

REPRESENTATIVE FOR PETITIONER: Paul Jones, JonesPyatt LLC

REPRESENTATIVES FOR RESPONDENT: Brian Cusimano, Attorney at Law
Marilyn Meighen, Attorney at Law
Ayn Engle, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

O'Day Holdings, LLC,)	Petition Nos.: See Attached.
)	
Petitioner,)	
)	
v.)	Parcel Nos.: 45-02-25-102-002.000-023
)	45-02-25-102-003.000-023
Lake County Assessor,)	45-02-25-102-004.000-023
)	45-02-25-102-005.000-023
Respondent.)	
)	County: Lake
)	
)	Assessment Years: 2014-15 & 2018-20

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence presented in the Parties' arguments, and having considered the issues, now finds and concludes the following:

I. INTRODUCTION

1. O'Day Holdings, LLC appealed the assessments of its old, multi-building industrial facility. The parties offered valuation opinions from two appraisers. We find the opinions of O'Day's appraiser, Jerry Kulik, more persuasive than the opinions of the Assessor's appraiser, Steven Kovachevich. While we agree with several of the Assessor's criticisms of Kulik's appraisals, Kulik based his opinions on sales of properties that were far better substitutes for the subject property than were the sales on which Kovachevich relied. We therefore find Kulik's opinions more persuasive. Although they likely included some personal property, they set a ceiling on the real

property's value. We therefore order the assessments to be reduced to the values set forth in Kulik's appraisals.

II. PROCEDURAL HISTORY

2. O'Day timely filed Form 130 appeal petitions with the Lake County Property Tax Assessment Board of Appeals ("PTABOA") challenging the assessments for the four parcels composing the subject property for the 2014-2015 and 2018-2019 assessment years. Because the four parcels were combined into a single parcel (45-02-25-102-002.000-023) for 2020, O'Day timely filed a single petition challenging the property's 2020 assessment. The PTABOA issued Form 115 determinations for the 2014, 2015, and 2018 assessment years. It did not issue determinations on O'Day's other appeals and more than 180 days elapsed since O'Day filed its Form 130 petitions.

3. O'Day timely appealed the PTABOA determinations. For the other appeals, O'Day exercised its option under Ind. Code §6-1.1-15-1.2(k) to appeal to us without waiting for the PTABOA to issue a determination. The total assessments under appeal as determined by the PTABOA or Assessor are as follows:

Year	Assessment
2014	\$1,375,600
2015	\$1,397,000
2018	\$1,460,400
2019	\$1,557,500
2020	\$1,572,500

4. Beginning on July 28, 2022, our designated administrative law judge, Erik Jones ("ALJ"), held a two-day hearing on O'Day's petitions. Neither he nor the Board inspected the property. Steven Kovachevich, Frank Kelly, and Jerry Kulik were sworn as witnesses and testified.

5. The parties offered the following exhibits¹:

¹ The ALJ held the hearing remotely via a video-conferencing application, and the parties submitted copies of their anticipated exhibits in advance of the hearing. The Assessor included a document labeled as Exhibit T in her submission but did not offer that document at the hearing. We therefore do not consider it in our determination.

Petitioner Exhibit A	Kulik Appraisal, 2013-2015,
Petitioner Exhibit B	Kulik Appraisal, 2018-2020,
Petitioner Exhibit C	Additional Comparable Sales,
Petitioner Exhibit D	Review Appraisal of Kovachevich.
Respondent's Ex. A	Kovachevich Appraisal, 2013-2015,
Respondent's Ex. B	CPI – Trend Data,
Respondent's Ex. C	Chicago-area industrial trends data,
Respondent's Ex. D	Chicago Industrial Trend Graph,
Respondent's Ex. E	CoStar Market Report,
Respondent's Ex. F	CoStar Sales Comps,
Respondent's Ex. G	1045 E. Main Comp data,
Respondent's Ex. H	3510 Calumet Ave. property profile,
Respondent's Ex. I	Industrial Submarket CoStar Report,
Respondent's Ex. J	Subject Property Record Cards,
Respondent's Ex. K	Rebuttal: 240 Waite St. Current Listing,
Respondent's Ex. L	SDF 4527 Columbia, Hammond (Aug.-14),
Respondent's Ex. M	Excerpt from The Appraisal of Real Estate, 15 th Ed.,
Respondent's Ex. N	Excerpt from the Dictionary of Real Estate, 6 th Ed.,
Respondent's Ex. O	Gary / Hammond CoStar comparison,
Respondent's Ex. P	Kovachevich resume,
Respondent's Ex. Q	Property Record Card (“PRC”) for 635 Conkley Street,
Respondent's Ex. R	Kulik appraisal for light manufacturing and storage complex, for 2013 assessment year,
Respondent's Ex. S	PRC for 1101 Lake Street,
Respondent's Ex. U	Google Earth images of Gostlin Street,
Respondent's Ex. V	Google Earth images of Gostlin Street roundabout,
Respondent's Ex. W	Photographs of truck access for Gostlin Street roundabout,
Respondent's Ex. X	Street map, prepared by Kovachevich,
Respondent's Ex. Y	Industrial light manufacturing and assembly warehouse sales list,
Respondent's Ex. Z	Building height with price-per-square-foot information.

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

III. OBJECTIONS

- The ALJ ruled on various objections at the hearing, and we adopt his rulings. He took two objections under advisement, which we now address.

8. The Assessor objected to Petitioner's Exhibit C, an addendum to Kulik's appraisal report containing information about additional sales, on grounds that she received a copy of the exhibit on July 25, just three days before the hearing. The Assessor, however, argued that the deadline for O'Day to provide her with the exhibit was July 21. O'Day agreed that it did not exchange the exhibit until July 25, explaining that it had inadvertently omitted it from an earlier exchange. *Id. Tr. at 125-26.*
9. We sustain the objection. The Assessor appears to have grounded her objection on our procedural rules, which, to promote settlement and avoid unfair surprise, require parties to exchange copies of documentary evidence at least five business days before a hearing. 52 IAC 4-8-1(a)-(b). Failure to comply with that deadline may serve as grounds to exclude documents. 52 IAC 4-8-1(f). Nothing in the case-management plan submitted by the parties and adopted by the ALJ excused O'Day from complying with that deadline. If anything, the plan required an even earlier exchange. *See Case Management Plan at ¶¶ 8-9* (requiring parties to exchange expert reports by March 20, 2022 and experts' workfiles, if requested, two weeks later²).
10. O'Day initially objected to Respondent's Exhibit Z, a chart and graph comparing building height and unit sale prices. Although counsel for O'Day initially said that he was objecting to the exhibit, he added, "but obviously if the board wants to admit it and give it its weight, that's fine, too." *Tr. at 391-92.* We find that O'Day either withdrew or waived its objection.

IV. FINDINGS OF FACT

A. The Subject Property

11. The subject property is an industrial manufacturing and storage facility located on East 143rd Street in Hammond. The property has six buildings totaling roughly 91,500 square

² Those dates were more than two months before the originally scheduled hearing date of May 23, 2022.

feet,³ on approximately 5.49 acres of land. There is a small area that a cellular company uses for a cell tower. O'Day originally leased land to the cellular company, but it later sold the company a perpetual easement to access and use the site for its cell tower. It is unclear when the sale occurred, and neither appraisal considered the lease or easement as measurably affecting the property's value. *Pet'r Ex. A-B at 26, 38; Resp't Ex. A at 1-2, 12-13; Tr. at 19, 288-89.*

12. Buildings 1 and 6, both of which were built in 1958, are the two largest buildings. Building 1 is a masonry-framed structure with two sections: a two-story, metal-sided section with approximately 9,408 square feet of office space, and an approximately 39,000-square-foot section with docks, industrial production and storage area, and other space. The larger section is subdivided into several different rooms and has mostly 12-foot ceiling clearances in the industrial area. That clearance is too low for lift trucks to transport two stacked pallets between workstations, although portions of the building near the docks have 16-foot eaves. The building also has a fork-lift pass-through that does not permit inventory stacking. The parties offered confusing and partly contradictory evidence about the building's heating and air conditioning. But we find that it has newer high-efficiency gas-fired furnaces with central air conditioning for the office portion and HVAC units with some suspended gas-fired space heaters for the remainder of the building. The roof mounted HVAC units and suspended space-heaters apparently replaced a boiler-type system that O'Day abandoned when it determined that replacing the system would be too expensive. *Pet'r Exs. A-B at 15-19, 56; Resp't Exs. A at 18-19, 50, R at 27; Tr. at 28-29, 55, 176, 304-05.*
13. Building 6 is an approximately 17,480-square-foot steel-framed building. It has overhead cranes that run along craneways inside the building and that O'Day uses to transfer raw steel through the roof to workstations. Two tunnels connect the building to Building 1. Buildings 2-5 range from 1,728 to 10,000 square feet. There is conflicting evidence as to

³ The appraisers disagree about the buildings' total area. Kulik found a total of 91,272 square feet while Kovachevich found a total of 91,556 square feet.

when they were built, but at least two of them were built as recently as 2002 or 2004. *Pet'r Exs. A-B at 52-55; Resp't Ex. A at 18-24; Tr. at 30-31.*

14. O'Day updated and repaired the buildings in the early 2000s. For example, it put new metal siding on all the buildings and either repaired or replaced their roofs. It also tuck-pointed some areas of Building 1 and patched the parking lot. The electrical-service area is neat and well laid out, and the building's restrooms are in good shape. *Resp't Ex. A at 48-50; Tr. at 176, 301-04.*

15. The parties' appraisers disagree about the condition of the floors. According to Kulik, the floors in the buildings' industrial sections suffer from settlement and cracking, which persist despite O'Day's attempts to correct the problem with patching. Kovachevich, on the other hand, testified that he did not see many issues with cracking, settlement, or other things that might significantly interfere with mobility inside the buildings. The photographs in the respective appraisals do not have clear enough resolution to corroborate either appraiser's description, but we credit Kulik's more detailed testimony on the issue. In addition, glass windows and fiberglass lighting panels on Buildings 1, 3, 4 and 6 leak when it rains and need to be caulked annually. *Pet'r Ex. A at 56; Tr. at 52-53, 55, 306-07, 310.*

16. O'Day stores raw material delivered to the facility in Buildings 3 and 4 and uses lift trucks to transfer the material to Building 6, which contains the primary fabrication area for its product. O'Day then uses lift trucks to transport the finished inventory back to Building 1, where it can be stored and loaded onto semi-trailers. Buildings 2 and 5 are not used consistently, although O'Day occasionally uses Building 5 to store pick-up trucks and a snowplow. Indeed, much of the total building area is empty, including the second-floor office space in Building 1, because O'Day has moved a portion of its business to locations in Florida, Georgia, and Texas. *Pet'r Exs. A-B at 59; Tr. at 23-24, 27, 50-51, 316.*

17. As shown below, the facility is just east of a railway line that marks the border between Indiana and Illinois. It is in a mixed-use neighborhood that is primarily residential and secondarily industrial.



Pet'r Exs. A-B at 22, 67; Resp't Ex. A at 13.

