REPRESENTATIVES FOR PETITIONER:
Paul M. Jones, Jr., Attorney
Brigham E. Michaud, Attorney

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

BEFORE THE INDIANA BOARD OF TAX REVIEW

GIV Green Tree Mall Investors LLC,	Petition Nos.: 10-011-17-1-4-02089-17
	10-011-18-1-4-00147-20
Petitioner,	10-011-19-1-4-00148-20
	Parcel No.: 10-14-03-200-611.000-011
v.	
	County: Clark
Clark County Assessor,	
Respondent.	Assessment Years: 2017, 2018, and 2019

October 15, 2021

FINAL DETERMINATION

I. INTRODUCTION

1. GIV Green Tree Mall Investor, LLC (the "Green Tree") appeals the assessment of the Green Tree Mall (the "Mall"), seeking a lower value, and the Clark County Assessor (the "Assessor") seeks to increase it. After considering each of the parties' expert opinions, the Indiana Board of Tax Review (the "Board") concludes that neither party has proved the assessment should be changed.

II. PROCEDURAL POSTURE AND MATTERS OF RECORD

2. Green Tree timely initiated its 2017, 2018, and 2019 assessment appeals with the Assessor. For 2017, the parties agreed to forego proceedings before the Clark County Property Tax Assessment Board of Appeals ("PTABOA"), and, pursuant to Ind. Code § 6-1.1-15-2.5(1), Green Tree filed its Form 131 with the Board. For 2018 and 2019, the PTABOA failed to hold a hearing within 180 days after the Petitioner filed notice for review, and, pursuant to Ind. Code § 6-1.1-15-1(o), the Petitioner filed its Forms 131 with the Board.

3. Beginning on September 21, 2020, Tom Martindale, the Board's designated administrative law judge ("ALJ"), remotely conducted a four-day consolidated hearing via Zoom. Neither the Board nor the ALJ inspected the subject property. Appraisers Laurence Allen and Art Schwertz were sworn and testified for the Petitioner. Appraisers Irene Sokoloff and Mark Kenney were sworn and testified for the Respondent.

4. The Petitioner offered the following exhibits:

Petitioner Exhibit A:	Appraisal of the subject property completed by Laurence Allen,
Petitioner Exhibit B:	Replacement for page 107 of Mr. Allen's appraisal,
Petitioner Exhibit D:	Appraisal review of the Kenney appraisal completed by Larry Mitchell, and Arthur Schwertz,
Petitioner Exhibit E:	Reproduction pages from Petitioner's Exhibit D.

5. The Respondent offered the following exhibits:[1]

Respondent Exhibit A:	Appraisal of the subject property completed by Mark Kenney,
Respondent Exhibit B:	Appraisal review of the Allen appraisal completed by Irene Sokoloff,

[1] During the hearing the Respondent requested, and the ALJ allowed, supplement pages to Respondent's Exhibits P, U, V, and W post-hearing.

Respondent Exhibit E:	Offering memorandum for Crossroads Mall,
Respondent Exhibit G:	Income statement for College Square Mall,
Respondent Exhibit I:	Offering memorandum for Fashion Square Mall,
Respondent Exhibit J:	2017 annual report for Pennsylvania Real Estate Investment Trust
Respondent Exhibit K:	Offering memorandum for The Lakes Mall,
Respondent Exhibit L:	Offering memorandum for University Mall,
Respondent Exhibit M:	Rent roll for Westland Mall,
Respondent Exhibit N:	2017 occupancy cost report for the subject property,
Respondent Exhibit O:	2018 occupancy cost report for the subject property,
Respondent Exhibit P:	Excerpts from THE APPRAISAL OF REAL ESTATE, 14th ed.,
Respondent Exhibit R:	Retail sales report for the subject property,
Respondent Exhibit S:	Capital Improvements 2014-2016,
Respondent Exhibit T:	2014-2016 capital improvements for the subject property,
Respondent Exhibit U:	*Southlake Ind., LLC. v. Lake Co. Ass'r,* IBTR pet. no. 45-046-11-1-4-00013 et al. (November 21, 2018),
Respondent Exhibit V:	Excerpts from THE APPRAISAL OF REAL ESTATE, 15th ed.,
Respondent Exhibit W:	Lease abstracts for the subject property.

6. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) the digital recording of the hearing and these findings and conclusions.

7. The Assessor requested the Board consider Kenney an expert witness. Green Tree objected to the request arguing "whether he is an expert is a determination to be made by the Board." The ALJ took the objection under advisement. We find the Respondent presented sufficient evidence regarding Kenney's experience and education to qualify him as an expert witness.

8. Green Tree objected to Respondent's Exhibit V, an excerpt from The Appraisal of Real Estate 15th edition, because it was not provided prior to the hearing. In response, the Assessor then argued "it is just a real estate appraisal manual . . . a textbook often used as

a source of information for the appraisal profession." The ALJ took the objection under advisement. The Board may take official notice of any relevant edition of The Appraisal of Real Estate. *See* 52 IAC 4-6-11(a)(4). Accordingly, the objection is overruled, and the exhibit is admitted.

9. Green Tree objected to the Assessor's Exhibit W, the subject property lease abstracts, because they were not provided prior to the hearing. In response, the Assessor argued the exhibit was provided during discovery. The ALJ took the objection under advisement. The Board does not find that the admission of the exhibit presents any undue hardship or prejudice to the Respondent because the exhibit was provided to the Petitioner during the discovery process. Accordingly, the objection is overruled, and the exhibit is admitted.

10. The original assessments and proposed values are as follows:

	2017	2018	2019
Assessment	$34,974,900	$35,405,700	$35,720,200
Allen	$28,750,000	$21,600,000	$20,200,000
Kenney	$46,500,000	$46,220,000	$39,300,000

III. FINDINGS OF FACT

11. The Mall is an enclosed regional shopping mall located at 757 Lewis & Clark Parkway East, Clarksville, and originally constructed in 1967. The site plan of the Mall reveals it is anchored by three large department stores: J.C. Penney, Sears, and Dillard's. (*Resp. Ex. A* at 76). However, the tax parcels encompassing the Sears and Dillard's stores, and their associated parking, are not on appeal. Thus, the portion of the Mall on appeal consists of roughly 290,000 leasable s.f. located on 18 acres.[2] As to parking and

[2] The Sears and Dillard's spaces comprise more than 311,000 s.f., meaning less than half of the total mall's 602,000 s.f. of "rentable building area" is on appeal. (*Pet'r. Ex. A* at 31).

entrances, the Mall operates without distinction of ownership through reciprocal access easements for the Sears and Dillard's stores and their parking areas.

