REPRESENTATIVE FOR PETITIONER: Paul M. Jones Jr., Paul Jones Law, LLC

REPRESENTATIVES FOR RESPONDENT: Brian Cusimano, Attorney
Marilyn Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

CVS Corporation #0434-01,	)	Petition:	45-045-12-1-4-00001
	)		45-045-13-1-4-20469-15
Petitioner,	)		45-045-14-1-4-20609-15
	)		45-045-15-1-4-01578-16
v.	)		45-045-16-1-4-00206-17
	)		
	)	Parcel:	45-09-21-351-024.00-045
Lake County Assessor,	)		
	)	County:	Lake
Respondent.	)		
	)	Assessment Years: 2012-2016	

January 4, 2019

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. The parties offered competing valuation opinions from two appraisers—Gary DeClark for the Petitioner ("CVS"), and Mark Kenney for the Lake County Assessor. We find both appraisers' sales-comparison and income approaches unreliable. We ultimately find Kenney's land valuation, coupled with DeClark's cost approach without his adjustment for external obsolescence, to be the most reliable evidence of the subject property's true tax value for the years at issue.

PROCEDURAL HISTORY

2. CVS timely filed notices for review with the Lake County Property Tax Assessment Board of Appeals ("PTABOA") for the 2012-2016 assessment years. The assessments of record are:

Year	Land	Improvements	Total
2012	$691,400	$965,800	$1,657,200
2013	$691,400	$986,700	$1,678,100
2014	$691,400	$971,100	$1,662,500
2015	$691,400	$1,029,600	$1,721,000
2016	$691,300	$1,077,500	$1,768,800

3. CVS then timely filed Form 131 petitions with the Board. On May 9, 2017, CVS filed a voluntary dismissal of these petitions, which the Board granted. The Assessor filed a request for rehearing asking the Board to reinstate the petitions, which CVS opposed. The Board granted the request in an order dated June 8, 2017.

4. On August 7-9, 2017, and August 31, 2017, our designated Administrative Law Judge, Andrew Howell, held a hearing on CVS's petitions. Neither he nor the Board inspected the subject property.

5. CVS and the Assessor filed a joint appeal management plan in which they agreed to try only the 2012 assessment year and trend from the Board's 2012 determination using stipulated trending factors. After the Board granted the Assessor's request for rehearing, CVS asked to set aside this agreement. The Board denied this request.

6. Mark Kenney, Gary DeClark, J. David Hall, Lawrence Mitchell, Carla Higgins, and Robert Metz testified under oath.

7. The parties submitted the following exhibits:

Petitioner's Ex. A:	None offered.
Petitioner's Ex. B:	Article from Purdue University Website titled *"Your property tax bill is unconstitutional—but not for long,"*

Petitioner's Ex. C:	Walgreens tenant overview,
Petitioner's Ex. D:	*"Investment Facts"* Realty Income, June 30, 2017,
Petitioner's Ex. E:	Documents related to Kenney Sales Comparable 1,
Petitioner's Ex. F:	Documents related to Kenney Sales Comparable 2,
Petitioner's Ex. G:	Documents related to Kenney Sales Comparable 3,
Petitioner's Ex. H:	Documents related to Kenney Sales Comparable 4,
Petitioner's Ex. I:	Documents related to Kenney Sales Comparable 5,
Petitioner's Ex. J:	Documents related to Kenney Sales Comparable 6,
Petitioner's Ex. K:	Documents related to Kenney Sales Comparable 7,
Petitioner's Ex. L:	Documents related to Kenney Sales Comparable 8,
Petitioner's Ex. M:	Documents related to Kenney Sales Comparable 9,
Petitioner's Ex. N:	Documents related to Kenney Sales Comparable 10,
Petitioner's Ex. O:	Documents related to Kenney Sales Comparable 11,
Petitioner's Ex. P:	Documents related to Kenney Sales Comparable 12,
Petitioner's Ex. Q:	Review Appraisal Report prepared by Lawrence Mitchell,
Petitioner's Ex. S:	Discovery responses and documents related to assessment comparables,
Petitioner's Ex. T:	Appraisal Report prepared by Gary K. DeClark with addenda,
Petitioner's Ex. U:	Corporate Guaranty and Ground Lease Agreement,
Petitioner's Ex. V:	One page of Listing for 8400 Ohio Street, Merrillville, IN,
Petitioner's Ex. W:	Enlarged version of assessment comparable spreadsheet,
Petitioner's Ex. X:	Property Record Card for 3518 Central Ave., Lake Station, IN,
Petitioner's Ex. Y:	Property Record Card for 1605 E. 37th Ave., Hobart, IN,
Petitioner's Ex. Z:	Property Record Card for 732 W. Old Ridge Rd., Hobart, IN,
Petitioner's Ex. AA:	Property Record Card for 12937 Wicker Ave., Cedar Lake, IN,
Petitioner's Ex. BB:	Spreadsheet of Kenney sales comparables,
Petitioner's Ex. CC:	Spreadsheet of assessment comparables.

Respondent's Ex. R-1:	Appraisal Report prepared by Mark T. Kenney with appendices,
Respondent's Ex. R-2:	Corrected Page 75 from Resp't Ex. R-1,
Respondent's Ex. R-3:	Deposition of Leo LaPierre,
Respondent's Ex. R-4:	CoStar sales reports for Kenney sales comparables,
Respondent's Ex. RD-1:	Demonstrative exhibit of Contract Rent Based on Construction Costs,
Respondent's Ex. RD-2:	Demonstrative exhibit of stipulated trending,
Respondent's Ex. RD-3:	Demonstative exhibit illustrating Kenney Cost Approach less external obsolescence,
Respondent's Ex. RR-1:	Review Appraisal Report prepared by Integra Realty Resources,
Respondent's Ex. RR-8:	Aerial photographs of the subject property and Kenney comparables,

Respondent's Ex. RR-9:	Corrected page for IRR Review Appraisal report for CVS 2519,
Respondent's Ex. RR-10:	Excerpt from 2012 Marshall Valuation Service Cost Manual,
Respondent's Ex. RR-11:	Property Record Card for 8303 Broadway, Merrillville, IN,
Respondent's Ex. RR:12:	Photograph of subject property,
Respondent's Ex. RR:13:	Photograph of subject property,
Respondent's Ex. RR:14:	Photograph of subject property,
Respondent's Ex. RR:15:	Photograph of subject property,

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

MOTION FOR DEFAULT JUDGEMENT

9. At the hearing, the Assessor alleged that an anonymous email was sent to the Northwest Indiana Times that contained allegations that the Assessor engaged in misconduct and fraud in the course of this case. The email purportedly contained information about the specifics of this case that was not publically available, but had been shared as part of the discovery process. In addition, the Assessor argued that the allegations were completely unfounded and constituted abusive conduct. Based on this email the Assessor moved for default judgement under 52 IAC 2-10-2. The Assessor did not offer a copy of the email into evidence. CVS's counsel stated that he had no knowledge of the email.

