnson also developed an income capitalization approach. He began by estimating market rent. He chose nine leases located and researched through the Indiana Real Estate

Database ("IRED") system. The leases include one from Columbus and one from Greenwood, with the rest located in central and northern Indiana. All of the leasehold properties were C-Stores. They had traffic counts ranging from 6,279 to 33,532, total leased space ranging from 1,736 to 4,993 square feet, and lease rates of $9.38/SF to $49.45/SF. All of Johnson's information came from online research—he did not review any of the leases. Nor did he speak with any of the parties to the leases. Johnson was also unable to tell what, if any, personal property the leases included. However, he acknowledged that it is common for personal property to be part of the lease agreements. Johnson thought that his income approach was weaker due to the many leases across the state, his inability to review the leases, and the likelihood that the transactions included personal property. *Johnson testimony; Resp't Ex. A at 100-110.*

21. Based on the lease information gathered, Johnson determined a correlated rate of $21.50/SF for 2017 and $22.00/SF for 2018. He then developed reconstructed operating income statements to determine the Net Operating Income ("NOI") for each year. Johnson estimated 5% for vacancy and collection loss. He made an additional 5% adjustment for the owner's expense during vacancy. He also included adjustments of 5% for management fees, 3% for general and administrative expenses, and 2% for reserves, ultimately producing NOI estimates of $55,209 for 2017 and $56,493 for 2018. *Johnson testimony; Resp't Ex. A at 111-112, 116.*

22. To develop an Overall Direct Capitalization Rate ("OAR") for the property, Johnson used the band-of-investment method and reviewed multiple market surveys. His band-of-investment method produced an overall rate of 8.527%. He reviewed market surveys from RealtyRates.com, PwC, CoStar, Calkain Research, and Quantum Real Estate Advisors. After considering the subject property's characteristics, Johnson concluded to a base rate of 8.75%. He loaded the base rate to account for the owner's share of property taxes during periods of vacancy, resulting in an OAR of 8.82% for both assessment years. Applying his cap rate to his NOI estimates produced correlated values of $626,000 for 2017 and $640,000 for 2018. Johnson then reduced those values by

$66,000 for 2017 and $64,500 for 2018 to account for the cost of depreciated non-realty components, resulting in indicated values of $560,000 for 2017 and $575,500 for 2018 under the income approach. *Johnson testimony; Resp't Ex. A at 113-117.*

e. Reconciliation

23. Although Johnson relied on all three valuation approaches, he placed the most weight on the cost approach and the least weight on the income approach. After reconciling the three approaches, Johnson reached the following final value conclusions:

Effective Date	Cost Approach	Sales Comparison Approach	Income Approach	True Tax Value
January 1, 2017	$485,000	$539,000	$560,000	$555,000
January 1, 2018	$493,500	$555,500	$575,500	$565,000

Johnson testimony; Resp't Ex. A at 118-119.

2. Correll's Appraisal

24. Laxmi engaged Correll, principle of Correll Commercial Real Estate Services, to appraise the subject property. Correll has been appraising property for over 30 years. His experience involves many property types, including C-Stores. He was previously employed as an appraiser and senior consultant with firms in Chicago and Los Angeles. Correll is currently a licensed appraiser in Indiana and several other states. *Correll testimony; Pet'r Ex. 5 Addendum*.

25. Correll's appraisal estimates the property's true tax value for the January 1, 2017 and January 1, 2018 assessment dates. He used the cost approach, sales comparison approach, and the income approach. Correll valued the fee simple interest and certified that his appraisal is USPAP-compliant. *Correll testimony; Pet'r Ex. 5 at transmittal letter, 13, 27, 39, 54*.

a. Correll's Research and Market Overview

26. Correll started by providing some basic demographic and economic information for Monroe County. The county has above average population growth for the region, and unemployment rates near the state average. He described the subject property's market area as the small, unincorporated community of Harrodsburg and the surrounding areas. Harrodsburg has a population of about 690 residents. It has limited commercial business and is mostly residential in character. The subject is a small, rural convenience store and gas station with average access and visibility and good curb appeal. Overall, Correll thinks the subject's market position is average for this type of property. *Correll testimony; Pet'r Ex. 5 at 14-19, 25*.