12. Green Tree purchased both the Mall and the Sears parcels in 2013 for $57,173,699.[3] (*Resp. Ex. A* at 31). The Sears closed at the end of 2017 and remained vacant thereafter. (*Tr.* at 19-21). The interior of the Mall was of overall good quality and in average condition physically and functionally. (*Resp. Ex. A* at 104, 108). On the exterior, a substantial amount of the parking asphalt was crumbling and in poor condition and the skylights were leaking. (*Tr.* at 26-28).

13. Located in the Louisville Metropolitan Statistical Area ("MSA"), the Mall is on a major commercial artery west of Interstate 69. Based on the population growth, median household income, and unemployment statistics, the MSA was described as a "healthy economic environment" during the relevant period. (*Tr.* at 22-23; *Pet'r. Ex. A*). Clark County had the number one retail sales per capita ($16,206) in the MSA, which likely indicates significant regional demand from shoppers in southern Indiana outside of Clark County. (*Resp. Ex. A* at 54-55).

14. The Mall's immediate retail area includes a Dick's Sporting Goods and big box stores like Walmart, Target, and Best Buy, but also a vacant former department store. Nearby is a major Power Center, a no-longer enclosed shopping center called the River Falls Mall, that includes major draws such as a Bass Pro's Shop. (*Resp. Ex. A* at 66). The Mall is located in the premier retail location in the area and all indications are that the area will remain so for the foreseeable future. (*Resp. Ex. A* at 71).

[3] The Dillard's is owned separately by Dillard's. The transaction included other outlots and parcels, and the figure for the Mall and Sears was an allocation. (*Resp. Ex. A* at 33, 36).

a. ALLEN'S APPRAISAL

15. Green Tree engaged Laurence Allen, MAI, CRE ("Allen") to appraise the Mall. Allen has been an appraiser for more than 40 years and has substantial experience in the valuation of regional malls and mall anchor department stores. (*Pet'r. Ex. A* at Qualifications; *Tr*. at 17-18).

16. Allen's view of the mall industry is that e-commerce, the retail "apocalypse," and a wave of store closures by major departments stores have dramatically impacted the value of regional shopping malls, including the Mall. (*Tr.* at 36-39.) He concluded that Class A malls will continue to perform well, and that Class C and D malls will face challenges attracting national retailers and securing new retailers. (*Tr*. at 35-36; *Pet'r. Ex. A* at 50-56). The difference between B- and C+ malls is small in terms of sales per square footage, but enormous in terms of capitalization rates. (*Pet'r. Ex. A* at 50).

17. To value the Mall, Allen developed both the income capitalization approach and the sales comparison approach. He gave primary weight to the income approach and used the sales comparison approach as a check for reasonableness. (*Pet'r. Ex. A* at 128). Allen considered but did not develop the cost approach because it is not typically relied upon by buyers and sellers of this property type. (*Pet'r. Ex. A* at 3, 75).

i. ALLEN'S INCOME APPROACH

18. Allen's income approach was developed using the direct capitalization methodology. This process involves determining the Subject Property's market rent, net operating income ("NOI"), and capitalization rate. (*Pet'r. Ex. A* at 76).

1. ALLEN'S MARKET RENT

19. To determine the Mall's market rent, Allen divided the Subject Property's rentable area into three distinct categories: tenants under 10,000 s.f. (inline spaces), tenants at 10,001 s.f. to 40,000 s.f (>10,000), and anchor tenants.[4] (*Pet'r. Ex. A* at 84). Allen admitted that estimating market rents for enclosed malls required a different process than typical retail centers. (*Pet'r. Ex. A* at 84). He believed that "prevailing rental rates" in malls are "largely a function of sales potential for various types of tenants and total occupancy costs." (*Pet'r. Ex. A* at 84). This relationship is reflected in the occupancy cost ratio (OCR), which is simply the total rent (including rent, percentage rent, and expense reimbursements) paid to the landlord divided by the tenant's gross sales, on a square footage basis. (*Pet'r. Ex. A* at 84).

20. Based on the fact that real estate investment trusts often publish OCR data, and ratings agencies use OCR data "to determine the health of the mall," Allen claimed that the "use of OCRs to establish market rates is a widely accepted methodology." (*Pet'r. Ex. A* at 84). While malls are largely structured as triple-net, Allen's OCR method estimated a gross rent. (*Pet'r. Ex. A* at 85).

21. Looking at the Mall's actual sales for inline tenants, Allen concluded to an actual gross retail sales range of $[redacted] to [redacted]/s.f. for 2016 to 2018, and he chose to use [redacted]/s.f. for purposes of classifying the Mall for all three years. (*Pet'r. Ex A* at 86). This calculation excluded one inline tenant, a Texas Roadhouse restaurant, because he considered it

[4] Allen treated spaces occupied by temporary tenants as if they were vacant and used a "line-item income source" to add in the income. (*Pet'r Ex. A* at 83).

similar to an Apple Store.[5] (*Pet'r. Ex. A* at 86; *Tr.* at 33, 50-52). Relying on the Korpacz survey, he classified the Mall as C+ for all three years, even though [redacted]/s.f. was in the Class B range for 2017.[6] (*Pet'r. Ex. A* at 84-85). However, Allen thought that rating was too high and concluded the Mall should be a "class C+ mall trending toward a Class C mall" due to several factors.[7] In any event, he chose OCRs pegged at .25% less than the top of the "healthy" Korpacz ranges for Class C malls: 11.5% for 2017, and 10% for 2018 and 2019. (*Pet'r. Ex. A* at 85, 87). At this point, Allen simply multiplied the OCRs by his concluded inline sales rate ($[redacted]) to estimate inline market rent at $4[redacted]/s.f. for 2017 and [redacted]s.f. for 2018 and 2019. (*Pet'r. Ex. A* at 88). Allen also looked at 5 recent leases at the Mall and concluded their actual gross rents were below his OCR-based inline rent estimates. (*Pet'r. Ex. A* at 88).[8]

22. Allen further adjusted his market rent conclusions by a deduction for tenant improvement allowances. Relying on 22 undated leases (2 at the Mall and 20 at various Michigan malls), that ranged from $[redacted]to $[redacted]/s.f., Allen projected that every lease on average should be reduced by $[redacted]/s.f. for tenant improvement expenses. (*Pet'r. Ex. A* at 89-90). Thus, for inline spaces, Allen concluded to market rents of $[redacted]/s.f. for 2017, and $[redacted]/s.f. for 2018 and 2019. (*Pet'r. Ex. A* at 90).