18. The property's primary access is off 143rd St. at Clark Ave. 143rd St. runs east-west. Gostlin St., another east-west street, lies just south of 143rd (and just below the cut-off of the included aerial photograph). Gostlin provides truck access to Chicago Ave., which in turn provides access to Calumet Ave., Cline Ave., and Indianapolis Blvd. The area south of Gostlin contains railroad property as well as industrial and commercial buildings. It is being redeveloped into the Hammond Gateway Station Area as part of a project for expanding the South Shore commuter railroad. The project's focus is to change the area from residential and industrial to a transit-oriented development that will bring new residents from Chicago. Land acquisition and engineering for the project began in 2014.

Pet'r Ex. A at 45-46; Resp't Ex. A at 13; Tr. at 45-48.

19. The project includes reconfiguring the entrance and exits of Clark and State Line Avenues and building roundabouts at three intersections: (1) Gostlin and Sheffield Ave., (2) Sheffield and Chicago, and (3) Chicago and Calumet. O'Day objected to the construction of the Gostlin-Sheffield roundabout on grounds that it would create a problem with deliveries because it would be difficult for trucks with semi-trailers to

maneuver around. Although Kulik initially testified that the Gostlin-Sheffield roundabout was completed in 2018 or 2019, construction did not begin until sometime between April 2020 and July 2021. Despite O'Day's concerns, trucks with semi-trailers can and do negotiate the Gostlin-Sheffield roundabout. *Pet'r Ex. A at 47; Resp't Exs. V, W; Tr. at 26, 227-231, 377-80.*

20. During the same period that the city built the Gostlin-Sheffield roundabout, it added a concrete divider to the intersection of Clark and Gostlin. This created lane restrictions whereby trucks travelling south on Clark cannot turn east on Gostlin toward Calumet Ave. but must instead go west toward Illinois. While there are other ways for trucks to leave the subject property without going to Illinois, they all appear to involve travelling through residential areas. *Pet'r Exs. A-B at 14, 22; Resp't Exs. U, X; See also, Tr. at 32, 232-34, 317-20, 381-83.*
21. Regardless of the route used to access the property, Building 1's loading docks are not long enough to accommodate modern 53-foot semi-trailers and cannot be expanded. To line up with the building's main dock, trucks must maneuver along a residential street, extending into parking areas and blocking driveways. And because O'Day receives 10 to 15 shipments a day, there can be two or three trucks waiting to back into the dock. All this causes congestion and complaints from neighbors. Although Kovachevich believes that O'Day could easily expand the dock area to allow trucks to complete their maneuvers on the property, we find otherwise. Given the problems created by the existing configuration, O'Day would have expanded the area if it feasibly could have done so. *Pet'r Exs. A-B at 13, 50-51, 56; Tr. at 25, 32, 50-51, 392-93.*

B. Expert Opinions

22. Each side offered opinion evidence. The Assessor offered an appraisal report and accompanying testimony from Kovachevich as well as testimony from Frank Kelly regarding how to relate Kovachevich's opinion of the property's market value-in-use for 2015 to values as of the 2018-2020 valuation dates. O'Day offered three reports from

Kulik—two appraisal reports valuing the property for the various valuation dates, and a review report addressing Kovachevich’s appraisal—together with Kulik’s testimony about those reports. We begin with Kulik’s valuation opinions.

1. Kulik’s valuation opinions

23. O’Day hired Kulik to appraise the market value-in-use of the fee simple interest in the subject property. Kulik is a licensed appraiser and a Member of the Appraisal Institute (“MAI”). He has vast experience appraising industrial properties, including more than 200 in the last five years. He is also an industrial broker, which gives him insight into what clients are looking for when selecting or disposing of industrial real estate. *Pet’r Exs. A-B at 3; Tr. at 15-18, 38.*
24. Kulik certified that he prepared his appraisals in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). Due to the gap between the years under appeal, he prepared two appraisal reports: one for the 2013-2015 assessment years, and another for the 2018-2020 assessment years. Because there is no appeal for 2013 before us, we will largely constrain our discussion of Kulik’s first appraisal to his analyses and conclusions for 2014 and 2015. *Pet’r Exs. A-B at 23, 35; Tr. at 15-18, 38.*

a. Market analysis

25. According to Kulik, the subject property competes in the Chicago industrial market, which includes 20 distinct submarkets. The two fastest-growing submarkets during the valuation periods were Joliet and Kenosha/Racine. Joliet has access to I-55 and I-80/94 as well as to a major container railyard that serves the ports of Los Angeles and Houston. Kenosha/Racine is primarily located along the I-94 corridor. *Pet’r Exs. A-B at 64-66; Tr. at 71-78.*
26. Kulik explained that, when locating an industrial facility, companies are concerned with standard hours truckers can drive (11) and the number of operations they can perform (14) in a day. Those limits determine a location’s feasibility. From a Joliet-area facility,

drivers can go to Milwaukee or Indianapolis and back within those limits. They can even go most of the way through Detroit. There is no reason to locate a facility in Joliet and then build a second one in Northwest Indiana. *Tr. at 71-78.*

27. Within northern Indiana, the greatest area of industrial appreciation was the Elkhart/Mishawaka/South Bend submarket near the Indiana Toll Road and the I-65 corridor. Based on data from CBRE, Marcus & Millichap, Cushman and Wakefield, and CoStar, triple-net lease rates for Northwest Indiana industrial properties grew in the 3% to 5% range over both valuation periods. But absorption was low; in fact, it was negative for four of the six assessment years Kulik examined. According to a top industrial broker Kulik spoke with to verify data, the Northwest Indiana submarket is “off of everyone’s radar.” *Pet’r Exs. A-B at 66.*
28. Turning to the subject property and how it competes within the market, Kulik considered the facility’s buildings to be in “fair overall condition,” noting, among other things, the cracking floors and settling slabs and the leaking from glass windows and fiberglass lighting panels. And he pointed to what he described as Building 1’s “antiquated” heating system. *Pet’r Exs. A-B at 56; Tr. at 53, 55.*
29. Kulik identified several additional factors that he felt affected the property’s utility. Some were within the property itself, while others were external. Starting with the internal factors, Kulik pointed to Building 1’s low ceiling clearances, including the forklift pass-through, that prevented stacking of pallets and inventory; to the subdivision of space within Building 1; to the separation of storage and manufacturing space throughout several buildings; and to the insufficient dock length. According to Kulik, the property’s layout results in an inefficient, and significantly more expensive operation. *Pet’r Exs. A-B at 56-59; Tr. at 28-29, 52-63.*
30. Kulik also explained that modern industrial buildings have minimum ceiling clearances of 20 to 24 feet. In his view, an ideal facility for O’Day’s operations or the operations of

similar light-industrial users, would be a single clear-span building of 40,000 to 45,000 square feet and ceiling clearance anywhere from 24 to 36 feet. He pointed to newly built facilities in the Chicago market that had ceiling clearances between 30 and 40 feet. And O'Day's new facilities in Texas, Florida, and Georgia are clear-span buildings. Based on his observations of the market and his work with brokerage clients, Kulik explained that industrial users will buy older buildings to get into the market. They will then look to build new facilities after three-to-five years. *Pet'r Exs. A-B at 56; Tr. at 28, 52-63.*

31. As for external factors, Kulik pointed to the problems with truck access, which he attributed to the Gostlin-Sheffield roundabout and the Clark Ave. lane restrictions. According to Kulik, trucks must travel up the Calumet Expressway or the Bishop Ford Expressway to 130th Street and come and go through Illinois. Suppliers add surcharges to account for the added fuel, time, and difficulty in delivering to a destination. *Pet'r Exs. A-B at 47, 59; Tr. at 26-27, 82, 95, 114, 178-79.*

32. In Kulik's eyes, all those internal and external factors affect the property's marketability. There are too many alternative buildings in superior locations with less potential renovation issues that are available for a reasonable price. He therefore concluded that the "subject property competes below the average in this market." *Pet'r Exs. A-B at 56-67; Tr. at 71-82.*

b. Valuation approaches

33. Kulik developed the cost and sales-comparison approaches to value. He believed that both approaches were relevant and had sufficient data from which to properly develop a valuation opinion. Although he considered the income approach, he did not develop it because the property was owner-occupied, and he was analyzing the value of the fee-simple interest in the property. *Pet'r Exs. A at 68, 107, B at 68, 111; Tr. at 82.*

(1) Cost approach

34. Kulik began his analysis under the cost-approach by estimating the value of the site as vacant. Because Hammond is an older community that is 95% built up, there were few sales of vacant industrial land to choose from. He selected six sales, which he used in both appraisal reports. Five were from Hammond, and one was from Lake Station, Indiana. The sales occurred between September 2013 and September 2020. They involved sites that ranged from .17 acre to 57.78 acres and sold for unit prices ranging from \$11,250/acre to \$29,412/acre. *Pet'r Exs. A-B at 69-77; Tr. at 83-84.*
35. Sale 2 had previously been a residential property and was rezoned commercial after the sale. Sale 4 is located close to an industrial area. It was zoned residential and still had a house on it. Sale 5 was downgraded to I-2 zoning after the sale to permit development. The buyer wanted to run a trucking operation. The neighbors, however, objected, and the site remains vacant. Sale 6, a narrow .17-acre site, is an old railroad right of way that was bought as part of the South Shore expansion project. It has scant road frontage, and Kulik included it because it was the only sale of industrial-zoned land near the subject property. *Pet'r Exs. A-B at 69-77; Resp't Ex. S at 1; Tr. at 84-88, 143, 150-51, 157-62.*
36. Kulik then considered adjusting the sale prices to account for relevant ways in which the transactions differed from the posited sale of the subject property as well as for relevant differences in the sites' physical characteristics. Although the sales occurred across seven years, he did not adjust for differences in market conditions. He explained that "market conditions for appraisal theory . . . is not a time adjustment." Instead, he testified that "market conditions reflect market conditions. CPI, inflation, there's a number of items that go into it." Kulik found that Northwest Indiana's industrial land market had appreciated little between March 2013 and March 2022. The comparable market data indicated a lack of demand in the area, with developers concentrating their efforts along the Joliet I-55, Kenosha I-94, and Indianapolis I-65 corridors. *Pet'r Exs. A-B at 79-81; Tr. at 88-90, 118, 147.*

