

REPRESENTATIVE FOR PETITIONER: Jeffrey T. Bennett, Bingham Greenebaum Doll

REPRESENTATIVE FOR RESPONDENT: Brian A. Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Speedway LLC,)		
)	Petition:	45-027-16-1-4-00440-17
Petitioner,)		
)	Parcel:	45-06-25-477-006.000-027
v.)		
)	County:	Lake
Lake County Assessor,)		
)	Assessment Year:	2016
Respondent.)		

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

March 26, 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—Jeffrey Vale for the Petitioner (“Speedway”), and David Hall for the Lake County Assessor. Both appraisals have problems that significantly detract from their reliability, but both cost approaches are generally reliable. Ultimately, we find Hall’s cost approach more persuasive because of the quality of his land sale comparables and his support for his adjustments.

PROCEDURAL HISTORY

2. Speedway filed a notice for review with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2016 assessment year. The PTABOA did not issue a determination and Speedway appealed to the Board. The original assessment was:

Year	Land	Improvements	Total
2016	\$1,623,800	\$434,300	\$2,058,100

3. The Board’s designated Administrative Law Judge, Timothy Schuster, (“ALJ”) held a two-day hearing commencing on May 30, 2018 in Indianapolis. Neither he nor the Board inspected the property.
4. Brian Cusimano represented the Assessor. David Hall testified under oath for the Assessor. Jeffrey Bennett represented Speedway. Jeffrey Vale and Kyle Benschoter testified under oath for Speedway.
5. The following exhibits were submitted:

Petitioner’s Ex. P1:	Appraisal report prepared by Jeffrey Vale,
Petitioner’s Ex. P2:	Property record card for subject property,
Petitioner’s Ex. P3:	Confidential pages from Vale appraisal,
Respondent’s Ex. A:	Appraisal report prepared by David Hall,
Respondent’s Ex. B:	Excerpt from “Convenience Stores and Retail Fuel Properties: Essential Appraisal Issues,” 1 st Ed. Bainbridge,
Respondent’s Ex. C:	Additional Listing from the Zacher Company for 2929 E. Dupont Rd., in Fort Wayne, Indiana,
Respondent’s Ex. D:	Additional listing information,
Respondent’s Ex. E1-2:	Vale Sale 1 photographs,
Respondent’s Ex. F1-2:	Vale Sale 2 photographs,
Respondent’s Ex. G1-4:	Vale Sale 3 photographs and property record cards,
Respondent’s Ex. H:	Vale Sale 4 photographs,
Respondent’s Ex. I:	(Not offered),
Respondent’s Ex. J:	Vale Sale 5 Co-Star sale details,
Respondent’s Ex. K:	Vale Sale 6 Co-Star sale details,
Respondent’s Ex. L:	Vale Sale 9 Co-Star sale details,
Respondent’s Ex. M:	Vale Sale 11 & 12 photograph,
Respondent’s Ex. N:	Traffic count maps for Vale Sales,
Respondent’s Ex. O:	Sales disclosure form for Hall Land Sale 6,

Respondent's Ex. P: Demonstrative: 11x17 aerial image of the subject property,
Respondent's Ex. Q: Confidential whiteboard photograph,
Respondent's Ex. R: Photograph of whiteboard notes on land area.

6. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeal, (2) all orders and notices issued by the Board or our administrative law judge, and (3) a digital recording of the hearing.

OBJECTIONS

7. The Assessor objected to Kyle Benschoter's testimony that the subject property's assessment was an outlier compared to other properties in northern Indiana. The Assessor argued that the testimony constituted an opinion of value that Benschoter was not qualified to give because he is not an expert. We overrule the Assessor's objection because Benschoter's statement was rationally based on his perception and experience reviewing assessments.

FINDINGS OF FACT

A. The Subject Property

8. The property is approximately 2.28 acres with a 3,176 sq. ft. convenience store, a 1,320 sq. ft. car wash, and an 11,250 sq. ft. canopy covering the fueling stations. A White Castle restaurant shares space in the convenience store building. It was built in 1995 and is located at the signalized corner of Calumet Avenue and 45th Street in Munster. During the year at issue, it operated as a Speedway brand store. Both appraisers agreed on a number of points:
 - The property is in average condition.
 - The property's highest and best use as vacant is commercial use.
 - The property's highest and best use as improved is continuing its current use as a gas station/convenience store.
 - The property is 100% improved with no excess or surplus land.
 - The property has excellent access, visibility, and abundant complementary properties near it.