---

[5] Allen explained as follows:

> Texas Roadhouse has the effect of distorting the view of the performance of the mall. It doesn't represent a typical tenant; it represents a destination location that doesn't directly feed the mall. And so to avoid that distortion, it's taken out of the numbers so you can look at the performance of the inline retail at the mall. And I think I mentioned the general guidelines would take out such stores as Apple stores, which also distort the performance, and would take out restaurants over 10,000 [square] feet, which distorts performance. This restaurant is 9,000 square feet, so it's a little less. But it would still have the effect of distorting the performance numbers of the inline tenants in the mall.

(*Tr.* at 50-51).

[6] The actual retail sales of $[redacted]/s.f. in 2018 was also within the Class B range. (*Pet'r. Ex. A* at 85-86).

[7] In support, Allen recounted the struggles of the Mall as described by its leasing director, Sherry Rawson. (*Pet'r Ex. A* at 88-89).

[8] In contrast, Allen's estimate of the Mall's actual occupancy cost ranged from $[redacted] to $[redacted]/s.f. during 2016 to 2018. (*Pet'r. Ex. A* at 84).

23. For the two tenants in the >10,001 s.f. category, Allen reviewed the actual rents ($[redacted]/s.f. and [redacted]/s.f.) and their average sales from 2016 to 2018 ([redacted] to $[redacted]s.f.). (*Pet'r. Ex A* at 90). He then chose a lower range of [redacted] to [redacted]s.f. Based on the decade-old 2008 publication of Dollars and Cents OCR rates (ranging from 8.53% to 11.18%), 2008 to 2018 overall mall OCR rates (ranging from 12.7% to 16.2%), and the average 2016 to 2018 actual tenant OCR rates (ranging from 7.74% to 9.71%), Allen chose OCRs at the low end of the spectrum: 9.5% for 2017 and 9% for 2018 and 2019. (*Pet'r. Ex. A* at 90-92). By multiplying his OCRs by his chosen sales per s.f., Allen estimated market rent at $11.40/s.f. for 2017, $10.35/s.f. for 2018, and $9.90/s.f. for 2019. (*Pet'r. Ex. A* at 92).

24. As a check on "market rent," Allen compared 8 leases with an occupancy cost range of $[redacted] to [redacted]/s.f., including 4 H&M leases—2 of which had negative total occupancy costs.[9] (*Pet'r. Ex. A* at 93).

25. Allen next looked to a different subset of 8 leases, 3 of which were again H&M leases, to determine a further deduction for tenant improvements, where he excluded the H&M leases to arrive at an average tenant improvement expense of $[redacted]s.f. Allen settled on the same $[redacted]s.f. adjustment as in his inline analysis, and he estimated final market rents for the >10,001 s.f. tenants of [redacted]s.f. for 2017, $[redacted]/s.f. for 2018, and [redacted]/s.f. for 2019. (*Pet'r. Ex A* at 94).

26. Finally, Allen estimated a market rent for the anchor store, the J.C. Penney, with an actual occupancy cost of [redacted]/s.f. (*Pet'r. Ex. A* at 94). He compared the J.C. Penney and Sears sales per s.f. and considered the likely sales at Dillard's and concluded at a range of [redacted] to [redacted]s.f. for 2017-2019. (*Pet'r. Ex. A* at 95-96). Allen adopted the 2008 Dollars & Cents department store OCR of 3.59% for 2017, lowered it to 3% for 2018 and

[9] In other words, for his check on "market rent" Allen used two lease comparables where the landlord is effectively paying the tenant rather than vice versa.

2019, and checked its reasonableness with one other lease. (*Pet'r. Ex. A* at 98). He multiplied his OCRs by his sales per s.f. and estimated rent for the anchor store at $4.31/s.f. for 2017, $3.30/s.f. for 2018, and $3.00/s.f. for 2019. (*Pet'r. Ex. A* at 98).

27. Allen admitted that mall anchor leases are extremely difficult to value due to their low rents, often subsidized rent and concessions, and build-to-suit nature. (*Pet'r. Ex A* at 99-100). Allen concluded that the actual occupancy cost of the J.C. Penney was below market. (*Pet'r. Ex A* at 100). Accordingly, he did not adjust for tenant improvements.

2. ALLEN'S NET OPERATING INCOME

28. Allen estimated gross potential income by multiplying his three categories of income by their respective square footage, and then, presumably based on historical figures, he included income for specialty leasing, unowned anchor reimbursements, marketing, miscellaneous income, and late fees. (*Pet'r. Ex. A* at 102). Allen calculated vacancy and collection loss of 22% to 25% for the inline spaces,[10] 5% for the >10,001 s.f. spaces,[11] and 15% for anchors.[12] Deduction of collection and vacancy loss resulted in effective gross income of $5,342,481 for 2017, $4,589,867 for 2018, and $4,413,407 for 2019. (*Pet'r. Ex. A* at 104). As for operating expenses, Allen adopted values consistent with the historical operating statement, and compared them to the expenses of six other malls. (*Pet'r. E.x A* at 104-5). He estimated a replacement cost reserve of $.57/s.f. based on the average reported rates in Realtyrates.com for 1st Quarter 2018. (*Pet'r. Ex. A* at 106). He concluded to NOI of $3,970,340 for 2017, $3,033,619 for 2018, and $2,836,709 for 2019. (*Pet. Ex. B* replacement page 107).

---

[10] Allen cited to actual vacancy as including occupied specialty tenant areas, which ranged from 21.5%-23.6% in 2017 to 2019. True vacancy ranged from 4.4% to16.7%. (*Pet'r. Ex. A* at 103).
[11] Actual vacancy was 0% and Allen's appraisal does not explain the 5% figure. (*Pet'r. Ex. A* at 103).
[12] Actual vacancy was 0%, and Allen looked to four Louisville area malls to select their average of 18.1%. (*Pet'r. Ex. A* at 103).

