

REPRESENTATIVE FOR THE PETITIONER:

Fred L. Lands, *pro se*

REPRESENTATIVE FOR THE RESPONDENT:

Beth H. Henkel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Fred L. Lands,)	Petition Nos.: 20-027-18-1-3-00229-19
)	
Petitioner,)	Parcel No.: 20-02-26-176-024.000-027
)	
v.)	
)	County: Elkhart
Elkhart County Assessor,)	Township: Osolo
)	
Respondent.)	Assessment Year: 2018

February 2, 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:

INTRODUCTION

1. The Respondent had the burden to prove the January 1, 2018, assessment was correct. Did the Respondent prove the assessment was correct?

PROCEDURAL HISTORY

2. The Petitioner initiated his 2018 assessment appeal with the Elkhart County Assessor on June 9, 2018. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) failed to hold a hearing. Thus, the Petitioner filed a Petition for Review of Assessment (Form 131) directly with the Board on February 26, 2019. *See* Ind. Code §

6-1.1-15-1(o) (permitting taxpayers to appeal directly to the Board if the maximum-time for a PTABOA to hold a hearing or issue a determination has elapsed).

3. On November 4, 2020, Dalene McMillen, the Board's Administrative Law Judge (ALJ), held the Board's administrative hearing telephonically. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Fred Lands appeared *pro se* via telephone and was sworn. Attorney Beth Henkel appeared for the Respondent via telephone. County Assessor Cathy Searcy and David Hall testified via telephone for the Respondent and were sworn.

5. The Petitioner offered the following exhibits:

- Petitioner Exhibit 1: Petitioner's experience and testimony,
- Petitioner Exhibit 2: Assessor's Industrial Sales Sheet,
- Petitioner Exhibit 4: Board's Notice of Stipulated Agreement Order of Dismissal, dated January 7, 2014,
- Petitioner Exhibit 5: Notice of Assessment by Assessing Official (Form 113) dated December 2, 2014,
- Petitioner Exhibit 6: Stipulation Agreement between Fred Lands and Elkhart County Assessor dated December 23, 2013,
- Petitioner Exhibit 7: "Elevate" property information for the subject property,
- Petitioner Exhibit 8: Email exchange between Fred Lands and Beth Henkel dated January 29, 2020,
- Petitioner Exhibit 9: Indiana Department of Environmental Management (IDEM) letter, dated June 18, 2008,
- Petitioner Exhibit 10: Keramida aerial map of the subject property,
- Petitioner Exhibit 11: Environmental Protection Agency (EPA) letter dated March 24, 2011,
- Petitioner Exhibit 12: EPA letter dated March 24, 2014,
- Petitioner Exhibit 15: EPA letter dated February 22, 2019,
- Petitioner Exhibit 17: Email exchange between Fred Lands and Beth Henkel, dated January 29, 2020.¹

6. The Respondent offered the following exhibits:

¹ Petitioner's Exhibits 3, 13, 14, 16, 18, 19, 20, and 21 were included in the Petitioner's evidence binder but not entered into the record.

- Respondent Exhibit R1: Appraisal Report of the subject property prepared by David Hall and Michael Lady of Integra Realty Resources with an effective date of January 1, 2018,
- Respondent Exhibit R2: Co-Star leasing information prepared by Robert James Inc., Commercial Real Estate and email exchange between James Skillen and David Hall dated February 19, 2020,
- Respondent Exhibit R3: LoopNet Sale Information for the subject property,
- Respondent Exhibit R4: Marshall & Swift calculator method, Section 14, page 1 (2/2016) and three photographs of the subject property,
- Respondent Exhibit R5: Sales disclosure form for subject property dated August 29, 2019,
- Respondent Exhibit R6: Aerial map of the subject property,
- Respondent Exhibit R7: EPA letter dated March 11, 2016,
- Respondent Exhibit R8: Alt & Witzig Engineering, Inc., letter, dated January 28, 2009,
- Respondent Exhibit R10: EPA Record of Decision – Lane Street Ground Water Contamination Site (8/2016).²
- Respondent Rebuttal Exhibit R11: Sale Listing Flyer for 2505 Marina Drive,
- Respondent Rebuttal Exhibit R12: Property record card for 2505 Marina Drive.³

7. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) the digital recording of the hearing and these findings and conclusions.
8. The property under appeal is a 22,500 square foot industrial warehouse located at 3507 Cooper Drive in Elkhart.
9. The 2018 total assessment is \$443,300 (land \$31,300 and improvements \$412,000).
10. The Petitioner requested a total assessment of \$90,300 (land \$31,300 and improvements \$59,000).

