INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition Nos.: **32-003-18-1-4-00609-19**
32-003-19-1-4-00337-20
Petitioner: **Mac's Convenience Stores, LLC**
Respondent: **Hendricks County Assessor**
Parcel No.: **32-11-11-226-001.000-003**
Assessment Years: **2018 & 2019**

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, and finds and concludes as follows:

I. Procedural History

1. Mac's Convenience Stores, LLC contested its 2018 and 2019 assessments. On June 4, 2019, the Hendricks County Property Tax Board of Appeals ("PTABOA") determined the following values:

Year	Land	Improvements	Total
2018	$1,200,000	$713,400	$1,913,400
2019	$1,200,000	$713,400	$1,913,400

2. Mac's disagreed and filed two Form 131 petitions with the Board, electing to proceed under our small-claims procedures. On September 29, 2020, our designated administrative law judge, Erik Jones ("ALJ"), held a telephonic hearing on the petitions. Neither he nor the Board inspected the property.

3. Milo Smith appeared as Mac's' certified tax representative. Greg Steuerwald appeared as counsel for the Assessor, Nicole Lawson. Lawson and Smith were sworn as witnesses and testified.

4. Mac's submitted the following exhibits:[1]

Petitioner's Exhibit 1	PRC (18) the subject 2018 property record card ("PRC")
Petitioner's Exhibit 2	PRC (19) the subject 2019 PRC
Petitioner's Exhibit 3	Comp 1 (18) 201 N State Street PRC
Petitioner's Exhibit 4	Comp 1 (19) 201 N State Street PRC
Petitioner's Exhibit 5	Comp 2 (18) 5871 N State Street PRC

[1] Mac's did not label the exhibits in sequential order, instead using descriptions like, "PRC (18)". For ease of reference, we have assigned them numeric labels.

Petitioner's Exhibit 6	Comp 2 (19) 5871 Liberty Pkwy PRC
Petitioner's Exhibit 7	SAS (5 Comparable Sales used by appraiser)
Petitioner's Exhibit 8	SD-1 (5871 Liberty Pkwy Sales Disclosure)
Petitioner's Exhibit 9	SD-2 (201 N State St Sales Disclosure)
Petitioner's Exhibit 10	SD-3 (560 N. SR 135 Sales Disclosure)
Petitioner's Exhibit 11	SD-4&5 (Marion Co Sales Disclosure Email)

5. The Assessor submitted the following exhibits:[2]

Respondent's Exhibit A	130 Petitions for 2018 and 2019
Respondent's Exhibit B	Copies of subject property PRCs for 2018 and 2019
Respondent's Exhibit C	Pictorial overview of subject parcel
Respondent's Exhibit D	Copy of sales disclosure – subject – vacant land
Respondent's Exhibit E	Copy of sales disclosure – subject Land & improvements
Respondent's Exhibit F	Form 134s for 2018 and 2019
Respondent's Exhibit G	PTABOA findings for 2018 and 2019
Respondent's Exhibit H	Form 115s for 2018 and 2019
Respondent's Exhibit I	Appraisal[3]

6. The record also includes the following: (1) all petitions and other documents filed in these appeals; (2) all orders and notices issued by the Board or our ALJ, and (3) an audio recording of the hearing.

II. Burden of Proof

7. 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, regardless of the amount of the increase. I.C. § 6-1.1-15-17.2(a)-(b), (d). If the assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

[2] The Assessor offered two separate packets of exhibits, one each for the 2018 and 2019 appeals. Exhibits C through E and I were identical for both years. The other exhibits contain assessment and appeal documents that are specific to each appeal, although the same type of document is included under the same letter designation for each year. For ease of reference we have combined the two packets into a single list.

[3] When the Assessor offered her exhibits as a group, Mac's indicated that it had no objection. Mac's later asked that we throw out Exhibit I, an appraisal by Erick Landeen, because Landeen did not appear at the hearing to be cross examined. To the extent Mac's was objecting to the appraisal's admissibility, rather than simply saying we should give it no weight, we overrule the objection. The exhibit had already been admitted. And the stated ground, which we interpret as a hearsay objection, does not support exclusion. *See* I.C. § 6-1.1-15-4(p) ("At a hearing under this section, the Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection.").