10. These circumstances do not warrant the extraordinary remedy of default. The email is not in evidence, and the Assessor can only speculate that it was sent by a person involved in this case. While this situation is troubling, there is no evidence in the record that proves CVS engaged in abusive conduct.

OBJECTIONS

11. The Assessor asked the Board to certify Mark Kenney and J. David Hall as experts in real estate valuation. CVS objected, arguing that the Board should determine whether they are experts. We find the Assessor presented ample evidence showing that Kenney and Hall are qualified to give expert testimony on the subject of real estate valuation.

12. CVS objected to page 1 of Respondent's Ex. 15, a satellite photo, on the grounds that no foundation was laid that it "relates to anything in this report." Hall testified that the photo was of Coers' Sale 3 from her sales comparison approach. We find this testimony sufficient support for the exhibit's authenticity and overrule the objection.

FINDINGS OF FACT

A. The Subject Property

13. The subject property is roughly 1.65 acres and contains a freestanding retail building of approximately 13,281 square feet that is in good repair. It is located at 3655 South Randolph Street, Hobart, Indiana. During the years at issue, it was operated as a CVS brand store. *DeClark testimony; Kenney testimony; Resp't Ex. R-1 at iv; Pet'r Ex. T at vii, 18-21.*

14. Hook SupeRx, LLC bought the site for $2,037,000 in 2010. It then built the improvements. One year later, AIN11IN Hobart North LLC c/o ARC Corporate Properties, LLC bought the site for $4,832,380 and leased it back for operation as a CVS brand store. This sale was part of a large portfolio transaction. *DeClark testimony; Kenney testimony; Resp't Ex. R-1 at 7; Pet'r Ex. T at 1.*

B. Expert Opinions

1. Kenney Appraisal

15. The Assessor engaged Mark Kenney, President of American Valuation Group Inc., to appraise the retrospective market value-in-use of the fee simple estate of the subject property as of March 1, 2012. Kenney certified that he appraised the property and

prepared his appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Kenney acquired a temporary permit for purposes of this assignment from the Indiana Professional Licensing Agency. He is a certified general appraiser in five states, and a Member of the Appraisal Institute ("MAI"). *Kenney testimony; Resp't. Ex. R-1 at 185, 191.*

16. Kenney completed highest and best use analyses as if the property were vacant and as if it were occupied. He determined that the current use is also the highest and best use and for that reason, the market value and market value-in-use of the property were identical. Kenney also found that the property competes in the "national commercial real estate market for investment grade pharmacy property." *Kenney testimony; Resp't. Ex. R1 at 7, 12, 52-55.*

a. Kenney Research and Market Overview

17. Kenney noted that the subject property was located in the Chicago Metropolitan Statistical Area ("MSA"). He examined a variety of economic indicators from the MSA including population, economic base, and transportation. Kenney also examined population, income, and retail sales trends from Lake County and Hobart City. He noted that as of March 1, 2012, markets were out of the recession and improving. *Kenney testimony; Resp't. Ex. R1 at 20-29*.

18. Kenney described the primary neighborhood around the subject property as suburban and located on the commercial corridors of U.S. 6 and S. Randolph Street. Kenney noted that an important aspect of the subject property was that it was located at a signalized intersection or "hard corner." He explained that a traffic signal could increase consumer traffic to a retail building that is located on a hard corner. In addition, he noted that a traffic signal slows traffic down, which can increase the likelihood of a motorist stopping at a retail location on the corner. Kenney testified that drug stores, gas station/convenience stores, restaurants, and banks are typically located on hard corners. Kenney described the subject's location as a "very good corner location for pharmacy use." *Kenney testimony; Resp't. Ex. R1 at 30-38*.

19. Kenney found the property was in excellent physical condition with minimal physical depreciation. In addition, he did not observe any functional or external obsolescence. He based his conclusion that there was no external obsolescence on the strength of both the national and local markets. *Kenney testimony; Resp't Ex. R-1 at 47-48*.

b. Kenney Valuation Approaches

20. Kenney developed all three generally recognized approaches to value: the sales-comparison, income, and cost approaches; although he ultimately relied most heavily on his conclusions under the sales-comparison and income approaches. *Kenney testimony; Resp't Ex. R-2 at 102.*

i. Kenney Sales-Comparison Approach

21. For his sales-comparison analysis, Kenney focused exclusively on leased fee sales based on his belief that the subject competed in the national market for investment properties. Kenney selected 12 comparable properties. All of the properties were either Walgreens or CVS stores. Eleven were located in Indiana and one was in Illinois. Of the 11 in Indiana, 4 were from Lake County. The comparable properties sold between October 2009 and May 2015. The sales included some sale-leaseback transactions as well as some portfolio transactions. On cross-examination, Kenney testified that portfolio transactions can be difficult to use because the allocation may not reflect market value-in-use. Kenney testified that in a fee simple valuation, leased fee sales must be at market rent or adjusted to market rent. He did not know the contract rent for two of the sales. For the other 10 sales, Kenney admitted that he did not know the market rent for those sales. He also testified that to estimate the market rent for most of these properties he would have generally used the same data that he used in his income approach. *Kenney testimony; Resp't. Ex. R-1 at 61-68*.

22. Kenney adjusted four of the comparables up by 10% for ownership interest because they were older leases. He determined the other eight properties required no adjustment for this factor. He also adjusted for market conditions, location, building size, age/condition,

parking, and building coverage ratio. He made no adjustments for financing, conditions of sale, construction quality, or access/visibility. *Kenney testimony; Resp't Ex. R-1 at 61-71*.