The subject property has an M zoning designation allowing a range of uses. *Vale testimony; Hall testimony; Pet'r Ex. P1 at 1, 14-15, 20-21, 29; Resp't Ex. A at 4, 37-40, 65-66.*

B. Expert Opinions

1. David Hall Appraisal

9. The Assessor engaged David Hall, Managing Director of Integra Realty Resources, to appraise the retrospective market value-in-use of the fee simple interest in the property. Hall certified that he appraised the property and prepared his appraisal report according to the Uniform Standards of Professional Appraisal Practice ("USPAP"). Hall is a certified general appraiser holding the MAI and AICP¹ designations. *Hall testimony; Resp't Ex. A at page 3, 106, Addendum A.*

a. Hall's Research and Market Overview

10. Hall identified the relevant market area as Lake County, Indiana. Hall found a good supporting market because total employment was stable and the unemployment rate was dropping despite the slight decline in the population of Lake County. He found stable total inventory suggesting a healthy market. Additionally, market vacancy for gas stations and convenience stores was trending lower since 2010 and reached 1% as of the January 1, 2016 valuation date. Hall's findings suggest a healthy demand and improved market conditions. Hall identified 159 competing properties in Lake County affiliated with 10 different local, regional, and national chains. *Hall testimony; Resp't Ex. A at 11-26.*

b. Hall's Valuation Approaches

11. Hall developed the sales-comparison and cost approaches, and relied on them equally to develop his overall conclusion of value. He did not use the income approach because he found insufficient market data and because typical lease agreements contain personal property. *Hall testimony; Resp't Ex. A at 67, 104-105.*

¹ A member of the Appraisal Institute and American Institute of Certified Planners, respectively.

i. Hall's Cost Approach

12. For his cost approach, Hall began by developing his land valuation. He searched for 1-3 acre plats of vacant land in Lake County zoned for commercial use that sold between 2010 and 2017. Hall located eight comparable sales and one listing (#9), which he adjusted as follows:

	Subject	#1	#2	#3	#4	#5	#6	#7	#8	#9
Location	Munster	Crown Point	Munster	Crown Point	Merrillville	Dyer	Highland	Munster	St. John	Dyer
Sale Date		Jun-17	May-17	Feb-17	May-16	Nov-15	Mar-15	Apr-14	Oct-10	Dec-17 (listing)
Usable Acres	2.28	1.66	1.36	1.72	1.30	2.41	1.44	2.00	1.71	2.47
Price/usable acre (\$)		421,687	476,540	363,372	769,231	477,178	538,194	327,500	351,494	868,379
Market Conditions adjustments		-1%	-1%	-1%	0%	0%	1%	2%	5%	-2%
Cumulative Adjusted Price (\$)		417,470	471,774	359,738	769,231	477,178	543,576	334,050	369,069	851,012
Location				20%	-20%		-20%			
Access/Exposure			5%			20%	10%	40%	20%	5%
Traffic Counts		20%	20%	20%	-5%		5%	20%	20%	15%
Final Adjusted Price (\$)		500,964	589,718	503,634	576,923	572,614	516,398	534,480	516,696	1,021,214
Overall adjustment		19%	24%	39%	-25%	20%	-4%	63%	47%	18%

Hall testimony; Resp't Ex. A at 79.

13. As shown above, Hall made adjustments for time, location, access/exposure, and traffic counts. He found the traffic counts particularly relevant. He supported this decision by citing to the *Convenience Stores and Retail Fuel Properties: Essential Appraisal Issues*, which discusses the great importance convenience store developers place on traffic count during site selection. The subject property had a combined traffic count of 55,284. *Hall testimony; Resp't Ex. A at 76-79; Resp't Ex. B1 at 28, 35.*
14. To highlight the significance of access/exposure, Hall compared comparable #2 to comparable #7, which was located directly behind comparable #2 with no frontage on a major street. The comparables have similar physical characteristics and traffic counts. He noted that comparable #2 sold for 45% higher than comparable #7. He attributed this almost entirely to the difference in access/exposure. *Hall testimony; Resp't Ex. A at 79; Resp't Ex. B.*
15. After adjustments, Hall settled on \$540,000 per usable acre for the subject property. He then multiplied that by the total acreage of 2.28 to arrive at a total land value of \$1,230,000. *Hall testimony; Resp't Ex. A at 79-80.*