3. Allen's Capitalization Rate and Concluded Values

29. In estimating a capitalization rate, Allen first looked to 14 sales of malls, only 1 of which had inline sales near Allen's estimated \$370/s.f. for the Mall, and only 5 of which exceeded \$300/s.f. (*Pet'r. Ex. A* at 108). They ranged from 8.6% to 20.1%. Next, Allen looked to the Mall IRR Assumptions from Green Street Advisors. (*Pet'r. Ex. A* at 109). While Allen reaffirmed his conclusion that the Mall was "class C+/C," that conclusion is inconsistent with the Green Street Advisors table, which placed Allen's estimated \$370/s.f. directly equidistant between Grades B and B-.

30. In selecting his cap rate, Allen considered the market area (less valuable as non-tiered), the old age of the mall, the tenant composition and Sears vacancy, the occupancy and *negative* impact of landing a national tenant like H&M, mall classification, mall industry climate, and market rents. (*Pet'r. Ex. A* at 110-11). Despite the Green Street Advisors data indicating a range of 7.3% to 9.0%, Allen selected 13% for 2017 and 14% for 2018 and 2019.[13] (*Pet'r. Ex. A* at 111). In his final analysis, 3% of his chosen cap rates reflected the loading of the Mall's tax liability. Applying the capitalization rate to his projected NOI resulted in Allen's income approach valuations of \$29,160,000 for 2017, \$21,670,000 for 2018, and \$20,260,000 for 2019. (*Pet'r. Ex. A* at 112).

ii. Allen's Sales Comparison Approach

31. Because malls are income-producing properties, Allen concluded that malls are valued most effectively through an income analysis. (*Pet'r. Ex A* at 113). As the sales comparison approach is especially challenging for mall properties due to their complexity, Allen conducted a sales comparison approach of the Mall only as a "measure

[13] In his testimony, Allen stated that he concluded to cap rates of 10% and 11% and he added 3% to reach 13% and 14% for his loaded cap rates; but that is not how the body of Allen's appraisal is written. (*Tr.* at 83-84; *Pet'r. Ex. A* at 111).

of the reasonableness" of his income approach. (*Pet'r. Ex A* at 113). Allen's sales comparison approach focused solely on comparing projected NOI to establish a price per square foot. (*Pet'r. Ex. A* at 124). The analysis made no comparison of inline sales or mall classifications.

32. Allen considered the sales of 9 malls from Illinois, Iowa, Michigan, and Ohio, all of which had inline sales below Allen's estimate for the Mall, and 6 of which were below $300/s.f. (*Pet'r. Ex. A* at 114). The difference in NOI required adjustments as high as 436%. (*Pet'r. Ex. A* at 124). Allen also considered 11 other sales, only one of which had inline sales comparable to Allen's estimate for the Mall. (*Pet'r. Ex. A* at 126). Based on the range of adjusted sales prices, Allen concluded to values under his sales comparison approach of $27,100,000 for 2017, $21,270,000 for 2018, and $19,810,000 for 2019. (*Pet'r. Ex. A* at 127).

33. Despite Allen's misgivings in regard to the effectiveness of a sales comparison analysis in valuing malls, he decreased his conclusions under the income approach based on his sales comparison approach and valued the Mall in his final Reconciled Market Value at $28,750,000 for 2017, $21,600,000 for 2018, and $20,200,000 for 2019. (*Pet'r. Ex. A* at 128).

B. SOKOLOFF REVIEW OF ALLEN'S APPRAISAL

34. Irene Sokoloff, MAI, CAE, is a commercial real estate appraiser with roughly 16 years of experience. She performed an appraisal review of Allen's appraisal in compliance with the Uniform Standards of Appraisal Practice (USPAP) Standards 3 & 4. (*Tr.* at 204-5; *Resp. Ex. B* at 4-5).

35. Sokoloff recreated the rent rolls for permanent inline tenants and concluded that Allen's vacancy rates and weighted rents were inaccurate, incomplete, and misleading, and his sales per s.f. represented false data. (*Resp. Ex. B* at 7-9). She reached the following

conclusions:

	2017	2018	2019
Vacancy Rate	21%	16%	16%
Average Base Rent	[redacted]	$[redacted]	$[redacted]
Sales per s.f.	$[redacted]	$[redacted]	$[redacted]

(*Resp. Ex. B* at Add. 3-9). The Board credits Sokoloff's testimony as transparent and finds her conclusions of the Mall's actual vacancy, base rent, and inline sales more credible than Allen's.

36. In Sokoloff's opinion, an OCR analysis is not intended for estimating market rent, rather it is an indicator for benchmarking. (*Resp. Ex. B* at 8). The OCR speaks to "the overall health of the property and how well a tenant can do at a particular location," but it is a "separate issue from rent." (*Tr.* at 273). She noted that it is difficult to measure market rent by using gross rents for properties like malls that have a triple-net or base-rent structure. (*Tr.* at 218). The Board accepts Sokoloff's testimony as establishing that Allen's OCR analysis is an unconventional and atypical method of estimating market rent.

37. Sokoloff stated that the typical method for estimating rent at a mall is to "look at the rents within the property itself, especially at a mall with forty tenants." (*Tr.* at 268). She agreed with Allen's statement that a mall is like a "little city" and that it forms the microcosm for determining "what the market rents would be for that property." (*Tr.* at 268). She affirmed that unlike other types of properties, appraisers do not

look to leases at other malls and make a "typical adjustment grid with locational adjustments." (*Tr.* at 268). The most relevant check on market rents at a mall would be a review of "relatively recent leases negotiated within the subject property." (*Tr.* at 269).

38. In regard to Allen's tenant improvements, Sokoloff explained that these are negotiated on a case-by-case basis, and tenant improvement allowances "should not be applied as an across the board deduction to rents already adjusted to market." (*Resp. Ex. B* at 10). In doing so, Allen used a method "not typically used by investors"[14] and "not reflective of market reality." (*Resp. Ex. B* at 5). By taking these deductions above the line, Sokoloff believed Allen overstated the expense of the tenant improvements. (*Resp. Ex. B* at 11). Tenant improvements are recaptured in rent; they do not impact the NOI conclusion so they should go below the line as indicated by *The Appraisal of Real Estate*. (*Resp. Ex.* B at Addenda 12, *Tr.* at 271). Sokoloff opined that Allen's method of deducting tenant improvements likely amounted to a "double hit" that unreasonably lowered his calculation of NOI. (*Tr.* at 230). The Board finds that Sokoloff's testimony is credible, well-sourced, and more persuasive than Allen's.