23. Kenney also adjusted for economic characteristics. He developed his economic characteristics adjustment by comparing the net operating income ("NOI") for the comparables to the NOI for the subject. These adjustments ranged from -20% to +10%. *Kenney testimony; Resp't Ex. R-1 at 71.*

24. Kenney also made a "risk differential" adjustment in order to get to "some hypothetical market-type tenant, rather than any specific user." This resulted in a -20% adjustment to the Walgreens properties and a -10% adjustment to the CVS sales. *Kenney testimony; Resp't Ex. R-1 at 71*.

25. After adjustment, his adjusted sale prices per sq. ft. ranged from $243.43 to $397.16, with a median of $304.92 and a mean of $303.05. Based on this range, as well as the subject property's recent sale for $4,832,380, Kenney settled on a value of $300/sq. ft., and a rounded conclusion of value of $3,900,000 for this approach. *Kenney testimony; Resp't. Ex. R-1 at 71-72*.

ii. Kenney Income Approach

26. Kenney also developed an income approach. He began by selecting nine rent comparables. All of the properties he selected were also used as comparable sales in his sales-comparison approach. The leases began between April 2000 and September 2009. *Kenney testimony; Resp't. Ex. R-1 at 75-77*.

27. Kenney acknowledged that his rent figures were not near the date of valuation, but noted that he "worked with what [he] had." After considering differences between the comparables and the subject, including factors such as market conditions and location, Kenney arrived at a market rent conclusion of $24/sq. ft. *Kenney testimony*; *Resp't. Ex. R-1 at 78*.

28. Based on a PwC real estate investor survey from 2011 Kenney concluded to a vacancy and credit loss adjustment of 5%. He used the same survey to estimate expenses for fees (3%), vacancy, and replacement reserves. After applying these figures to his potential gross income, he arrived at a NOI of $283,003. *Kenney testimony; Resp't Ex. R-1 at 80-82.*

29. Kenney developed his capitalization rate with a band of investment technique, survey data, and rates derived from his leased comparable sales. He reconciled this data to a loaded capitalization rate of 7.1%. After applying this capitalization rate to his NOI, he arrived at a rounded value conclusion of $4,000,000 under the income approach. *Kenney testimony; Resp't Ex. R-1 at 83-89.*

iii. Kenney Cost Approach

30. Kenney began his cost approach by using the sales-comparison technique to value the land. He began by looking for properties that were similar in size to the subject while also located at signalized intersections with high traffic volume. He ultimately settled on six comparable land sales–all from Lake County. The properties sold between January 2004 and November 2012. They sold for an average of $610,216/acre. Two of the sales were corner locations with frontage along two streets. He concluded that "all of the comparable land sales were superior in terms of location." He reconciled to a lower value of $600,000/acre, which yielded a total land value of $1,000,000. *Kenney testimony; Resp't Ex. R-1 at 90-95.*

31. To estimate his replacement cost new, Kenney looked to the costs for an excellent quality class C drug store from Marshall Valuation Service. He estimated an entrepreneurial profit of 20% and noted that the typical range is 15-25%. He found minimal physical depreciation given the quality of the building and the fact that the subject property was only 2 years into its 45-year economic life as of the valuation date. He made no deductions for functional and economic obsolescence, noting that he did not see indicators of market obsolescence such as widespread vacancy or a dearth of sales. After

adding his improvements into his land value Kenney concluded to $3,800,000 under the cost approach. *Kenney testimony; Resp't. Ex. R-1 at 98-101*.

c. Kenney Reconciliation

32. In his reconciliation, Kenney considered all three approaches, but found the sales-comparison and the income approaches "especially relevant" because he considered the subject property to be an "institutional-quality investment property." He also considered the cost approach because of the age of the building and the type of property. Kenney concluded to a value of $3,900,000 as of March 1, 2012. *Kenney testimony; Resp't. Ex. R1 at 102*.

2. DeClark Appraisal

33. CVS engaged Gary DeClark, Senior Vice President of CBRE, Inc., to appraise the fee simple interest of the subject property. DeClark certified that he appraised the property and prepared his appraisal report in accordance with USPAP. DeClark is a certified general appraiser in three states including Indiana and holds the MAI designation. *Pet'r Ex. T at Cover Letter p. 2, Addendum G.*

a. DeClark's Research and Market Overview

34. DeClark began with a market overview and analysis. He determined the subject was located in the Hobart market with a primary trade area of one to five miles. He explained that the North Hobart Road/East 37th Avenue corridor where the subjected is located includes office, retail, and commercial uses, surrounded by residential uses along secondary roadways. After examining area demographic trends including population and household income, he concluded that "demand for both comparable surrounding area retail properties and the subject will continue to be favorable." DeClark concluded the outlook for the subject's neighborhood was "generally stable performance." He also looked at the Northwest Indiana submarket of the Chicago MSA. He noted that retail space had increased by about 1% for the five years prior to the assessment date. He also noted that between 2007 and 2011 vacancy increased from 5.1% to 6.9%. On cross-examination, DeClark admitted he was unable to find any specific signs that the subject

property's neighborhood was unhealthy as of the valuation date. He concluded that the highest and best use of the property was "retail development." *DeClark testimony; Pet'r Ex. T at 12-17, 34-45.*

b. DeClark's Valuation Approaches

35. DeClark developed all three generally recognized approaches to value–the sales-comparison, income, and cost approaches. He gave the most weight to the sales-comparison approach with secondary consideration to the income approach. *DeClark testimony; Pet'r Ex. T at 81.*

i. DeClark's Cost Approach

36. DeClark began his cost approach by developing a value for the land using a sales-comparison analysis. He settled on five sales of vacant land in Northwest Indiana that sold between January 2009 and February 2012 for $8.07/sq. ft. to $10.07/sq. ft. He then made qualitative adjustments for size, frontage, location, and corner access. DeClark explained that because the subject was on a corner, he had to make an upward adjustment to four of the five sales because they were not located on a corner. He testified that the other sale was located on a corner and did not require adjustment. After being presented with an aerial photograph of this property on cross-examination, DeClark admitted that this property was not on a corner either. Based on his qualitative analysis he concluded the subject property's value would be between $9.50/sq. ft. and $10.00/sq. ft. He ultimately settled on a value of $9.76/sq. ft. for a total land value of $700,000. *DeClark testimony; Pet'r Ex. T at 47-49; Resp't Ex. RR-8 at 10.*

37. To estimate the replacement cost new for the subject property, DeClark used cost schedules from Marshall Valuation Service. He used the cost figures for a good quality 'Class C' Retail Store. He included adjustments for sprinklers, mini-drive-thru, pharmacy, and canopy. He also used multipliers to adjust the building costs for the number of stories, height per story, and floor area. Finally, he applied cost multipliers for the current and local costs to arrive at a final cost of $118.99/sq. ft. After adding additional costs for signage, landscaping, parking/walkways, and miscellaneous site

improvements he arrived at direct costs of $1,736,338. He noted this figure was similar to the subject property's actual construction budget. *DeClark testimony; Pet'r Ex. T at 51-58*.