8. The parties agree that the assessment increased by more than 5% between 2017 and 2018, climbing from $1,734,000 up to $1,913,400. Thus, the Assessor has the burden to prove the 2018 assessment is correct. Assigning the burden of proof for 2019 necessarily depends on our determination for 2018.

III. Contentions

A. The Assessor's Contentions

9. The assessment increased when the Assessor removed a 20% negative influence factor. Although Mac's contests this decision, the Assessor claims it was warranted. When the convenience store was originally built, there was little development in the area. That changed: a stoplight was installed, and a Walmart superstore and Tractor Supply store both opened. According to the Assessor, she should have removed the influence factor when the stoplight was installed. Her office corrected the error in 2018. *Lawson testimony.*

10. To support the assessment, the Assessor offered an appraisal report from Erick Landeen, a certified Indiana appraiser, in which Landeen estimated the property's market value-in-use at $2.1 million as of January 1, 2018. Landeen certified that he prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He applied only one valuation approach—the sales-comparison approach. He explained little weight is given to the cost approach when valuing convenience stores because the other two approaches are more reliable. He similarly decided against applying the income approach due to a lack of comparable leases and the owner's failure to provide operating expenses. *Resp't Ex. I at 11, 61-62.*

11. Landeen believed that the property was in an area well suited for convenience store development. He found that it benefitted from a site (3.2 acres) that was larger than the sites for most convenience stores. It also benefitted from ample traffic along Rockville Road, access off a signalized intersection, and limited nearby competition. *Resp't Ex. I at 40, 45*.

12. Landeen described several structures and site improvements at the subject property, including:

- A 4,476-square-foot convenience store built in 2014 that had average utility and was in average condition.
- A 1,219-square-foot freestanding carwash.
- Canopied fuel islands with ten double-sided fuel pumps plus four double-sided fuel pumps configured for tractor-trailers (diesel). Because two of the pumps at the truck station were side by side, Landeen counted them as a single pump for valuation purposes.
- Two air stations and a vacuum station.

Resp't Ex. I at 9, 18-19, 59.

13. For his comparable sales, Landeen used five convenience stores that sold between December 2014 and September 2017: two from Indianapolis, and one each from Clayton, Lizton, and Greenwood. The buildings were between 2,800 and 5,436 square feet, although portions of two of the buildings were devoted to additional uses, such as a laundromat. Each property had between four and ten dual-sided fuel pumps. Most did not have a carwash. They sold for gross prices ranging from $1.3 million to $1.85 million. *Resp't Ex. I at 44-56.*

14. Landeen considered making various transactional adjustments to the sale prices but found that only one was warranted: an adjustment for differences in market conditions between the sale dates and his valuation date for the subject property. He quantified that adjustment at 3% per year. He did not adjust for differences in property rights transferred, explaining that there were "no variations in real property rights conveyed." *Resp't Ex. I at 58.*

15. Next, Landeen considered adjustments to account for relevant ways in which his comparable properties differed from the subject property, including: location; building and site size; age, condition, and quality of improvements; presence or lack of a car wash; and number of fuel pumps. *Resp't Ex. I at 58-59.*

16. For his age and condition adjustment, Landeen noted that the subject property was built in 2014, while the comparables were built between 2001 and 2013. Thus, the subject property was less than four years old on the valuation date, while the comparable properties, other than the one built in 2013, were between 7 and 13 years old at the time of sale. He adjusted those sale prices upward between 2.5% and 7.5%. *Resp't Ex. I at 58-59.*

17. Landeen also adjusted the sale prices for properties without carwashes upward by $100,000. He indicated that he did not adjust the Greenwood sale for its lack of carwash because it had "improvements used for oil changes (building size not part of c-store)," which he viewed as similar to a car wash. Earlier in the appraisal, however, he listed the Greenwood property as having both a "1,620 SF 3-bay auto interior cleaning section, and 930 SF, 2-bay oil change section with a pit" within the same building as the convenience store and a "free standing 4,128 SF automated tunnel car wash." *Resp't Ex. I at 51-52, 58-59.*