16. Hall estimated the replacement cost of the improvements using information from Marshall Valuation Service (“MVS”). Hall believed the convenience store, car wash, canopy, and site improvements were average as described by the MVS definitions. Additionally, Hall estimated 10% indirect costs and 10% entrepreneurial profit. Hall concluded a total replacement cost new of \$1,584,836 for the improvements. *Hall testimony; Resp’t Ex. A at 82-89.*
17. Using the age-life method to calculate depreciation, Hall found the effective and actual ages of the convenience store, car wash, and canopy to be the same: 21 years. As a result, Hall estimated a rounded depreciated replacement cost of \$570,000. Finally, Hall added his land value to arrive at \$1,800,000 as his opinion of value under the cost approach. *Hall testimony; Resp’t Ex. A at 82-89.*

ii. Hall’s Sales-Comparison Approach

18. Hall began his sales-comparison approach by looking for 2011-2016 sales of gas station/convenience stores located in metropolitan areas in Indiana built in the 1990s-2000s. *Hall testimony; Resp’t Ex. A at 90.*
19. Hall noted that gas stations and convenience stores generally sell as a going-concern. A going-concern transaction typically includes real estate, personal property, business value, and intangible property. Despite identifying a market inventory of 159 properties in Lake County, Hall felt that those properties had one of two problems: (1) the personal property was included but in an unknown amount; or (2) it was for a going-concern transaction. Consequently, Hall looked outside Lake County for comparables, identifying three in suburban Indianapolis and one in New Albany. He found the comparable properties shared similar land values, suburban characteristics, and surrounding influences making them relevant comparables. None of the comparable properties had a car wash. Hall adjusted his sales comparables as follows:

	Subject	#1	#2	#3	#4
Location	Munster	Indianapolis	Franklin	New Albany	Indianapolis
Sale Date		Jun-14	Dec-13	Mar-11	Mar-11
Sale Price		\$1,725,000	\$1,000,000	\$870,000	\$825,000
Gross Building Area	4,496	3,884	1,950	2,145	2,325
Land SF	99,273	42,123	44,083	41,818	34,848
Land-to-building ratio	22.08	10.85	22.61	19.50	14.99
Price/SF of Gross Building Area		\$444.13	\$512.82	\$405.59	\$354.84
Market Conditions adjustments		1%	2%	5%	5%
Cumulative Adjusted Price		\$448.57	\$523.08	\$425.87	\$372.58
Location		-20%	0%	10%	20%
Land-to-building ratio		20%	0%	0%	10%
Age/condition		-2%	-7%	-5%	-11%
Final Adjusted Price (\$)		\$439.60	\$486.46	\$447.17	\$443.37
Overall adjustment		-1%	-5%	10%	25%

Hall testimony; Resp't Ex. A at 22, 90-92.

20. Unlike his land sales, Hall did not adjust for traffic counts. Hall emphasized that land is a significant component of the subject property's value. *Hall testimony; Resp't Ex. A at 102.*
21. Hall settled on a value of \$450/sq. ft. He applied it equally to the convenience store and the car wash coming to rounded value conclusion of \$2,000,000 under this approach. *Hall testimony; Resp't Ex. A at 102.*

c. Hall's Reconciliation

22. In his reconciliation, Hall re-emphasized the limited amount of fee simple transactions for gas station/convenience store properties. But he felt he successfully avoided including personal property based on his choices. Hall equally considered both approaches and settled on a retrospective market value-in-use of \$1,900,000 for the January 1, 2016 assessment date. *Hall testimony; Resp't Ex. A at 104-105.*

2. Vale's Appraisal

23. Speedway hired Jeffrey R. Vale of Vale Appraisal Group, Inc. to appraise the retrospective market value of the fee simple interest in the property. He holds the MAI

designation and is an Indiana certified general appraiser. He certified that he performed his appraisal in conformity with USPAP. *Vale testimony; Pet'r Ex. P1 at 1, 43, 56-60.*

a. Vale's Research and Market Overview

24. Vale identified the subject property's market as Lake County. He noted that the market for new real estate development appeared to be slowing generally, but the area near the subject property continued to attract new development because of nearby medical facilities. Since 2012, Vale found real estate values to be "stable to increasing." *Vale testimony; Pet'r Ex. P1 at 10-11.*

b. Vale's Valuation Approaches

25. Vale developed all three approaches to value, the cost, sales-comparison, and income approaches. *Vale testimony; Pet'r Ex. P1 at 4.*

i. Vale's Cost Approach

26. To begin his cost approach, Vale developed a land value. He selected four comparable properties from Lake County. He tried to avoid shopping center sites because they frequently have cross easements and parking agreements that limit their comparability—in addition to the increased draw from nearby retail. Despite this, Vale felt that, "[T]he [land] sales weren't great," so he used one such site as a comparable. Vale made the following adjustments:

	Subject	#1	#2	#3	#4
Sale Date		Apr-14	Mar-15	Mar-14	Nov-14
Sale Price		\$655,000	\$500,000	\$345,325	\$650,000
Site Size (acres)	2.28	2.00	1.38	1.01	1.33
Sale Price/Acre		\$327,500	\$362,319	\$339,219	\$488,722
Location/Adjustment	Good	Secondary/10%	Secondary/10%	Good/0%	Very Good/-10%
Corner/Adjustment	Yes	No/20%	Secondary/10%	No/20%	Pad Site/0%
Size/Adjustment		Similar/0%	Smaller/-10%	Smaller/-10%	Smaller/-10%
Net Adjustments		30%	10%	10%	-20%
In \$/acre		\$98,250	\$36,232	\$33,922	(\$97,744)
Indicated Value		\$425,750	\$398,551	\$373,141	\$390,977

No adjustments were made for property rights, financing terms, conditions of sale, and market conditions. *Vale testimony; Pet'r Ex. P1 at 18.*

27. Vale discussed his comparable #1 in depth because it is the same sale as Hall's land comparable #7. Vale agreed the property was significantly inferior to the subject, but disagreed on the degree. Hall made a 63% adjustment while Vale made a 30% adjustment. When asked why his degree of adjustment was more appropriate than Hall's adjustment, Vale stated:

About the best I can tell you, looking at my grid is the fact that when I did these particular adjustments that was the level that seemed to make it kinda fit with the other sales.

He settled on a value of \$400,000 per acre, and multiplied that by the subject property's 2.28 acres for a land value of \$912,000. *Vale testimony; Pet'r Ex. P1 at 19.*

28. For the improvements, Vale developed a replacement cost new using the 2017 MVS Manual and a comparative cost multiplier for January 2016. Vale believed the convenience store, car wash, canopy, and site improvements were average as described by the MVS definitions. He applied the age-life method for physical depreciation with a useful life of 30 years. Vale estimated that those structures were halfway through usefulness based on age and condition. This resulted in a depreciated replacement value for the convenience store and car wash of \$619,262. Vale then added:

- the value of all depreciated improvements,
- the value of the lot improvements as found in the Assessor's records, and
- the land value.

He arrived at a rounded conclusion of value of \$1,568,000 under the cost approach. In testimony, Vale commented that he felt both his and Hall's estimates under the cost approach were similar, but diverged on land value. *Vale testimony; .Pet'r Ex. P1 at 22-23.*

ii. Vale's Sales-Comparison Approach

29. For his sales-comparison analysis, Vale selected eight gas station/convenience store sales from Lake County. He made the following adjustments:

	Subject	#5	#6	#7	#8	#9	#10	#11	#12
Location	Munster	Highland	Hobart	Crown Point	Hobart	Dyer	Munster	Crown Point	Re-sale-Crown Point
Date of Sale		Jun-14	Apr-14	Apr-14	Jan-14	Feb-16	Feb-6	Oct-16	Dec-16
Sale Price (\$)		900,000	500,000	750,000	900,000	2,900,000	500,000	500,000	1,125,000
Building Size (S.F.)	3,176	1,596	1,525	2,813	3,150	4,221	1,688	2,117	2,117
Land size (Ac.)	2.280	0.518	0.325	0.910	0.329	1.520	0.306	0.330	.55 ²
Financing Terms & adjustment		Cash/0%	Cash/0%	Cash/0%	Land contract/-5%	Cash/0%	Cash/0%	Cash/0%	Land contract/-5%
Conditions of Sale adjustment		0%	0%	0%	0%	0%	0%	0%	0%
Adjusted Sale Price (\$)		900,000	500,000	750,000	855,000	2,900,000	1,640,000	500,000	1,068,750
Building Value per S.F. (\$)		563.91	327.87	266.62	271.43	687.04	971.76	236.18	504.84
Location Adjustment	Good	Avg./good 10%	Average 20%	Average 20%	Good 0%	Very Good -10%	Very Good -10%	Good 0%	Good 0%
Land/Building Ratio Adjustment	31.27	14.14 15%	9.28 20%	14.09 15%	4.55 30%	15.69 15%	7.90 20%	6.79 20%	6.79 20%
Age/condition Adjustment	1995 Average	1997 Avg-Good -10%	1968 Remod 2011 -10%	1982 Average 10%	2006 Good -15%	2001 Good -10%	2004 Remod. 5%	1990 Remod. 10%	1990 Remod. New equip. '16 -10%
Car Wash Adjustment	Yes	Yes 0%	No 5%	No 5%	No 5%	Yes 0%	No 5%	No 5%	No 5%
Size Adjustment		Smaller -5%	Smaller -5%	Similar 0%	Similar 0%	Similar 0%	Smaller -5%	Smaller -5%	Smaller -5%
Net Adjust. In \$ per S.F.		10% \$56.39	30% \$98.36	50% \$133.31	20% \$4.29	-5% (\$34.35)	10% \$97.18	30% \$70.85	10% \$50.48
Indicated Value		\$620.30	\$426.23	\$339.93	\$325.71	\$652.69	\$1,068.94	\$307.04	\$555.33

30. He did not adjust for property rights conveyed or market conditions. Vale admitted that all of the sales likely contained personal property, but he only adjusted sales #5 and #11 for that factor. He noted that this would have resulted in an over-valuation of the real property. Vale's comparable #5 was a foreclosure sale, but he made no adjustment for that factor. *Vale testimony; Pet'r Ex. P1 at 27-35.*

31. Comparables #6 and #7 from April 2014 were the result of contracts initially agreed to in 2010 and 2012. Vale admitted he did not know:

- if the properties were marketed together or separately,
- if the properties were listed on the open market,
- if the sales included the going-concern.

² Although sales #11 and #12 were of the same property, the second sale included an additional parcel that increased the land size to .55 acres. Vale's appraisal used the original, incorrect acreage. He admitted this mistake during testimony. He noted that this would have changed his land to building ratio adjustment and the additional land may have affected the sale price.

Pet'r Ex. P1 at 27-35; Vale testimony.

32. Vale then averaged the sale prices to arrive at his opinion of value. Before averaging, he removed comparable #10 because it had an undisclosed amount of personal property. He also removed the highest and lowest sale prices. He averaged the remaining sale prices to a value of \$460/sq. ft. Vale multiplied this by the 3,176 sq. ft. of the convenience store to arrive at a value of \$1,461,000. *Vale testimony; Pet'r Ex. P1 at 27-35.*

iii. Vale's Income Approach

33. Vale found the income approach applicable because the convenience store shares space with a White Castle restaurant. Vale estimated the building to be a 51% owner-occupied convenience store, and a 49% tenant-occupied fast food restaurant. Vale calculated the total expenses for the property and allocated 49% of those to White Castle. *Vale testimony; Pet'r Ex. P1 at 37-41.*
34. He began his market rent estimate for the restaurant by using the actual rent. Vale did not review the subject property's lease to White Castle, but he did speak with the owner. Based on the conversation, Vale understood the lease to be a modified gross lease. Specifically, the tenant pays rent and its own utilities and the owner pays the remaining expenses. Despite his uncertainty, he believed the lease to be at market based on information for older Burger King leases, but admitted that he did not do a market rent study and did not know if the subject property's rate was typical. He then used a combination of estimated and actual expenses to arrive at a net rent of [REDACTED] sq. ft. for the restaurant. *Vale testimony; Pet'r Ex. P1 at 37-41.*
35. When estimating market rent for the convenience store, Vale acknowledged there is limited data for convenience store rents because they are typically owner-occupied. As a result, Vale extended his search outside of Lake County and northwest Indiana. Vale selected four comparable properties, two from Lake County. *Vale testimony; Pet'r Ex. P1 at 37-41.*