38. DeClark then adjusted this figure for indirect costs and entrepreneurial profit. DeClark estimated indirect costs of 5% and entrepreneurial profit of 10%. DeClark then estimated physical depreciation of 4% using the age-life method based on an expected economic life of 50 years and an effective age of 2 years. *DeClark testimony*; *Pet'r Ex. T at 53-58.*

39. Next, DeClark considered whether the property suffered from either functional or external obsolescence. He determined there was no functional obsolescence. He did find there was external obsolescence based on "the difference between the Pro-Forma stabilized NOI and Cost Feasible NOI." DeClark calculated the cost feasible NOI by multiplying the depreciated cost of the improvements and the land value by his capitalization rate from his income approach. This calculation yielded a feasibility NOI of $241,164. From that, he subtracted his pro-forma stabilized NOI of $150,014 from his income approach to arrive at "NOI differential" of $91,150. He noted that this differential "essentially indicates that it would not typically be feasible to construct a similar property in the current economic environment given the cost of construction, inflation, rental rates, etc. as compared to the market rental rate for similar product." He also found that "although it may not have been feasible to construct a similar improvement in the economic time period (2012) for a typical market participant, it was feasible for CVS to develop the property based on their specific business model." DeClark capitalized the NOI differential to arrive at an estimate of $992,177 in external obsolescence. He also testified that failing to include this obsolescence adjustment would result in a leased fee valuation rather than a fee simple valuation. *DeClark testimony*; *Pet'r Ex. T at 56-57.*

40. After adding the land value and the entrepreneurial profits to the direct and indirect building costs and deducting out depreciation and external obsolescence, DeClark arrived at a rounded value of $1,630,000 under his cost approach. *DeClark testimony; Pet'r Ex. T at 57.*

ii. DeClark's Sales-Comparison Approach

41. For his sales-comparison analysis, DeClark looked for fee simple sales of properties that sold for continued retail use within the Northern Indiana market. He excluded sales that were part of portfolio transactions. *DeClark Testimony*; *Pet'r Ex. T* at 59-65.

42. DeClark chose five sales from Elkhart, Schererville, Mishawaka, and Muncie. They included two former Advanced Auto Parts, a former HDW Commercial Interiors, a ReStore – Discount Store, and a Dollar General. After the sale, the purchaser of the HDW property converted it to a medical outpatient facility. The properties sold between December 2010 and December 2012 for between $95.19/sq. ft. and $127.55/sq. ft. Three were interior locations while two were corner locations. They were between 2 and 18 years old as of the date of sale with a median age of approximately 13 years. Three of the buyers were tenants or occupants of the properties prior to sale. DeClark qualitatively adjusted the sales for a number of factors including market conditions, location, size, age/condition, traffic counts/exposure, parking, land-to-building ratio, and build-out. *DeClark Testimony*; *Pet'r Ex. T at 59-65, 76.*

43. In his reconciliation, DeClark gave greatest weight to the sales that were nearer to the valuation date and the sales with lower total adjustments. DeClark ultimately settled on a value of $1,600,000 or $120.47/sq. ft. for the subject property. *DeClark Testimony; Pet'r Ex. T at 64-65.*

iii. DeClark's Income Approach

44. Under the income approach, DeClark relied on lease data for properties in Merrillville, Hammond, and Highland to estimate market rent. The leases included two strip centers, and three free-standing single-unit spaces. DeClark acknowledged he would have preferred to only use rent comparables from freestanding buildings, but because of limited availability, he was required to use rents from two in-line spaces. He gave the rents from those spaces less emphasis. None of the three freestanding spaces was located on a signalized intersection. The buildings were between 16 and 58 years old as of the lease dates. The leased spaces ranged from 8,925 to 97,163 square feet, and rents ranged

from $11.24/sq. ft. to $13.36/sq. ft. Based on the CoStar Retail Market Report and the lease data for comparable properties, DeClark ultimately chose a rental rate of $12.50/sq. ft. due to the "recent downward trends in occupancy, current overall softness of the submarket and extent of competition, [and] available retail space for lease." *DeClark Testimony*; *Pet'r Ex. T at 66-69.*

45. Based on his opinion of the local market, DeClark deducted 5% of potential gross income to account for vacancy and collection loss, which he based on retail vacancy in the Chicago MSA and Northwest Indiana submarket. DeClark deducted expenses that included property insurance, repairs and maintenance, a management fee, miscellaneous non-reimbursable landlord expenses, and replacement reserves, to arrive at a NOI of $150,014. *DeClark Testimony*; *Pet'r Ex. T at 42-43, 66-75, 80*.

