REPRESENATIVES FOR PETITIONER: David Suess, Abraham Benson, Brigham Michaud, Faegre Drinker Biddle & Reith, LLP

REPRESENATATIVES FOR RESPONDENT: Ayn Engle, Attorney at Law

STATE OF INDIANA
INDIANA BOARD OF TAX REVIEW

KOHL'S INDIANA, LP,	)	Petition Nos.: 10-009-19-1-4-00838-21
	)	10-009-20-1-4-00839-21
Petitioner,	)	10-009-21-1-4-00840-21
	)	10-009-22-1-4-01070-22
v.	)	
	)	Parcel No.: 10-19-01-200-882.000-009
CLARK COUNTY ASSESOR,	)	
	)	County: Clark
Respondent.	)	
	)	Assessment Dates: 2019, 2020, 2021, and 2022
	)	

Date: Oct. 28, 2024

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

1. In these assessment appeals of a big-box retail store, the parties offered competing opinions from expert appraisers: Larry Allen for Kohl's Indiana, LP, and David Hall for the Clark County Assessor. After weighing the evidence, we find that Allen's value conclusion under the income-capitalization approach, minus an unsupported deduction for a tenant-improvement allowance, is the most persuasive evidence of the property's true tax value.

II. PROCEDURAL HISTORY

2. Kohl's filed Form 130 petitions timely appealing its 2019-2022 assessments. On November 3, 2021, the Clark County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations for the 2019 through 2021 appeals, ordering no change to the assessments. The PTABOA did not issue a determination on Kohl's' 2022 appeal. The assessments determined by the PTABOA (and for 2022 by the Clark County Assessor) were:

Year	Land	Improvements	Total
2019	$1,750,400	$3,317,100	$5,067,500
2020	$1,750,400	$3,317,100	$5,067,500
2021	$1,750,400	$3,317,100	$5,067,500
2022	$1,750,400	$3,356,100	$5,106,500

3. On December 1, 2021, Kohl's filed Form 131 petitions with us for the 2019-2021 assessment years. On December 12, 2022, after the maximum time for the PTABOA to act on the 2022 appeal expired, Kohl's filed a Form 131 petition with us for that year. *See* Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to file an appeal with us if more than 180 days have passed without a county PTABOA issuing a determination).

4. The ALJ adopted the parties' agreed appeal-management plan, which included a deadline of August 4, 2023, for each party to identify its expert and serve the opposing party with a copy of the expert's report.

5. The parties further stipulated that we would issue a determination of the property's assessed value for the January 1, 2022, assessment date, and that we would use the following formula to determine the assessed values for the other years under appeal:

2019 AV = 2022 FD x .93
2020 AV = 2022 FD x .95
2021 AV = 2022 FD x .97
2022 AV = Final Determination

6. Beginning October 10, 2023, our designated administrative law judge, David Pardo ("ALJ"), held a four-day hearing on Kohl's' petitions. Neither he nor the Board inspected the property. Allen and Hall were sworn as witnesses.

7. Kohl's offered the following exhibits:

P-1	Appraisal report for the subject property prepared by Allen &Associates Appraisal Group, Inc.
P-2	Articles
P-3	Kohl's Store Openings
P-4	Updates on Kohl's Store Optimization Initiatives
P-5	Kohl's Rightsize Summary
P-6	Kohl's Lease Flyer for Jeffersonville Store
P-7	Target Store Openings
P-8	Indiana CoStar Data (pp. 1-13)
P-9	Situs RERC Study
P-10	706 E Lewis & Clark Pkwy Information
P-11	1501 Blackiston Mill Road Information
P-12	Walmart Correspondence
P-17	Hall Sales 1-5 Summary of Location Data & Adjustments
P-29	Excerpts from Integra Realty Resources Appraisal for Kohl's Store in Madison County
P-30	Aerial Photograph of Property from Hall's Comparable Lease #6

8. The Assessor offered the following exhibits:

R-1	Appraisal Report for Subject Property by Integra Realty Resources
R-2	Addenda to appraisal report
R-3	Sales Comparison Approach - Corrections
R-4	Allen Sale #1 (Excerpts from Allen's Workfile)
R-5	Allen Sale #2 (Excerpts from Allen's Workfile)
R-6	Allen Sale #4 (Excerpts from Allen's Workfile)
R-7	Allen Sale #5 (Excerpts from Allen's Workfile)
R-8	Allen Sale #6 (Excerpts from Allen's Workfile)
R-9	Allen Sale #7 (Excerpts from Allen's Workfile)
R-10	Allen Additional Sale #2 (Excerpts from Allen's Workfile)
R-11	Allen Additional Sale #5 (Excerpts from Allen's Workfile)
R-12	Allen Additional Sale #6 (Excerpts from Allen's Workfile)
R-13	Allen Rent # 11 (Excerpts from Allen's Workfile)
R-14	Allen Rent # 14 (Excerpts from Allen's Workfile)
R-15	Allen Rent # 17 (Excerpts from Allen's Workfile)
R-16	Allen Rent # 18 (Excerpts from Allen's Workfile)
R-17	Offering memoranda (Excerpts from Allen's Workfile)

R-18 Boulder Group Net Lease Big Box) (Excerpts from Allen's Workfile)
R-20 Allen Land Sale #1 (Excerpts from Allen's Workfile)
R-22 Clark County Target Selections from Allen's Workfile (pp. 3-28 only)
R-23 Spending Articles
R-24 U.S. Census 2015 Spending
R-25 Store Size Articles
R-26 CNBC *Shipt* Article
R-27 CNBC Click and Collect Article
R-28 Statistica Shopper Visits
R-29 Hall Sale #2 Data (Hall Workfile) (p. 10 only)
R-31 Offering Memoranda (Hall Workfile)
R-33 Hall Rent #2 Offering Memoranda
R-34 Hall Rent #3 Lease Agreement and Exhibits
R-35 New and Proposed Big Boxes
R-36 New Big Box Articles
R-37 Home Depot Store Count by Year (pp. 1-4 only)
R-40 Walmart Supercenter Store Count by Year
R-41 At Home Store Count by Year
R-42 Data Sheet for Blackiston Mill Rd. (Peddler's Mall) Property
R-43 Photographs of Peddler's Mall (pp. 1-3 only)
R-44 Clarksville Kmart Article
R-45 Small Format Store Articles
R-52 Excerpts from Allen's Appraisal of Goshen Kohl's (Cover and pp. 80 and 90)[1]

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

III. OBJECTIONS

10. The parties made various objections during the course of the hearing, most of which the ALJ ruled on. We adopt his rulings. The ALJ took three objections under advisement: (1) Kohl's objection to Exhibit R-3, a document labeled as "Corrections" to Hall's sales-comparison analysis and Hall's testimony about that exhibit; (2) Kohl's objection to Exhibit R-52, excerpts from Allen's appraisal of a Kohl's store from Goshen, Indiana; and (3) the Assessor's objection to Exhibit P-29, excerpts from Hall's appraisal of a Kohl's store from Madison County, Indiana.

[1] When going over the exhibits at the end of the hearing, the ALJ mistakenly referred to this as Exhibit P-53.