37. Turning to physical characteristics, Kulik adjusted the unit (per acre) prices for various reasons. For example, he made upward adjustments ranging from 5% to 15% for the three larger sites that were between 12.2 and 57.78 acres, although in a previous appraisal that he had prepared for the 2013 assessment year, he adjusted a 42-acre site's sale price upward by 20%. He could not recall why. In his current appraisals, Kulik adjusted the prices for the two sites that were less than one acre downward by 10%. He did not adjust Sale 5, which was 6.4 acres. He also adjusted Sale 4 upward by 5% for its inferior residential zoning but did not adjust the other two sales that had to be rezoned post-sale. *Pet'r Exs. A-B at 79-81; Resp't Ex. R at 35-36; Tr. at 88-90, 164-65.*
38. The adjusted sale prices ranged from \$11,250/acre to \$27,941/acre. Kulik settled on a value for the subject land of \$26,000/acre, or \$143,000 (rounded) for all five valuation dates. He had concluded to a value that was about \$3,000/acre higher in his earlier 2013 appraisal. *Pet'r Exs. A-B at 80-81; Tr. at 89-90, 162-64.*
39. To estimate replacement costs for the improvements, Kulik used a cost guide published by Marshall Valuation Service ("MVS"). Based on the subject buildings' physical characteristics, he used the data for low-cost Class C, D, and S buildings. He applied several adjustments, including one to relate the current costs to costs as of the retrospective valuation dates. Kulik's reports also indicate that he trended the costs upward by 3% during each valuation period "to account for the increase in material and labor costs." It is unclear what he meant by that statement, however, given that he had already related current costs to the valuation date through his retrospective adjustments. He also estimated replacement costs for the site improvements. *Pet'r Exs. A at 83-87, B at 85-89; Tr. at 91-92, 172-75.*
40. Kulik then used the age-life method to estimate depreciation. For 2014 and 2015, he estimated effective ages for Buildings 1 and 6 that were 11 years, and 24 years less than their actual ages, respectively. In his 2018-2020 appraisals, the gaps between actual and effective ages for those buildings were 14 years for Building 1 and 29 years for Building

6. It appears, however, that Kulik simply copied the information for Building 6 from his 2014-2015 appraisal into his 2018-2020 appraisal.⁴ *Pet'r Exs. A at 51, 58, 87-89, B at 51, 58, 89-90.*

41. For each assessment date, Kulik estimated depreciation for Buildings 1 and 6 of at least 88%, with substantially lower depreciation for the rest of the buildings. In doing so, he treated the buildings as younger than he did in his earlier 2013 appraisal, where he estimated depreciation of 96% for all but one building. He estimated that the site improvements were between 88% and 92% depreciated for the various assessment dates, although he estimated site-improvement depreciation for 2018 at 2% lower than what he estimated for 2015. He explained the lower depreciation by testifying, "you have cost increases. They're doing some periodic maintenance." *Pet'r Exs. A at 51, 58, 87-89, B at 51, 58, 89-90; Resp't Ex. R at 42-43; Tr. at 120, 132, 167-72.*

42. Although Kulik considered including functional obsolescence, he decided against it, explaining that the comparable properties in his sales-comparison approach "basically have similar warts" as the subject property. As for external obsolescence, Kulik believed that he could justify a deduction based on supplier surcharges for the difficulty in delivering to the subject property, but he concluded that it would be a logistical nightmare to calculate the deduction and that he would not have been able to complete his appraisals in time if he had tried to do so. *Tr. at 94-97, 120, 177-78.*

43. Kulik then added the depreciated building and site-improvement values to his land-value estimate to reach the following conclusions for each year:

2014	2015	2018	2019	2020
\$866,000	\$786,000	\$760,000	\$700,000	\$600,000

Pet'r Exs. A at 88, B at 91; Tr. at 97.

⁴ In his 2014-2015 appraisal, he estimated Building 6's effective age at 31 years for 2013 and increased that age by one year for each succeeding valuation date. He did the same thing in his 2018-2020 appraisal, again starting with an effective age of 31 years for 2018. *Pet'r Exs. A at 58, 87, B at 58, 89.*

(2) Sales-comparison approach

44. Kulik next turned to the sales-comparison approach. Based on guidance from 50 IAC 30-3 and *The Appraisal of Real Estate* (15th ed.), he analyzed the market and submarket in which the subject property competes. He identified relevant characteristics affecting the property's value and marketability, which in turn allowed him to group it with other properties with which it would compete for buyers. Those characteristics then guided his search for sales to use in his sales-comparison analysis:

Category	Subject Property	Delineation Criteria
Current Use	Industrial	Industrial
Type	Manufacturing	Industrial Manufacturing
Office Space	10.3%	1% to 20%
Load Docks	1:10,141 sf	1:5,000 sf to 1:40,000 sf
Clear Ceiling Height	8 feet to 20 feet	Under 40 feet
Size	91,272 sf	50,000 to 400,000 sf ⁵
Land-to-building ratio	2.61:1	1:1 to 9:1
Year Built	1958-2004	Between 1900 and 2022
Setting	Mixed Neighborhood	Mixed Neighborhood or Industrial Park
Location	Hammond, IN	North Indiana, Chicago Metro Area
Sale Date		January 1, 2010 to March 2022

Pet'r Exs. A-B at 62-63; Tr. at 67-70.

45. In addition to his market-segmentation analysis, Kulik identified additional selection criteria. He looked for properties that were used primarily for metal manufacturing, fabrication, and storage and that had masonry/metal panel exteriors, multiple buildings or building additions, and overhead cranes or craneways. He explained that buildings used for metal manufacturing wear out faster than other buildings. Kulik also limited his search to properties occupied by owner-users as opposed to multi-tenant properties, explaining that multi-tenant properties "have a much different concept." He did not

⁵ In the market-segmentation section of Kulik's appraisal reports, he lists the upper end of his delineated building size as 140,000 square feet, and he repeated that number on direct examination. *Pet'r Exs. A-B at 63; Tr. at 69.* But later in his reports he lists the upper end as 400,000 square feet, and he testified that the reference to 140,000 square feet was a typo. *Pet'r Exs. A at 90, B at 92; Tr. at 183.* We find that the reference to 140,000 square feet was a typo and that Kulik's size criterion extended to buildings with 400,000 square feet.

always view the subject property as an owner-user property, however. In his earlier 2013 appraisal, he had relied primarily on the income approach, viewing the property as an investment property because O'Day had rented out a small part of it. *Pet'r Exs. A at 90-91, B at 92-93; Tr. at 35, 97-98, 141-42.*

46. Based on his market-segmentation analysis and additional criteria, Kulik selected the following sales for each appraisal:

2014-2015

	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Location	1601 165 th St., Hammond	4531 Columbia Ave., Hammond	430 Russell St., Hammond	4000 7 th Ave., Gary	1225 Martin Luther King Dr., Gary	240 Waite St., Gary	4333 N. Ohio St., Mich. City	24 Marble St., Hammond
Sale Price	\$4,900,000	\$2,071,501	\$875,000	\$2,200,000	\$1,500,000	\$565,000	\$650,000	\$1,455,000
Sale Date	Mar.-12	June-14	May-18	Mar.-15	June-18	Dec.-19	Mar.-14	Sept.-18
Price/SF	\$12.08	\$8.09	\$17.97	\$11.22	\$9.65	\$4.06	\$7.00	\$7.28
Building type	One and part-two story masonry and metal panel complex w/ cranes	One-story metal panel w/ cranes	One story masonry & metal panel complex	One story masonry/metal panel complex w/ cranes	One & partial 4- and 6- story masonry & metal panel complex w/ cranes	One & partial 2-story metal panel complex	One & partial 2-story masonry & metal panel	One and partial 2-story masonry metal panel complex
Building Size	405,791 sf	256,074 sf	48,680 sf	196,484 sf	155,361 sf	141,211 sf	92,800 sf	200,000 sf
Built	1906	1938	1981	1953	1960-2003	1948-1969	1970	1909
Office Area	2.4%	5.7%	17.3%	3%	2%	3%	26%	Unknown
Ceiling Clearance	11-35 ft.	10-37 ft.	12-24 ft.	13-30 ft.	10-40 ft.	12-25 ft.	12-25 ft.	12-25 ft.
Land Area	38.94 Ac.	10.67 Ac.	3.97 Ac.	14.03 Ac.	30.91 Ac.	27.83 Ac.	13.4 Ac.	13.4 Ac.
L/B Ratio	4.18:1	1.82:1	3.55:1	3.11:1	8.67:1	8.58:1	6.29:1	4.22:1

Pet'r Ex. A at 92-100; Tr. at 100-105.

2018-2020

	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Location	4000 7 th Ave., Gary	9702 W. US Hwy 30, Wanatah	430 Russell St., Hammond	1225 Martin Luther King Dr., Gary	24 Marble St., Hammond	2700 E. 5 th Ave., Gary	240 Waite St., Gary	1 Berkel Dr., LaPorte
Sale Price	\$2,200,000	\$1,313,250	\$875,000	\$1,500,000	\$1,455,000	\$4,050,000	\$565,000	\$825,000
Sale Date	Mar.-15	May-17	May-18	June-18	Sept.-18	Nov.-18	Dec.-19	Nov.-21
Price/SF	\$11.22	\$7.22	\$17.97	\$9.65	\$7.28	\$13.46	\$4.06	\$5.83
Building type	One story masonry/metal panel complex w/ cranes	One & two-story metal panel complex	One story masonry & metal panel complex	One & partial 4- and 6- story masonry & metal panel complex w/ cranes	One and partial 2-story masonry metal panel complex	One & partial 2-story metal panel w/ cranes	One & partial 2-story metal panel complex	One & partial 2-story masonry complex
Building Size	196,484 sf	182,200 sf	48,680 sf	155,361 sf	200,000 sf	300,882 sf	141,211 sf	141,530 sf
Built	1953	1960-1990	1981	1960-2003	1909	1916	1948-1969	1916
Office Area	3%	5%	17.3%	2%	Unknown	4.75%	3%	5.4%
Ceiling Clearance	13-30 ft.	11-35 ft.	12-24 ft.	10-40 ft.	12-25 ft.	10-35 ft.	12-25 ft.	10-20 ft.
Land Area	14.03 Ac.	15.57 Ac.	3.97 Ac.	30.91 Ac.	13.4 Ac.	10.80 Ac.	27.83 Ac.	7.12 Ac.
L/B Ratio	3.11:1	3.72:1	3.55:1	8.67:1	4.22:1	1.56:1	8.58:1	2.19:1

Kulik verified the terms of the sales through commercial databases. Although his appraisal reports do not say so, he also typically talks to the brokers involved in the sales. *Pet'r Exs. A at 92-100, B at 95-104; Tr. at 100-105, 120-22, 185.*

47. There was significant overlap between Kulik’s appraisals, with five sales appearing in both appraisals. In each appraisal, most of the properties are either currently, or were at the time of sale, used for metal fabrication and manufacturing. A real estate investment trust (“REIT”) bought one property, 4531 Columbia Ave. (Sale 2, 2014-2015), and subdivided the interior. When asked about that sale, Kulik testified, “they are all steel-related users, it’s not a different user.” While confusing, we interpret Kulik’s testimony to mean that the buyer leased the property to multiple tenants who all used the property for steel-related businesses. *Pet'r Exs. A at 92-103, B at 93-107; Tr. at 100-05, 123, 187, 191-92.*

48. The property at 24 Marble Street in Hammond (Sale 8, 2014-2015; Sale 5, 2018-2020) was three blocks south of the subject property on a barely passable dead-end road. The seller had used the facility to process concrete panels and roof structures. Sometime between six months and a year after the sale, the buyer demolished the improvements and

is holding the property for potential transit-oriented development in anticipation of the South Shore railroad expansion project. According to Kulik, that property was remarkably similar to the subject property in that it had multiple buildings and lower ceiling heights. Kulik originally testified that the buyer demolished the improvements because renovating them would have been cost prohibitive. He later testified on cross-examination that he did not know whether the improvements were contributing to the real estate at the time of sale, but he assumed so and that the buyer had purchased the property as an industrial building. *Pet'r Exs. A at 92-100, B at 93-104; Tr. at 60-61, 100-05, 192-94.*