46. To determine his capitalization rate, DeClark used a comparable sales analysis, published investor surveys, and a band-of-investment analysis. For his comparable sales analysis, DeClark first looked to three sales from his sales comparison approach. Although these properties were fee simple sales, the buyers were the tenants immediately prior to the sale. DeClark extracted implied capitalization rates by using the last reported contract rent. These rates ranged from 7.26% to 10.40%. He also looked at seven additional sales with rates ranging from 7.52% to 9.10%. His report stated that these were sales of freestanding buildings "similar in construction, year built, and quality" and the tenants included "dollar stores, drug stores, general merchandise and electronics." He did not provide any more data specific to any individual sale. He also looked at published investor surveys that indicated a range of 8.75% to 9.50%. Finally, DeClark performed a band-of-investment analysis, in which he assumed, among other things, a 70% loan-to-value ratio, an interest rate of 5%, and a desired equity dividend rate of 12%. This analysis yielded a rate of 9.10%. Giving equal weight to all four data sources, DeClark settled on an overall capitalization rate of 9.0%. *DeClark testimony*; *Pet'r Ex. T at 76-78.*

47. He loaded the capitalization rate with the landlord's share of property taxes to arrive at a rate of 9.187%. DeClark applied it to his NOI to arrive at a rounded value of $1,630,000 or $122.73/sq. ft. *DeClark testimony; Pet'r Ex. T at 79-80*.

c. DeClark's Reconciliation

48. DeClark relied primarily on his sales-comparison approach because of the quality of data and because he found it best reflected the views of market particpants. He found his income approach to be reasonable, but gave it secondary consideration because he was valuing the fee simple interest. He developed the cost approach because the building was only two years old as of the date of valuation. But, he found that the reliability of the cost approach "somewhat diminished" due to the substantial amount of depreciation present in the property. DeClark concluded to a reconciled value of $1,615,000 for the 2012 assessment year. *DeClark testimony; Pet'r Ex. T at 81*.

C. Review Appraisals

1. Mitchell's Review of Kenney Appraisal

49. CVS hired Lawrence Mitchell of Valbridge Property Advisors to conduct a review appraisal of Kenney's work. Mitchell is an Indiana certified general appraiser, and a level II assessor-appraiser. He also holds the MAI designation. Mitchell certified that he conducted his review appraisal according to USPAP, but did not come to an independent opinion of value. *Mitchell testimony; Pet'r Ex. Q at 21, 26-27*.

50. Mitchell found Kenney to be knowledgeable, but noted that he fundamentally misunderstood how Indiana's market value-in-use differs from market value. Mitchell did not believe that Kenney gained the necessary competency required under USPAP to appraise a property in Indiana. Mitchell pointed to several examples such as a lack of a deduction for personal property, failure to follow Board and Indiana Tax Court guidance, and the use of portfolio and sale-leaseback transactions. *Mitchell testimony; Pet'r Ex. Q at 6*.

51. Mitchell made several general criticisms, the most significant of which we recount here. He noted that Kenney's work file contained a dearth of supporting information and verification data. In addition, he found that no source was included for Kenney's lease rates. He also noted that one of Kenney's comparables was listed several times in the

report with different building sizes and construction dates, but because Kenney did not include supporting information for that comparable Mitchell was unable to verify the correct building size or construction date. Mitchell testified that Kenney erroneously treated leased fee and fee simple sales as equivalent. *Mitchell testimony; Pet'r. Ex. Q at 8.*

52. Turning to Kenney's sales-comparison approach, Mitchell noted that several of the sales were portfolio sales, sale-leaseback transactions, or purchased by real estate investment trusts. He emphasized that these sales should be used with caution because they may include value that is not attributable to the real estate. He found no indication that Kenney used caution in the use of these sales. Mitchell noted that one of the requirements for using a leased fee sale is that it must be leased at market rent or properly adjusted for non-market rent. Mitchell found that because Kenney did not know the rent for two of the sales, he could not have properly analyzed those sales. Mitchell also noted several factual errors regarding lease rate, lease term, sale price, and acreage. *Mitchell testimony; Pet'r Ex. Q at 10-11.*

53. Next, Mitchell noted that although Kenney made adjustments for lease rate and risk differential, he provided no support or explanation for how he developed those adjustments. Mitchell found this especially troubling because Kenney used only leased fee sales. Mitchell also noted that because one adjustment was based on Kenney's NOI from his income approach, the independence of the sales-comparison approach was undermined. Mitchell also found that this adjustment could have been duplicated in Kenney's economic characteristics adjustment, but that the appraisal contained insufficient explanation to make that determination. Finally, Mitchell noted several inconsistent adjustments for the same attribute, such as location and parking adjustments. *Mitchell testimony; Pet'r Ex. Q at 11-14.*

54. Regarding Kenney's income approach, Mitchell found there was little to no explanation for adjustments for any of the comparables. He found that Kenney's lease comparables 2 and 9 were actually the same property (Kenney's sales comparable 4) and that they

contained inconsistent information. Mitchell also noted that the leases ranged from 2000-2009, but that the valuation date was in 2012. Given Kenney's description of the subject property's active and healthy market, Mitchell would have expected there to have been at least some leases closer to the valuation date. Mitchell also criticized Kenney for only using leases that arose out of build-to-suit transactions. He stated that these leases should not be used because they would not have been exposed to the open market. He also found that Kenney should have adjusted for the 20-25 year lease terms. Mitchell explained that all the leases had the same rental rate for the entire term of the lease. He testified that in those situations, the lease is typically above market at the beginning of the lease term and below market by the end. According to Mitchell, Kenney should have at least discussed this issue in the report. *Mitchell testimony; Pet'r. Ex. Q at 15-17*.

55. Mitchell testified that Kenney provided little or no support for his vacancy rate. He found Kenney's expense analysis to be supported and generally credible. Mitchell found Kenney's capitalization rate to be largely unsupported by any of the three methods Kenney relied on. Specifically, Mitchell noted that Kenney's use of a band of investment technique, a method that relies on mortgage rates, was inconsistent with Kenney's assertion that the market is largely cash buyers. Given that situation, Mitchell stated that a rate developed with a band of investment technique was largely meaningless because it would not reflect the actions of market participants. Mitchell stated that the investor surveys Kenney cited were not sufficiently related to the subject property. For the sales-derived capitalization rates, Mitchell found that because all of the sales were for leases to top tier credit tenants (Walgreens and CVS), those rates would not have reflected the general market. He also noted this was inconsistent with Kenney's use of a risk differential adjustment in the sales comparison approach. Finally, Mitchell noted that the Kenney's capitalization rates were essentially based on gross income data. Kenney applied these rates to the net income he developed for the subject property. Mitchell found this application to be comparing apples to oranges. *Mitchell testimony; Pet'r. Ex. Q at 15-17*.