39. Regarding Allen's decision to exclude from his analysis the actual retail sales for the Texas Roadhouse as similar to excluding an Apple Store, Sokoloff observed that Apple Stores stores generate more than $5,000 PSF in retail sales. (*Tr.* at 51, 221-22). In contrast, the Texas Roadhouse at the Mall only generated roughly [redacted] PSF in retail sales. (*Tr.* at 222). Ultimately, Sokoloff concluded that there was "no reason" to exclude the Texas Roadhouse restaurant from the market rent analysis.[15] If an appraiser creates his own rules about what to omit from his analysis, rather than following industry

[14] Sokoloff noted that Allen's own file established that most market participants treat tenant incentives as below-the-line rather than operating expenses. (*Resp. Ex. B, E, G, I, K, L, M*).
[15] As Sokoloff succinctly summarized, "Apple stores are the leading retailer in the country. Texas Roadhouse is not." (*Tr.* at 222).

practice, the results risk being skewed.

40. In reviewing Allen's sales comparison analysis, Sokoloff determined that the comparable properties relied on by Allen for his sales analysis required major sale price per s.f. adjustments (over 300%), which suggested the properties were not comparable to the Mall. (*Tr.* at 263). She further noted that four of the comps "sold as distressed assets that went into receivership and sold at auction or in foreclosure." (*Resp. Ex. B* at 13; *Tr.* at 254). While malls in general are struggling, the Mall cannot be compared to those distressed mall properties. (*Tr.* at 257). Additionally, by relying solely on a comparison of NOI, Allen's sales comparison approach essentially amounted to a second income approach. (*Resp. Ex. B* at 13).

C. KENNEY'S APPRAISAL

41. The Assessor offered an appraisal from Mark Kenney, MAI, SRPA, who has been in the profession since 1991. He has extensive experience in appraising dozens of shopping malls across the U.S., and he has given evidence before many courts and administrative agencies for regional mall tax valuation disputes. (*Resp. Ex. A* at App. 337-49).

42. Kenney did not develop the cost approach because market participants are more interested in a mall's productivity, or income. For the same reason, and because comparisons can be very difficult with different classes of complex mall properties, Kenney also did not develop the sales comparison approach. He relied entirely on the direct capitalization income approach. (*Resp. Ex. A* at 116).

a. KENNEY'S MARKET RENT AND OTHER INCOME

43. Kenney operated under the assumption that rental activity at a mall "is a submarket within itself," and he opined that the "best source of leasing activity" data for developing market rents is "recent mall leasing activity." (*Resp. Ex.* A at 117). The Mall should be

considered its own "micro market or neighborhood" due to the number of spaces and leasing activity. (*Tr.* at 375).

44. Kenney noted that leases at malls are negotiated with a triple net expense structure that makes the tenant responsible for rent but also pays for additional property expenses in separate line items to the landlord such as Common Area Maintenance ("CAM"), insurance, and property taxes.[16] For this reason, Kenney analyzed income on a triple net basis.

45. Kenney reviewed the rent rolls for the Mall as of January 1, 2017, 2018, and 2019, and restated those rent rolls in his appraisal. He narrowed his market rent through an analysis of recent leases at the Mall for several categories of tenants: kiosks, <1,000 s.f., 1,000-2,999 s.f., 3,000-5,999 s.f., and >6,000 s.f. (*Resp. Ex.* A at 117-129). Because this category was not limited to inline spaces, it created some confusion in how the analysis supported Kenney's estimate of inline market rent. He estimated market rent for the inline spaces at $[redacted]/s.f. for 2017 and 2018, and $[redacted]/s.f. for 2019. (*Resp. Ex.* A at 133). Kenney next considered 6 comparable leases[17] for estimating anchor rent, only one of which was an anchor space attached to a mall. (*Resp. Ex.* A at 131-32). He estimated a market rent of $[redacted]/s.f. for the anchor stores.[18] (*Resp. Ex.* A at 133). Kenney's Income Statements include another category for "Leased Majors" (>10,000 s.f.) ranging from $[redacted] to $[redacted]/s.f., despite no analysis of that category in the body of his appraisal. (*Resp. Ex.* A at 146-48).

46. Kenney reviewed the Mall's actual revenues for specialty leasing, which ranged from $[redacted] to $[redacted] from 2017 to 2019. (*Resp. Ex.* A at 134). He listed this as other income in his Income Statements and entered amounts ranging from [redacted] to

[16] See *Resp 't Ex. E* at 71, *G* at 1, I at 6, *K* at 6, and *L* at 77.
[17] One of the 7 listed comps was a duplicate.
[18] Kenney included the value of the Sears in his appraisal, but he separated that value in his final valuation.

[redacted] which he considered real estate income. (*Resp. Ex.* A at 137, 146-48). Kenney did not include any additional rent for percentage sales. (*Resp. Ex.* A at 135).

47. As for reimbursed expenses, the CAM recoveries ranged from [redacted] to [redacted] during 2015 to 2018, and Kenney applied a range of $966,000 to $1,070,000 in his Income Statement. (*Resp. Ex.* A at 136, 146-48). Real estate tax recoveries and expenses were excluded in order to load them in the tax rate. (*Resp. Ex.* A at 137).

b. KENNEY'S NET OPERATING INCOME

48. After a review of the Mall's actual and economic vacancy rates from 2017 to 2019, and publications of shopping mall vacancy, Kenney closely followed the Mall's historical economic vacancy rate and added a 1% collection loss (which included bad debt). (*Resp. Ex.* A at 139-40, 142). For operating expenses, including CAM, marketing, and landlord expenses, Kenney again made projections based on historical figures at the Mall. (*Resp. Ex.* A at 140). Kenney chose 3% for management fees based on industry publications, an amount above the Mall's actual fees. (*Resp. Ex.* A at 141). Kenney opted to include a $.50/s.f. replacement reserve as an above the line deduction. (*Resp. Ex.* A at 142).

49. Kenney identified an average of [redacted] in annual actual tenant improvement expenses at the Mall, or a 10-year amortized [redacted] in annual expenses. (*Resp. Ex. D*). Kenney emphasized that he did "**NOT**" deduct tenant improvements from above the line and used *PwC* "Method 1" in capitalizing NOI after replacement reserves but before tenant improvements. (*Resp. Ex.* A at 142-43) (emphasis in original). But he made no adjustments for tenant improvements below the line. Kenney testified that the tenant improvements were reflected in the "reserve for replacements," but that was an above the line adjustment. (*Tr.* at 519). He also suggested the tenant improvements were "factored into the cap rates." (*Tr.* at 519). But the appraisal contains no discussion of tenant improvements impacting his choice of cap rate.