11. We begin with Kohl's' objection to Exhibit R-3. That document contains Hall's conclusion that two of the sales from his sales-comparison analysis—former Sam's Club stores from Indianapolis, Indiana and Madison, Wisconsin—were part of a portfolio transaction and were not reliable as individual transactions. Hall then analyzed the portfolio sale as a whole and concluded that he would expect the subject property to sell for a unit price that was similar to the unadjusted average unit price for the portfolio. *Ex. R-3.*

12. Hall had used the reported individual sale prices for the Indianapolis and Madison Sam's Club stores in an earlier appraisal for an appeal of a Cabela's store. In the determination we issued for that appeal, which Hall had read months before he prepared his appraisal report for the subject property, we credited Allen's testimony that he had confirmed with the seller's representative that the two properties were part of a portfolio transaction in which the buyer was allowed to allocate the price between the properties as it saw fit. *Tr. at 675-76, 682.* In a hearing on an appeal of a Clark County Target store during the first week of September 2023, Hall was confronted with an email between Allen and a senior manager from Walmart echoing Allen's testimony from the Cabela's appeal. Shortly after that hearing, on September 11, Hall prepared Exhibit R-3. The Assessor's counsel provided the exhibit to Kohl's four days later. *Ex. P-12; Tr. at 667, 686.*

13. Kohl's objected to Exhibit R-3 on grounds that Hall did not prepare the exhibit, much less exchange it, until well past the appeal-management plan's deadline for exchanging expert reports. According to Kohl's, the exhibit goes well beyond mere corrections to Hall's original report and instead represents his analysis of data he had not considered in forming his valuation opinion. The Assessor responded that the exhibit neither represents a new appraisal nor changed Hall's opinion of value. *Tr. at 667-91.*

14. We overrule the objection. We agree that Hall's analysis of the portfolio sale as a whole goes beyond mere corrections to his original report. And Hall did not create Exhibit R-3

until well after the appeal-management plan's deadline for exchanging expert reports. But Kohl's and its expert, Allen, were well aware of the portfolio sale. Under those circumstances, we do not find any prejudice to Kohl's by admitting Hall's written analysis of that transaction or his related testimony.

15. Next, the Assessor offered the excerpts from Allen's appraisal of the Goshen Kohl's store (Ex. R-52) to show (1) that the traffic counts he used for two comparable sales were from 2022 or earlier, rather than from 2023, and (2) that he made inconsistent adjustments between the two appraisals. *Tr. at 409-19.* The Assessor originally used the excerpts to refresh Allen's memory but then decided to offer them as an exhibit. Kohl's objected on relevance grounds, arguing that the Assessor had already elicited Allen's refreshed testimony. According to Kohl's, admitting the excerpts would potentially allow the Assessor to argue additional points that Kohl's would not be able to anticipate and to which it therefore could not respond by offering additional testimony. *Tr. at 416-19.* We agree with Kohl's and sustain the objection.

16. We reach the same conclusion on the Assessor's objection to the excerpts from Hall's appraisal of a Kohl's store from Madison County (Ex. P-29). As the Assessor had done with the appraisal of the Goshen Kohl's store, Kohl's used the excerpts to refresh Hall's memory about several aspects of his Madison County appraisal that it argued were inconsistent with his appraisal of the subject property. The Assessor objected largely on the same grounds as Kohl's had objected to Exhibit P-29. *Tr. 1060-80.* We sustain the objection.

IV. FINDINGS OF FACT

A. The Property

17. The subject property contains an 89,476-square-foot Kohl's discount department store with a mezzanine measuring approximately 7,800 to 8,000 square feet. The store was built in 2009. It sits on an 8.464-acre site in Jeffersonville, which is part of Clark

County. Clark County, in turn, is part of the Louisville, Kentucky Metropolitan Statistical Area ("Louisville MSA"). *Ex. P-1 at 10, 17, 22; Ex. R-1 at 47, 58.*

18. The property is located along Allison Lane in a commercial neighborhood that contains a diverse mix of supporting retail, office, and multifamily properties, as well as several shopping center complexes and multiple big-box stores. The neighborhood is accessible from local highways, including Interstates 65 and 265. *Ex. P-1 at 14; Ex. R-1 at 26-27; Tr. at 497.*

19. At some point, Kohl's decided it could maximize product sales at the store using as little as 40,000 square feet. In 2019 and 2020, it therefore marketed a 24,655-square-foot portion of the store for lease. There was no market interest in the space, and Kohl's continued to occupy the entire store. *Ex. P-6; Ex. R-1 at 60; Ex. R-2 at 30-33; Tr. at 70-71.*

20. The property was assessed for $5,067,500 in 2021. The assessment rose to $5,106,500 in 2022, an increase of 0.77%.

B. Expert Opinions

1. Allen's appraisal

21. Kohl's hired Allen to appraise the property. Allen holds multiple professional designations. Among other things, he is a Member of the Appraisal Institute ("MAI") and a chartered financial analyst. He has both taught college-level appraisal courses and been a guest lecturer on real estate valuation for graduate-level business classes. He is certified or licensed to appraise property in multiple states. He has also published articles on valuing real property. *Ex. P-1 at 140-41;Tr. at 16-20.*

22. Allen has appraised a wide variety of properties over his more than 40-year career, including appraising big-box stores in all of the states where he is licensed. He also has vast experience studying sales, offerings, and leases of big-box stores throughout the

Midwest, and he has worked as a broker to select sites for two big-box retailers. In that capacity, Allen has had conversations with big-box retailers about the factors they believe are important for potential store locations. *Ex. P-1 at 140-41; Tr. at 16-22.*

23. We find that Allen's experience and training bolster his credibility as an expert on the valuation of real property, particularly big-box stores.

24. Allen prepared an appraisal report in which he estimated the market value-in-use of the fee-simple interest in the subject property as of January 1, 2022. He certified that his appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Ex. P-1 at 2, 4, 8.*

a. Area and market analysis

25. Allen analyzed the subject property's neighborhood, which he defined as the half-mile radius around the property, and he determined that it was in the stabilized state of its lifecycle as of the valuation date. Turning to the market, Allen described changes in the general retail industry over the last ten years or so, including what some have termed the "retail apocalypse." In his appraisal report, Allen cited to various sources tracking retail-chain store closures from 2014 through 2021, showing what he described as a giant wave of closures beginning in 2016. Those closures included big-box stores, although much of the data in his report is not specific to big-box retailers. *Ex. P-1 at13-16, 36-44*; *Tr. at 42-45, 392.*

26. According to Allen, the wave of store closures has led to an oversupply of stores similar to the subject property. And he noted that neither Indiana nor the subject property's market area were immune. Green Tree Mall is located less than a mile away from the subject property and has experienced closures, including a Sears store that has not been re-occupied. Even in the immediate area around the subject property, there was a former Kmart that closed and was re-tenanted by Rural King and a Kroger store that closed and had not been re-occupied. *Ex. P-1 at 79; Tr. at 34, 68-69, 203.*

27. Allen also explained that there has been a decrease in demand for larger stores, although he acknowledged that there was still an active market for properties like the subject property and that they frequently exchange in the market. Due to changes in consumer habits, big-box stores do not need as much space to sell the reduced inventory they carry. Some big-box retailers have therefore begun to downsize their new stores. Downsizing efforts are reflected in a decline in the median and average sizes for new Kohl's and Target stores. Indeed, the median size for new Target stores plunged from 145,305 square feet in 2010 to 27,492 in 2016, and stayed below 34,000 square feet until 2021, when it rose to 40,859 square feet. Similarly, Kohl's was not opening any new stores over 80,000 square feet after 2013, and its smallest stores are 35,000 square-feet. *Exs. P-2 at 69-72, P-3, P-4, P-7; Tr. at 50-52, 62-65, 75-77, 420, 441, 459.*