b. Correll's Cost Approach

27. Correll started his cost approach by looking for comparable land sales to develop a land valuation. He disagreed with Johnson's characterization of Harrodsburg as a suburb of Bloomington, arguing that it is located in a rural area of the county. Accordingly, Correll attempted to locate comparables from similar settings. He ultimately included two commercial properties located in Bloomington and two properties purchased for development into C-Stores. *Correll testimony; Pet'r Ex. 5 at 27-32.*

28. Sale 1 is near an airport that may impose certain restrictions on signage height. It is zoned "General Business", and its planned use was unknown. Sale 2 is in an industrial park adjacent to State Road 37 in Bloomington. Correll had no information regarding its planned use. Sale 3 is in an industrial setting just southwest of downtown Kokomo on which a 3,243 square foot C-Store with four fueling islands and a canopy was later constructed. Sale 4 is located in Alexandria. It was redeveloped and rebranded as a Rickers-brand C-Store. The properties ranged in size from 0.73 to 1.81 acres. Their traffic counts ranged from 5,651 to 21,000 per day, but he did not provide a traffic count for Sale 3. And they sold for prices ranging from $82,873 to $176,768 per acre. *Correll testimony*; *Pet'r Ex. 5 at 28-32*.

29. Correll made positive adjustments for size because all four of his land sales were larger than the subject property. Correll also adjusted for location, making a positive adjustment to Sale 2 due to its inferior access, a negative adjustment to Sale 3 because of its proximity to the much larger community of Kokomo, and a negative adjustment to Sale 4 to account for its superior location. He further adjusted Sales 3 and 4 downward to account for their superior access to public sewers and water services. And while Correll made no traffic count adjustments, he noted that Johnson's land sales under the cost approach had significantly higher traffic counts. *Correll testimony; Pet'r Ex. 5 at 34; Pet'r Ex. 5-A at 33, 35.*

30. After adjustments, Correll's sales ranged in price from $110,221 to $159,091 per acre. That produced a price range of $57,315 to $82,727 for the subject property's 0.52 acres. Based on his data and his view of the subject's market position, Correll concluded to a land value of $70,000 for both 2017 and 2018. *Correll testimony; Pet'r Ex. 5-A at 35.*

31. Correll then calculated a replacement cost estimate for the improvements. He searched the M&S SwiftEstimator for a small C-Store between 2,000 and 8,000 square feet with limited interior amenities. Correll excluded personal property and other fixtures from his calculation. He applied depreciation rates of 40% to the building and 60% to the heating and cooling. Additionally, he cited adverse weather/environmental effects to support his application of a 70% rate to the canopy, a 40% rate to the paving, and a 50% rate to the other site improvements. Correll did not add vacancy or entrepreneurial costs to his improvement calculation because the property was owner-occupied. He also declined to include other soft costs, such as unexpected building expenses, although he admitted they could apply. His calculations resulted in depreciated replacement costs for the improvements of $209,314 for 2017 and $216,820 for 2018. *Correll testimony; Pet'r Ex. 5 at 36; Pet'r Ex. 5-A at 37-38.*

32. Adding Correll's land value conclusions to his replacement cost estimates for the improvements produced the following value conclusions under the cost approach:

Year	Land	Improvements	Total
2017	$70,000	$209,314	$280,000 (rounded)
2018	$70,000	$216,820	$290,000 (rounded)

Correll testimony; Pet'r Ex. 5-A at 37-38.

c. Correll's Sales Comparison Approach

33. Correll relied on four sales for his sales comparison approach. None of Correll's sales were from the Bloomington or the Monroe County area because he could not find sales that were similar to the subject. He instead chose comparable sales that he believed to be similar to the subject and that were close in time to the assessment date. *Correll testimony*.

34. The most relevant details from Correll's sales are detailed in this chart:

Property	Subject	Sale 1	Sale 2	Sale 3	Sale 4
Location	9198 S. Old SR 37, Bloomington	907 E. Main St., Petersburg	15707 IN 545, St. Meinrad	901 N. Main St. Winslow	790 W. McClain Ave, Scottsburg
Sale Date	June-12	Jan-16	Jan-15	May-16	May-14
Sale Price	$560,000 (included personal property)	$226,688	$230,000	$171,000	$225,000
Year Built	2002	1989	1982	1978	1980
Building (SF)	3,262	420	2,400	2,470	1,950
Land (acres)	0.52	0.25	1.22	0.28	0.40
Traffic count	1,916	7,000	2,680	3,667	-
Use	C-Store	C-Store	C-Store	C-Store	C-Store

Correll testimony; Pet'r Ex. 5 at 40-49; Pet'r Ex. 5-A at 50-51.