50. Kenney concluded to NOI of $4,724,425 for 2017, $4,917,531 for 2018, and $4,565,955 for 2018.

c. Kenney's Capitalization Rate

51. Based on 4th Quarter 2016 data, Kenney calculated inline sales of [redacted]s.f. for the Mall, which he stated placed the Mall in the Class B+ category ([redacted]/s.f.).[19] (*Resp. Ex.* A at 135).

52. Kenney analyzed the Mall's Cost of Occupancy rate, which is the same as OCR. It examines the relationship between retail sales and total rent (minimum rent, percentage rent, and a pro rata share of recoverable expenses), which is expressed as a percentage of retail sales volume. (*Resp. Ex. A* at 137). Kenney likewise described the OCR as a measure of a mall's health. (*Tr.* at 321-22; *Resp. Ex. A* at 137).

53. Citing a 2003 publication, Kenney maintained that OCR is typically 14% to 16% for malls with $350 in inline sales. (*Resp. Ex. A* at 138). He also looked to reports from the mall portfolio of General Growth Properties, which had average inline sales in excess of $580/s.f. and OCRs of 13.4% in 2015 and 14.3% in 2016. (*Resp. Ex. A* at 138). Kenney based his OCR for the Mall on the Mall's 2015 "owner's report" which indicated an OCR of 12.64%.[20] (*Resp. Ex. A* at 138). From this, Kenney concluded the Mall has a low and healthy OCR, and the Mall's owner could *even raise* overall occupancy costs without an adverse affect on the tenants.[21] (*Resp. Ex. A* at 138). Accordingly, he did not adjust his conclusion of the appropriate classification of the mall.

---

[19] This was higher than Sokoloff's estimates for 2017, 2018, and 2019. Under Allen's Green Street Advisors table, it would have placed the Mall between B+ and A-. (*Pet'r. Ex, A* at 109). Under Korpacz, it would have placed the Mall at B+ for 2016-2019. (*Pet'r Ex. A* at 85).

[20] Kenney referenced the Mall's OCR for 2017 and 2018, but those included the anchor and major tenants. (*Resp. Ex. N, O*).

[21] Kenney also stated that his OCR analysis implied "overall market-oriented rents and expense reimbursements" and the Mall is at "'market rent' levels" for the valuation dates. (*Resp. Ex. A* at 138).

54. In selecting a capitalization rate for the Mall, Kenney focused on the band of investment approach. (*Tr.* at 428; *Resp. Ex. A* at 149-163). Premised on the concept that most real estate purchases are made using debt and are not typically pure cash exchanges, an appraiser reviews the mortgage interest rates and the ratio of debt to equity in similar transactions and then determines what typical investor expectations are for a return on investment in their equity position. (*Tr.* at 428-430). Kenney considered the debt interest rate component provided in a review of interest rates on ten-year T-notes from the Treasury, *PwC Investor Survey* quarterly average commercial mortgage interest rates, and American Council of Life Insurers Bulletins which compile data from various mortgage transactions and disaggregate that data by location, use, and portfolio size into various tables. (*Resp. Ex. A* at 151-55). Kenney concluded to overall cap rates of 8.9% for 2017, 9.2% for 2018, and 9.6% for 2019. (*Resp. Ex. A* at 146-48).

55. Additionally, Kenney considered *PwC* 2016 to 2018 survey data for all malls (which ranged from 4% to 10%) and the average for Class B+ malls (which ranged from 6.35% to 6.84%). (*Resp. Ex. A* at 159). Kenney also reviewed the cap rates of several comparable sales and concluded that they supported rates of 9% for 2017, 9.25% for 2018, and 9.5% for 2019. (*Resp. Ex. A* at 161).

56. Kenney loaded the capitalization rates with the owner's share of real estate expenses as indicated by the vacancy rate and gross leases where the tenants did not reimburse for real estate taxes. (*Resp. Ex. A* at 146-48; *Tr.* at 530-31). Kenney's total concluded cap rates were 9.5% for 2017, 9.95% for 2018, and 10.5% for 2019. (*Resp. Ex. A* at 146-48). These rates resulted in final valuation of the Mall at $46,500,000 in 2017, $46,220,000 in 2018, and $39,300,000[22] for 2019. (*Resp. Ex. A* at 162-63).

[22] The 2019 value was adjusted based on CAM income correction. (*Tr.* at 441).

D. Schwertz's Review of Kenney's Appraisal

57. Green Tree presented a USPAP compliant review appraisal from Arthur Schwertz,[23] MAI, who has appraised "half-a-dozen malls over the last decade." Schwertz reviewed the analysis and conclusion of Kenney's appraisal but did not perform his own appraisal. (*Tr.* at 259-260; *Pet'r. Ex. D*).

58. The majority of Schwertz's criticisms relate to Kenney's income approach. In regard to market rent, Schwertz considered "it a flaw for an appraiser to utilize the subject rental rates to determine what the market rates should be for the subject as it results in an inbred result. While it is considered acceptable to give weight to subject leases in a fee simple analysis, it should always be done with confirmation of market comparables outside of the subject property." (*Pet'r. Ex. D* at 13). However, Schwertz agreed that a mall's "rent rolls and lease rates with tenants at the mall constitute" a portion of the market. (*Tr.* at 633). He believed that the 40 tenants at the Mall were not the complete market because of a competing mall in the Louisville market. (*Tr.* at 633-34).

59. Schwertz found significant flaws in Kenney's anchor lease comparables, and believed better data was available for the Louisville market, but he credited Kenney for not giving the comparables any weight. (*Pet'r. Ex. D* at 14). He noted that Kenney's appraisal contained no analysis of the market rent estimates for the "Leased Majors," and the rates reflected the average actual rent. (*Pet'r. Ex. D* at 16).

60. Schwertz conceded that an OCR can reveal whether the rents are above or below market rates, and that an OCR with a reasonable tolerance could indicate market rent. (*Tr.* at

---

[23] The appraisal was jointly authored with Lawrence Mitchell, MAI, who provided geographic competency and helped ensure the review appraisal complied with Indiana law.

633-34). Schwertz was not aware of any survey where jewelry stores or restaurants were eliminated from surveys reporting inline sales at malls. (*Tr.* at 663-64).