18. Because all the properties had fewer fuel pumps than the subject property, Landeen viewed them as inferior. He adjusted one sale price upward by 5%, another by 8%, and the rest by 10% to account for the difference. On cross-examination, the Assessor acknowledged that her office did not assess fuel pumps as real property. But she

understood Landeen as saying that fuel pumps increase business: the more pumps, the greater the value of the business. *Lawson testimony; Resp't Ex. I at 60.*

19. Turning to differences in site size, Landeen explained that the subject property's large site allowed development with many fuel pumps, a carwash, and an ample-sized convenience store. Although he noted that he had already accounted for some of those factors, he explained that he needed to also account for the contributory value of the large site that allowed for those uses. He therefore adjusted the sale prices for the comparable properties with smaller sites upward and the price for the one with a larger site downward. *Resp't Ex. I at 59-60.*

20. After adjustment, the sale prices ranged from $2,050,290 to $2,461,320. Three of the sales, including the Greenwood sale and one Indianapolis sale, had adjusted prices within $50,000 of $2.1 million, which was the value Landeen settled on for the subject property. *Resp't Ex. I at 60-61.*

21. Landeen's valuation conclusion aside, the Assessor pointed out that Mac's bought the property for $2,702,000 in October 2014. The disclosure form for the sale indicates that the sale price included $720,000 for personal property. The real estate therefore sold for $1,982,000. That adjusted sale price was still higher than the contested assessment of $1,913,400. Although the sale was from October 2014, the Assessor argued that Landeen's annual adjustment for changes in market conditions shows that the property continued to appreciate by 3% per year after the sale. *Lawson testimony; Resp't Ex. E.*

B. Mac's Contentions

22. Mac's contended that the Assessor should not have removed the negative influence factor because some of the site was undeveloped. Also, the Assessor applied a base rate of $250,000 per acre to Walmart's property compared to $350,000 per acre for the subject property. According to Mac's, that is not "in the interest of having uniform assessments" of property in the county. *Smith testimony and argument.*

23. In any case, Mac's argued that the Assessor failed to meet her burden of proof, and that the assessment should therefore revert to its 2017 level. Although the Assessor offered Landeen's appraisal, Mac's certified tax representative and witness, Milo Smith, outlined various reasons why he believed the appraisal did not comply with USPAP. And Landeen was not available to address those issues. Mac's therefore argued that the Board should not give the appraisal any weight. *Smith testimony and argument.*

24. Landeen used only one of three recognized appraisal methods—the sales-comparison approach. Yet he used a sale from 2014, and three of his five sales were from other counties. Both those things tend to show that convenience store properties did not frequently exchange, as is required for the sales-comparison approach to be a valid indicator of market value-in-use. Also, the property record card for the Greenwood sale

indicates that the convenience store building included a 3,960-square-foot car wash/oil-change facility. Landeen, however, failed to account for that feature. *Smith testimony and argument*.

25. More importantly, the subject property has a significant amount of personal property, including fuel pumps, underground storage tanks, prefabricated walk-in cold storage units, and racks and shelving. The sales disclosure statement confirms this, allocating $720,000 of the purchase price to personal property. Yet Landeen did not say whether he included those items in valuing the real estate. *Smith argument; Resp't Ex. I.*

26. According to Mac's, Landeen's failure to clarify that point is important because he did not adjust the sale prices for his comparable properties to account for property interests transferred, even though his comparable properties sold for continued use as convenience stores and contained similar personal property. The fact that those properties were assessed for significantly less than their sale prices corroborates that the sales must have included personal property. Not only did Landeen fail to adjust the sale prices downward to account for personal property transferred in the sales, he adjusted them upward based on their relative lack of fuel pumps compared to the subject property. *Smith testimony and argument; Pet'r Exs. 7-11; Resp't Ex. I.*

27. Although the Assessor also pointed to the subject property's adjusted sale price, Mac's argued sale was irrelevant because it was from 2014. Regardless, the Assessor was inconsistent in assessing properties based on sale prices. She assessed two of Landeen's comparable properties for amounts far below their sale prices, probably because they also contained personal property. In any case, Mac's argued that nothing in Indiana's assessment regulations provides for assessing properties based on their sale prices. To the contrary, singling out properties for differential treatment merely because they have sold violates those regulations. *Smith argument; Pet'r Exs. 7-11*.