28. According to Kohl's' store optimization initiatives, however, those small-format stores provide a blueprint to maximize its presence in small and large markets. And an article from Allen's workfile indicates that big-box retailers in general, and Target in particular, were boosting business by opening new, smaller stores in places where there is not enough space to locate a big warehouse-type store, such as big cities, dense suburban areas, and college campuses. But Allen disputed that the shift from large-format to small-format stores was primarily attributable to the infeasibility of building such stores in those markets; to the contrary, he said that if there were more demand for large-format stores in big cities, retailers would build them. But he acknowledged that it might be difficult to buy a site the size of the subject site in Manhattan or on some college campuses. In any case, Allen agreed that retailers are still building larger stores, even in Indiana. *Ex. P-2 at 68-69; Ex. P-4; Ex. P-7 at 11-12; Tr. at 389, 396-400, 449.*

29. In addition to downsizing new stores, some big-box retailers, including Kohl's, have been trying to "rightsize" existing stores by either leasing or selling portions of those stores to different entities, such as the supermarket chain Aldi's or Planet Fitness, and by widening aisles to mask the fact that they are carrying less inventory. They also enter into deals

with Amazon and Sephora to occupy parts of their stores. Kohl's' efforts to lease a portion of the subject property in 2019-2020 reflects its rightsizing initiative. Kohl's' "rightsized" stores went from a median of 88,576 square feet to 63,550 square feet. As of the valuation date, Kohl's had rightsized about 22 stores and had plans to rightsize about 300 total stores. *Exs. P-2 at 68-7, P-4, P-5; Tr. at 50-55, 64-65, 64-67.*

30. Allen believes that the changes to the market largely stem from the continued rise of e-commerce, although he acknowledged that the industry had begun to use click-and-collect as a reaction to compensate for sales lost to e-commerce. Click-and-collect is a process through which consumers can buy products online and either pick them up at a store or have a contractor pick them up and deliver them to the consumer, often on the same day. *Tr. at 62, 84-85, 242-44.*

31. But Allen explained that click-and-collect has neither stopped the closures of big-box stores nor led to more stores of the subject property's size being built. To the contrary, some retailers are working towards having stores with as little as 3,000-4,000 square feet that are designed solely for click-and-collect sales. And Kohl's' store optimization initiatives contemplate that, like the rest of its stores, its small-format stores will serve as pick-up locations for click-and-collect buyers. *Ex. P-4; Tr. at 62, 85-86.*

b. Valuation approaches

32. With those things in mind, Allen turned to the three generally recognized valuation approaches: the cost, sales-comparison, and income approaches.

(1) <u>Sales-comparison approach</u>

33. Allen began with the sales-comparison approach.

i. Comparable sales

34. Because prospective buyers for stores like the subject property are regional, Allen did not limit his search for comparable sales to Indiana. Instead, he expanded his search to adjacent states. But he wanted to stay close because supply and demand characteristics and prices for big-box stores differ between regions of the United States. The Midwest has some of the lowest prices he has seen, while the highest are from the east and west coasts and Florida. Generally, the Northwest, California, and the Southeast also have much higher prices than the Midwest. Midwest capitalization rates for retail properties are also generally higher than the national average. For the fourth quarter of 2021 the Midwest had the second highest asking capitalization rates for net-lease big-box stores (including junior- and mid-box stores) of any region, trailing only the Northeast. *Ex. P-1 at 48; Ex. R-18*; *Tr. at 107-09, 159-60, 186-87, 376.*

35. For those reasons, Allen did not use sales from Virginia Beach, Virginia or Colorado. Big-box prices from Colorado, one of the states in which Allen is licensed and has appraised big-box stores, are two-to-three times what they are in Indiana. Virginia Beach is on the East Coast, and the appraisal work Allen has done there indicates much higher prices than in the Midwest. *Tr. at 108-09.*

36. Allen included sales of stores as small as 50,000 square feet in his search. In previous appraisal assignments, however, he defined big boxes as stores exceeding 80,000 square feet. According to Allen, there used to be strong demand for larger stores. But the market has changed, and there is more of a size-related price difference than before. So he no longer uses his old definition. *Tr. at 220, 420.*

37. Allen specifically did not include any sales from the Sam's Club portfolio transaction. Allen asked a senior manager from Walmart about the transaction, and he responded that the parties had originally agreed on an allocation of the overall sale price between stores, but that Walmart allowed the buyer, At Home, to change the allocation for its own

business purposes. The allocated prices ranged from $24.50/SF for a Cincinnati, Ohio store to $118.21 for a store from Scottsdale, Arizona. *Ex. P-12; Tr. at 128-31.*

38. According to Allen, while the sale of the portfolio as a whole was a market transaction, the allocated prices for the individual stores do not reflect their market values because the parties did not agree to those prices. *Tr. at 128-31.*

39. Allen ultimately selected eight sales for his analysis:

Development Location	Subject Kohl's Clark Cnty. IN	Sale 1 Kroger Indianapolis IN	Sale 2 Walmart Hammond IN	Sale 3 Menards Portage, MI	Sale 4 Marsh Ft. Wayne IN.	Sale 5 Lowe's Portage IN	Sale 6 Big Kmart Byron Twp. MI	Sale 7 Super Walmart Hartland Twp. MI	Sale 8 Kmart Clarksville IN
Sale Date		Sep-17	Nov-17	Mar-18	Sep-20	Jun-19	June-19	Jan-21	Dec-19
Bldg. Area	89,467	65,006	145,554	81,569	65,732	133,841	115,440	78,434	102,750
Year Built	2009	2000	2000	1988	2003	2003	1993	2009	1993
Land Size	8.46	6.01	11.27	12.76	10.94	12.39	10.47	10.92	8.97
LTB Ratio	4.12	4.03	3.37	6.81	7.25	4.03	3.95	6.06	3.80
Rights Conveyed									
Sale Price		Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Price/SF		$2,600,000	$2,600,000	$2,800,000	$825,000	$3,823,000	$3,125,000	$2,425,000	$2,350,000
		$40.00	$17.86	$34.33	$12.55	$28.56	$27.07	$30.92	$22.87
Community Data									
5-mile radius									
Population	112,439	183,807	235,425	128,066	129,505	82,846	155,050	30,904	163,026
Households	49,140	70,871	89,397	52,451	52,542	31,500	58,564	11,064	69,248
Med HH Inc	$61,778	$68,097	$49,554	$52,561	$66,429	$60,546	$58,383	$100,038	$49,702
Avg. HH Spend	$56,303	$51,159	$36,908	$43,115	$50,111	$41,833	$43,911	$66,353	$40,457
Spending Power	$2,767	$3,626	$3,299	$2,261	$2,633	$1,318	$2,572	$734	$2,802
10-mile radius									
Population	547,373	447,930	630,835	237,076	308,629	262,087	460,188	145,796	489,736
Households	235,648	172,224	231,830	95,846	121,362	101,463	173,860	55,810	210,227
Med HH Inc	$60,460	$64,072	$52,216	$55,133	$57,597	$57,904	$62,458	$105,742	$55,484
Avg. HH Spend	$55,102	$49,175	$37,405	$43,483	$44,602	$43,982	$44,652	$62,259	$50,626
Spending Power	$12,985	$8,469	$8,672	$4,168	$5,413	$4,453	$7,763	$3,475	$10,643
Traffic Count	23,445	54,601	16,757	13,443	28,727	20,692	90,000	34,900	6,308

Allen physically inspected all the properties in order to understand their physical structures and locations. *Ex. P-1 at 47-67, 78; Tr. at 97-106, 111.*