36. He admitted that his convenience store leases likely had personal property included, but did not explain what adjustments he made to account for it. Vale commented that, over the course of a lease, personal property is a significant element of a lease at the beginning, but it does not have as much value later because personal property has a faster depreciation rate than real estate or buildings. In considering this factor, he acknowledged that, “[i]t could be an allocation thing, but I hadn’t really thought about it that much until the last two days.” He did not elaborate on what he meant by an “allocation thing.” *Vale testimony.*
37. Vale included a traffic count for comparables #2 and #3 but did not adjust for it. He acknowledged that the market areas for these comparables were inferior to Lake County. Vale made adjustments for lessor expenses, location, size, and condition. He ultimately settled on a net rent of \$38/sq. ft. for the convenience store portion of the property. *Vale testimony; Pet’r Ex. P1 at 37-41.*
38. Finally, Vale estimated rent for the car wash. The limited data required Vale to expand his search radius for car wash comparables. He was only able to find one lease and three listings. The lease was \$10.26/sq. ft. while the listings ranged from \$7 to \$45/sq. ft. He concluded to a rent of \$10/sq. ft. for the car wash. *Vale testimony; Pet’r Ex. P1 at 37-41.*
39. Vale chose a 5% vacancy rate because the property is a Speedway gas station with a White Castle restaurant so he considers it a “pretty safe bet.” After deducting vacancy and collection loss, and lessor expenses, he determined the operating income to be \$108,999. Vale developed a capitalization rate using information exclusively from the Real Estate Research Corporation’s 4th quarter 2015 report. Vale settled on a 7.5% cap rate based on data from first-tier retail neighborhood/commercial properties in the Midwest, and he noted that the property’s good location supported this rate. After applying the cap rate, Vale concluded the value was \$1,453,000 under the income approach. *Vale testimony; Pet’r Ex. P1 at 37-41.*

c. Vale's Reconciliation

40. In his overall conclusion, Vale considered all three approaches, but found the sales-comparison approach to be the most important. He acknowledged that each approach has strengths and weakness for this type of property, but felt all were appropriate to use for the 2016 assessment date. After rounding, Vale concluded to a value of \$1,460,000. *Vale testimony; Pet'r Ex. P1 at 37-41.*

C. Kyle Benschoter testimony

41. Kyle Benschoter also testified about his role as a tax analyst for Speedway, the subject property's assessment in the years preceding appeal, and the features Speedway considers valuable for a property. He admitted that he is not an appraiser. *Benschoter testimony.*
42. Benschoter testified about nine comparable properties he previously discussed with the Assessor, but focused on one Marathon property located nearest to the subject property. Neither Vale nor Hall used the Marathon as a comparable. In Benschoter's opinion, the Marathon has easier access than the subject to Calumet Avenue, but despite this point the subject property is assessed roughly \$10/sq. ft. more. Benschoter explained that the subject property is a high outlier in northern Indiana based on his experience reviewing assessments as a tax analyst for Speedway. *Benschoter testimony.*
43. Finally, Benschoter testified that the greatest utility for Speedway comes from the convenience store, and as a result, new Speedway stores focus on larger convenience stores making the subject similar to new construction. *Benschoter testimony.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

44. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior

year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. § 6-1.1-15- 17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b). The parties agreed that the Assessor bears the burden of proof.

B. Appraisals

1. Hall's Opinions

45. Hall gave equal weight to the cost and sales-comparison approaches in his value conclusion. But we find his cost approach more reliable because Hall appropriately considered Indiana's market value-in-use standard and adequately supported his conclusions. As explained below, we give no weight to his sales-comparison approach because he applied his indicated value equally to the car wash and convenience store even though the evidence indicates this was inappropriate.

a. Hall's Cost Approach

46. For Hall's cost approach, Speedway primarily criticized his land valuation. Beginning with his selection of comparable properties, Speedway noted that five of the nine properties sold after the January 1, 2016 assessment date. Speedway found this problematic because they may have been affected by market trends that were unknown as of the assessment date. As stated by the Tax Court, parties may present evidence of present-day property values as long as they attempt to relate that evidence to the appropriate date. *Marion Cnty. Assessor v. Simon DeBartolo Grp., LP*, 52 N.E.3d 65, 70 (Ind. Tax Ct. 2016). Hall related his comparable properties to the assessment date by using a market conditions adjustment. Therefore, we give Speedway's criticism little weight.
47. Next, Speedway made several arguments about Hall's use of traffic counts. It argued Hall did not show reliability in his linear regression analysis for traffic counts because he

failed to demonstrate that his results were statistically significant. We agree that Hall could have better supported his use of the traffic count data, but we do not find it is entirely devoid of value. Hall's choice to use data to support his adjustments is more persuasive than Vale's general reliance on his own experience.