35. Correll testified that the information available for comparable sales is not always clear and complete with regard to the real and personal property sold in the transaction. He stated that these sales may also include the transfer of other types of assets such as fuel, goodwill, brand value and other intangibles that are not identified in the material he is reviewing. Nevertheless, Correll took care to select comparable properties he believed to represent the sale of only the real estate. And all of his comparable sales were recent arm's-length sales of the fee simple interest. Accordingly, he made no adjustments for the terms or time of sale. However, Correll did make positive adjustments ranging from 15% to 30% to all of his comparables to reflect their effective age at the time of sale. He also made positive 30% adjustments to all of the comparables to account for the subject's additional retail space. Finally, Correll made a negative 10% location adjustment to Sale 1 due to its higher traffic count. *Correll testimony; Pet'r Ex. 5-A at 50-51.*

36. After making adjustments, Correll's sales ranged in price from $273,600 to $348,750. Correll concluded to a value under the sales-comparison approach of $325,000 for both 2017 and 2018. *Correll testimony; Pet'r Ex. 5 at 53*.

d. Correll's Income Approach

37. Correll explained that the normal approach for calculating income would not be effective for this property. He reasoned that this was not an investment property that the owners were buying to rent to third parties in anticipation of income. Rather, the owners planned to and have become the owner-operators of the business and property. Their purpose is to operate the C-Store as a means of making a living. This is the reason that he not only believes the traditional income approach is inapplicable, but also that soft expense concepts such as vacancy rate and entrepreneurial expenses are not applicable to this property. *Correll testimony; Pet'r Ex. 5 at 54.*

38. Because the property is leased within the family/company to receive a tax benefit, Correll did not believe that an income approach based on market lease rates was appropriate. He therefore based his income approach on what he referred to as the "rent tolerance" of the

taxpayer in relation to the subject property and its profit margin. He calculated the business net income of the subject by deducting expenses, wage expenditures and other business costs from the store's gross sales for 2017 and 2018. To estimate the subject's net annual rent, Correll multiplied his net income estimates for each year by 22%. The 22% rate came from "Convenience Store News." It represents a good rule of thumb for the gross profit necessary to sustain a C-store. It resulted in annual rent estimates of $8.55/SF for 2017 and $8.75/SF for 2018. In a separate calculation using a rule of thumb used by business brokers, Correll applied rent costs of 10% of effective gross revenue, resulting in annual rent estimates of $11.65/SF for 2017 and $11.88/SF for 2018. Correll also reviewed data from two outside leases that had rental rates of $11.59/SF and $9.38/SF. *Correll testimony; Pet'r Ex. 5 at 54-58.*

39. Based on his rule of thumb calculations and the actual lease data, Correll concluded that an appropriate rent would be $35,000 per year, or $10.73/SF. He then applied a 7.5% allowance for vacancy and credit loss, a 3% management fee, and $2,500/year for reserves, resulting in an estimated NOI of $28,256 for both years under appeal. After researching capitalization rate surveys for service station properties and Band of Investment Technique results for C-Stores reported by RealtyRates.com, he estimated a capitalization rate of 9.0% for 2017 and 2018. Applying his cap rate to his estimated NOI produced indicated values of $315,000 for both 2017 and 2018. *Correll testimony; Pet'r Ex. 5 at 59-61*.

e. Correll's Reconciliation

40. Correll placed greater weight on the cost approach in his final reconciliation. After reconciling the three approaches, Correll reached the following final value conclusions:

Effective Date	Cost Approach	Sales Comparison Approach	Income Approach	True Tax Value
January 1, 2017	$280,000	$325,000	$315,000	$290,000
January 1, 2018	$290,000	$325,000	$315,000	$300,000

Correll testimony; Pet'r Ex. 5 at 62.

ANALYSIS AND CONCLUSIONS OF LAW

A. OBJECTIONS

41. Laxmi lodged a relevance objection to Johnson's testimony regarding Laxmi's request for his appraisal services. According to Johnson, he refused to provide services to Laxmi due to a conflict of interest arising from his prior appraisal work for the Assessor. Because Johnson's testimony was simply an effort to demonstrate his compliance with the ethical standards of professional appraisers, we find it relevant and overrule the objection.