² Respondent’s Exhibit R9 was included in the Respondent’s evidence binder but not entered into the record.

³ Ms. Henkel offered *Garrett LLC v. Noble Co. Ass’r*, 112 N.E.3d 1168 (Ind. Tax Ct. 2018) for “legal argument.”

OBJECTIONS

11. Mr. Lands objected to Respondent's Rebuttal Exhibits R11 and R12, information pertaining to 2505 Marina Drive, on the grounds the Respondent failed to timely provide copies prior to the hearing as outlined by 52 IAC 4-8-1(b). In response, Ms. Henkel argued the rebuttal exhibits relate to Petitioner's Exhibit 2, the sale of 2505 Marina Drive, and Mr. Land's testimony as it is related to the sale of the property. The ALJ took the objection under advisement. Rebuttal evidence is evidence offered to explain, contradict, or disprove the evidence presented by an adverse party. *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993). The Board may exclude evidence offered in rebuttal which should have been presented in the party's case-in-chief but is not required to do so. *Id.* Here, the Board finds the exhibits were offered to challenge information contained in Petitioner's Exhibit 2. For this reason, the objection is overruled and Respondent's Rebuttal Exhibits R11 and R12 are admitted.

PETITIONER'S CONTENTIONS

12. The subject property is over assessed. Mr. Lands testified that since 1994 he has been a licensed real estate broker. He is the owner of Lands Realty LLC, specializing in commercial real estate, predominately industrial real estate, manufacturing facilities, and warehouses buying, selling, building, and leasing. *Lands testimony; Pet'r Ex. 1.*
13. According to Mr. Lands, he originally filed an assessment appeal in 2012 with the Board regarding this property. As a result of that appeal, a stipulation was reached valuing the property at \$93,700. This assessment carried forward from 2012 through 2017. In 2018, the assessment was increased to \$443,300. According to the Respondent, "an industrial depreciation study and removal of obsolescence" accounted for the increase in the 2018 assessment. No changes had been made to the subject property, and it remained contaminated at above the legal limit with no IDEM or EPA action taken.⁴ Mr. Lands

⁴ Mr. Lands ordered soil testing from Keramida, and the reports indicated "TCE levels of 80 parts per million." *Lands testimony; Pet'r Ex. 10.*

argues the previous stipulated agreement of \$93,700 should be reinstated. *Lands testimony; Pet'r Ex. 4, 5, 6, 7, 9, 11, 12.*

14. Mr. Lands testified that he received a letter from the EPA on February 22, 2019. According to this letter, Mr. Lands was able to sell the property in 2019 “because it diminishes his liability regarding the property’s contamination and transfers the federal, state, local and/or tribal laws or requirements that may apply regarding the property’s clean-up to the new owner.” *Lands testimony; Pet'r Ex. 15.*
15. In support of his position, Mr. Lands submitted a comparable sale adjacent to the subject property. The comparable property is located at 2505 Marina Drive and sold on October 30, 2015, for \$675,000 or \$14.42 per square foot. Mr. Lands testified he was the listing and sales agent of this property. *Lands testimony; Pet'r Ex. 2.*
16. The industrial sales sheet prepared by the Respondent is flawed. The analysis claims four properties were identified by the EPA as within the contaminated groundwater area: 3501 Cooper Drive, 2500 Ada Drive, 2501 Marina Drive, and 2505 Marina Drive. These properties were not known to be contaminated, so the sale prices were not affected by the contamination. The sale of 3506 Henke Drive was contaminated property. Mr. Lands argues that one contaminated property does not create a market. *Lands testimony; Pet'r Ex. 1, 2.*
17. The Respondent’s appraisal is also flawed. Mr. Hall failed to address the fact that the building’s three stall loading dock is hindered by a trash bin, so that only two loading dock stalls can be used. He also failed to address that the loading dock has a French drain and when it rains the dock fills with water. There is no LED lighting in the

building, the building is lit by metal hung lights. Also, the roof is half rusted and needs to be replaced at a cost of \$120,000.⁵ *Land testimony (referencing Resp't Ex. R1).*