40. Three of the properties (Sales 3, 4, and 6) sold to owner-users (Blaine's Farm & Fleet, Poochickieburger, and U-Haul, respectively) who occupied the entire store. Of those three, two of the buyers did not intend to use the stores primarily to sell goods. Poochickieburger planned to open an entertainment center and rezone the property to allow arcades, indoor go-karts, miniature golf, and other recreational pursuits. U-Haul bought a former grocery store to use as an indoor, climate-controlled storage facility and as a showroom for selling moving and packing supplies and renting out trucks and

trailers. Allen, however, considers self-storage and entertainment centers as a continuation of retail use. *Ex. P-1 at 51-67; Ex. R-6 at 5-8; Tr. at 230-31, 276-77, 339-40, 428.*

41. Another three properties (Sales 1, 2, and 5) were sold to investors or developers. The buyer from Sale 2 intended to lease the property to either a single tenant or multiple tenants, while the buyer from Sale 5 anticipated dividing the building into smaller retail spaces. *Ex. P-1 at 51-67; Tr. at 275.*

42. Sale 7 involved a former Wal-Mart Supercenter that Rural King bought in 2016. Rural King then subdivided the building into two spaces and sold a 78,434-square-foot space to an appliance store, which is the sale Allen used. Sale 8 was a former Kmart building that sold to an existing tenant, Peddler's Mall. Allen only discovered that fact after he prepared his report. Peddler's Mall operated the property like an antique mall where customers could buy merchandise from various vendors. *Ex. P-1 at 64-67*; *Ex. P-11; Tr. at 102-06, 280-285.*

43. Four of the properties (Sales 1, 2, 5, and 7) were sold with covenants in their deeds restricting various uses of the properties. The restrictions varied. Some prohibited grocery-store uses or uses by retailers who were similar to the seller, while others prohibited department-store uses. And some of the covenants were tied to total area devoted to the restricted use, such as grocery-store use exceeding 10,000 square feet, or department- or discount-store use exceeding 50,000 square feet. The restrictions' duration ranged from 4 to 50 years. *Ex. P-1 at 51-69.*

ii. Adjustments

44. Allen considered adjusting his comparable properties' sale prices to account for transactional and property-related differences. He adjusted the sale prices for the four properties that sold with deed restrictions to reflect differences in property rights transferred between those sales and the posited sale of the subject property. Allen spoke

to a party or broker from each sale that included deed restrictions. In the three instances where the restrictions were added in conjunction with the sale that Allen used in his report (Sales 1, 2 and 5), the parties had already settled on a sale price before the restriction was negotiated. In the remaining instance, the existing restriction did not interfere with the buyer's planned use of the store. Allen therefore concluded that the restrictions did not affect the properties' sale prices. *Ex. P-1 at 51-67, 68-69; Tr. at 112-15, 122-23, 125-26.*

45. Despite that conclusion, Allen researched the issue further by reviewing two national studies of big-box stores. One was prepared by Brett Harrington of the International Appraisal Co., and the other was prepared by Situs RERC. Although the final version of the Situs RERC study showed virtually no price difference between properties with and without deed restrictions in the subject property's size range, the Harrington study indicated that deed restrictions depressed sale prices by an average of 6%. Allen ultimately decided to adjust the sale prices for the restricted properties downward by 5%. Even though he could not find direct evidence that any of the deed restrictions affected the properties' sale prices, he felt that an adjustment was appropriate because the restrictions affected some ownership rights. *Ex. P-1 at 68-69; Ex. R-22 at 13; Tr. at 136-37, 286, 331-33, 428-30.*

46. Turning to differences in market conditions between the comparable properties' sale dates and the valuation date for his appraisal, Allen relied on several data sources, including market sales from Indiana and Michigan for freestanding retail stores over 50,000 square feet, publications, and interviews with brokers. He also looked at CoStar and *Realty Rates* data both from the Louisville MSA and the MSAs for his comparable sales, explaining that buyers would consider conditions in the markets where they bought the properties. From these sources, Allen determined annual appreciation rates of 2% from year-end 2016 through year-end 2017, 3% for 2018 and 2019, and 5% for 2021. Due to the Covid-19 pandemic, he found 0% appreciation for 2020, although all the data

displayed in his report showed at least some increase in value over the course of that year. *Ex. P-1 at 70-73; Tr. at 139-42, 294-96.*

47. Allen also considered various physical characteristics, including land-to-building ratios; building size, design, age, and condition; and location-related characteristics, such as arterial attributes, demographic attributes, and retail submarkets. He adjusted Sale 3 downward because the site included surplus land. But he did not adjust any of the sales based on differences in land-to-building ratios. Even though Sale 4 had a much higher ratio than the subject property, there was no excess or surplus land. Instead, the additional land was part of the parking lot for the overall shopping center with cross-easements. *Ex. P-1 at 73-78; Tr. at 316-17, 433-34.*

48. For his building-size adjustments, Allen explained that larger developments generally command lower unit values than do properties that are smaller than big-box stores. He did a matched-pair analysis involving the former Wal-Mart Supercenter that first sold to Rural King and that a smaller portion of which later sold to an appliance store. After adjusting for market conditions, there was a 16.8% difference in the unit prices from the two sales. Allen also looked at the Situs RERC study, which reported median and average sale prices for several size ranges (50,000-70,000, 70,000-100,000, 100,000-130,000 and 130,000+ square feet), and he computed indicated premiums or discounts for the subject property's size range compared to the other ranges. *Ex. P-1 at 73-74; Tr. at 143-44, 297-99.*

49. Allen ultimately adjusted the three sales that involved buildings with more than 115,000 square feet upward by 10% and the two sales with buildings that were in the 65,000-square-foot-range downward by 10%. *Ex. P-1 at 73-74, 78*; *Tr. at 143-45, 298-300.*

50. Turning to location considerations, Allen first addressed arterial attributes, including traffic counts, proximity to highways, access, and overall visibility. He gave traffic counts the most weight, explaining that retailers look at them as representing visibility

and advertising and that they consider those counts to be very important. His adjustments ranged from -10% to 10%. *Ex. P-1 at 74-75, 78; Tr. at 146-47, 306-07.*

51. For demographics, Allen focused on the community data he had collected. He gave the greatest weight to spending power, which he calculated by multiplying the number of households within each property's 5- and 10-mile radii by average household spending. His adjustments ranged from -5% to 10%. *Ex. P-1 at 75-76, 78; Tr. at 147-49.*

52. For his last location-related adjustment, Allen compared the properties' retail submarkets. According to Allen, the submarket data offers a picture of retail price levels and of supply and demand for each location. He based his adjustment on effective asking rent—which was a function of asking rent and vacancy—for the five-mile radius (primary trade area) surrounding each property. Allen, however, acknowledged that he relied on data that included all retail types, and the mix of retail properties within a property's primary trade area could differ from location to location. His adjustments ranged from 0% to 25%. *Ex. P-1 at 77; Tr. at 149-51, 310-11.*

53. Finally, Allen determined that the subject property was in average condition for its age on each valuation date. He adjusted the sale prices by 1% for each year difference in the subject property's age and the effective age of each comparable property on its sale date. *Ex. P-1 at 77-78; Tr. at 151-52.*

54. The adjusted prices from Allen's comparable sales ranged from \$17.75/SF to \$43.69/SF, with an average of \$35.30/SF. He did not give as much weight to the sales on the high and low ends of the range (Sales 4 and 5, respectively). He also indicated that he would not give as much weight to the Peddler's Mall sale (Sale 8) because the property was leased when it sold. He settled on a unit price of \$38/SF for the subject property, which he applied to the ground-floor area. *Ex. P-1 at 83; Tr. at 164-65, 336-37, 431.*