48. Speedway also claimed that Hall did not sufficiently explain why he used traffic count adjustments for land sales, but not for improved properties. But Hall explained that he did not use traffic counts for improved properties because improved properties have more factors to consider. Regardless, this criticism does not cast doubt on Hall's cost approach.
49. Speedway also argued that the location, access/exposure, and traffic count adjustments were "similar in concept" and thus, duplicative. While it is true that a location adjustment can account for differences in traffic counts and access/exposure, that is not necessarily the case. Hall explained that his location adjustment was for surrounding land uses and broader market characteristics while his access/exposure adjustment included visibility and accessibility. We find that Hall adequately explained how these adjustments differ.

b. Hall's Sales-Comparison Approach

50. Speedway criticized Hall's sales-comparison analysis in two ways. First, it argued that Hall erred in applying his \$450/sq. ft. conclusion to both the convenience store and car wash. Hall pointed to a gas station/convenience store with a car wash listing as support for the contention that the market considers all improvements together. We agree with Speedway's criticism. None of Hall's improved comparable sales included a car wash, nor did he adjust for this factor. Thus, his concluded value is more appropriate for a gas station/convenience store without a car wash. Hall's own cost approach indicates that the car wash portion costs significantly less to build than the convenience store portion. Thus, by applying his concluded per square foot value to the entire subject property including the car wash, Hall likely overstated the value.

51. Second, Speedway criticized Hall for choosing comparable improved sales from outside Lake County. It posited that Hall was unfamiliar with Lake County, and thus he sought a reason to select comparables in a market he was more familiar with such as Indianapolis over 150 miles away.
52. As Hall explained, he began his search in Lake County but felt that he did not have enough transactional information about the sales he found to avoid including going-concern or personal property value. Thus, he expanded his search radius. As discussed above, he looked for locations with similar underlying land values and locational characteristics, and made adjustments. We find that Hall adequately explained his rationale for selecting improved comparables outside of Lake County.

c. Hall's Valuation Opinions

53. The fact remains that Hall's sales-comparison approach is flawed because it likely over-valued the car wash portion of the subject property. We find Hall's overall opinion of value is not persuasive because he relied equally on the cost and sales-comparison approaches. Despite the minor problems with his analysis under the cost approach, we find it is a reliable indicator of the subject property's true tax value. We now turn to whether Vale's opinion is more persuasive.

2. Vale's Opinions

54. Vale considered all three generally recognized approaches to value, but acknowledged all three have weaknesses. Vale reconciled his approaches to arrive at an overall conclusion of value. Vale's appraisal has significant problems. Although we find his analysis under the cost approach reliable, we do not find his other approaches persuasive.

a. Vale's Cost Approach

55. The Assessor made no significant criticisms of Vale's improvements estimates but offered several regarding his land sales analysis, the most significant of which we address here. Generally, we find that Vale offered scant explanation for his adjustments. This failure seriously undercuts the persuasiveness of his opinions.
56. Vale land comparable #1 was the same sale as Hall's comparable #7. Hall found it significantly more inferior to the subject than Vale did because of its lack of frontage on a major road. When asked to explain his adjustments, Vale stated that he attempted to bring it in line with his other sales. This is particularly troubling and reflects poorly on Vale's credibility. Adjusting a sale to make it reflect the sale prices of other comparables renders that sale void of any independent probative value.
57. Finally, Vale acknowledged that all of his corner land sales were inferior to the subject property's location at the corner of major thoroughfares. He also admitted he might not have a proper upper adjustment limit for his comparables. The limited support for Vale's adjustments detracts from the reliability of his conclusions under this approach.

b. Vale's Sales-comparison Approach

58. The Assessor criticized Vale's sales-comparison approach because it fails to adjust for property rights, intangible value, and personal property. We largely agree with these criticisms. In addition, like his land sales analysis, Vale did little to explain many of his adjustments.
59. A number of Vale's sales had significant problems that detract from their reliability. For example, Vale's sale #5 was the result of a foreclosure. But he provided only a cursory explanation for why he made no adjustment for conditions of sale. Sales #6 and #7 were actually negotiated in 2010 and 2012, but Vale did not explain why those were relevant for the 2016 assessment date. He also claimed those sales were market transactions, but admitted did not know how the properties were marketed or if they included only real

estate. In addition, for Comparable #12, the re-sale of comparable #11, he failed to adjust for an additional parcel of land.