IV. Analysis

A. Indiana assesses real property based on its market value-in-use, which may be shown through evidence that complies with generally accepted appraisal principles.

28. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. 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), (e). It is instead 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). 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." MANUAL at 2.

29. Evidence in a tax appeal should be consistent with that standard. *Id*. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See id.; see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use). By contrast, contesting an Assessor's methodology in computing an assessment or offering a value determined through a purportedly correct application of the Guidelines normally does not suffice to show a property's market value-in-use. *See Eckerling*, 841 N.E.2d at 678 (explaining that strict application of assessment regulations is not enough to rebut the presumption that an assessment is correct).

30. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation dates for the assessment years under appeal were January 1, 2018, and January 1, 2019. *See* I.C. § 6-1.1-2-1.5(a)(2); 50 IAC 27-5-2(c).

B. The Assessor met her burden of proof for the 2018 appeal.

1. When viewed together, Landeen's appraisal and the adjusted sale price for the subject property demonstrate that the property was worth at least what it was assessed for.

31. The Assessor offered two things to support her assessment: Landeen's appraisal and the property's adjusted sale price from October 2014. We begin with Landeen's appraisal.

a. Landeen applied generally accepted appraisal methodology

32. At first blush, Landeen's USPAP-certified appraisal is probative. He applied a generally accepted methodology—the sales-comparison approach—to estimate the property's market value-in-use as of the relevant January 1, 2018 valuation date. He inspected the property and analyzed the market in which it competed. Based on his research he identified comparable sales and considered whether the sale prices needed to be adjusted to account for relevant ways in which those properties differed from the subject property. He then explained his reasons for the adjustments he applied and how he arrived at his value conclusion based on the adjusted sale prices.

b. Although Mac's impeached Landeen's appraisal to some extent, his valuation opinion still carries probative weight.

33. Mac's, however, cited to various reasons for its belief that Landeen did not comply with USPAP: (1) he used the sales-comparison approach, which was not a valid indicator of

market value-in-use in this instance; (2) he did not develop the other two approaches to value; (3) he did not properly account for the Greenwood store's oil-change area; and (4) he included personal property.

34. We give little weight to the first two criticisms. While Smith suggested that going back more than three years and expanding the search for comparable properties outside the county necessarily means that convenience stores did not exchange frequently enough for the sales-comparison approach to reflect market value-in-use, he offered no support for that proposition. Similarly, Landeen explained why he chose to forego developing the cost and income approaches, and Mac's offered nothing to challenge his explanation. That said, the property was less than four years old on the valuation date. Landeen's appraisal might have been more compelling had he developed the cost approach, if only to test the reasonableness of his conclusions under the sales-comparison approach.

35. As for Mac's' third criticism—Landeen's treatment of the Greenwood property—the appraisal report offers conflicting information. The pages in which Landeen described the Greenwood property refer to a freestanding, automated tunnel carwash as well as to oil-changing and interior-cleaning bays. In explaining his adjustments, however, Landeen indicated that the property lacked a carwash, but that he treated the oil-changing bays as the functional equivalent in terms of value. Either his property description was wrong, or he ignored what appear to be superior attributes of the Greenwood property (oil-changing bays plus a freestanding carwash compared to only a freestanding carwash for the subject property). Landeen did not attend the hearing to explain which of those alternatives was true. Either answer would detract from the reliability of his valuation opinion, although the second would be more significant.

36. But Mac's' primary criticism is that Landeen included personal property in valuing the real estate. If Mac's is right, that is a more significant flaw in Landeen's valuation because it leads to the potential for double taxation.