55. Allen also looked at additional data: (1) unadjusted sale prices from Indiana stores ranging from 50,903 to 133,800 square feet that did not otherwise meet his selection criteria for comparable sales, and (2) ranges, medians, and averages from the Harrington and Situs RERC studies. The additional sales gave him a picture of the market, while the Harrington and Situs RERC studies told him that his comparable sales were generally within the ranges and averages of national data. *Ex. P1 at 79-83; Tr. at 154-64.*

56. For the mezzanine, Allen used a unit value of $12.16/SF, or 32% of the ground floor's unit value. He based that on the differences in base replacement costs for those areas reported by Marshall Valuation Services ("MVS). Using his chosen unit values, Allen arrived at a total of $3.5 million (rounded) for the subject property under the sales-comparison approach. *Ex. P-1 at 83-84; Tr. at 165-66.*

(2) Income capitalization approach

57. After completing his sales-comparison analysis, Allen turned to the income capitalization approach under which he capitalized one year of projected stabilized net operating income ("NOI") for the property and then subtracted stabilization costs. *Ex. P-1 at 84.*

58. To project NOI, Allen first had to estimate market rent for the property. He assumed a triple-net lease, under which the tenant would pay, as additional rent, the costs of insurance, real estate taxes, and exterior maintenance. He selected 18 leases for comparison, which he narrowed down to the following eight:

	Lease 10	Lease 11	Lease 13	Lease 14	Lease 15	Lease 16	Lease 17	Lease 18
Tenant	Floor & Decor	At Home	Big R.	G4CE Ent.	Floor & Decor	Urban Air	Floor & Decor	Gabe's
Location	Cincinnati OH	Louisville Ky	Elkhart IN	Warren MI	Shelby Twp. MI	Toledo OH	Lexington KY	Perrysburg OH
Date	June-14	Sep-14	Jan-17	Nov-17	Sep-19	Feb-20	Jan-22	Mar-22
Bldg. Size	79,348	162,000	86,581	101,773	91,500	66,258	82,688	56,588
Yr. Built	1994	1983	1990	1993	2000	1986-93	1979	1982
Rent/sf	$5.50	$5.00	$2.75	$4.75	$6.25	$7.45	$7.50	$5.85
Population	233,690	150,000	81,890	333,948	252,634	170,584	210,361	82,468
Med. HH Income	$66,482	$82,179	$55,987	$65,206	$80,972	$60,124	$58,827	$75,488
Av. HH Spend.	$61,470	$66,615	$45,820	$52,001	$61,156	$51,290	$52,606	$56,910

Traffic	26,281	49,992	19,660	31,231	82,278	53,677	38,465	23,943

As with his comparable sales, Allen inspected all of the properties except the Floor & Décor from Lexington (Lease 17). *Ex. P-1 at 85-105; Tr. at 171-73.*

59. Lease 14 involved space within a larger shopping center that the lessee used to operate a G4C entertainment center, which offered activities like go-karts, laser tag, an arcade, and other action-oriented activities. The lessee from Lease 16, Urban Air, used the property as a trampoline park. *Ex. P-1 at 88-103*; *Tr. at 339-40, 346-47; see also, Ex. R-6 at 5.*

60. Lease 18, the Gabe's from Perrysburg Ohio, was a gross, rather than a triple-net, lease. Allen therefore converted it to a triple-net structure by subtracting $2.80/SF for common-area maintenance ("CAM"), insurance, and property taxes that the owner was paying but that would be borne by the tenant under a triple-net structure. But the offering memorandum for that property revealed the owner was paying only $2.21/SF for those expenses in 2021, and that appears to include penalties for late tax payments. Allen claimed that the difference stemmed from him having used 2022 taxes payable in 2023 instead of 2021 taxes payable in 2022. The offering memorandum, which includes information on the taxes for each year, does not support his claim, however. If Allen had used the taxes for 2022 payable in 2023, his converted triple-net lease rate would have been higher. *Ex. P-1 at 102; Ex. R-16 at 8, 21-23; Tr. at 172-73, 349-56.*

61. Allen adjusted his rental rates largely along the same lines he used to adjust his comparable sale prices, although his appraisal report contains less data about those adjustments. *Ex. P-1 at 104-05; Tr. at 175-76.*

62. Unlike with his sales-comparison approach, Allen did not consider market trends in the MSA for each comparable lease but instead based his market-conditions adjustment only on data for the Louisville MSA. For 2014 and 2015, he applied 1% appreciation. For 2016 forward, he applied the same appreciation as he applied in adjusting his comparable sales. Once again that included 0% appreciation for 2020, despite the fact that his data

showed asking rent for several property types increasing during that year. *Ex. P-1 at 103-05.*

63. Allen initially adjusted rental rates downward for much smaller differences in building size than the differences for which he had adjusted sale prices. For example, he adjusted Leases 10, 13, and 17, which were within roughly 10,000 square feet or less of the subject building's size, downward by 10%. At the hearing, he acknowledged that his adjustments for Leases 13 and 17 were errors. He therefore recalculated his adjusted rent for those properties. Allen also adjusted the leases for the two smallest buildings (Leases 16 and 18) downward by 15%. The only positive adjustment (10%) was for the 162,000-square-foot space from Lease 11. *Ex. P-1 at 105; Tr. at 358, 447-48.*

64. Allen also made smaller adjustments for age and condition (3.5% to 10%) than he did under the sales-comparison approach because, under triple-net leases, tenants are not responsible for replacing things like the roof or repaving the parking lot. *P-1 at 105; Tr. at 437.*

65. For arterial and demographic attributes, Allen considered the same factors as he did in his sales-comparison analysis. His arterial-attributes adjustments ranged from -20% to 5%, while his demographic-attributes adjustments ranged from -10% to 5%. In some instances, the properties had similar traffic counts to two of his comparable sales, but he made larger adjustments for superior arterial attributes. Traffic count, however, was only one factor in his adjustment, albeit the most important one. Much the same is true for Allen's demographic-attributes adjustments. His overall adjustments to his leases differed from the adjustments in his sales-comparison analysis for properties that had some similar characteristics. Allen made even larger adjustments for differences in retail submarket characteristics, ranging from -5% to 25%. *Ex. P-1 at 105; Tr. at 362-65.*

66. After considering all the adjusted leases, Allen settled on ground-floor rent of $5.50/SF. That was slightly above the average of $5.40/SF he had originally calculated before

correcting his size adjustments for Leases 13 and 17, but below the median of $5.53/SF. After correction, the average was $5.53/SF, although the median remained $5.53.[2] Allen's corrections did not change his conclusion, which he felt was in line with his comparable rents overall. He estimated rent for the mezzanine at 32% of the ground-floor rent. *Ex. P-1 at 105-06, 108; Tr. at 176-77, 447-48.*

67. To arrive at potential gross income ("PGI"), Allen added two reimbursable operating expenses—common area maintenance ("CAM") and insurance—for which a tenant would be responsible under his posited triple-net expense structure. By including those expenses both as reimbursement income and operating expenses, he was able to account for the owner's share of the expenses during periods of vacancy. Allen based his CAM estimate on (1) data from shopping centers, both from the Midwest and nationally, and (2) CAM expenses for three big-box stores. *Ex. P-1 at 107; Tr. at 173, 179-80, 369-70.*

68. Allen did not include real estate taxes as an expense or reimbursement because he addressed them in his capitalization rate. That was consistent with his hypothetical condition that property taxes are level with assessment, which negated the influence that property taxes tied to the existing assessment might otherwise have on his value conclusion. According to Allen, that is a generally accepted approach in the appraisal profession. *Ex. P-1 at 107*; *Tr. at 29-30, 179-80, 183-84, 189.*