42. Laxmi objected to the admission of Assessor's Exhibit D, a copy of an appraisal prepared by Correll. Laxmi claimed the exhibit was an initial draft of Correll's appraisal that its counsel mistakenly sent to the Assessor, and that it constitutes confidential work product. Laxmi also argued that it is irrelevant because it is not the final version. The Assessor countered by offering the email that accompanied the appraisal and an email string showing the parties' agreement to a final exchange date of February 8, 2019 (Exhibits E and F). She argued that Laxmi waived any claim of privilege or confidentiality by sending the draft with a submission letter signed by Correll indicating it was the final appraisal. We agree. And because we also conclude the draft appraisal is relevant even if it has since been amended, we overrule the objection.

43. Laxmi objected to the admission of Assessor's Exhibit G, a SDF for a property located on Sare Road in Bloomington. Laxmi argued that the SDF did not specifically identify the

address of the property, making its relevance to this proceeding unclear. However, the Assessor submitted a PRC (Exhibit J) that confirmed the property's address. And Correll used the 2011 sale of the property as a comparable land sale in his draft appraisal, making the exhibit at least minimally relevant. We therefore overrule the objection.

44. Finally, Laxmi objected to the admission of Assessor's Exhibit I, a SDF for a property located at 907 E. Main Street, Petersburg. Laxmi claimed the sale reflected on the SDF was irrelevant because it closed more than two years after the assessment date. Because Correll used a prior sale of the same property in his sales comparison approach, we find the exhibit relevant and overrule the objection.

45. For her part, the Assessor objected to the admission of Laxmi's Exhibits 6, 7 and 8, claiming that Laxmi failed to provide the exhibits prior to the exchange deadline. Laxmi explained the exhibits were maps/charts of data derived from Johnson's appraisal and that the Assessor therefore already possessed the information. But it did not claim to have timely exchanged them. Because Laxmi failed to timely exchange the exhibits, we sustain the Assessor's objection.

B. BURDEN OF PROOF

46. 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, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I .C. § 6-1.1-15-17.2(b), (d).

47. The parties agreed that the Assessor bears the burden of proof for the 2017 assessment year. However, in a case like this, where both parties offered USPAP-compliant appraisals prepared by qualified experts, the question of who has the burden is largely theoretical. We must weigh the evidence to determine which party presented the most

credible and reliable opinion of the subject property's true tax value for each year.

C. TRUE TAX VALUE

48. Indiana assesses property based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market value-in-use appraisals often will be probative. *See id*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r,* 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

49. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2017 and 2018, the valuation dates were January 1, 2017 and January 1, 2018, respectively. Ind. Code § 6-1.1-2-1.5(a).

50. 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). Therefore, "it is up to each party to convince the Indiana Board why its

opinion . . . is more probative." *Id*. Furthermore, 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).

D. VALUATION EVIDENCE

1. Johnson's Appraisal

51. Johnson used all three generally accepted appraisal approaches to value the subject property. He claimed he gave the least weight to the income approach, and indicated that the cost approach is likely the most reliable. Nevertheless, his reconciliation values are much closer to the sales and income values and are significantly more than the value he derived from the cost approach. While we agree that Johnson's cost approach is the most reliable of his three approaches, it has several issues that impair its reliability. And as we explain in more detail below, we conclude that his other two approaches are entirely unreliable.

a. Johnson's Cost Approach

52. One of the main problems with Johnson's cost approach stems from his selection of comparable land sales. Although he recognized that the subject is in a smaller, rural part of Monroe County, his land comps are located in more developed and populated areas closer to the heart of Bloomington. And we note that none of the comps were subsequently developed into C-stores. They are also located along roads with much higher traffic counts. For example, Land Sale #3 has a reported daily traffic count of around 28,170 vehicles. In contrast, the subject's daily traffic count is approximately

1,916 vehicles. Yet, Johnson did not adjust any of his comps for either location or traffic count, substantially reducing the reliability of Johnson's land valuation.