61. As for inline market rent, the Board finds that Schwertz conclusively established that Kenney used a market rent reflecting the Mall's average rent rather than an estimate influenced by Kenney's review of recent leases. (*Tr.* at 682). However, Schwertz's estimates of an overvaluation of the Mall by $11,000,000 were based on extrapolating data that included non-inline rent, and the Board rejects them. (*Pet'r. Ex. D* at 18, 22)

IV. CONCLUSIONS OF LAW

a. BURDEN OF PROOF

62. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r.*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). Under certain circumstances, the burden of proof may shift under Ind. Code § 6-1.1-15-17.2. Green Tree stipulated that it bore the burden of proof for all three years under appeal. (*Tr.* at 9). Thus, Green Tree must present probative evidence of the true tax value of the mall in order to lower the assessment. Likewise, the Assessor must present probative evidence in order to increase the assessment.

b. ANALYSIS

63. The true tax value of real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted

to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

64. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2017, 2018, and 2019 assessments, the valuation dates were January 1 of each respective assessment year. *See* Ind. Code § 6-1.1-2-1.5.

65. The Tax Court has held that the "valuation of property is an opinion and not an exact science." *Monroe Co. Ass'r v. SCP 2007-C-26-002, LLC*, 62 N.E.3d 478, 482 (Ind. Tax Ct. 2016). Therefore, "it is up to each party to convince the Indiana Board why its opinion. . . is more probative." *Id.* While case law generally addresses appraisal theory, most often the question comes down to which "appraiser exercised . . . caution in his income approach, [and which] appraiser did not." *Grant Co. Ass'r v. Kerasotes Showplace Theatres, LLC*, 955 N.E.2d 876, 882 (Ind. Tax Ct. 2011). If an appraiser has not sufficiently "identified the objective bases for his [or her] opinion, the Indiana Board has no way to assess whether the proffered opinion is rationally based or merely a conclusion," and conclusory statements do not qualify as probative evidence. *Marion Co. Ass'r v. Washington Square Mall, LLC,* 46 N.E.3d 1, 12 (Ind. Tax Ct. 2015).

66. For property tax appeals, assessors and appraisers are required to follow "generally recognized appraisal principles." 2011 MANUAL at 3. At the heart of this appeal is the appropriate method and analysis for estimating market rent. Based on the expert testimony on the proper process for estimating a mall's market rent, the Board finds that Allen failed to use a generally accepted method of estimating rent, and Kenney offered an incomplete analysis in support of his estimates. Accordingly, the Board rejects both appraisals.

i. ALLEN'S APPRAISAL IS NOT BASED ON GENERALLY ACCEPTED APPRAISAL PRINCIPLES AND HIS OPINION IS NOT PROBATIVE OF THE MALL'S TRUE TAX VALUE

67. Allen's appraisal is based on his claim that the "use of OCRs to establish market rates is a widely accepted methodology." (*Pet'r. Ex A* at 84). Among the four appraisers testifying in this matter, Allen is the only one to espouse this view, and the Board rejects it. For the reasons expounded below, the Board finds Allen's opinion is not probative.

68. Sokoloff credibly explained that OCR analysis is not intended for estimating market rent. (*Resp. Ex. B* at 8). The OCR speaks to "the overall health of the property and how well a tenant can do at a particular location," but it is a "separate issue from rent." (*Tr.* at 273). Kenney and Schwertz both agreed that OCR can provide a benchmark as to whether the Mall is at "'market rent' levels" or tolerances. (*Resp. Ex. A* at 138; *Tr.* at 633-34). Only Allen opined that market rent could be estimated through the application of the OCR rate to the mall's average sales per s.f. The Board agrees with Sokoloff's conclusion that malls are structured with triple-net and base rents, and Allen's use of gross rents to estimate market rent for a triple-net property was inappropriate.

69. Sokoloff persuasively argued that the typical method for estimating rent at a mall is to "look at the rents within the property itself, especially at a mall with forty tenants." (*Tr.* at 268). She stated that the most relevant check on market rents at a mall with a sufficient number of tenants would be a review of the "relatively recent leases negotiated within the subject property." (*Tr.* at 269). Kenney advocated this approach as well. Schwertz's testimony revealed that his criticism in regard to basing market rent solely on a mall's leases was only because he believed another mall in the Louisville market could be a source of comparable leasing data.[24] (*Tr.* at

[24] In this regard, Schwertz is the outlier, as none of the other appraisers considered it necessary to review leases at a nearby mall in order estimate market rent.

633-34). Neither Schwertz nor his co-author suggested an appraiser should have used an OCR approach to estimate the Mall's market rent.

70. The Board rejects Allen's use of OCR to estimate a market rent because he has failed to prove that such a method is a generally accepted appraisal practice for determining the Mall's market rent under the income capitalization approach.[25] This failure to credibly estimate market rents is fatal to Allen's valuation because an income approach requires a reliable estimate of NOI. Accordingly, Allen's income approach fails to offer probative evidence of the Mall's true tax value.

71. Even if the Board were to accept Allen's OCR estimate of market rents, the Board would still reject his estimate of NOI due to his treatment of tenant improvements because his method does not align with common industry practices. Tenant improvement adjustments should reflect market terms and the terms of the subject property's leases. *The Appraisal of Real Estate* at 447. The most common below-the-line expenses are tenant improvements and leasing commissions. *The Appraisal of Real Estate* at 475. The memoranda and financial statements from Allen's comparable properties all conclude to an NOI before tenant improvements are deducted below the line. (*Resp. Ex.* at 71, *Ex.* G, *Ex. I* at 6, *Ex. J* at 6, *Ex. L* at 74, and *Ex. M* at 6). Likewise, the financial statements for the Mall indicate tenant improvements are treated as a below the line expense. (*Resp. Ex. A* at App. 193-211). Furthermore, Allen admitted that tenant improvements are capital expenses that are generally taken below the line. (*Tr.* at 148). Because tenant improvements are considered in negotiated rents, we agree with Sokoloff that Allen's method of deducting tenant improvements was atypical and likely amounted to a "double

[25] The Board also rejects Allen's underlying presumption that Indiana law somehow requires atypical appraisal practices in order to achieve a "fee simple" valuation of a mall. Indiana's property tax system demands from an appraiser a presentation of objectively verifiable evidence that supports an opinion based on generally accepted appraisal practices—full stop. To selectively warp appraisal theory in assessing ad valorem taxes would eviscerate any notion of equal and uniform taxation.

hit" that unreasonably lowered his calculation of NOI. (*Tr.* at 230). Allen has failed to persuade the Board that his tenant improvement adjustments, which were contrary to industry practice, did not distort his NOI, and his income approach must be rejected.