37. To address that criticism, we must first determine whether the disputed items—fuel pumps, underground storage tanks, prefabricated walk-in cold storage areas, and racks and shelving—are real or personal property. For purposes of property taxation, real property includes any "building or fixture situated on land located within this state." I. C § 6-1.1-1-15(2). None of the disputed items are buildings. Thus, they are real property only if they are fixtures. If not, they are personal property.[4]

38. A piece of equipment is typically thought of as personal property. *Dinsmore v. Lake Elec. Co.*, 719 N.E.2d 1282, 1286 (Ind. Ct. App. 1999). To determine whether an article

[4] The statutory definition for personal property lists specific items, none of which are at issue here, and includes the catch-all "other tangible property (other than real property) which: (A) is being held as an investment; or (B) is depreciable personal property." I.C. § 6-1.1-1-11. In turn, the DLGF defines "depreciable personal property" as "tangible personal property that is used in a trade or business . . . that should be or is subject to depreciation for federal income tax purposes. . .." 50 IAC 4.2-4-1.

has become "so identified with real property as to become a fixture," courts consistently apply a three-part test considering whether: (1) the article is actually or constructively annexed to the realty, (2) it is adapted to the use or purpose of the part of the realty to which it is connected, and (3) the party who annexed the article intended to make it "a permanent part of the freehold." *Milestone Contrs., L.P. v. Ind. Bell Tel. Co.*, 739 N.E.2d 174, 177 (Ind. Ct. App. 2000). The third part of the test controls; if there is any doubt as to intent, the property should be considered personal. *Id.*; *see also, Dinsmore,* 719 N.E.2d at 1286.

39. For further guidance, the DLGF has promulgated a rule addressing how to classify property as real or personal for taxation purposes:

> (a) The following guide is intended to assist in the identification of property as either real or personal. The use of a unit of machinery, equipment, or a structure determines its classification as real or personal property. If the unit is directly used for manufacturing or a process of manufacturing, it is personal property. If the unit is a land or building improvement, it is real property.
> . . .
> (d) Miscellaneous
> . . .
> Cold storage:
> Built-in cold storage rooms – Real.
> Cold storage refrigeration equipment – Personal.
> Cold storage, prefab walk-in type – Personal.
> …
> Pumps and motors – Personal
> . . .
> Tanks:
> Storage only (except as indicated below) above or below ground – Real.
> Used as part of a manufacturing process – Personal.
> Underground gasoline tanks at service stations – Personal . . ..

50 IAC § 4.2-4-10 (filed Feb. 26, 2010).[5]

40. We start with the fuel pumps, which were the items to which the parties devoted the most attention. From the photographs in Landeen's appraisal, the pumps appear to have been annexed to the real property and adapted to its use. But there is little evidence about whether the parties who annexed those items to the property intended to make them a "permanent accession to the freehold." That uncertainty argues for viewing the pumps as personal property.

[5] The rule was amended on November 2, 2020. The formatting for the quoted excerpts was changed, but the substance remains the same.

41. The DLGF's rule provides similarly ambiguous guidance. While it defines "pumps and motors" as personal property, that may only relate to pumps employed in manufacturing processes. In fact, use in the manufacturing process is the DLGF's touchstone for classifying equipment as personal property. On the other hand, fuel pumps are part of delivering fuel from underground gasoline tanks, which the DLGF explicitly recognizes as personal property. And the Guidelines do not provide any cost schedules for assessing these items as real property. We therefore find that the fuel pumps and underground storage tanks are personal property.

42. We have even less information about the cold storage units, racks, and shelving. The appraisal says nothing about those items. The only evidence we have that they exist is Smith's cursory testimony, where he simply said he knew that subject property had those items and believed that Landeen's comparable properties did as well. But Smith offered no further description. So we have no way of knowing whether the items were annexed to the real estate. Nonetheless, the DLGF's rule provides that "prefab walk-in type" cold storage is personal property. And the property record card does not explicitly include shelving or cold storage or assign those items a value. We therefore conclude that they are also personal property.

43. But simply classifying the disputed items as personal property does not tell us whether they played a significant role in Landeen's value conclusion. It they did, it would be because the sale prices from Landeen's comparable properties included a significant component for similar personal property. We have little doubt that underground tanks, fuel pumps, and the like transferred at the same time as real estate in each sale. And statements in the sales disclosure forms notwithstanding, we find it likely that the real estate and personal property transferred as part of a single transaction with a single sale price—the same price Landeen used in his analysis.