56. Mitchell also reviewed the cost approach, starting with the land sales analysis. He pointed out that many of the sales were several years before the valuation date, which he found inconsistent with Kenney's conclusion that the subject property was located in a very active market. He noted that Kenney did not provide an adjustment grid and that his narrative regarding his adjustments was inconsistent. Specifically he noted that although Kenney found that all of the comparables were superior in location, Kenney's conclusion was "very close to the average." He also testified about several specific adjustments he thought were inappropriate. *Mitchell testimony; Pet'r Ex. Q at 17-18.*

57. Regarding cost estimates, Mitchell testified that it appears Kenney included some personal property, such as lighting. Mitchell also found Kenney's estimate of $25/sq. ft. for concrete walks and pads was excessive and unsupported. Mitchell testified that Kenney's 20% entrepreneurial profit estimate seemed excessive, and lacked sufficient support in the appraisal. Mitchell also testified that because entrepreneurial profit rewards a developer for risk, such a high rate was inconsistent with the Kenney's low capitalization rate and risk differential adjustments. Mitchell did find Kenney's conclusions about physical deterioration, functional obsolescence and external obsolescence were credible. *Mitchell testimony; Pet'r Ex. Q at 17-19.*

58. Because Mitchell did not find any of Kenney's three approaches credible, Mitchell did not find the conclusions credible or supported. In particular, he noted that Kenney failed to credibly value the fee simple interest of the subject property. *Mitchell testimony; Pet'r Ex. Q at 19-20.*

2. Hall's Review of DeClark Appraisal

59. The Assessor engaged David Hall, MAI, of Integra Realty Resources, Inc. to review DeClark's appraisal. He has appraised residential, commercial, and special-purpose properties. Hall certified that his appraisal review complied with USPAP. *Hall testimony; Resp't Ex. RR-1 at Cover Letter page 2, Addendum A.*

60. In regard to DeClark's conclusion that the subject property was located at the intersection of two well-traveled corridors, Hall found that DeClark failed to give this factor

appropriate consideration throughout the rest of his report. Regarding the site analysis, Hall criticized the "average" ratings for the visibility and traffic volume. Hall believed these ratings should be "excellent," "good," or "above average" due to the subject's "rare" attribute of frontage along two five-lane commercial thoroughfares. *Hall testimony*; *Resp't Ex. RR-1* at 15.

61. Turning to DeClark's land valuation, Hall noted that none of the comparables were located at the corner of a major intersection like the subject property. He concluded that DeClark's analysis did not establish an upper limit of value because all five of the land sales were inferior to the subject property. Based on DeClark's data, Hall concluded that the subject's land value should exceed DeClark's estimate of $700,000. *Hall testimony; Resp't Ex. RR-1 at 2, 25-30*.

62. Hall also criticized DeClark's deduction for external obsolescence because it conflicted with DeClark's conclusion that "demand for both comparable surrounding area retail properties and the subject will continue to be favorable." Hall also noted that DeClark did not provide any evidence of market trends consistent with economic obsolescence. In contrast, Hall found that DeClark presented a wealth of information that indicated a healthy market, including increasing employment, lending, personal income, population, and home prices. He also noted stable vacancy and rental rates. Hall found these factors contradict "the appraiser's conclusion that the subject was impacted by eternal obsolescence." Hall also pointed out that in DeClark's sales comparison approach he made a positive market conditions adjustment to a 2010 sale, and negative market conditions adjustments to the sales from after the valuation date. Hall found this to be another indication of a healthy market. Finally, Hall noted that DeClark's calculation for external obsolescence relied entirely on his estimate of market rent. Because Hall did not find DeClark's market rent estimates to be credible, he found the external obsolescence adjustment to be unsupported. *Hall testimony; Pet'r Ex. T at 21, 34; Resp't Ex. RR-1 at 2, 16, 22, 24, 31-35.*

63. Regarding DeClark's sales comparison analysis, Hall determined that three of the comparables were purchased by the respective tenants. Of these, he found two may have been related transactions that could have been impacted by a purchase option or buyout clause. Hall criticized these comparables because the buyer and seller may have been atypically motivated and thus the sales may not represent arm's length transactions. Hall found one parking adjustment lacked support and was inconsistent with the data. Hall also noted that one sale was acquired for non-retail use and was not adjusted for expenditures after the purchase. Based on these criticisms, Hall concluded that DeClark's analysis did not yield a reliable upper limit for the value of the subject property. *Hall testimony; Resp't Ex. RR-1 at 2-3, 35-38.*

64. Turning to the income capitalization approach, Hall concluded that three of the rent comparables did not conform to DeClark's market segmentation criteria for comparable properties. Moreover, according to Hall, all five of the comparable rent properties were inferior to the subject in age/condition, frontage, exposure, and visibility, but DeClark failed to properly consider these differences in his analysis. Thus, Hall determined that the estimate of market rent was not credible. *Hall testimony; Resp't Ex. RR-1 at 3, 18-21, 39-46*.

65. Hall also had several issues with DeClark's estimate of a capitalization rate. Hall began by noting that the rates DeClark extracted from his primary comparable sales were based on potential gross income, while his concluded rate was applied to net operating income. Hall found this to be an error and inconsistent with *The Appraisal of Real Estate.* Hall also noted that DeClark's concluded rate exceeded the range from his secondary comparable sales. Overall, Hall determined that DeClark's loaded capitalization rate of 9.187% was not appropriate or reasonable based on the information presented. *Hall testimony; Resp't Ex. RR-1 at 3, 18-21, 39-46.*

66. Because Hall did not find any of DeClark's valuation approaches credible, Hall also found DeClark's reconciliation was not sufficiently supported, appropriate, or reasonable. *Hall testimony; Resp't Ex. RR-1 at 1-2.*

D. Other Testimony

67. CVS called Robert Metz, a hearing officer with the Lake County Assessor's office, who testified regarding the assessments of other drug stores in Lake County. Specifically, he testified that in 2012 Walgreens stores were assessed between $112.26/sq. ft. and $120/sq. ft. while the subject property was assessed at $129.12/sq. ft. He also testified that the Walgreens assessments were the result of settlements. *Metz testimony; Pet'r Exs. S, W-Z, AA.*

68. CVS also called Carla Higgins, its own tax representative. Higgins prepared two assessment comparison analyses. First, she examined Kenney's Indiana sales comparables. She determined they had an average 2013 assessment of $95.76/sq. ft. and a median assessment of $102.85/sq. ft. Second, she presented an assessment comparison of other freestanding retail properties in Hobart. In this analysis, she found 2015 assessments ranging from $20.41/sq. ft. to $132.04. She compared these to the subject property's 2015 assessment of $132.43/sq. ft. and to Kenney's conclusion of $300.09/sq. ft. She also testified that there was a "huge disparity" between Kenney's conclusion and the assessments of the Walgreens stores in Lake County. *Higgins testimony; Pet'r Exs. BB, CC.*

Conclusions of Law and Analysis

A. Burden of Proof

69. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official,

stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b). The parties agreed that the Assessor had the burden of proof based on a greater than 5% increase between the 2011 and 2012 assessments of the subject property.