72. Finally, the Board must reject Allen's valuation based on his conclusory opinion of the Mall's classification. While reasonable minds might differ as to the exclusion or adjustment of the high sales for the Texas Roadhouse in estimating inline sales, his conclusion of [redacted] s.f. placed the Mall in the Class B category for 2017, and his calculation of [redacted]/s.f. in actual sales placed the Mall in the Class B category for 2018. Despite the Mall being either Class B or Class C+ based on sales per s.f., Allen chose a class that did not exist in the Korpacz survey: "class C+ mall, trending toward a class C mall." (*Pet'r. Ex. A* at 86). Allen then presented a conclusory grid with "Y" or "N" or "n/a" to support lowering the classification, but he concluded to the same classification: "class C+ mall, trending toward a class C mall." (*Pet'r. Ex. A* at 87). Allen also failed to reconcile his "class C+/C," with his inclusion of the Green Street Advisors table, which placed Allen's estimated [redacted]/s.f. directly equidistant between Grades B and B-. (*Pet'r. Ex A* at 109). In any event, the Board finds Sokoloff's estimates of the Mall's inline sales per s.f., which were substantially higher, to be the most credible. As the evidence underlying Allen's classification of the Mall has been rebutted by Sokoloff, the Board must reject Allen's income approach valuation.

ii. ALLEN'S SALES COMPARISON APPROACH IS NOT PROBATIVE OF THE MALL'S TRUE TAX VALUE

73. Allen noted that the sales comparison approach is especially challenging for malls due to their complexity, and he offered his sales comparison approach of the Mall only as a "measure of the reasonableness" of his income approach. (*Pet'r. Ex A* at 113). Thus, by his own acknowledgment, Allen's sales comparison approach is not a probative gauge of the true tax value of the Mall independent of his income approach valuation. Because the

Board has rejected Allen's income approach, the sales comparison approach must likewise be rejected.

74. Additionally, all of the experts agreed that malls are income-producing properties and must be valued primarily under the income approach. Even if a sales comparison approach could offer a probative opinion of the Mall's value, Allen's sales comparison approach focused solely on projected NOI with no comparison of inline sales (and corresponding mall classifications) or OCR—the two factors most determinative of value and comparability. The Board rejects Allen's sales comparison approach.

75. Because the Board has rejected both of Allen's values, Green Tree has failed to prove that the current assessments for each year do not reflect the Mall's true tax value. The Board now turns to the Assessor's evidence in support of increasing the assessments.

iii. KENNEY'S INCOME APPROACH IS TOO INCOMPLETE AND CONCLUSORY TO BE PROBATIVE OF THE MALL'S TRUE TAX VALUE

76. All of the experts agree that industry participants classify malls according to their sales per square foot for inline spaces. Kenney's written appraisal only considers data from 2016 to conclude that the Mall should be classified as B+ for all three years on appeal. While it may be appropriate to consider 2016 data in valuing the Mall for the 2017 assessment date, that data cannot be relied upon to establish the Mall's classification for 2018 and 2019. Moreover, Sokoloff's conclusions of inline sales of [redacted] for 2017 and [redacted] for 2018 placed the Mall no higher than the range of Class B malls pursuant to the Korpacz schedule. (*Pet'r. Ex. A* at 85). Because Kenney's choices in regard to market rents and capitalization rates were influenced by his Class B+ rating, which is not supported by the evidence, his most important conclusions are unfounded for the years 2018 and 2019. Accordingly, the Board concludes that Kenney has failed to establish a

probative valuation for years 2018 and 2019, and the Assessor cannot establish a higher true tax value for those years.

77. Even had he otherwise established the Mall's rating as Class B+ for all of the years on appeal, Kenney's appraisal is too incomplete to establish a probative value for any year on appeal. While some of these omissions might have been overcome in isolation, the cumulative effect seriously detracts from Kenney's credibility. First, Kenney's written appraisal contained no basis for his "Leased Majors" market rent estimates, though Kenney's rates were lower than Allen's rates for that category (before tenant improvement adjustments). Second, Kenney failed to explain how he arrived at the market rent establishing potential gross income for the vacant space, which likely reflected a mixture of inline and non-inline rents. Third, and most importantly, Kenney failed to explain how he accounted for tenant improvements, if at all. These are significant as Kenney identified an average annual expense of roughly [redacted]. Despite an express explanation of how he intended to account for tenant improvements, Kenney's written appraisal made no adjustment for them. His vague testimony suggesting that the tenant improvements were accounted for in either his replacement reserve or his choice of cap rate was inconsistent with the process outlined in his written appraisal, and Kenney fails to persuade the Board that he meaningly accounted for them. By failing to expressly and unequivocally address the tenant improvement expenses, a factor that all of the experts agree significantly affects the determination of overall value, Kenney has failed to offer a complete valuation. For these reasons, Kenney's opinion is incomplete and therefore conclusory. The Board finds the Assessor has failed to offer a credible opinion of the Mall's true tax value for any of the years on appeal.

78. Additionally, as mentioned in analyzing Allen's valuation, the Board has concluded that market rents must be largely influenced by *recent* leasing activity at the mall, to the extent such data is available. Schwertz persuasively established that Kenney's inline

market rents were nearly identical to the Mall's average rents and not Kenney's survey of recent leases in his appraisal. Kenney failed to offer an explanation of why he diverged from that evidence in selecting his market rent. This omission certainly lends credence to Green Tree's argument that Kenney's valuation might reflect the contract value of the Mall rather than its market value in use. However, on these facts, the Board simply concludes that Kenney's appraisal is not probative because he failed to explain why his survey of recent leases, the most important gauge of market rent for a mall, had no apparent influence on his estimate of inline market rent.

79. For these reasons, the Board rejects Kenney's appraisal for all three years and concludes the Assessor has failed to prove that the true tax value of the Mall requires an increased assessment.

V. CONCLUSION

80. Green Tree's evidence failed to follow generally accepted appraisal practices for valuing a mall, and the Assessor's evidence was incomplete and unsupported by sufficient analysis. Consequently, neither party presented a probative case for increasing or decreasing the assessment in any year on appeal. Therefore, the Board finds that the assessments must stand at $34,974,900 for 2017, $35,405,700 for 2018, and $35,720,200 for 2019.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Jonathan R. Elrod

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Timothy G. Schuett

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>.