44. That does not necessarily mean the parties assigned significant value to the personal property when negotiating the sale prices. The record is silent on that point. But we do know that Landeen adjusted the sale prices upward between 5% and 10% to account for the comparable properties' relative lack of pumps as compared to the subject property. Even that is not conclusive. The fact that Landeen counted the two diesel pumps that were located side by side as a single pump for valuation purposes supports the inference that his adjustment related more to the real estate's capacity to host vehicles for refueling than to the pumps themselves. But Landeen's reasoning for applying a separate adjustment for site size cuts the other way.

45. In short, we have concerns about whether Landeen took enough care to exclude personal property from his valuation opinion. And the discrepancy in how he reported and analyzed the Greenwood sale adds some additional doubt about the reliability of his opinion. Had Landeen appeared at the hearing, he might have been able to allay some or all our concerns. As it is, our concerns remain unaddressed.

46. But simply identifying some concerns, even the relatively significant ones we have outlined here, does not necessarily deprive an appraisal of all probative weight. Although Landeen may have included some personal property, his value conclusion of $2.1 million was almost $200,000 above the contested assessment. And the problematic Greenwood sale was just one of five he considered. Thus, despite our concerns, we find that Landeen's appraisal tends to show that the subject property was worth at least the amount for which it was assessed.

c. The subject property's adjusted sale price further supports the assessment.

47. The price Mac's paid for the real estate further supports the assessment. Mac's bought the real estate and personal property for $2,702,000. After adjusting for the portion of the price that Mac's itself claims was attributable to personal property, the real estate sold for $1,982,000, or $68,600 more than the $1,913,400 assessment Mac's now challenges.

48. Of course, the sale was from October 2014—more than three years before the relevant valuation date. But it was just two months before December 2014—the sale date for the earliest of Landeen's comparable sales. And Landeen concluded that the market for convenience stores appreciated by 3% per year during the intervening period leading up to the valuation date. Based on Landeen's analysis, the Assessor argues that the property was worth at least the amount for which it was assessed on the valuation date.

49. We recognize that market conditions might not be the only thing that changed between the sale and valuation dates. Improvements, like the convenience store and carwash at the subject property, depreciate over time. But Landeen found only a modest effect on value as convenience stores age. The improvements from Landeen's comparable sales were between three and thirteen years old when they sold, while the subject improvements were between three and four years old on the valuation date. The largest adjustment Landeen made to account for differences in age and condition was only 7.5%. Thus, we find that appreciation due to improving market conditions more than offset any depreciation over the three plus years between the subject property's sale and the valuation date.

50. This appeal differs from *Nova Tube Ind. II LLC v. Clark Cty. Ass'r*, 101 N.E.3d 887 (Ind. Tax Ct. 2018). In that case, the Board upheld assessments from 2011 through 2013 based on a May 2014 sale of the property under appeal. *Nova Tube*, 101 N.E.2d at 893-94. The 2014 sale price was roughly 22% higher than the 2013 assessment. The assessor offered information about general industrial market trends, residential demographics, and building permits from 2009 to 2013, a period during which the market was recovering from recession. *Id*. Her evidence showed that the market was relatively stable from 2009 to 2014, with no more than 1% annual growth in real estate values between 2011 and 2013. *Id.* Nonetheless, the Tax Court held that the assessor failed to show the sale price was directly related to any of the valuation dates for the years under appeal. Also, given

the relatively flat growth from 2009 to 2014, the Court noted that the assessor's evidence did not support doubling the assessment between 2010 and 2011. *Id.*

51. Here, by contrast, the Assessor did not rely on generalized market evidence of the type described in *Nova Tube*. Instead, she pointed to Landeen's annual adjustment for market conditions. Although Landeen did not apply that adjustment to the 2014 sale of the subject property, he did apply it to sales of other properties from the specific market in which the subject property competed. And unlike *Nova Tube*, there was no massive, unexplained jump between the preceding assessment and the assessment under appeal. Rather, the assessment increased moderately when the Assessor removed a negative influence factor that she believed was no longer appropriate given the development of the area surrounding the property.