53. We have no issues with most of Johnson's decisions or calculations related to the development of his replacement cost estimate. However, we do question whether his 15% entrepreneurial incentive adjustment is appropriate given the lack of market information offered to support it. It also appears that despite estimating a separate value for the canopy, Johnson failed to include that figure when calculating the subject's true tax value. Additionally, Johnson's site improvement calculation is highly suspect. Not only is the unit cost that Johnson used for the parking surface more than double the cost that Correll used, Johnson multiplied it by the subject's purported 25,000 square feet of paved area. Given that the entire subject parcel is approximately 22,700 square feet, Johnson's estimate is clearly incorrect. Taken together with the problem with his land valuation, we conclude that Johnson's cost approach is minimally reliable.

b. Johnson's Sales Comparison Approach

54. Almost half of the appraisals Johnson's firm did in 2018 were in Monroe County. Johnson limited his search for comps to properties that sold in or near Monroe County due to his belief that Bloomington and Monroe County are "unique" markets. However, we are unconvinced that Bloomington and Monroe County are as distinctive as Johnson asserts. Johnson even admitted that his decision led him to choose properties that were not as similar as he would like. His decision also appears to have resulted in the selection of comps that sold long before the relevant valuation dates. In fact, three of Johnson's comps sold prior to the 2012 sale of the subject property. Although he time-adjusted his comps, we find his unwillingness to expand his search area concerning.

55. We also question several aspects of Johnson's adjustments. Johnson has not convinced us that his location adjustments are sufficient to account for the unmistakable superiority of the locations and traffic counts of Sales 2-5. And he offered no support for the

effective age adjustments he applied to Sales 1, 2, 4, and 5 other than a cursory statement that they "required adjustment for condition."

56. Furthermore, we are concerned that Johnson failed to extract the value that is not attributable to the real property. He acknowledged that the unadjusted sales prices of his five comps includes "personal property, fixtures, equipment (FF&E) and intangibles." Although he removed the personal property values indicated on the SDFs for three of his comps, there is no indication he verified whether the sales prices for his two other comps included personal property. And his calculation of the depreciated value of the subject's non-realty components only accounted for the value of the tanks and other fixtures associated with the gas pumps. Johnson has not persuaded us that he properly accounted for the value of personal property or intangible assets.

57. Finally, we find no support for Johnson's decision to exclude Sale 1 from consideration. Sale 1 appears to be the most similar comp to the subject in almost every respect. But Johnson excluded it because it is allegedly owned by the same company that owns the subject, and because of "a potential atypical sale price." However, the buyer in Sale 1 was Shubh Laabh, Inc., not Laxmi. And he did not explain why he thought the sales price was *potentially* atypical. We also note that the correlated values he ultimately selected ($190.00 for 2017 and $195.00 for 2018) are nearly identical to the averages of the adjusted sales prices for all five comps ($190.72 for 2017 and $194.26 for 2018), making us question whether he truly excluded it. While this issue only slightly detracts from Johnson's credibility, when paired with the other issues highlighted above we ultimately conclude that Johnson's sales comparison approach failed to produce reliable valuations.

c. Johnson's Income Approach

58. Johnson estimated market rent using nine C-store leases from across Indiana that he identified through online research. He acknowledged that it is common for personal property to be included in lease agreements. However, Johnson admitted that he did not

review any of the leases or speak with any of the parties to the leases. And he had no knowledge of whether any of the leases included personal property or other non-realty value. Thus, we are again left wondering whether Johnson properly accounted for the value of personal property and other intangible assets. As a result, we find his conclusions under the income approach unreliable.

2. Correll's Appraisal

59. Correll analyzed the property's value using all three valuation approaches. Because we do not find his valuation opinions under the sales comparison or income approaches convincing, his reconciled value conclusions are not reliable indicators of value. Nevertheless, we ultimately find the valuations produced by Correll's cost approach to be the most persuasive evidence of the property's true tax value.

a. Correll's Cost Approach

60. Like Johnson, Correll thought that the cost approach was the most reliable valuation method. Correll used four land sales, including two from Bloomington, one from Kokomo and one from Alexandria. The Assessor questioned Correll's use of Sale 1 due to the potential for use restrictions given its proximity to an airport. The Assessor also asserted that Sale 2 might have access issues, and highlighted its proximity to a waste treatment plant. However, she failed to show that any of these issues actually affected their values or warranted an adjustment. Additionally, the Assessor emphasized the industrial character of the area surrounding Sale 3, but she failed to challenge Correll's claim that the buyer purchased it to develop a C-store. Thus, we find no fault with its inclusion as a comp. However, we do question the lack of time adjustments, particularly since Sales 2 and 4 sold in 2014.

61. The Assessor spent a significant amount of time and effort highlighting a number of variations between the adjustments Correll applied to the comps in his draft appraisal and the ones he applied in the final version of his appraisal. She also pointed to differences

between the depreciation percentages listed in Correll's final version and those contained in the correction pages Correll submitted at our hearing. But we find nothing improper about an appraiser making changes to his own appraisal, particularly given the difficult nature of this assignment.