RESPONDENT'S CONTENTIONS

18. The subject property is currently underassessed. In support of this position, the Respondent offered an appraisal report prepared by David Hall. Mr. Hall is an Indiana Certified General Real Estate Appraiser and holds the MAI and AICP designations. Mr. Hall certified that he appraised the subject property and prepared his report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP). Mr. Hall performed an appraisal of the retrospective market value-in-use of the property's fee simple interest at \$510,000 as of January 1, 2018. The Respondent requests the assessment be increased to this amount.⁶ *Henkel argument; Hall testimony; Resp't Ex. R1.*
19. The subject property is a 22,500 square foot industrial building that includes an estimated 1,500 square foot finished office area constructed in 1983. The property is zoned M-2 general manufacturing. The property is designed for occupancy by a single tenant. Under Extraordinary Assumptions and Hypothetical Conditions, Mr. Hall relied on historical data to conclude the property's condition as of January 1, 2018. Mr. Hall requested access to inspect the interior of the subject property, but access was not granted. *Hall testimony; Resp't Ex. R1.*
20. According to the EPA the subject property is located in an area impacted by groundwater contamination. The EPA designated a 65-acre area, an area that encompasses the subject property, as the Lane Street Groundwater Contamination Superfund Site. The

⁵ Mr. Lands read a statement from Mr. Hall's appraisal in the Assumptions and Limiting Conditions section regarding environmental defects or problems from page 131. Ms. Henkel stated the Respondent provided Mr. Lands with three copies of the appraisal and he must be reading from an earlier copy. Mr. Lands questioned Mr. Hall regarding his expertise as an environmental expert. Mr. Hall responded by stating he is not an environmental expert but referenced EPA's record of decision and a copy of an environmental study to conclude the market value-in-use is not impacted by groundwater contamination. The Board's copy of Respondent's Exhibit R1 shows the paragraph in question to be on page 137.

⁶ Mr. Hall included a portion of his work file that included the Co-Star sale listing sheet published by Robert James Inc., email correspondence with James Skillen, and the LoopNet property information. *Resp't Ex. R2, R3.*

contamination was first identified in 2007. In November of 2008, the EPA initiated clean up measures, including connecting properties to city water. The EPA is anticipating achieving its objectives of clean up and remediation within 10 years. *Hall testimony; Resp't Ex. R1, R6, R10.*

21. An onsite contamination investigation was conducted by Alt & Witzig Engineering, Inc. According to the investigation, the subject property was not the source of the groundwater contamination. The original source was a property located to the northeast of the subject property. *Hall testimony; Resp't Ex. R1, R8.*
22. EPA reports, letters, and the investigation, found the utility of the property was “unlikely” significantly impaired by groundwater contamination or soil vapor concentration. As of the effective date of the appraisal, the property did not rely on well water because it was serviced by municipal water. Mr. Hall concluded that as of January 1, 2018, the market value-in-use of the property was not affected by groundwater contamination. *Hall testimony; Resp't Ex. R1.*
23. Mr. Hall provided an overview of the property’s market, including an economic and demographic analysis, and a market segmentation analysis. The economic analysis found that the population increased between 2010 and 2019 and job growth was strong between 2010 and 2017. According to Indiana Department of Workforce Development, Elkhart County’s 2017 unemployment rate was the lowest among all counties in the State of Indiana. An article in the Wall Street Journal also noted the area outperformed all other major U.S. manufacturing regions in job growth between 2009 and 2017. The economic indicators for Elkhart County from a valuation perspective show increasing values, rental rates, and declining vacancies as of January 1, 2018. *Hall testimony; Resp't Ex. R1.*
24. The market segmentation analysis helped Mr. Hall identify the following criteria: property type, property features, market area boundaries and characteristics, availability of substitute properties, and access to supporting properties. In Elkhart County, he found 709 single tenant industrial properties that ranged in size from 10,000 square feet to

50,000 square feet. According to Co-Star, the average market rental rate as of the first quarter of 2018 was \$3.32 per square foot, the average vacancy rate was less than 1%, and the average market sale price was \$30.46 per square foot. The property is easily accessible from Interstate 90 and State Road 19. In conclusion, the trends indicate strengthening demand. *Hall testimony; Resp't Ex. R1.*

Cost approach:

25. Mr. Hall started with the cost approach. For land value, he identified five sales of vacant sites in Elkhart County. The sales occurred between 2012 and 2017, so a positive 4% per year time adjustment was applied. He also adjusted the sale prices to account for differences in location, accessibility, size, physical characteristics, zoning, and utility. The adjusted land sales ranged from \$36,367 to \$47,690. He settled on a value of \$100,000 for the 2.31-acre site. *Hall testimony; Resp't Ex. R1.*
26. Mr. Hall used the Marshall Valuation Service (MVS) cost schedules for a class S industrial light manufacturing facility to calculate the replacement cost for the building. He determined the building was average construction quality. MVS cost schedules include some indirect cost, but Mr. Hall determined the subject property had an additional 10% indirect cost for items such as environmental site assessment reports, zoning approval, and legal fees. Because the building is presumed to be owner occupied, no adjustment was made for entrepreneurial incentive or profit. *Hall testimony; Resp't Ex. R1.*
27. Because the property was constructed in 1983, its actual age was 35 years as of January 1, 2018. He used the age-life method to estimate a remaining economic life of 10 years. He concluded an effective age of 25 years. *Hall testimony; Resp't Ex. 1.*
28. Mr. Hall determined the building did not suffer from any functional or external obsolescence. In his view, the building did suffer from deferred maintenance and the overall condition was fair. The total building depreciation based on the age-life method

was determined to be 71.4% and the site improvements depreciation based on the age-life method was 50%. *Hall testimony; Resp't Ex. R1.*

29. Mr. Hall estimated a replacement cost new for both the building and the site improvements. For the building, he estimated a replacement cost new of \$1,247,648. For the site improvements, he estimated a replacement cost new of \$133,374. After depreciation was accounted for, Mr. Hall determined a depreciated replacement cost of \$420,000. Finally, the land value of \$100,000 was added to the depreciated replacement cost of \$420,000, totaling an estimated value of \$520,000 under the cost approach. *Hall testimony; Resp't Ex. R1.*

Sales comparison approach:

30. Turning to the sales comparison approach, Mr. Hall looked at fee-simple industrial property sales between 10,000 and 50,000 square feet in Elkhart County. He also researched five industrial property sales located in the immediate area of the subject property that were also located in the EPA groundwater contamination site, but only found the property at 3506 Henke Street to be comparable. He ultimately settled on the following six sales:
- **Sale 1.** This property is located at 3506 Henke Street. It is a 28,000 square foot building situated on 3.84 acres that was constructed in 1986. It sold in October of 2017 for \$620,000 or \$22.14 per square foot. This property suffers from the same groundwater contamination and is in the same EPA Superfund Site area as the subject. The building includes approximately 2.9% office space and has a building height of 16 feet.
 - **Sale 2.** This property is located at 2900 Gateway Drive. It is a 25,000 square foot building, constructed in 1994 situated on 1.53 acres. It sold in November of 2015 for \$620,000 or \$24.80 per square foot. The building has two drive-in doors, two truck docks, a building height of 18 feet, and approximately 5.3% office space.
 - **Sale 3.** This property is located at 2431 East Kercher Road. It is a 38,120 square foot building, constructed in 1987 situated on 6 acres. It sold in October of 2015

for \$945,000 or \$24.79 per square foot. The building includes a two-story office area of 13.2%, 10 drive-in doors, and a building height of 25 feet.

- **Sale 4.** This property is located at 56764 Elk Park Drive. It is a 27,000 square foot building, constructed in 1983 and situated on 2.5 acres. It sold in July of 2015 for \$485,000 or \$17.96 per square foot. The office area is 4,000 square feet. The warehouse areas are heated and air condition. The building height ranges from 12 feet to 14 feet.
- **Sale 5.** This property is located at 3401 Cooper Drive. It is a 14,101 square foot building, constructed in 1974 situated on 3.99 acres. It sold in April of 2015 for \$325,000 or \$23.05 per square foot. The office area is 14.9%, includes 3 drive-in doors, and has a building height of 14 feet.
- **Sale 6.** This property is located at 29221 County Road 20. It is a 22,312 square foot building, constructed in 1994 and situated on 2.69 acres. It sold in May of 2014 for \$460,000 or \$20.62 per square foot. The property was vacant at the time of sale. The office area is 10.4% and the building height is 20 feet.

Hall testimony; Resp't Ex. R1.