49. When 240 Waite St. in Gary (Sale 6, 2014-2015; Sale 7, 2018-2020) was advertised for sale again in 2022, the CoStar report indicated that the property needed repairs, including replacing the roof, adding power, and repairing railway access. The report estimated the cost of those repairs at \$400,000. Kulik was not aware of the CoStar listing. He had flown a drone over the property, but he explained that he did not drive by it because "I value my life." *Resp't Ex. K; Tr. at 189-90.*
50. The property at 4333 N. Ohio St. in Michigan City (Sale 7, 2014-2015) was sold by a bulk trucking company that served the steel industry to a pallet manufacturer. There are piles of scrap on the property that the buyer does not own, although Kulik did not know whether the buyer leased the land underlying the scrap piles to their owner. *Pet'r Ex. A at 98; Tr. at 101, 103-04, 186, 191-92.*
51. As with his land sales, Kulik considered adjusting the improved properties' sale prices. All the sales were arm's length transactions for the fee-simple interest, so he did not adjust for property rights transferred. He similarly did not consider whether the overhead cranes in several of his comparable properties constituted personal property, explaining that most brokers do not have information about whether cranes are personal property or are instead fixtures that are secured to the building. But he acknowledged that cranes could have been included in the sale prices that he used. In any case, he testified that a

crane in a 40-year-old building is not worth much because “it costs more to repair it than you get from the sale.” *Pet’r Exs. A at 103-06, B at 107-11; Tr. at 184-85.*

52. As with his analysis of vacant land sales, Kulik decided against adjusting any of the sale prices for differences in market conditions. He regularly reviews capitalization and interest rates, and he found no evidence of yearly appreciation in the Lake County or Hammond industrial markets for older industrial properties. According to Kulik, buyers purchase older industrial buildings like the subject property to house their operations at the lowest unit cost possible. Their second major criterion is not to have to replace major building components within five years after the purchase. He reiterated that Joliet and Kenosha were the main areas of appreciation in the Chicago market. In northern Indiana, the greatest industrial appreciation was in Elkhart/Mishawaka/South Bend near the toll road and the I-65 corridor from Indianapolis through Lafayette. *Pet’r Exs. A at 102-106, B at 106-11; Tr. at 106-11, 148-49.*
53. Kulik did not explain in his appraisal report what he considered when assessing the relative desirability of locations. But he testified that household income and the number of households did not have any bearing on locational adjustments for industrial properties. Instead, he looked at things like truck and rail access. *Pet’r Exs. A at 102-106, B at 106-11; Tr. at 204-05.*
54. With those things in mind, Kulik did not adjust any of the Hammond sales in either appraisal for locational differences. In his 2014-2015 appraisal, he indicated that the nearby sales from Gary did not need any adjustment either, although he adjusted one of those sales—240 Waite St.—downward by 5% in his 2018-2020 appraisal. He also adjusted another Gary sale from his 2018-2020 appraisal—2700 E. 5th Ave.—downward by 15% to account for its far superior location near where I-65 meets U.S. 20, which he described as a designated heavy truck route. According to Kulik, that was the ideal location in Northwest Indiana for a steel processing business, and the property sold from one steel processor to another. Kulik also adjusted a sale from Wanatah, which he

described as “a very rural area,” downward by 5%. *Pet’r Exs. A at 102-106, B at 106-11; Tr. at 107-11, 121-22, 204-205, 223.*

55. In addressing building size, Kulik adjusted the sale prices for buildings between 141,211 and 196,484 square feet upward by 5%, and he adjusted the sale prices for the larger buildings upward by 6% to 10%. He adjusted the price for a property with a 46,680-square-foot building (Sale 3 both years) downward by 10%. In his earlier appraisal for the 2013 valuation date, however, Kulik made only a 5% adjustment for a 44,000-square-foot building. *Pet’r Exs. A at 102-106, B at 106-11; Resp’t Ex. R at 49, 55; Tr. at 200.*
56. As for land (area)-to-building (area) ratios, Kulik explained that a comparable property would have similar utility to the subject property if it had a ratio anywhere between 2.5:1 to 6.5:1. His adjustments ranged from -15% to +5%. In three instances, however, his adjustments for the same property were different between the two appraisals. For two of the properties, the difference was only 5%. But for 4000 7th Ave., Kulik adjusted the sale price downward by 15% for 2014-2015 but made no adjustment for 2018-2020. *Pet’r Exs. A at 105, B at 109; Tr. at 210-12.*
57. Turning to condition, Kulik explained that “when you get industrial buildings that are of this age, almost all of them are in fair condition. There’s not enough money in the world to spend to justify the return on investment.” Kulik adjusted several sale prices downward between 5% and 10% to account for what he viewed as their superior condition. They included sales of buildings constructed between 1906 and 1938. Kulik adjusted the sale price of 240 Waite St., the property needing \$400,000 in repairs in 2022, upward by 5% for 2014-2015 but made no adjustment for 2018-2020. He did the same thing for 24 Marble Street, where the buyer demolished the improvements. Although Kulik’s appraisal reports do not explain how he assessed the relative condition of his comparable properties, he testified that he based his assessment on conversations with the parties to the sales. *Pet’r Exs. A at 102-106, B at 106-11; Tr. at 113-14, 177, 201.*

58. With two exceptions, Kulik viewed the comparable properties as having similar functional utility as the subject property and therefore did not adjust their sale prices for that factor. He adjusted Sale 3 (both appraisals) and Sale 7 (2018-2020) downward by 10% and 5%, respectively to account for their superior utility. He viewed the first property as superior because it was “more or less one building” compared to the subject property’s six buildings. When asked about the magnitude of the adjustment, he replied only that: “It was used in the paper business. So . . . the functional utility of that building is going to be different than the functional utility of a building used for the steel business.” *Pet’r Exs. A at 102-106, B at 106-11; Tr. at 113-14, 206-08.*
59. Indeed, Kulik said little about how he quantified any of his adjustments, either in his appraisal reports or his testimony. Instead, he testified that there are very few paired sales of industrial properties and that he therefore based his adjustments on his judgement and experience, both as an appraiser and as a broker. *Tr. at 147-49, 213-15, 223-24, 241-43, 497.*
60. For 2014-2015, Kulik found that Sales 4-8 were the most comparable to the subject property. He excluded Sale 1 from that group because it was older than the subject property. And he excluded Sale 2 because it had more than 10 cranes. Regardless of whether cranes were bought as personal property, Kulik felt that there “had to be some accommodation for that difference.” The adjusted sale prices for the complete set of comparable sales ranged from \$4.06/sf to \$12.68/sf, while the adjusted prices for Sales 4-8 ranged from \$4.06/sf to \$9.54/sf. Kulik settled on a value of \$9.50/sf, or \$867,000 (rounded) for the subject property. *Pet’r Ex. A at 106; Tr. at 114, 208-09.*
61. For 2018-2020, Kulik found that Sales 2, 4-5, and 7-8 were the most comparable to the subject property, with Sale 5 (24 Marble St.) being the most comparable among that subset. He did not include the sale of 4000 7th Ave. in Gary, which sold for an adjusted (and unadjusted)⁶ price of \$11.22/sf, in that subset, even though it had lower net and

⁶ Kulik’s net adjustment to the sale price was 0%. *Pet’r Ex. B at 106.*

gross adjustments than several of the sales in the subset and he had found it to be one of the most comparable sales in his 2014-2015 appraisal. The adjusted sale prices for the complete set of comparable sales ranged from \$3.85/sf to \$11.84/sf, while the adjusted prices from his subset of the most comparable properties ranged from \$3.85/sf to \$9.17/sf. Kulik settled on \$9.00/sf, or \$825,000 (rounded) for the subject property. *Pet'r Ex. B at 105-10; Tr. at 122-23, 217-18.*

(3) Reconciliation

62. Kulik gave the greatest weight to his conclusions under the sales-comparison approach, which led him to the following rounded value opinions:

	3/1/14	3/1/15	1/1/18	1/1/19	1/1/20
Cost	\$866,000	\$786,000	\$760,000	\$700,000	\$600,000
Sales-Comp.	\$867,000	\$867,000	\$825,000	\$825,000	\$825,000
Indicated	\$870,000	\$870,000	\$800,000	\$800,000	\$800,000

Pet'r Ex. A at 107-08; Ex. B at 112; Tr. at 123-24.

63. When asked about various inconsistencies between his 2014-2015 and 2018-2020 appraisals—including his decisions to apply different land-to-building-ratio or condition adjustments for the same comparable property and to give different weight to the sale of 4000 7th Ave.—Kulik explained that he was looking at different periods and different sets of comparable sales. According to Kulik, he was looking at entire subsets of comparable sales rather than pulling out individual adjustments. He also testified that the differences did not appreciably change his values, which indicated to him that “the market is very close to investors’ perception[s] in the way they’re thinking, and they’re pricing the buildings accordingly.” Similarly, he responded to apparent inconsistencies between his earlier 2013 appraisal and the two newer appraisals by explaining that the newer appraisals were prepared “over a different view of time” and were based upon further discussions with representatives of O’Day and brokers in the area. *See Tr. at 215, 218-21, 237.*

2. Kovachevich's appraisal

64. The Assessor hired Steven Kovachevich to appraise the subject property. The National Association of Independent Fee Appraisers has designated Kovachevich as a senior member. He has over 40 years of experience and had appraised about a dozen industrial properties over the two years leading up to the hearing. He prepared a retrospective estimate of the subject property's value for the 2013-2015 assessment years. Again, because the 2013 assessment is not before us, we will largely constrain our discussion to Kovachevich's analyses and conclusions for 2014 and 2015. Like Kulik, Kovachevich certified that he prepared his report in conformity with USPAP. *Resp't Ex. A at i-3; Tr. at 251-55, 396.*
65. Also like Kulik, Kovachevich estimated the market value-in-use of the fee-simple interest in the subject property. But unlike Kulik, Kovachevich determined values for only the 2014-2015 valuation dates (the Assessor relied on Frank Kelly to trend Kovachevich's 2015 valuation opinion to the later valuation dates). Kovachevich treated the subject property's cranes as personal property and did not include them in his valuation, but he did include the craneways, which he viewed as an integral part of the building. *Resp't Ex. A at 2, 4-5, 16, 42; Tr. at 269-70, 273, 276-77, 298.*

a. Market overview

66. Data from the Greater Northwest Indiana Association of Realtors, Multiple Listing Service ("GNIAR-MLS"), which includes both commercial and industrial sales, showed the number of Lake County sales dipping dramatically during the 2007-08 recession. Though sales began rebounding by 2014, in 2017 they remained 29% below pre-recession levels. The decline in unit sales showed a lower demand for properties that was reflected in average sale prices. Those average sale prices followed a roller-coaster movement, with a downward trend from 2008 through 2012, followed by an upward trend through 2016, after which prices began to decline again. Kovachevich concluded that overall market conditions suggested continued improvement in the Lake County commercial/industrial market. *Resp't Ex. A at 8-9; Tr. at 280-82, 400-06.*