70. CVS argued that the Assessor failed to meet the burden of proof because Kenney admitted the current assessments are incorrect and the Assessor sought a higher value, and therefore the value must revert to the prior year's assessment. The Indiana Tax Court rejected this argument in *CVS Corp. v. Monroe Cty. Assessor,* 83 N.E.3d 1286, (Ind. Tax Ct. 2017) where it found that when the burden has shifted the reversion applies if "the burden to prove the property's correct assessed value has not been met by either party." *Id.* at 1290. Thus, we must weigh the evidence to determine if either party met the burden of proof before applying the reversion.

B. Assessment Comparisons

71. We do not find the assessment comparison Higgins presented to be persuasive evidence of the true tax value of the property. She did not explain how her purportedly comparable properties compared to the subject, nor did she establish that she used generally accepted appraisal principles. CVS claims that her evidence, along with the testimony from Metz, shows that the assessments are in violation of the Constitutions of both Indiana and the United States of America. We address only the claimed violation of the Indiana Constitution because CVS did not develop its argument regarding the U.S. Constitution.

72. Specifically, according to CVS, the assessment comparison evidence shows that it is being assessed inequitably as compared to properties owned by Walgreens in Lake County. Assuming for the purposes of this argument that this claim can be successful regardless of whether Walgreens' assessments are the product of settlements, CVS still failed to prove its case. According to the Tax Court, "when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values

of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). While CVS did provide objectively verifiable market data for the subject property, it did not provide any such data for the Walgreens properties it claims are receiving disproportionate assessments. For that reason, CVS's constitutional claim fails.

C. Expert Opinions

1. Kenney's Appraisal

73. Kenney considered all three approaches to value, but he relied most heavily on the sales-comparison and income approaches. We find both of these approaches have serious problems that ultimately undermine their reliability. But we find Kenney's cost approach to be reliable evidence of value.

a. Kenney's Land Valuation and Cost Approach

74. We first examine Kenney's land valuation. Kenney appropriately considered the subject property's corner location when he looked for comparable land sales. He presented two sales that had frontage on two streets like the subject. But Kenney's land valuation was not without its problems.

75. As Mitchell pointed out, Kenney provided only scant explanation for his land sale adjustments. In addition, although Kenney found all of his land sales were superior in location to the subject, he only accounted for this difference with a minor negative deviation from the average sale price per acre. We find these problems detract from the persuasiveness of Kenney's land sales analysis.

76. We also agree with Mitchell's criticisms of Kenney's cost estimates. In particular, Mitchell found that Kenney included personal property and did not support his estimates for concrete walks/pads. We also credit Mitchell's testimony that Kenney's estimate of entrepreneurial profit was unsupported and inconsistent with his low capitalization rate.

Despite these concerns, we find Kenney's cost estimates and his entire cost approach to be a minimally credible estimate of the true tax value of the subject property.

b. Kenney's Sales-Comparison Approach

77. All of Kenney's sales comparables were leased at the time of sale. Both Mitchell and Kenney testified that in a fee simple valuation a leased fee sale must be leased at market rent or properly adjusted to market rent to be used as a sales comparable. For 2 of his 12 sales, Kenney did not know the lease rate. Thus, it would have been impossible for him to determine whether they were leased at market rent. Kenney then admitted that he did not know the market rent for the other 10 sales. Although Kenney later testified that he would have used the same data from his income approach to determine the market rent for these sales, there is no indication that he actually performed this analysis.[1] Because Kenney did not have this information for any of his comparables, we have little confidence that his leased fee comparables were leased at market rates.

78. Kenney did make several different adjustments for various factors related to the lease, including the age of the lease, the credit quality of the lessee and the economic characteristics as compared to the subject. As Mitchell pointed out, these adjustments were not well explained or supported. We find them to be conclusory. More importantly, we note that none of these adjustments could have properly adjusted the leases for market rent, given the lack of information available to Kenney as discussed above. Mitchell also noted several additional problems with Kenney's sales comparables, notably that several were portfolio sales or sale-leaseback transactions and Kenney failed to give proper consideration to these factors. Ultimately, we find all of these problems substantially undermine Kenney's sales-comparison approach and render it totally unreliable.

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[1] We also note that because Kenney used the leases from his sales comparables in his income approach, this analysis would have been somewhat circular.

c. Kenney's Income Approach

79. Mitchell made several significant criticisms of Kenney's development of market rent. Notably, he took issue with the lack of leases near to the valuation date, the use of built-to-suit leases, and the lack of adjustment for long lease terms. While we do not find these issues necessarily preclude the use of a lease comparable, we do find that they merit some analysis on the part of the appraiser. Kenney's conclusion that he "worked with what he had" in regards to the lack of leases close to the valuation date does little to convince us that he came to a reliable indication of market rent. We also agree with Mitchell that the built-to-suit leases may not have been exposed to the market and thus may not have been reliable evidence of market rent. Overall we find Kenney's market rent conclusions to be largely unsupported due to his overall lack of analysis and explanation.

80. In addition, Mitchell observed several problems with Kenney's development of a capitalization rate. For instance, Mitchell found that Kenney developed his rate largely from gross rent data, but then applied the rate to the subject's net operating income. Mitchell also found Kenney's choice to use a band of investment technique was inconsistent with his assertion that the market was largely made up of cash buyers. We agree with these criticisms.

81. Overall, we find Kenney's income approach conclusions to be unsupported. Most of his lease comparables have "red flags" that generally require further analysis by the appraiser. By failing to provide that analysis, Kenney has failed to support his conclusion.

d. Kenney's Valuation Opinions

82. As discussed above, we find Kenney's sales-comparison and income approaches unreliable. Although Kenney did not primarily rely on the cost approach, we find it to be minimally credible and sufficient to meet the Assessor's burden of proof. We now turn to whether CVS's evidence was sufficient to rebut Kenney's cost approach.