69. Allen then estimated the property's effective gross income ("EGI") by adjusting his PGI to account for stabilized vacancy and credit loss. This reflects an allowance for the likelihood of vacancy if, for example, a tenant goes out of business or declares bankruptcy. Allen examined CoStar data for all retail property types in the Louisville MSA and settled on a rate of 5%. His estimate did not consider the costs that would be incurred to achieve stabilization, which he believed needed to be included under his fee-

[2] Allen testified that the median was $5.42/SF. But both before and after Allen's corrections, the middle two adjusted rents in the eight-lease range were $5.42/SF and $5.64/SF. That translates to a median of $5.53/SF.

simple valuation premise. He dealt with those later in his analysis. *Ex. P-1 at 106-07; Tr. at 177-78.*

70. To arrive at NOI, Allen subtracted operating expenses from the property's EGI. In addition to CAM and insurance, he also needed to subtract un-reimbursable operating expenses, which he identified as a management fee and replacement reserves. He settled on a management fee equaling 3% of EGI. *Ex. P-1 at 107-08; Tr. at 180-83.*

71. Turning to replacement reserves, Allen explained that leases for existing buildings differ from those for properties that were built to suit the original tenant. Build-to-suit leases are essentially devices to finance construction. Allen opined that build-to-suit leases may be absolute net, meaning the tenant is responsible for maintaining structural improvements like the roof and parking lot that ordinarily would be the owner's responsibility under a triple-net lease. That makes it easier to raise the capital necessary to build the store because the leases can be sold on the market like a mortgage or bond. By contrast, leases of existing big-box stores typically are not absolute net, and investors need to account for major capital expenses over a normal ownership period. To estimate replacement reserves, Allen relied on data from the *Korpaz/PWC Real Estate Investment Survey* from 2019-2021. The survey reported reserves for several different types of investors over that period. Allen settled on $.25/SF for the subject property. *Ex. P-1 at 107-08; Tr. at 180-83.*

72. He then turned to selecting an appropriate capitalization rate. His goal was to estimate an overall rate that valued the fee-simple, rather than a leased-fee, interest in the property. Unfortunately for Allen, sources for overall rates (like extraction from market sales) are for leased-fee interests. He explained that leased-fee rates are lower because they do not include many of the risks associated with buying the fee-simple interest, like the need to find a tenant whose creditworthiness will be unknown at the time of sale, negotiate a lease, and possibly provide tenant improvements. *Ex. P-1 at 109; Tr. at 184-85.*

73. Keeping that in mind, Allen used two methods and sources to determine a capitalization rate. He calculated a rate by analyzing bands of investment. He also looked at rates reported through several industry publications. Based on this data, and keeping in mind that fee-simple rates are riskier and that rates from the Midwest are generally higher than the national average, Allen estimated an overall rate of 8.5%. That was higher than the average from his band-of-investment analysis. It was also higher than the rates indicated from all but one of his surveys. Allen explained that he chose a "value-added" rate, meaning that an investor would buy the property with the risk of not having a tenant in place. He then loaded his overall rate to reflect property taxes for which the owner would be responsible during vacancy[3] and divided the loaded rate into his estimated NOI. *Ex. P-1 at 109-11; Tr. at 184-89, 378-79.*

74. But Allen had one final step. Because his definition of the fee-simple interest contemplates the property being available for lease on the valuation date, he felt he needed to account for the following expenses that would be incurred in leasing the property to stabilization: a leasing commission, holding costs, and a tenant-improvement allowance. *Ex. P-1 at 111-13; Tr. at 189-92, 382.*

75. Based on broker interviews, Allen used a commission equaling 6% of annual base rental income over the first five years of his hypothesized lease. His holding costs included lost rent and reimbursement of expenses during the lease-up period, which he estimated at 12 months. Only two of his comparable leases referenced either a tenant-improvement allowance or a rent concession for tenant-improvements: Lease 15, which included a $4.61/SF allowance, and Lease 14, which included a six-month rent concession. Nonetheless, Allen testified that it is difficult to get tenant-improvement allowance data and he claimed that landlords typically offer such allowances in the retail setting. When Kohl's marketed a portion of the subject property, it offered a tenant-improvement allowance, and at least one leasing memorandum from Allen's workfile advertised a

[3] To calculate his tax load of .14229%, he multiplied the property's effective property tax rate (2.84572%) by his estimated vacancy rate (5%).

tenant-improvement allowance of $20/SF. Allen estimated an allowance of $5/SF for the subject property. *Ex. P-1 at 88-112; Ex. R-17 at 30; Tr. at 72, 191-92, 380-82, 444-45.*

76. He arrived at the following value under the income approach:

	2022
PGI	$618,043
Vacancy & Credit Loss	($30,902)
EGI	$587,141
CAM	($89,476)
Ins.	($22,369)
Mgmt. Fee	($17,614)
Repl. Res.	($22,369)
NOI	$453,313
Cap Rate	÷8.64229%
Capitalized NOI	$5,037,008
Leasing Comm.	($151,859)
TI Allowance	($447,380)
Holding Costs	($618,043)
Value (Rounded)	$3,820,000

Without Allen's deduction for a tenant-improvement allowance, the value would be $4,267,100 (rounded). *Ex. P-1 at 105-13.*

(3) <u>Cost approach</u>

77. Allen began his analysis under the cost approach by estimating the subject site's value. He identified three sales and one offering of vacant land and adjusted the prices along largely the same lines and using similar methodology as he used to adjust his improved sales. He estimated a value of $275,000/acre or $2.33 million (rounded) for the subject site. *Ex. P-1 at 114-19; Tr. at 194-97.*

78. To estimate the improvements' replacement cost, Allen used data from MVS for an average quality, class-C discount store. He also estimated replacement costs for the site improvements, such as asphalt paving and lighting. The costs provided by MVS include both direct costs (construction materials and labor) and most indirect, or "soft" costs that go into construction. Allen included additional soft costs, primarily to account for construction management, which he estimated at 5% of MVS' costs. He based that

estimate on his experience with construction-management companies. Also, as explained by *The Appraisal of Real Estate*, the cost approach represents "the value of the fee-simple interest in a property at stabilized occupancy and at market rents and terms." Allen therefore added his projected leasing commission (which he later deducted at the end of his analysis). *Ex. P-1 at 119-22, 127; Tr. at 199, 386.*

79. Allen used the age-life method to estimate physical depreciation for the building and site improvements. That entailed dividing the useful lives of the building and site improvements (35 and 15 years, respectively) by their effective ages as of each valuation date. *Ex. P-1 at 122-23; Tr. at 200-02.*

80. Allen also determined that the property suffered from both functional and external obsolescence. He explained that freestanding big-box stores like the subject property are never built on speculation, i.e. for the purpose of later selling or leasing them. That is because no prudent businessperson would expect to realize a return on such an investment. Instead, the stores are built to meet the specific brands and business models of their operators. When those stores sell, they will not be the exact size or configuration that the buyer wants. Buyers know that they will incur costs to reconfigure the stores to meet their own retail concepts and therefore will not pay the full physically depreciated replacement cost. In addition, while costs of construction increased during the pandemic, market values did not. *Ex. P-1 at 123-24; Tr. at 202-05, 388, 391.*

81. In addition, Allen pointed to the oversupply of big-box stores in the market and to retailers turning increasingly to small-format stores. Based on his observations of the market, click-and-collect has not ameliorated the presence of obsolescence in stores like the subject property. To the contrary, they continue to sell for less than their depreciated replacement costs new. *Tr. at 84-86.*

82. Allen primarily relied on two methods to estimate the amount of obsolescence: capitalization of deficient income, which is recommended by the 15th edition of *The*