60. As discussed above, Vale admitted that all of his sales likely contained personal property, but he only adjusted two sales for this factor. Vale discounted the risk of including personal property and business value as part of the sales prices by stating that his conclusion of value would be higher because he would have over-allocated the value of the real estate. While it is true that this failure was likely not in favor of Vale's client, Speedway, it nonetheless demonstrates a careless attitude toward the assignment. By not properly accounting for assets other than the real property, Vale did not successfully estimate the market value-in-use of the subject property.
61. Overall, we find Vale's sales-comparison approach too flawed to be a reliable indication of the market value-in-use of the subject property.

c. Vale's Income Approach

62. Vale relied on the actual rent for the restaurant portion of the property, but he did little to show this rent was representative of the market. He did not review the lease. He stated that the rent was supported by two Burger King leases, but provided virtually no information about them. He also admitted that he did not know the typical rental rate for a fast food restaurant. We find this significantly detracts from the reliability of Vale's income approach.
63. His estimate of convenience store rent is likewise lacking. He acknowledged that the convenience store leases likely included personal property, but he did not explain what adjustments he made to account for it. Vale also did not make adjustments for location despite his own opinion that comparables #2 and #3 are in inferior markets.
64. He likewise did little to support his market rent for the car wash, relying on just one lease and three listings. Overall, we find that Vale failed to support his conclusions under the income approach.

d. Vale's Reconciliations

65. We find that two of Vale's approaches are unreliable due to the significant problems mentioned above. Vale came to his overall conclusion by reconciling the three approaches. Therefore, Vale's overall opinion of value is unsupported. Vale's only reliable opinion is his cost approach.

C. Kyle Benschoter testimony


66. Kyle Benschoter testified about a nearby Marathon as evidence that the subject property's assessment is an outlier. Speedway is correct in its argument that Indiana Code § 6-1.1-15-18(c) allows a taxpayer to introduce evidence concerning any relevant, comparable property. *Pet'r Br. at 25*. Nevertheless, the statute goes on to say that comparability requires a showing using generally accepted appraisal and assessment practices. Here, Benschoter only gave an opinion about access and an underlying land assessment. He failed to show that he used generally accepted appraisal practices.

D. Conclusions

67. As discussed above, we find Hall's sales-comparison approach, and Vales sales-comparison and income approaches unreliable. A finding that a portion of an appraisal is flawed does not necessarily mean that a party has failed to make a prima facie case. *Marion Cnty. Assessor v. Gateway Arthur, Inc.*, 43 N.E.3d 279, 285 (Ind. Tax Ct. 2015). Rather, if the Board determines "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). *Washington Square Mall* and *Gateway Arthur* make clear that the Board is not compelled to accept or reject in whole an appraiser's final opinion of value. The Board may base a valuation on probative portions of an appraisal. *See Wash. Square Mall*, 46 N.E.3d at 14 (remanding to the Board to value the property based solely on the appraiser's direct capitalization method). Furthermore, the Board may consider the opposing party's arguments and evidence in evaluating an appraisal. *Gateway Arthur, Inc.*, 43 N.E.3d at 285 (affirming the Board's use of an appraisal after omitted property tax reimbursements were included).

68. We now turn to the cost approach. Although the cost approach can be less reliable for an older building such as the subject, that deficiency primarily relates to the estimate of depreciation for the improvements. In this case, the appraisers came to similar estimates of the value of the improvements, with Hall slightly higher, and neither side took issue with these estimates. Instead, the primary difference between the cost approaches lies in the estimates of land value. For that reason, we find the cost approach to be a reliable indication of value for the subject property.
69. We find Hall's land valuation, and thus his entire cost approach, more persuasive. Rather than rely on general statements about his experience, Hall pointed to actual data from the market to support his adjustments. We also find he provided more similar comparables that better bracketed the subject property's locational qualities. Finally, Vale's decision to adjust a sale to "fit in" undercuts the persuasiveness of his analysis. Overall, we find Hall's cost approach value of \$1,800,000 best reflects the subject property's true tax value as of January 1, 2016.

The Assessments are changed accordingly. 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>>.