31. Mr. Hall opted not to use the 2505 Marina sale in his sales comparison approach. He stated the building was “double” in size and there were significant differences in physical characteristics. The building was also added onto at various times; therefore, the configuration is inferior to the open rectangular style of the subject property. *Hall testimony; Resp't Ex. R6; Rebuttal Resp't Ex. R11, R12.*
32. Mr. Hall adjusted his sale prices to account for various differences. First, he adjusted for land to building ratio, which ranged from negative 10% to positive 5%. Building height and office space adjustments were made for sales 1, 4, and 5. He made various adjustments for age on six sales. All in all, Mr. Hall concluded that few adjustments were necessary. After adjustments, the price per square foot ranged from \$19.17 to \$24.37, with an average of \$21.78. He reconciled his opinion of value based on the sales

comparison approach at \$22.00 per square foot. His conclusion under the cost approach was \$500,000 (rounded). *Hall testimony; Resp't Ex. R1.*

Income approach:

33. Mr. Hall estimated market rent for the subject property by identifying five leases of comparable single-tenant industrial properties in Elkhart:
- **Lease 1:** A triple-net lease of a 26,000 square foot building located at 21240 Protecta Drive leased to AGM Structures for \$3.60 per square foot.
 - **Lease 2:** A triple-net lease of a 20,809 square foot building located at 52886 State Road 13 leased to The Barn Door, LLC, for \$2.73 per square foot.
 - **Lease 3:** A triple-net lease of a 23,775 square foot building located at 1805 Leer Drive leased to Just Pack It for \$2.12 per square foot.
 - **Lease 4:** A triple-net lease of a 28,000 square foot building located at 2904 Airport Parkway leased to Curtis Riegsecker Affinity for \$1.66 per square foot.
 - **Lease 5:** A triple-net lease of a 43,295 square foot building located at 2503 Ada Drive leased to a confidential tenant for \$2.64 per square feet.

Hall testimony; Resp't Ex. R1.

34. Mr. Hall compared the leases in terms of expense structure, lease conditions, and market conditions. The properties were compared in terms of location, size, physical characteristics, and age/condition. Based on data and analysis, an annual 4% adjustment was applied to each comparable base rent to account for the average compound annual rate of increase.⁷ He made no adjustments for location, size, or physical characteristics. The age/condition adjustments ranged from negative 3% to negative 11%. The average adjusted rents ranged from \$1.93 per square foot to \$3.28 per square foot. He concluded a market rent of \$2.50 per square foot or potential gross rent of \$56,250.⁸ *Hall testimony; Resp't Ex. R1.*

⁷ The annual percentage adjustment of 4% was based on market conditions as of January 1, 2018. For example, the lease for comparable 3 began in March 2011, so an annual adjustment of 27% was applied. *Resp't Ex. R1 at 120.*

⁸ Mr. Hall noted that the subject property was rented in 2019 for \$3.25 per square foot. *Resp't Ex. R1 at 121.*

35. Next, Mr. Hall assumed the subject property was rented on a triple-net basis. Therefore, the tenant would be responsible for taxes, insurance, utilities, repairs, and maintenance. Based on Co-Star, he estimated the average vacancy loss at 2%, although the rate for smaller industrial properties in Elkhart County was less than 1%. After deducting the vacancy loss, the effective gross income equates to \$55,125 or \$2.45 per square foot. Next, he deducted management expenses of \$1,317 and replacement reserves of \$4,050 for a net operating income of \$49,758. *Hall testimony; Resp't Ex. R1.*
36. To determine an appropriate capitalization rate, Mr. Hall looked at PwC Real Estate Investor Survey, CBRE North America Cap Rate Survey, Co-Star Analytic Survey and Realty/Rates.com. He also built a rate through the "band-of-investment technique." The capitalization rates ranged from 8.25% to 10.50%. Mr. Hall reconciled his data to arrive at a rate of 10%. *Hall testimony; Resp't Ex. R1.*
37. After capitalizing his projected net operating income, Mr. Hall concluded a value under the income approach of \$500,000 (rounded). *Hall testimony; Resp't Ex. R1.*

Reconciled value:

38. Mr. Hall gave weight to all three approaches to value. Both the sales comparison approach and income approach were \$500,000. The cost approach was \$520,000. He determined that there was adequate data available to support all three approaches and that a typical buyer would give weight to each approach. Mr. Hall reconciled his opinion to \$510,000 as of January 1, 2018.⁹ *Hall testimony; Resp't Ex. R1.*
39. Mr. Hall also explained that there were no sales of the subject property in the three-year period preceding January 1, 2018. With that being said, the property sold for \$525,000 in a fee simple transaction on August 29, 2019. At that time the property was vacant. The new owner made repairs to the property and leased it. *Hall testimony; Resp't Ex. R2, R5.*

⁹ In response to questioning, Mr. Hall testified he inspected the exterior of the subject property on March 20, 2020, and there was a typographical error in the appraisal report that showed the inspection date as March 2, 2020.