Appraisal of Real Estate, and direct extraction from the sales-comparison approach. Both relied heavily on his analyses under the other two valuation approaches. The first relied on his estimates of NOI and an appropriate capitalization rate for the subject property, and the second essentially compared his concluded value from the sales-comparison approach to the site value plus the physically depreciated cost of the improvements. Allen basically gave equal weight to the two methods and settled on obsolescence equaling 40% of replacement cost new. *Ex. P-1 at 124-26; Tr. at 205-08.*

83. Allen did not find any inconsistency between his conclusions about obsolescence and the fact that he adjusted his comparable sales and leases upward to account for market appreciation. According to Allen, if costs increase faster than market values, there is obsolescence. And there has been tremendous inflation. *Tr. at 206-12.*

84. After considering all forms of depreciation and making a property-rights adjustment to back out his estimated leasing commissions and holding costs, Allen settled on the following value under the cost approach:

	2022
Bldg. Cost	$7,852,272
Site Imp. Cost	$1,179,713
Total Cost	$9,031,985
Bldg. Dep.	($2,692,208)
Site Imp. Dep.	($786,475)
Obsolescence	(3,612,794)
Depreciated Cost	$1,940,508
Land Value	$2,330,000
Subtotal	$4,720,508
Leasing Comm.	($151,859)
Holding Costs	($618,043)
Rounded Value	$3,500,000

Ex. P-1 at 127-28; Tr. at 212.

(4) Reconciliation

85. Allen gave the greatest weight to his value conclusion under the sales-comparison approach. He found the income approach less reliable due to (1) the lack of leases for

comparable properties in Indiana and the surrounding region, and (2) the fact that reported capitalization rates are based on the credit strength of tenants and therefore do not directly reflect the underlying value of the real estate. Finally, considering the large amount of accrued depreciation and the fact that market participants do not use the cost approach when buying and selling properties like the subject property, he gave that approach less weight. Allen ultimately settled on a value of $3.6 million for the subject property. *Ex. P-1 at 129; Tr. at 212-14.*

2. Hall's Appraisal

86. The Assessor hired Hall to appraise the property. Hall is employed by Integra Realty Resources, which has more than 50 offices scattered across the country. He has been an MAI appraiser since 2012. He and a colleague also formed a company that invests in land. Hall has appraised the market value-in-use of approximately 70 to 75 big-box stores, although until 2016, he considered himself inexperienced in big-box assignments. He has appraised property in every state except Alaska, primarily through his work with a colleague in appraising properties leased to the U.S. Postal Service. Those appraisals were used by a real estate investment trust in determining how to allocate the purchase price for those properties. *Ex. R-2 at 3; Tr. at 465-75, 860.*

87. Like Allen, Hall estimated the market value-in-use of the fee-simple interest in the subject property and certified that he performed the appraisal and prepared his report in conformity with USPAP. *Ex. R-1 at transmittal letter, 196.*[4]

a. Market-segmentation analysis.

88. Like Allen, Hall examined CoStar trends for the subject property's primary trade area, although he did not break the data down by property type. He also looked at CoStar data from Indiana for freestanding retail properties between 80,000 and 225,000 square feet.

[4] Although a senior managing director at Integra's Indianapolis office, Michael Lady, reviewed and signed both the appraisal report and letter transmitting it to the Assessor, Hall was the one who prepared the report. *Tr. at 478, 485, 861-62*. We will refer to the appraisal report and valuation opinion contained therein solely as Hall's.

Hall noted a consistent upward trend in market rent for the second set of properties, although that trend appears to have begun a sharp decline in 2022. Similarly, sale prices had remained largely stable until 2020, when they began to trend upwards. Vacancy and capitalization rates had fluctuated over time, although vacancy rates generally declined from a peak in 2018 through the valuation date, and capitalization rates had trended downward between 2019 and the end of 2021. *Ex. R-1 at 34-40; Tr. at 506-13.*

89. Turning to the national big-box market, Hall downplayed any negative effects e-commerce had on big-box stores, explaining that appraisers are beginning to realize that big-box retail is now very different than it was pre-pandemic. According to Hall, the change in outlook stems mostly from the rise of click-and-collect and its various hybrids—such as applications like Shipt or Instacart, where customers can buy online and have shoppers pick up their purchases and deliver them to their homes—which support demand for existing stores. In fact, once consumers come to the store to retrieve the items they have bought online, they often shop at the store. Hall cited to articles from industry publications to support his view. He had also visited at least six big-box stores over the previous three-to-five months and observed signage promoting click-and-collect and areas within the stores dedicated for that purpose. But he acknowledged that not all big-box retailers have been equally successful in implementing click-and-collect strategies. *Ex. R-1 at 41-43; Tr. at 513-516, 791-92, 958, 1287-88.*

90. In addition, a variety of big-box retailers were allowed to remain open during the early stages of the Covid-19 pandemic when other retailers were forced to close temporarily, and those big-box retailers continued to benefit even after the economy began to open back up. An August 19, 2020, article from *The New York Times* reported that profits for big-box retailers continued to rise in spite of the pandemic, with Target seeing record profit growth. As the article noted, the big-box retailers' success could be attributed to offering one-stop shopping, both in-person and online. According to the Boulder Group, capitalization rates in the net-lease big-box sector decreased by 50 basis points from the fourth quarter of 2020 to the fourth quarter of 2021 as investment in that sector had

increased, particularly from institutional investors. And the spread between investment-grade and non-investment-grade big-box retailers shrank 90 basis points as investors became more comfortable with non-essential retailers throughout 2021. *Ex. R-1 at 41-44; Tr. at 517-19.*

91. Hall also analyzed supply and demand for big-box stores in Clark County, pointing to seven other stores he viewed as competitive with the subject property. The stores ranged from 103,540 to 183,251 square feet and were built between 1996 and 2015, although only one was built after 2005. All eight stores, including the subject store, had been continuously occupied since being built. *Ex. R-1 at 31; Tr. at 586.*

b. Valuation approaches

92. Like Allen, Hall developed all three generally accepted valuation approaches.

(1) <u>Cost approach</u>

93. Hall used sales of five vacant sites to estimate the subject site's value. After adjusting the sale prices to account for transactional and property-related differences, he settled on a unit price of $160,000/acre, for a total land value of $1.35 million. *Ex. R-1 at 103-16.*

94. To estimate the building's replacement cost, Hall, like Allen, relied on MVS cost schedules for an average class-C discount store. For soft costs not included by MVS, Hall found that the most likely range would be 5% to 15% of direct costs. He based his estimate on budgets for proposed developments, interviews with developers and contractors, and data reported by two industry sources: *Billd* and *Buildxact*. Those last two sources are not specific to big-box developments but instead include a larger spectrum of commercial property types. Nor are they specific to the Midwest. *Billd* reported a soft-cost range of 25% to 75% of project costs, while *Buildxact* reported a range of 25% to 50%. Neither source breaks out how much of its soft-cost estimates are included in MVS. But according to Hall, soft costs included by MVS might be 15% to 20% of a project's budget. *Ex. R-1 at 116-20; Tr. at 574-78, 884-88.*

95. In previous appraisals of two other stores from Clark County—a 2016 appraisal of a Clark County Target store and an appraisal of a Dillards department store for 2019-2021—Hall estimated soft costs at 3% and 2% of direct costs, respectively. And he had no evidence to demonstrate that inflation had affected soft costs at a greater rate than it affected direct costs. *Tr. at 883-84, 889-92.*