67. To focus more closely on the industrial sector, Kovachevich attempted to trend unit sale prices solely for industrial properties, a task that was complicated by the limited number of sales annually. Using the samples from his sales-comparison analyses for vacant land and improved properties, he produced roller-coaster trend lines. According to Kovachevich, the subject property's location appeared to be stabilizing, with redevelopment activities designed to maintain and increase overall appeal, marketability, and value going forward. He found that the proximity of main thoroughfares, including Calumet Ave., the presence of other major industrial users, and generally good access and visibility should contribute to future growth, development, and demand. *Resp't Ex. A at 10-11; Tr. at 283-85.*
68. Kovachevich disagreed with Kulik's characterization of Northwest Indiana's industrial market as "off the radar." He pointed to three sales of vacant sites on which buyers constructed large industrial facilities. Two were in Merrillville—one off I-65 and another off Highway 30. But Kovachevich also pointed to a 2020 sale from East Chicago, which he described as a mirror image of the subject property—an older industrial area bordering on residential uses. That approximately 24.5-acre site sold for \$115,390/acre. According to Kovachevich, those were just a few examples showing the demand for industrial property in Lake County's older, urban areas. He was sure there were more. *Tr. at 293-96.*
69. Unlike Kulik, Kovachevich did not prepare a distinct market-segmentation analysis in his report. But he testified that he engaged in a segmentation analysis throughout his appraisal. He looked at all the data sources available to him and then narrowed the data down to what he believed was the most relevant and credible for his assignment. He considered factors like sale dates, location, age, property type, and use. *Tr. at 260, 276, 279, 283-84, 300, 397-404, 428.*

b. Valuation approaches

70. Like Kulik, Kovachevich considered the three generally recognized valuation approaches but decided against developing the income approach because the property was owner-occupied. *Resp't Ex. A at 5, 41; Tr. at 321, 333-34.*

(1) Cost approach

71. Kovachevich acknowledged the scarcity of industrial land sales in Northwest Indiana. To select comparable sales, he focused primarily on location and use. He further narrowed his search to look for sales that occurred before the valuation dates. Although he identified eight sales between 2012 and 2015, he described them as a “weird” mix of government and non-government sales. The county or township assessor deemed three of the eight sales as invalid for trending, but Kovachevich found that the circumstances “suggest[ed] arms [*sic*] length conditions.” In making that determination, he did not talk to the parties or brokers involved in the sales; instead, he relied on sales-disclosure forms, explaining that those forms are signed under the penalties of perjury, vetted by an assessor, and relied upon by appraisers and other disciplines. Kovachevich also looked at deeds and other recorded documents, such as mortgages. *Resp't Ex. A at 27; Tr. at 322-25, 335-36, 338-39.*
72. He plotted all eight sales on two graphs, one with overall sale prices as a function of parcel size, and a second with unit sale prices as a function of parcel size. Kovachevich then used a function in a software program (Excel) to calculate a trend line or “most probable path of value.” While Kovachevich acknowledged that he is not a mathematician or statistician, he explained that the probability can be measured “through the expression of what they call the R-squared factor,” which “in a general sense, [is] the statement of the goodness of fit of the data points to the trend line drawn.” The closer the R^2 is to one, “presumably, theoretically, the greater the certainty is in the predicted outcome,” and “[t]he more data points you have . . . the more relevant that would be.” According to Kovachevich, real-estate transactions “tend to be very noisy,” and R^2 factors typically are not “really high . . . like 80 or 90 percent.” Instead, depending on the

property type, “if you’re in the 40 to 60 . . . range, you know, you’re not doing too bad. You know, that’s what you would reasonably expect.” Indeed, multiple variables typically go into a sale price. *Resp’t Ex. A at 28; Tr. at 324-26.*

73. The trend lines in Kovachevich’s two graphs suggested an overall sale price of about \$240,000 and a probable unadjusted unit price of about \$43,000/acre, which would translate to \$236,070 for the whole property. The R^2 s were .9565 and .6433, respectively. Given the higher R^2 for the overall-price trend line, Kovachevich settled on \$240,000 for the subject property’s land value. Considering the rollercoaster nature of industrial sale prices over time, he believed that maintaining a level land value estimate over the valuation period was reasonable. So, he kept that value the same for each year and decided to let the contributory value of the improvements tell him “where things are going in an overall sense.” *Pet’r Ex. A at 27-28; Tr. at 339-41.*
74. Turning to the improvements, Kovachevich viewed the buildings as a mix of low- and average-cost Class C, D, and S construction. He used Marshall & Swift cost data for those models and made what he viewed as appropriate adjustments. From there, he considered physical depreciation and obsolescence. Based on his inspection of the property, Kovachevich believed that the improvements were in average condition. He pointed to, among other things, the condition of the bathrooms, offices, and electrical service area; Building 1’s high-efficiency furnaces and roof-mounted HVAC system; and the fact that O’Day had repaired or replaced the roofs and added metal siding to the buildings. While Building 6 had a little more wear and tear, he did not see any big issues with the structure or anything to suggest that it was “like 90-plus percent depreciated and needs to be demolished.” Taken together, the property record cards for the subject property showed a weighted effective age of 1975 for the buildings. Kovachevich believed that estimate was reasonable if conservative. *Resp’t Ex. A at 29-31; Tr. at 300-15, 343-47.*

75. Using the age-life method, Kovachevich estimated depreciation of 65%-70%. He also extracted depreciation from 12 market sales, using the replacement costs from each property's record card. He plotted those sales on a graph addressing sale price as a function of effective age. The trend line indicated depreciation for improvements with an effective age of 1975 at around 64%. He found that the two methods supported each other and led to reasonable depreciation estimates of 68% and 70% for 2014 and 2015, respectively. *Resp't Ex. A at 31; Tr. at 345-47.*
76. But the property's assessed value for each year, as well as Kovachevich's conclusions under his sales-comparison grid analysis (discussed below) indicated much higher depreciation of 84% to 85%. Kovachevich concluded that the presence of obsolescence likely accounted for the 15% difference. As potential sources for the obsolescence, he pointed to super-adequate office space, as shown by the fact that the upstairs office area was vacant, and to a site that was larger than necessary for the current use, as evidenced by the lease (or sale) of the cellular-tower site. He did not believe that the ceiling heights, which he described as adequate for at least some inventory stacking, interfered with activities at the property. He similarly disagreed with Kulik's characterizations regarding truck access to the property as creating obsolescence. Indeed, O'Day's representative did not mention those issues when talking about the problems the company was facing, complaining instead mainly about the cost of steel. If anything, Kovachevich felt that he was exaggerating the overall depreciation. *Resp't Ex. A at 30-33; Tr. at 305-06, 312, 316-19, 348-52, 389-90.*
77. Based on his Marshall & Swift replacement costs and accrued depreciation of 85%, Kovachevich concluded values of \$1,424,209, and \$1,442,230, respectively for 2014 and 2015. *Resp't Ex. A at 33; Tr. at 353.*

(2) Sales-comparison approach

78. Kovachevich began his sales-comparison analysis by identifying a pool of 33 Lake County sales from 2012 to 2017 that involved properties with industrial class codes. He

then narrowed that group down by excluding sales that the Assessor had not deemed valid for trending or that were in poor or fair condition. He also excluded sales that he considered too remote in time or location or that he believed were outliers. *Pet'r Ex. A at 34-40; Tr. at 353-57.*

79. Because the sales were primarily from the southern part of the county, Kovachevich analyzed what he described as “paired” sales of properties from Hammond and Crown Point to determine whether differences in location influenced sale price. He concluded that there was no significant location-related price differential within the data set; instead, other factors were more predictive of sale prices. He then plotted the sales from 2013 to March 1, 2014, and from 2014 to March 1, 2015 on graphs addressing sale price as a function of building size. The trend line for the first graph showed a value of about \$2 million for the subject property, with an R^2 of .5278, while the trend line for the second graph showed a value of about \$3.15 million, with an R^2 of .6587. *Pet'r Ex. A at 34-40; Tr. at 354-58.*

80. While Kovachevich felt that the graphs offered a good overview, they did not address other variations between the subject property and the sales in his data set. He therefore selected several sales for an “adjustment grid approach” for each year, trying to stay within about 12 months of the valuation date:

2014

	Subject	Sale 1	Sale 2	Sale 3	Sale 4
Location	111 143 rd St., Hammond	3201 E. 83 rd Pl., Merrillville	1045-85 Millennium Dr., Crown Point	4303 Kennedy Ave., East Chicago	8410 Minnesota St., Merrillville
Sale Price	N/A	\$465,000	\$1,300,000	\$1,583,424	\$785,000
Sale Date	Mar.-14	Feb.-13	Mar.-13	Oct.-13	Feb.-14
Price/SF	N/A	\$44.52	\$106.91	\$25.13	\$53.58
Building Size	91,556 sf	10,444 sf	12,160 sf	63,000 sf	14,650 sf
Year Built	1975	1975	2013	1990	2001
Land Area	5.487 Ac.	1.35 Ac.	2.126 Ac.	2.378 Ac.	1.605 Ac.
Condition	Average	Average	Good	Good	Good

2015

	Subject	Sale 1	Sale 2	Sale 3	Sale 4
Location	111 143 rd St., Hammond	670 Madison St., Crown Point	7915 Maryland Ave., Hammond	1120-40 Arrowhead Ct., Crown Point	1001-3 E. Summit St., Crown Point
Sale Price	N/A	\$710,000	\$1,645,000	\$1,250,000	\$1,600,000
Sale Date	Mar.-14	July-14	May-15	Oct.-14	Apr.-15
Price/SF	N/A	\$52.34	\$116.05	\$53.69	\$39.80
Building Size	91,556 sf	13,556 sf	14,175 sf	23,280 sf	40,200 sf
Year Built	1975	1999	2015	2007	1995
Land Area	5.487 Ac.	1.950 Ac.	2.090 Ac.	2.105 Ac.	4.653 Ac.
Condition	Average	Average	Good	Good	Good

Resp't Ex. A at 37-40; Tr. at 359-61.