52. Regardless, Mac's argued that singling out properties for differential treatment merely because they have sold violates Indiana's assessment regulations. The Assessor, however, did not single out the subject property because it sold; rather, she appropriately offered the sale price as valuation evidence in Mac's' assessment appeal. *See Hubler Realty Co. v. Hendricks Cty. Ass'r*, 938 N.E.2d 311, 314-15 (Ind. Tax Ct. 2010) (explaining that market value-in-use evidence includes sales information for a property under appeal and rejecting argument that county PTABOA's consideration of sale constituted sales-chasing or selective reappraisal).

53. The Assessor's evidence is far from compelling. And the likelihood that Landeen's value opinion included at least some personal property cautions against raising the assessment to $2.1 million as the Assessor requests. But taken together, Landeen's appraisal and the subject property's adjusted sale price support the assessment. We must therefore examine whether Mac's offered probative valuation evidence of its own to counter the Assessor's evidence.

2. Mac's did not offer any probative valuation evidence of its own.

54. Mac's offered Smith' testimony that (1) the Assessor should not have removed the 20% negative influence factor she had previously applied to the subject property's land, and (2) she used a lower base rate to assess nearby land owned by Walmart.

55. The first point simply contests the methodology used in determining Mac's' assessment, which we have already explained does not suffice. In any case, an influence factor is an adjustment applied where a given tract has a condition peculiar to it that is not found in the standard tract used to determine the assessment neighborhood's base rate. *See* 2011 GUIDELINES, ch. 2 at 70. The amount may be quantified using market data. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Mac's did nothing to show any peculiar factors affecting its land that did not affect the standard tract from which the base rate was determined, much less offer any market data to quantify that effect.

56. As for Mac's' second point, parties may offer evidence of comparable assessments to prove the market value-in-use for a property under appeal. I.C. § 6-1.1-15-18(c). But they must show that the properties are comparable using "generally accepted appraisal and assessment practices." *Id*. Conclusory statements that properties are "similar" or "comparable" to each other do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. They must similarly explain how relevant differences affect values. *Id*.

57. Mac's did not offer the type of comparative data and analysis contemplated by the Tax Court or by generally accepted appraisal and assessment practices. Smith pointed to Walmart's location next to the subject property, but he did not address various other characteristics that affect market value-in-use. And he did not even attempt to explain how relevant differences affected the properties' values.

58. Smith also mentioned "uniformity" when referring to the Walmart assessment. It is unclear whether, by doing so, he was claiming that the subject property's assessment should be adjusted to remedy a lack of uniformity and equality in assessments. In any case, Mac's did not offer any evidence to support granting relief on that basis. Smith merely pointed to the disparity in base rates used to assess the two land tracts without analyzing either tract's market value-in-use. The Tax Court has rejected a similar claim. *See Westfield Golf Practice Ctr. v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (rejecting taxpayer's uniformity-and-equality challenge where it compared the base rates used to assess landing areas for its driving range to those used to assess other driving ranges but failed to show the market values-in-use for any of the properties).

C. Mac's had the burden of proof for its 2019 appeal and failed to make a prima facie case for reducing the assessment.

59. The 2019 assessment was for the same amount as the 2018 assessment that we have upheld. Thus, neither of the circumstances that would trigger the burden of proof to shift from Mac's to the Assessor occurred. *See* I.C. § 6-1.1-15-17.2(a)-(b), (d). Mac's offered the same valuation evidence for 2019 as it did for 2018. We have already explained why that evidence lacks probative value. Mac's therefore failed to make a prima facie case for changing the 2019 assessment.

V. Final Determination

60. The Assessor proved by a preponderance of the evidence that the subject property's market value-in-use as of January 1, 2018, was at least as much as its assessment. Mac's had the burden of proof for its 2019 appeal and failed to make a prima facie case for

changing that assessment. We therefore find for the Assessor and order no change to either assessment.

ISSUED: January 11, 2021

_____
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>.