40. Mr. Hall was denied access to the property. He photographed three-sides of the building because the gate was locked. He was unable to observe the condition of the asphalt paving or concrete paving because at the time of the exterior inspection the ground was snow covered. To determine the condition of the paving, improvements, and property he relied on aerial photographs of property as of 2018. *Hall testimony.*
41. Finally, Ms. Searcy testified that properties are valued from year to year based on sales in the county. The county reviews sales from the prior twelve-month period and then determines the proper trending factors. The trending factor study is presented to the State for review and approval. The State does not require the county to review contamination in its studies. The county reviews claims of contamination on an individual basis if the property is appealed. *Searcy testimony.*

BURDEN OF PROOF

42. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute creates two exceptions to that rule.
43. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
44. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the

gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

45. Here, the Respondent conceded the assessment increased by more than 5% from 2017 to 2018. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the Respondent has the burden to prove the 2018 assessment is correct.

ANALYSIS

46. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
47. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2018 assessment, the valuation date was January 1, 2018. *See* Ind. Code § 6-1.1-2-1.5.
48. Here, the Respondent had the burden to prove the 2018 assessment was correct. The Respondent sought to increase the assessment and offered a USPAP compliant appraisal prepared by licensed appraiser David Hall. In completing his appraisal, Mr. Hall developed the retrospective cost, sales comparison, and income approaches and

reconciled the property value at \$510,000 as January 1, 2018. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479.

49. In an attempt to impeach the appraisal, Mr. Lands argued it was flawed. First, Mr. Lands argued the loading dock is hindered by a trash bin. Mr. Lands also argued the French drain does not function properly, thereby allowing the dock area to fill with water. Finally, Mr. Lands argued features of the subject property were incorrectly listed in the appraisal, for example Mr. Hall listed the building's lighting incorrectly and failed to address that half of the roof is rusted and needs replaced. Because Mr. Hall was denied access to inspect the interior of the subject property, he was forced to rely on historical data to conclude the property's condition. As a licensed appraiser, Mr. Hall backs his decisions with education, training, and experience. He developed his appraisal in accordance with USPAP. Thus, we can infer that he used reliable data and generally accepted appraisal principles in formulating his opinion of value. Mr. Lands failed to offer any probative evidence that would have led to a different value conclusion, instead Mr. Lands merely attempted to poke holes in the appraisal. For these reasons, Mr. Lands failed to impeach the appraisal.
50. Mr. Lands also argued the property is contaminated, and he would accept the assessment being reduced to the 2017 level of \$90,300. In support of this argument, Mr. Lands offered two points.
51. First, there is no dispute that the property suffers from groundwater contamination. Certainly, the existence of contamination could lower its value and make it more difficult to sell. But Mr. Lands needed to offer probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 704 N.E.2d at 1119 (Ind. Tax Ct. 1998). He did not.
52. Next, Mr. Lands argued that the 2012 stipulation for a valuation of \$93,700 that was carried forward until 2014, and then for 2015 to 2017 "roughly \$90,000 a year" should be

probative. A stipulation is a compromise between a taxpayer and an assessing official. The Board has repeatedly declined to find that a prior year's stipulated value constitutes evidence of the correct valuation of the property. 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 Co. Ass'r*, 83 N.E.3d 1286, 1292 (Ind. Tax Ct. 2017). Accordingly, the previous stipulation agreement has no probative value.

53. Mr. Lands also discussed a comparable property located at 2505 Marina Drive. The Board infers that he intended to use the sales comparison approach to prove market value-in-use. *See* MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2) (stating that the sales comparison approach relies on "sales of comparable improved properties and adjusts the selling price to reflect the subject property's total value."); *see also Long*, 821 N.E.2d 466, 469.
54. To effectively use the sales comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E. 2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market value-in-use. *Id.* Here, Mr. Lands' evidence lacks any of this analysis, and therefore lacks any probative value.
55. The Board finds Mr. Hall's appraisal and supporting testimony provides the most accurate market value-in-use for the subject property.¹⁰ While the Board is reluctant to increase assessments, Mr. Lands was aware that his assessment could increase as a result

¹⁰ The Board notes that the August 29, 2019, sale of the subject property, albeit roughly 20 months removed from the relevant valuation date, supports the value indicated in Mr. Hall's appraisal.

of his appeal. Accordingly, the Board orders the 2018 assessment be increased to \$510,000.

SUMMARY OF FINAL DETERMINATION

56. In accordance with the above findings and conclusions the 2018 assessment must be changed to the appraised value of \$510,000.

The 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>>.