62. We also give no weight to the Assessor's criticisms regarding Correll's failure to account for external or functional obsolescence because Johnson also concluded that no deductions for those items were necessary. However, we do find Correll's use of the same depreciation percentages for both 2017 and 2018 somewhat troubling. Additionally, we are not entirely satisfied with Correll's explanations for not including adjustments for entrepreneurial incentive or soft costs. While these issues detract a little from the reliability of his cost approach, they do not substantially undermine its probative value.

b. Correll's Sales Comparison Approach

63. The four comps Correll selected for his valuation are considerably more similar to the subject than the majority of Johnson's sales comps. While the Assessor complained that Correll failed to provide demographic data for the cities in which they are located, we conclude that oversight has little effect on the reliability of Correll's valuation. We also reject the Assessor's attempt to question the soundness of Correll's inclusion of Sale 1 using a subsequent sale of the same property that closed less than 30 days before the date of his appraisal. However, Correll's sales comparison approach has a number of other problems that ultimately undermine its probative value.

64. First, we note that Correll made no time adjustments to his comps and he failed to offer any market data to support the omission. That is particularly concerning because Sales 2 and 4 sold more than two years prior to the 2017 valuation date and more than three years prior to the 2018 valuation date. He also chose not to make size adjustments even though his comps are significantly smaller. As the Assessor pointed out, the subject is approximately seven times the size of Sale 1. And oddly, Correll then decided to adjust

all of his comps upward by 30% to account for the subject's additional retail space despite the comps varying sizes. He also failed to include the negative location adjustment he claimed to be making to Sale 2 in his adjustment grid.

65. More problematic is Correll's failure to convince us that he properly accounted for the value attributable to personal property and intangible assets. He claimed to have taken care in selecting comps with sales prices representing only the real property value, and he purportedly verified that was the case by reviewing SDFs. Unlike Johnson, however, Correll did not even attempt to extract the value of the subject's non-realty components such as tanks and fixtures.

66. Finally, we note that Correll concluded to the same value for both 2017 and 2018 without providing any market data demonstrating that there was no appreciation in the market during that timeframe. While appraisers undoubtedly must rely on their experience and judgment in valuing a property, they cannot do so as a substitute for using market data. Instead, they must explain how they exercised their judgment in light of the data that was available to them. Based on the issues discussed above, we conclude Correll's sales comparison approach is unreliable.

c. Correll's Income Approach

67. Correll developed an income capitalization approach for the subject based on his calculation of Laxmi's rent tolerance. He does not believe that an income approach based on market lease rates is an appropriate way to value the subject because Laxmi is an owner-operator. And he thinks concepts such as vacancy rate and entrepreneurial expenses are inapplicable for the same reason. However, the Tax Court has explained, "to 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." *Indiana MHC, LLC v. Scott Cty. Ass'r*, 987 N.E.2d 1182, 1185-86

(Ind. Tax Ct. 2013) (emphasis added). Thus, while appraisers should examine a property's actual income, they must compare that income to the market.

68. Correll did compare his estimated rent to rental rates from two leases. But there is no indication that he reviewed the actual leases, or the income, expense, and vacancy rates for the leased properties. We are also skeptical that such a small sample size gave him sufficient information to check the reliability of his rent estimate. Thus, even if we accepted his analysis of the subject's net income and his rule of thumb calculations without question, we would still find that he failed to meaningfully analyze whether the estimated rental range it produced was at market level. Furthermore, he failed to convince us that the rental rates from the two leases excluded personal property and other non-realty value. Consequently, we give his conclusions under the income approach no weight.

D. WEIGHING THE EVIDENCE

69. As previously discussed, we find both appraisers' sales comparison and income approaches unreliable. That leaves their cost approaches. Both were imperfect, but neither was completely devoid of probative value. We find that Correll selected better comparable land sales and made fewer mistakes overall. Thus, after weighing the evidence, we conclude that Correll's cost approach is the most persuasive evidence of the property's true tax value for the 2017 and 2018 assessment years.

CONCLUSION

70. Because we find Correll's conclusions under the cost approach to be the most persuasive evidence of the property's true tax value, we order the assessments under appeal changed to the following values:

Assessment Date	Concluded Value
January 1, 2017	$280,000
January 1, 2018	$290,000

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

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Commissioner, Indiana Board of Tax Review

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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>.