81. Kovachevich verified the sales solely through public records, including sales-disclosure forms. He did not talk to the parties or to any brokers involved in the sales, explaining that his experience with doing so is “mixed.” According to Kovachevich, all the sales were arm’s length transactions for the fee-simple interest in the properties. When asked about specific properties, however, Kovachevich could not say whether they were leased. *Tr. at 420-25, 433-44.*

82. Like Kulik, Kovachevich considered adjusting the sale prices. He did not make any adjustment for property rights transferred or market conditions. Based on his paired-sales analysis, he did not adjust for differences in location either. But he did adjust for differences in building size, building age, site size, and land improvements. *Pet'r Ex. A at 37-40; Tr. at 361-65.*

83. Kovachevich recognized what he described as the “relatively smaller” size of his comparable buildings, but he explained that the difference was an unavoidable consequence of the available sales and likely reflected the prevalence of smaller buildings in the marketplace. His adjustment to account for size differences reflected the diminishing contributory value of each added square foot of industrial space. He calculated an adjustment of \$10/sf, which he described as “salvage value,” by taking “what would be basically the total sale price of the property,” and deducting land, land improvements, and “a little bit more . . . just to play it safe.” His building-size

adjustments ranged from \$285,560 to \$811,120 for 2014 and from \$513,560 to \$779,900 for 2015. In two instances, the building-size adjustment exceeded the property's unadjusted sale price, with the adjustment for Sale 1 (2014) being almost 1.75 times the unadjusted price. In three other instances, the adjustment was more than half of the unadjusted sale price. *Resp't Ex. A at 37-40; Tr. at 364-65, 417-19.*

84. Turning to building age, Kovachevich asserted that a graph examining sale price as a function of building age indicated a rounded adjustment of 1% per year. For land value, he took the difference between his estimate for the subject site and the land value that the Assessor assigned to each comparable property, explaining that he believed the Assessor's values were reasonable. Those adjustments were all negative and ranged from \$600 to \$141,300 for 2014, and from \$14,800 to \$368,000 for 2015. *Resp't Ex. A at 37-40; Tr. at 362-65.*
85. Kovachevich did not adjust for differences in ceiling height or condition. Many of the comparable sales had heights that he described as like the subject buildings. In any case, he plotted a graph examining sale price as a function of ceiling height. The R^2 was low (.0721) and reflected slightly declining values as ceiling heights increased, which indicated to Kovachevich that the market does not necessarily pay more for higher ceilings. *Resp't Ex. Z; Tr. at 377-78, 385-89.*
86. The adjusted sale prices for the 2014 valuation date ranged from \$1,188,121 to \$1,806,622, with an average of \$1,481,492. For the 2015 valuation date, the adjusted sale prices ranged from \$1,326,753 to \$1,686,582, with an average of \$1,492,915. Kovachevich settled on those averages as the subject property's indicated value for each year. *Resp't Ex. A at 38-40; Tr. at 363-66.*

(3) Reconciliation

87. In his appraisal report, Kovachevich indicated that he gave primary weight to his conclusions under the sales comparison approach, while at the hearing, he testified that

he gave the greatest weight to his conclusions under the cost approach “backed up by the comparison approach.” But he reconciled to values that exactly matched his conclusions under the sales-comparison approach for each year:⁷

	3/1/14	3/1/15
Cost	\$1,424,209	\$1,442,230
Sales-comparison Indicated	\$1,481,492	\$1,492,915

Resp't Ex. A at 3, 42; Tr. at 321, 374.

3. Review appraisal

88. In addition to his own appraisals, O'Day hired Kulik to conduct a review appraisal of Kovachevich's work. Kulik certified that he conducted his review appraisal according to USPAP. *Pet'r Ex. D at 6; Tr. at 465.*
89. Kulik took issue with several aspects of Kovachevich's appraisal report. Among other things, he believed that Kovachevich failed to comply with Ind. Code § 6-1.1-31-6(d) and 50 IAC 30-3 because his report did not include a market-segmentation analysis. Kulik also criticized Kovachevich for failing to verify any of the sales with the parties or a broker, which Kulik described as “one of the basic jobs of a real estate appraiser.” He has found that 50% to 75% of the data from GNIAR, CoStar, or other similar sources contains mistakes. Although parties and brokers do not always respond to emails or phone calls, communicating with them is part of an appraiser's job. *Pet'r Ex. D at 8-9; Tr. at 467-68, 472-73.*
90. Kulik also criticized Kovachevich's selection of both vacant land and improved sales. One of his primary criticisms was that three of Kovachevich's improved sales (Sale 2, 2014 and Sales 3 and 4, 2015) were leased to multiple tenants when sold. In Kulik's view, those sales highlighted Kovachevich's lack of a market-segmentation analysis, and

⁷ Because Kovachevich incorrectly believed that not all parcels had been appealed for all years, he also allocated the property's overall value between the individual parcels for each year. *See Resp't Ex. A at 2-4, 42; Tr. at 269-71.*

he believed that Kovachevich should have excluded them from his appraisal. In any case, Kulik testified that Kovachevich should have adjusted those sale prices to account for the differences between fee-simple sales and leased-fee sales of multi-tenant properties. *Pet'r Ex. D at 9-11; Tr. at 468-72.*

4. Kelly's opinion on trending

91. Rather than commission an appraisal for the 2018-2020 appeals, the Assessor hired Frank Kelly to trend Kovachevich's valuation opinion for 2015 to values as of the 2018-2020 valuation dates. Kelly holds a PhD in economics. He is also a Level III Assessor-Appraiser and actively does assessing fieldwork, but he is not a licensed appraiser. *Tr. at 436-39.*

92. Kelly briefly discussed several documents, including two reports on the Chicago industrial market and the "Indiana" submarket that one of Kelly's employees prepared from CoStar data, and sales information for several properties that Co-Star identified as comparable to the subject property. He also pointed to data from the Bureau of Labor Statistics reflecting the consumer price index for all urban consumers ("CPI-U"), which he explained gauges the change in price over time for a basket of goods that typical consumers might buy. Kelly calculated the percent changes in the CPI-U between March 1, 2015 and each valuation date from 2018-2020, as well as the percent change between each of the 2018-2020 valuation dates:

Periods	% Change	Annual % Change
3/1/15 – 1/1/18	2.9%	N/A
3/1/15 – 1/1/19	3.7%	.77%
3/1/15 – 1/1/20	6.2%	2.37%

Resp't Exs. B-I; Tr. at 439-41, 457-59.

93. According to Kelly, all his data points indicated increasing values between 2015 and the 2018-2020 valuation dates. While Kelly calculated annual percentage changes in average sale prices for the Chicago market, he acknowledged that they were probably "grossly overstated." Although he testified that it would be hard to identify any method as the

best, he noted that the CPI has been used “in other circumstances similar to this,” and that it is a very conservative approach that would generate the smallest increase in values. *Tr. at 443, 453-54.*

94. Without explaining how it related to trending, Kelly also “requested a research and analysis of Gary sales through this 2015 to 2020 period as compared to sales from Hammond.” The research was from CoStar and reflected both “filtered” and “unfiltered” data, although Kelly did not explain what was being filtered. The unfiltered data showed an average of \$26.47/sf for Gary compared to \$36.68/sf for Hammond, while the filtered data showed averages of \$16.09/sf and \$30.74/sf, respectively. *Resp’t Ex. O; Tr. at 454-56.*

V. CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of proof and market value-in-use standard

95. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cnty. Ass’r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).⁸
96. In Indiana, assessments are based on a property’s “true tax value.” True tax value does not mean fair market value. I.C. § 6-1.1-31-6(c). Nor does it mean the value of the property to the user. I.C. § 6-1.1-31-6(e). Subject to these somewhat tautological directives, the legislature has relied on the Indiana Department of Local Government Finance (“DLGF”) to define true tax value. I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.⁹ The Manual offers further guidance, defining

⁸ Neither side argues that any specialized burden-of-proof statute applies to these appeals.

⁹ The 2021 Manual, which went into effect after the assessment dates on appeal, mirrors this definition. 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

“market value-in-use,” “value-in-use,” and “use value,” as being synonymous. MANUAL at 6-8. But it also states that a property’s true tax value will equal its value-in-exchange when properties are frequently exchanged and used for the same purposes by the buyer and seller. MANUAL at 2; *See also, Millennium Real Estate Investment, LLC v. Benton Cnty. Ass’r*, 979 N.E.2d 192, 196 (Ind. Tax Ct. 2012) (explaining that where a property’s current use is the same as its highest-and-best use and there are regular exchanges in the market, its market value-in-use will equal its market value). Thus, true tax value is something other than purely market value or value-in-use. Given mandates from the Indiana Supreme Court and legislature, the DLGF created a valuation standard that relies heavily on what it terms as objectively verifiable data from the market, but that still maintains the notion of property wealth gained through utility and therefore recognizes situations where true tax value will differ from market value.

B. Although Kulik’s appraisals have flaws, we find that his valuation opinions are more reliable than Kovachevich’s opinions and that they set a ceiling on the subject property’s market value-in-use.

97. As is frequently the case, these appeals boil down to a battle of experts. Both parties relied on qualified experts who offered appraisals that they certified as complying with USPAP. While far from perfect, we find Kulik’s valuation opinions more persuasive than Kovachevich’s opinions.

1. Despite several valid criticisms of his appraisal, we find Kulik’s understanding of the subject property’s utility and the market in which it competes persuasive.

98. Kulik is a highly qualified appraiser with a wealth of experience in appraising industrial properties. He offered a nuanced understanding of the Chicago market for industrial properties as well as of how the Northwest Indiana submarket fit within that greater market. Kovachevich disputed Kulik’s claim that Northwest Indiana was “off the radar” by pointing to three sales of vacant land where the buyers built large industrial facilities. Two of those were in Merrillville, however, including one off I-65, which Kulik explained was a desirable area. Neither those sales nor Kovachevich’s claim that he was sure he could produce more examples shakes our confidence in Kulik’s assessment of the

market. To the contrary, we are persuaded by Kulik's analysis of the market as well as by his analyses of the subject property's utility and its relative competitiveness within the market.

99. That said, the Assessor criticized aspects of Kulik's valuation opinions. We agree with many of those criticisms. Our most overarching concern is that Kulik did little to explain the factors behind, or data supporting, several of his decisions about adjusting the sale prices of his vacant and improved comparable sales. We have no qualms with appraisers relying on their judgment in applying appraisal methodology. Sometimes the available data does not lend itself to adjustments that are easily quantifiable through methods like paired-data or statistical analysis, and appraisers must use their judgment and experience to interpret the data. In doing so, an appraiser need not always cite to a specific source for general market data gathered through years of experience or through interactions with market participants. But appraisers should base their key judgments on market evidence. And the extent to which they point to such evidence to explain their judgments affects the persuasiveness of their opinions.

a. Although there were several problems with Kulik's analysis under the cost approach, we give weight to his view of the property's utility.

100. With that in mind, we turn to Kulik's analyses under the two valuation approaches he developed, beginning with the cost approach. We share the Assessor's concerns over Kulik's use of a residentially zoned property that still had a house on it and of two other sales that required re-zoning post sale, while making minimal or no adjustment for that issue. We also share the Assessor's concern over Kulik using sales from as late as 2019 in valuing the site for 2014-2015. Neither we nor the Tax Court have prohibited the use of data from after the relevant valuation date in estimating the retrospective value of property. Nonetheless, we recognize that market participants could not have known about the sales in question on the valuation dates. And beyond generally pointing to the lack of appreciation in the Northwest Indiana submarket for older industrial properties over the period spanning the valuation dates under appeal, Kulik did little to explain why

those later sales would confirm trends that would have been apparent to market participants on the valuation dates.