2. DeClark's Appraisal

83. DeClark developed all three approaches to value, but relied primarily on the sales-comparison approach with secondary consideration to the income approach. We find both of these approaches have serious problems that ultimately undermine their reliability. DeClark gave less weight to the cost approach because of the amount of depreciation he estimated. The vast majority of this depreciation came from DeClark's external obsolescence adjustment, which we find unsupported. We find DeClark's cost approach without this adjustment to be a reliable estimate of value.

a. DeClark' Land Valuation and Cost Approach

84. Hall's primary criticism of DeClark's land valuation was that he failed to give appropriate consideration to the subject's corner location when selecting his comparables. We agree with Hall. Of the five sales DeClark presented, he had to make a qualitative upward adjustment to four of them for the lack of corner location. On cross-examination, he admitted that the only sale that he did not make this adjustment to was also not located on a corner. Thus, all of DeClark's land sales are inferior to the subject in this regard and he failed to bracket the subject property. We find this detracts from the persuasiveness of DeClark's land valuation and undermines his credibility.

85. We find DeClark's estimates of replacement cost new and physical depreciation to be credible. We also note that DeClark supported his estimates with the subject property's actual construction budget. Hall primarily took issue with DeClark's estimate of external obsolescence. First, Hall noted several economic factors that were inconsistent with a finding of external obsolescence. These included increasing employment, personal income, population, and home prices. He also noted stable vacancy and rental rates. Second, Hall found that DeClark's quantification of obsolescence was unreliable because it relied entirely on his market rent analysis that Hall did not find credible. DeClark's primary justification for finding external obsolescence was that the NOI from his income approach was significantly lower than a cost feasible NOI he developed. He also admitted that he was unable to point to any signs of an unhealthy market in the subject's

neighborhood. As we will discuss below, we do not find DeClark's market rent conclusion, the foundation of his NOI, to be credible. Thus, we agree with Hall that DeClark's finding of external obsolescence is unsupported. We do find DeClark's land valuation and physically depreciated replacement cost to be a reliable estimate of value.

b. DeClark's Sales-Comparison Approach

86. DeClark presented five sales in his sales-comparison analysis. Of those five, Hall found that three were purchased by the occupying tenants. Two of those appear to be related transactions. We agree with Hall that under these circumstances DeClark should have provided more analysis before using these sales. Of the remaining two sales, one was converted to a medical outpatient building after sale and the other was an interior location rather than a corner. For these reasons, we find DeClark failed to present sufficient data and analysis to support a credible opinion of value under the sales-comparison approach.

c. DeClark's Income Approach

87. Hall found that DeClark's lease comparables were inferior to the subject in age/condition, frontage, exposure, and visibility. We agree that the comparables bear little resemblance to the subject property, a newly constructed freestanding retail building on a corner lot with access to two well-traveled corridors. Two of the five comparables were in-line spaces. Of the three freestanding buildings, not one was located on a major intersection. In addition, all of the comparables were significantly older than the subject. DeClark's failure to provide more comparable data, or to provide credible adjustments for these differences, renders his market rent conclusions unreliable.

88. Like Kenney, it appears DeClark used gross rent data to develop a capitalization rate that he applied to net operating income. This point, taken with his unreliable market rent estimate, compels us to find his income approach unreliable.

d. DeClark's Reconciliation

89. DeClark gave primary consideration to the sales-comparison approach. We find DeClark failed to present sufficient reliable data to support his conclusion under this approach. He

gave secondary consideration to his income approach, which we reject for the same reason. Although his external obsolescence adjustment was unsupported, we find his cost approach absent that adjustment to be a reliable estimate of value.

C. Conclusions

90. Both parties ask the Board to adopt the reconciliations of their respective appraisers. Because we find two of the three approaches that each appraiser gave the most weight to unreliable, we are unable to adopt either appraisers' conclusion. A finding that a portion of an appraisal is flawed does not necessarily mean that a party has failed to make a prima facie case. *Marion Cnty. Assessor v. Gateway Arthur, Inc.*, 43 N.E.3d 279, 285 (Ind. Tax Ct. 2015). Rather, if the Board determines "that parts of an appraisal are not probative, it should not then accept those parts of the appraisal to value the property." *Marion County Assessor v. Wash. Square Mall, LLC*, 46 N.E.3d 1, 14 (Ind. Tax Ct. 2015). *Washington Square Mall* and *Gateway Arthur* make clear that the Board is not compelled to accept or reject in whole an appraiser's final opinion of value. The Board may base a valuation on probative portions of an appraisal. *See Wash. Square Mall*, 46 N.E.3d at 14 (remanding to the Board to value the property based solely on the appraiser's direct capitalization method). Furthermore, the Board may consider the opposing party's arguments and evidence in evaluating an appraisal. *Gateway Arthur, Inc.*, 43 N.E.3d at 285 (affirming the Board's use of an appraisal after omitted property tax reimbursements were included).

91. Both appraisers performed a cost approach, although neither appraiser gave it primary weight. The cost approach can be especially relevant for newer properties like the subject, which was approximately two years old as of the assessment date, because there is minimal physical depreciation.

92. Both appraisers presented minimally credible land valuations, although both suffered from similar problems. Kenney presented land sales that were almost exclusively superior to the subject property, while DeClark's were the opposite. We adopt Kenney's land valuation of $1,000,000 because we are troubled by DeClark's failure to give

sufficient consideration to the subject property's corner location and his erroneous conclusion that one of his five sales was located on a corner.

93. Mitchell pointed out several significant problems with Kenney's cost estimates. We find DeClark's cost estimates to be more persuasive, and supported by the subject property's actual construction budget. But we remove his adjustment for external obsolescence because it was unsupported. After adding this to Kenney's land value, we arrive at a value of $2,925,100 (rounded) for the 2012 assessment year. We apply the agreed trending factors to yield the following values for each year under appeal:

Year	**Value**
2012 (base year)	$2,925,100
2013	$2,968,200
2014	$3,013,100
2015	$3,010,900
2016	$3,021,000

The Assessments are changed accordingly. This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.