101. Turning to Kulik's estimate of replacement costs for the improvements, we agree with the Assessor that he did not coherently explain his 3% annual adjustment over the valuation periods, given that he had already adjusted current costs to the valuation dates. But that issue alone does not cause us to doubt Kulik's conclusions as a whole.
102. Unlike the Assessor, however, we are not particularly troubled by Kulik's estimate of the improvements' effective ages or by his resulting depreciation calculations. Recognizing that the property continued to have utility, Kulik estimated effective ages that were well below the actual ages for Buildings 1 and 6, which were by far the largest and most expensive buildings on the property. Kovachevich and the Assessor argued that the subject property was in better condition than Kulik judged it to be and that it had a lower overall effective age. They pointed to the buildings' mostly well-kept appearance as well as to things like the newer high-efficiency gas furnace and HVAC system in Building 1, and O'Day installing metal siding on the buildings and either repairing or replacing the roofs. But we are not persuaded that Kulik overestimated the improvements' effective ages. Nor are we troubled that Kulik found a larger gap between the buildings' effective ages in his 2018-2020 appraisal than he did in his 2014-2015 appraisal. Other than for Building 6, where he appears to have copied the effective ages from his first appraisal into his second, Kulik simply found that the buildings' remaining useful lifespans did not necessarily decrease in lockstep with their advancing chronological ages. The same is true for the site improvements, where Kulik explained that their effective age did not increase at the same rate as their chronological age due, in part, to routine maintenance.
103. Kulik did not adjust for obsolescence in addition to his estimated physical deterioration. But we credit most of his observations about internal and external factors affecting the property's utility, particularly the issues with the property's multi-building layout, Building 1's low ceiling clearances, and the loading dock's inability to easily

accommodate trucks with 53-foot semi-trailers. We also agree that the property's location amidst residential properties and roads is less than ideal, even if (1) the Gostlin-Sheffield roundabout and Clark Ave. lane divider that Kulik pointed to were not constructed until after the last valuation date (although they were in the planning stages from at least 2014), and (2) Kovachevich showed that trucks with semi-trailers were ultimately able to navigate the roundabout.

b. While Kulik's sales-comparison analyses had some flaws, most of his comparable sales were good substitutes for the subject property.

104. Turning to Kulik's sales-comparison analyses, we find persuasive his evaluation of the property's utility and of the market in which it competes. This led him to select sales of properties that, with two exceptions, were good substitutes for the subject property. Those exceptions were 24 Marble St., which Kulik used in both appraisals, and 4531 Columbia Ave., which he used only in his 2014-2015 appraisal. The buyer of 24 Marble St. demolished the improvements between six months and a year after purchasing the property. Kulik's testimony that the buyer demolished the improvements because renovating the buildings would have been cost prohibitive casts significant doubt on his later claim that the buyer purchased the property as an industrial building. We therefore find that the property was not a substitute for the subject property. Similarly, the REIT that bought 4531 Columbia Ave. converted that property to multi-tenant use, which does not fit within Kulik's own criteria for comparable properties. Indeed, Kulik criticized Kovachevich for using multi-tenant properties in his sales-comparison analysis.
105. We do not share the Assessor's concerns about the total building space in Kulik's comparable sales, however. Those spaces ranged from 48,650 square feet to 405,791 square feet, with five sales having more than twice the subject property's total building space. Nonetheless, most were used for similar industrial fabrication and storage operations, and in that respect, we are persuaded that they would compete with the subject property for the same types of buyers.

106. We recognize that four of the eight sales in Kulik's 2014-2015 appraisal were from 2018 or later, including three of the five to which he gave the most weight. For the reasons we already discussed in the context of his comparison analysis of vacant land sales, this gives us some pause. But those concerns do not change our view that, except for 24 Marble St. and 4531 Columbia Ave., Kulik's comparable sales were good substitutes for the subject property.

c. Although we have some questions about several of Kulik's adjustments, they do not significantly detract from the reliability of his valuation opinions.

107. Beyond Kulik's general lack of explanation, the Assessor criticizes several of his specific decisions in adjusting (or failing to adjust) his comparable sale prices. We begin with the Assessor's critique of Kulik's decision not to adjust any of his sale prices to account for differences in market conditions. This, however, is one of the areas where Kulik explained his decision and referenced the market data behind it. He regularly reviews capitalization and interest rates, and he found no evidence of general yearly appreciation in the Lake County or Hammond markets for older industrial properties. He found that appreciation was instead concentrated in the more desirable Joliet and Kenosha/Racine submarkets. In northern Indiana, it was concentrated in the Elkhart/Mishawaka/South Bend area and along the I-65 corridor.

108. Kovachevich's roller-coaster trend line for his admittedly thin data on Lake County industrial sales does not tell a significantly different story. And we give no weight to the reports that Kelly or his employees prepared from Co-Star. Some of the data from those reports was based on the Chicago market as a whole, which Kelly acknowledged grossly overstated appreciation for the subject property's submarket. And Kelly did little to interpret the reports or apply them to the subject property. At most, Kelly showed an increase in the CPI-U, and Kulik acknowledged that the CPI is one factor that goes into determining differences in market conditions. But that acknowledgement, by itself, does not significantly undermine Kulik's judgment that conditions for the submarket in which the subject property competes remained stable over the valuation periods at issue.

109. We similarly give little weight to the Assessor's specific criticisms of Kulik's decisions about whether to adjust for location differences. The Assessor focuses on the fact that Kulik chose not to adjust the sale prices of his Gary sales upward for what she argues is Gary's inferior market. For support, she points to a document that Kelly prepared comparing sales from Gary to those from Hammond using data he requested from CoStar. But Kelly, who is not an appraiser, provided almost no information about the underlying data. We therefore give no weight to the document or to Kelly's testimony about it.
110. Nor do we give any weight to the Assessor's claim that Kulik acted inconsistently by adjusting the sale prices for some properties from Gary but not for others. As Kulik explained, he based his location adjustments partly on things like truck and rail access. And the sale he adjusted downward by 15% was located at the corner of two heavy truck routes. But we do give some weight to the Assessor's criticism of how Kulik treated 240 Waite St. He adjusted that sale downward by 5% in his 2018-2020 appraisal (but not in his 2014-2015 appraisal) to account for its superior location, even though he testified that he did not drive by the property because "I value my life."
111. The Assessor also criticized Kulik's adjustments for differences in condition between some of his comparable properties and the subject property. Most of the adjustments were downward, including those for properties that were built in 1908, 1909, and 1916, signifying that the properties were in better condition than the subject property. At first blush, this seems counterintuitive, especially given Kulik's testimony that older industrial buildings are invariably in fair condition. And Kulik did not go out of his way to alleviate that concern beyond testifying that he spoke to the parties to the sales about the comparable properties' condition.
112. On the other hand, the Assessor offered little evidence of her own to impeach Kulik's judgment about the relative condition of his comparable properties. At most, she offered

a CoStar listing from 2022, indicating that one property (240 Waite St.) needed \$400,000 of investment, including replacing its roof. The listing was from less than three years after the sale that Kulik used in his appraisals, meaning that the property's condition was likely similar on that sale date. While Kulik adjusted the sale price upward 5% for the property's inferior condition in his 2014-2015 appraisal, he made no adjustment in his 2018-2020 appraisal.

113. The Assessor also attacks Kulik's building-size adjustments, mainly by arguing that they are inconsistent and that his upward adjustments to unit prices for larger buildings were comparatively less than his downward adjustments for smaller buildings. The Assessor, however, did not offer convincing evidence to show that the inverse relationship between size and unit price in the market for older industrial buildings is a constant. As shown by his adjustments, Kulik simply judged that the effect is greater at the extremes i.e., that the market values each square foot much higher in relatively small properties, and lower in very large properties, but that it does not recognize as stark a difference in properties between roughly 100,000 and 200,000 square feet.
114. The Assessor next criticizes Kulik for failing to adjust for differences in site size. We give no weight to that criticism; Kulik considered site size when he adjusted for differences in land-to-building ratios. The Assessor, however, raises a valid concern about Kulik's land-to-building-ratio adjustments. In three instances, his adjustments for the same property were different between the two appraisals.
115. Kulik gave varying explanations for those and other inconsistencies between his 2014-2015 and 2018-2020 appraisals and between those two appraisals and his earlier 2013 appraisal: that he was looking at different timeframes and different sets of comparable sales; that he was looking at entire subsets of comparable sales rather than pulling out individual adjustments; and that he based the later two appraisals on further discussions with representatives of O'Day and brokers in the area.

116. We give little weight to Kulik's first two explanations. Without more, we fail to see why differences in timeframes or between his sets of comparable sales should influence how the market values characteristics like land-to-building ratio. In any case, the comparable sets from his two appraisals were mostly the same. And the passage of time should have had little effect on the relative condition of his comparable properties compared to the subject property because he did not view the buildings' effective ages as increasing significantly between the two sets of valuation dates. But we do give some credence to Kulik's claim that inconsistencies between his 2014-2015 and 2018-2020 and his earlier 2013 appraisal reflect a refined view of the subject property and the market.

117. In any event, all but one of the inconsistencies between his 2014-2015 and 2018-2020 appraisals involved discrepancies of 5% one way or the other. We therefore agree with Kulik that they did not significantly affect his value conclusions, which closely reflected the way investors were pricing properties in the relevant market.

d. Although Kulik's valuation opinions likely included cranes and craneways, which are personal property, those opinions set a ceiling on the real property's market value-in-use.

118. Finally, the Assessor argues that Kulik may have included personal property in his valuation opinions. For support, she points to two things: (1) a photograph of a comparable property from Kulik's 2014-2015 appraisal showing scrap piles at the property, and (2) Kulik's testimony that when confirming a sale, there is no way to determine whether cranes are fixtures, and therefore part of the real estate, or are instead personal property.

119. As to the Assessor's first claim, because the buyer did not purchase the scrap piles, they were not included in the sale price, or by extension, in Kulik's valuation opinions. Kulik, however, likely did include cranes, and presumably the accompanying craneways, in his valuation opinions. While he did not offer enough detail about his calculation of replacement cost to know if he included those items in his analysis under the cost approach, several of his comparable sales had cranes. And he acknowledged that those

cranes could have been included in the sale prices that he used. Indeed, Kulik identified the presence of cranes as a factor in identifying substitute properties for his sales-comparison analysis. We therefore find that his comparable sale prices, and by extension his valuation opinions, likely included cranes and craneways.

120. For property taxation purposes, real property includes, among other things, land, any “building or fixture situated on land,” and any “appurtenance to land” located in Indiana. I.C. § 6-1.1-1-15(1)-(3). 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 includes the following:

Crane
Moving crane — Personal

Runways, including supporting columns of structure and foundation, inside or outside of the building — Personal

50 IAC 4.2-4-10 (filed Feb. 26, 2010) (emphasis added).¹⁰

121. While in the abstract, we might wonder whether the cranes and craneways at issue in these appeals would qualify as fixtures or appurtenances, and therefore as real property, the DLGF’s regulation places them squarely within the definition of personal property. We therefore find it likely that Kulik included personal property in his valuation opinions.¹¹

¹⁰ The DLGF amended the rule on November 2, 2020, after the last assessment date at issue. Although the formatting for the quoted excerpts changed, the substance remains the same.

¹¹ As addressed below, both appraisers included crane-related personal property in their valuations.

122. The Assessor cites *Mac's Convenience Stores v. Hendricks Cnty. Ass'r*, 191 N.E.3d 285 (Ind. Tax Ct. 2022) for the proposition that we must reject Kulik's appraisals on that basis. *Assessor's Post-Hearing Brief* at 20 (quoting *Mac's Convenience Stores*, 191 N.E.3d at 291). In *Mac's Convenience Stores*, an appraisal offered by the Hendricks County Assessor included personal property, such as underground storage tanks, fuel pumps, walk-in coolers, and portable racks and shelves. *Id.* The appraisal, however, valued the property at almost \$200,000 more than the appealed assessments. We found that, while the inclusion of personal property had "played a significant role" in the appraisal, it did not deprive the appraisal of all probative value. But it did caution against raising the assessments as the assessor had asked. *Id.* at 287-89. We looked at the appraisal in conjunction with other evidence (which the Tax Court separately held that we had erred in relying on). Based on the combined evidence, we found that the Assessor, who under a since-repealed statute (Ind. Code § 6-1.1-15-17.2) had the burden of proving the assessment was correct, met her burden. *Id.* at 288-89.
123. On judicial review, the Tax Court noted that the assessor "did not present any authority, whether binding or persuasive, that would allow the Court to find that an appraisal is probative of the value of real property even if some personal property is included in the valuation." *Id.* at 291. The Court further directed readers to "see also" *Goshen Pub. Libr. of Elkhart Cnty. v. Dep't of Local Gov't Fin.*, 128 N.E.3d 574, 580 (Ind. Tax Ct. 2019), a case discussing the de minimis doctrine and the closely related idea of substantial performance. Turning to the facts before it, the Court held that, "[c]ontrary to Indiana's real property assessment laws," the totality of evidence showed that the appraisal had valued more than just real property and that we had erred in finding that it supported the assessments. *Mac's Convenience Stores*, 191 N.E.3d at 291. In accordance with Ind. Code § 6-1.1-15-17.2, the Court therefore ordered the assessment to revert to the previous year's level.
124. Read in isolation, the Tax Court's dictum about the probative value of appraisals that include some personal property might seem to be a bright-line rule prohibiting the use of

such appraisals in appeals of real property assessments, or at least prohibiting their use where the included personal property has more than de minimis value. But we must read that statement in light of the procedural posture and facts that were before the Court. To meet her burden, the assessor had to either prove that the challenged assessment was correct or face having it revert to the previous year's level. The appraisal therefore could not support a specific value, like the assessment (or any specific number above the reversionary value), because it included a significant amount of personal property with an unknown value. By contrast, in these appeals O'Day need not prove a specific value to be entitled to have its assessments reduced. While Kulik's inclusion of personal property means that his appraisals cannot support his precise valuation opinions, those appraisals, which we find otherwise credible, set a ceiling on the real property's value that is below its assessments. In other words, Kulik's appraisal proves that the property is over-assessed and that O'Day is entitled to at least the relief requested.

125. We therefore do not read *Mac's Convenience Stores*, as barring us from relying on those appraisals to reduce O'Day's assessment to the ceiling that Kulik's valuation opinions represent. To the extent O'Day might be entitled to an even lower assessment, it waived that right by failing to offer evidence from which to allocate those valuation opinions between the amounts attributable to each property type. Similarly, while there is a danger of double taxation if O'Day separately reported the cranes and craneways on its business personal property returns, O'Day itself created that danger and waived any claims of inappropriate double taxation by asking us to rely on Kulik's appraisal. In the final analysis, *Mac's Convenience Stores* merely held that an assessor's inclusion of personal property may impermissibly over-assess a property. This shield to protect a taxpayer does not create a sword to strike a taxpayer's compelling evidence that its property is over-assessed by hundreds of thousands of dollars.

2. Kovachevich's understanding of the subject property's utility and the market in which it competes is less convincing than Kulik's understanding, and it led him to base his valuation opinions on sales of properties that were not substitutes for the subject property.
126. Kovachevich has less expertise and experience in appraising industrial properties than Kulik does. That translated to less convincing views of the industrial submarket in which the subject property competes and of the subject property's utility. And it contributes to us agreeing with several criticisms that Kulik and O'Day level against Kovachevich's valuation opinions.
127. We do not agree with all those criticisms, however. For example, we disagree with Kulik's and O'Day's claim that Kovachevich failed to comply with statutory and regulatory requirements by not including a distinct market-segmentation analysis in his appraisal report. While the applicable statute and regulations provide that a market-segmentation analysis may be used to challenge a valuation opinion, they do not affirmatively require a valuation opinion to contain such an analysis. *See* I.C. § 6-1.1-31-6(d) (providing that a valuation does not reflect an improved property's true tax value if the purportedly comparable sales "have a different market or submarket than the current use of the improved property, based on a market segmentation analysis"); *see also*, 50 IAC 30-3-1(a), (d) (providing that while a market segmentation analysis may be used as evidence "refuting or supporting the purported comparability of a sale or appropriateness of a valuation approach in an opinion of true tax value," such an analysis is not required to "accompany a valuation using the sales-comparison approach").
128. In any case, we agree with Kovachevich that he engaged in at least some aspects of the market-segmentation process. He disaggregated sales data by narrowing it down to what he believed was the most credible for valuing the subject property, focusing on factors like sale dates, location, age, and property type. *See* 50 IAC 30-2-3 (explaining that "disaggregation" involves grouping properties together based on similar attributes to differentiate them from other types of properties); *see also*, 50 IAC 30-3-2 (providing a non-exclusive list of factors that may be included in disaggregation).

129. But that does not mean that Kovachevich's segmentation of the market or his choice of comparable sales was persuasive. To the contrary, we find that his view of the submarket in which the subject property competed far less persuasive than Kulik's view. And it led Kovachevich to choose comparable sales that mostly were not substitutes for the subject property. Indeed, five of Kovachevich's eight sales had less than 15,000 square feet of building space compared to the subject property's more than 91,000 square feet. He therefore had to make astronomical adjustments to the sale prices just to account for size differences: he adjusted five of his eight sales by more than half of their unadjusted sale prices, including two that he adjusted by more than 100%. Three sales, including one of the few for which Kovachevich made a size adjustment totaling less than half its unadjusted sale price, were leased to multiple tenants at the time of sale. The subject property, however, was a single-user property that was competing with other single-user properties for buyers. Kovachevich did not know the comparable properties were leased, and he could not determine whether the leases were at market rates, an important concern when determining whether the sale prices reflected the market value of the fee-simple interest.
130. Kovachevich's ignorance of the existing leases is symptomatic of another problem that detracts from the reliability of his valuation opinions: he did not even try to talk to the parties or brokers involved in his comparable sales. Kulik credibly explained that doing so is a basic part of an appraiser's job.
131. Turning to Kovachevich's analysis under the cost approach, we have some concerns about his use of three sales that the Assessor deemed invalid for trending. Although Kovachevich testified that he determined they were arm's-length sales, he looked only at the sales disclosure forms, deeds, and mortgages. But that information was also readily available to the Assessor when she made her determination on the sales' validity. Presumably, she relied on additional information to conclude that the sales were invalid. Because Kovachevich did not talk to any of the parties or brokers involved in the sales, however, he had no additional information.

132. We are even more troubled by Kovachevich's analysis of depreciation. He ignored the property's multi-building layout and glossed over the problems with large semi-trailers accessing the loading dock. We credit Kulik's view that those issues significantly diminished the property's utility and find that they contributed to obsolescence. While Kovachevich did find some obsolescence based on what he considered to be the property's super-adequate office space and site size, he relied partly on his conclusions under the sales-comparison approach to quantify it. As we have already explained, however, Kovachevich based those conclusions mostly on sales that were not substitutes for the subject property.

133. Finally, Kovachevich included personal property in his appraisal. He excluded the subject property's cranes but included the craneways, and we cannot tell how much those craneways contributed to his valuation opinions. As explained above, Kulik also included personal property in his appraisals. But the Assessor seeks to use Kovachevich's appraisal to do something different than what we find Kulik's appraisals probative for. While Kulik's appraisals are probative for setting a ceiling on the real property's value, the Assessor seeks to use Kovachevich's appraisal to support one of two specific numbers for each year: the assessment or Kovachevich's value opinion. But like the assessor in *Mac's Convenience Stores*, she cites to no authority to show that an appraisal that includes some personal property is probative for that purpose.

3. Kulik's valuation opinions are more persuasive than Kovachevich's opinions.

134. These appeals involve a property that is challenging to value. The buildings are old and suffer from obsolescence, making depreciation difficult to accurately estimate and leaving the reliability of even a carefully developed opinion under the cost approach debatable. Indeed, neither appraiser ended up giving that approach much weight in his reconciled valuation opinions. And the relative dearth of sales created its own issues under the sales-comparison approach.

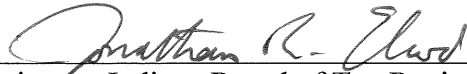
135. In the end, we find Kulik’s valuation opinions more persuasive than Kovachevich’s. Kulik’s appraisal was far from perfect. But he has more knowledge and experience than Kovachevich in dealing with industrial properties. And he used that knowledge and experience to provide a nuanced picture of the Chicago market for industrial properties and to explain how the Northwest Indiana submarket for older industrial properties fit within that larger market. That greater understanding of the market led Kulik to use improved sales that, with two exceptions, were good substitutes for the subject property. Although he likely included personal property in his appraisals, they were sufficiently credible to set a ceiling on the real property’s market value-in-use.
136. By contrast, Kovachevich explained more of his specific judgments, including his adjustments to his comparable properties’ sale prices, and his appraisal did not suffer from the types of inconsistencies that Kulik’s appraisals did. But Kovachevich’s comparatively inferior knowledge and experience in dealing with industrial properties led him to offer a far less convincing view of the subject property’s utility and of the market in which it competed with other properties for buyers. Those shortcomings are reflected in Kovachevich’s choice of purportedly comparable sales, almost none of which we find were substitutes for the subject property. And he included at least some personal property in his valuation opinions without identifying its contributory value. Given those problems, we find his valuation opinions too unreliable to carry much weight.

VI. CONCLUSION

137. Despite their flaws, we find Kulik’s valuation opinions more credible than Kovachevich’s opinions. While Kulik likely included some personal property, his opinions suffice to set a ceiling on the real property’s market value-in-use. We therefore order the assessments to be reduced to the following values:

2014	2015	2018	2019	2020
\$870,000	\$870,000	\$800,000	\$800,000	\$800,000

Date: APRIL 27, 2023



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 of 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>.

Petition No.	Parcel No.
45-023-18-1-3-00719-19	45-02-25-102-002.000-023
45-023-15-1-3-00720-19	45-02-25-102-002.000-023
45-023-14-1-3-00721-19	45-02-25-102-002.000-023
45-023-19-1-3-00909-21	45-02-25-102-002.000-023
45-023-20-1-3-00910-21	45-02-25-102-002.000-023
45-023-18-1-3-00710-19	45-02-25-102-003.000-023
45-023-15-1-3-00711-19	45-02-25-102-003.000-023
45-023-14-1-3-00712-19	45-02-25-102-003.000-023
45-023-19-1-3-00908-21	45-02-25-102-003.000-023
45-023-18-1-3-00713-19	45-02-25-102-004.000-023
45-023-15-1-3-00714-19	45-02-25-102-004.000-023
45-023-14-1-3-00715-19	45-02-25-102-004.000-023
45-023-19-1-3-00907-21	45-02-25-102-004.000-023
45-023-18-1-3-00716-19	45-02-25-102-005.000-023
45-023-15-1-3-00717-19	45-02-25-102-005.000-023
45-023-14-1-3-00718-19	45-02-25-102-005.000-023
45-023-19-1-3-00906-21	45-02-25-102-005.000-023