96. Hall offered several reasons for the difference between the soft costs he estimated for the subject property and the costs he estimated in those earlier appraisals. First, sources such as *Billd* and *Buildxact* were not available when he completed his previous appraisals. Second, estimates of soft costs are specific to each property being appraised, and markets change over time. Finally, Hall's understanding of appraisal practice has evolved as he has completed coursework, gained experience, reviewed additional construction budgets, and completed additional assignments since those earlier appraisals. *Tr. at 576, 885-87, 1281-85.*

97. Like Allen, Hall did not include any costs to account for entrepreneurial profit or incentive, citing to (1) the fact that properties like the subject property are not built on a speculative basis, (2) the definition of market value-in-use, and (3) our previous determinations. In the past, Hall regularly included entrepreneurial incentive of 10% when appraising big-box properties, including in the 2016 Target appraisal where he had estimated soft costs of 3%. *Ex. R-1 at 120; Tr. at 579-80, 894-97.*

98. Hall next analyzed depreciation. Like Allen, he applied the economic age-life method using a similar effective age and the same useful life as Allen. But Hall based his estimate of the property's useful life on several factors beyond just the useful lives listed in MVS, including the expected lives of the comparable properties he used in his analyses under the sales-comparison and income capitalization approaches. *Ex. R-1 at 71-73, 122-26; Tr. at 538-41.*

99. Unlike Allen, however, Hall determined that the subject property suffered from no functional or external obsolescence. According to Hall, the store's physical characteristics were consistent with market norms and offered good utility for its big-box use. The subject property and its seven direct competitors had been continuously occupied. If the property had atypical physical characteristics, Hall would expect some vacancy. Hall also indicated that properties of the same size and larger were built over the five years preceding the valuation date, and more were planned for the future, both in Indiana and nationally. *Ex. R-1 at 69, 127-28; Ex. R-35; 587, 798-803.*

100. But Hall's own data showed that few such stores were being built in Indiana. When Allen re-created Hall's search for Indiana, it showed a substantial decline in new freestanding single-tenant retail stores between 80,000 and 225,000 square feet in the 2010s and none since 2020. After he prepared his report, Hall identified six new stores that had opened or were projected to be opened after October 2021, although five of the six openings were after the valuation date. *Ex. R-35; Ex. P-8; Tr. at 79-81, 798-803.*

101. Hall similarly found that the property did not suffer from external locational or market obsolescence. Based on his market-segmentation analysis, he concluded that the market was strengthening between 2013 and January 2022. Increases in sale prices and rental rates indicated to Hall that the market was healthy. And he inferred from the set of local competitive properties that supply and demand were in balance. Hall explained that supply may be measured in different ways: by total square footage for a property type, by number of properties, or by changes in store count over time. He would not expect to see store counts increase if the big-box market was suffering from obsolescence. In any case, a slowdown in construction might simply indicate that supply is catching up with demand. According to Hall, even if construction of a given property type stops, that would not necessarily indicate obsolescence if most existing properties of the same type continue to be occupied. *Ex. R-1 at 31-44, 128; Tr. at 834-36, 840-41, 588-89, 1278-80.*

102. In reaching his conclusions, Hall downplayed any negative effects from the rise of e-commerce, pointing largely to big-box retailers' use of click-and-collect. But Hall's conclusions about the effect of e-commerce on the market for big-box stores and the continued demand for large-format stores contrast with what he found in his appraisals of two Hamilton County Target stores (from Fishers and Westfield), which he prepared in 2018, but which had an effective date of January 1, 2016. In those appraisals, he wrote that e-commerce was capturing a growing share of the total retail market, which had led many big-box retailers to conclude that their stores were too large. Some of those retailers had reduced their physical footprints through store closures, while others were developing new prototypes that were smaller and/or allowed flexible configuration. Those trends suggested to Hall that big-box stores like the ones he was appraising were impacted by some degree of external obsolescence. *Tr. at 513-17, 523, 588-89, 931-35, 1323.*

103. When confronted with those earlier appraisals, Hall explained that both e-commerce and his understanding of it have evolved over time and that he was not sure he would still make those statements. In any case, Hall claimed that his economic age-life analysis would capture all forms of depreciation, including any obsolescence to the extent it existed. *Tr. at 901, 932.*

104. To ensure that his value estimate under the cost approach, which presumes the property is occupied, was consistent with his estimate under the sales-comparison approach, which assumes the property is vacant, Hall deducted a leasing commission after totaling his estimated land value and depreciated improvement costs. In calculating a leasing commission, Hall assumed that an owner-occupant was equally likely to buy the property as an investor was. The first would not incur any leasing commission, while the second would. Hall cited no source to support his methodology, explaining that it was his own analysis. PwC reported an average leasing commission for the national net-lease market of 3.9% of market rent over 10 years. Hall then applied that percentage to his estimate of the subject property's PGI (detailed below) and divided by two to account for the 50%

probability that an owner-occupant would buy the property. *Ex. R-1 at 130-31; Tr. at 590-92, 1238-43.*

105. Hall arrived at the following conclusion under the cost approach:

	2022
Bldg. Cost	$7,743,910
Site Imp. Cost	$1,075,642
Total Cost	$8,819,552
Phys. Dep.	($3,414,130)
Dep. Cost (Rounded)	$5,410,000
Land Value	$1,350,000
Value (Rounded)	$6,760,000
Leasing Comm.	($122,135)
Value (Rounded)	$6,640,000

Ex. R-1 at 121, 129-31.

(2) Sales-comparison approach

i. Comparable sales

106. Turning to the sales-comparison approach, Hall initially searched CoStar for Indiana sales involving freestanding retail properties of at least 80,000 square feet that occurred between January 1, 2015 and December 31, 2022. Although that search returned 84 sales, he excluded all but one of the transactions for various reasons, including that they were leased-fee transactions or were part of a larger portfolio sale that reflected a mathematical allocation of prices. Hall explained that such portfolio sales should be categorically excluded because they don't reflect the property's characteristics. The remaining sale was the Sam's Club from Indianapolis that was part of the five-sale portfolio transaction where the buyer, At Home, was allowed to allocate the overall price between the stores according to its own business purposes. *Ex. R-1 at 132-35; Tr. at 602-05, 852-53.*

107. Hall then expanded the geographic scope of his search, using both CoStar and Integra's database. It is not clear exactly what geographical parameters he used: he said he looked primarily in the Midwest but expanded beyond that "a little bit." He did not perform a

search for states contiguous to Indiana similar to the one he performed for Indiana. In any case, Hall looked for properties that were used for retail purposes both before and after sale, explaining that he views a buyer's conversion of a property to a different use as an indication that the buyer does not believe the property has optimal utility. According to Hall, most big-box retailers are general, not specialty, retailers. They do not focus on a single product line or type. Hall's understanding of big-box use generally does not include providing entertainment services; instead, the primary big-box business model is to sell goods. *Ex. R-1 at 132-35; Tr. at 506-07, 605-06, 836-37, 871-72, 1280.*

108. Hall selected the following five sales:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Location	Jeffersonville	Rochester, MN	Indianapolis, IN	Madison, WI	Va. Beach, VA	Denver, CO
Former Occupant		Shopko	Sam's Club	Sam's Club	Super Kmart	Lowe's
Later Occupant		At Home (lessee)	At Home	At Home	Walmart	Costco
Date		Aug.-21	Dec-18	Oct-18	Jul.-16	May-15
Sale Price		$4,390,000 + $786,185	$8,400,000	$9,800,000	$9,000,000	$9,100,000
Price/sf		$57.24	$61.58	$82.05	$58.82	$75.55
Bldg. Size	89,476	90,432	136,403	119,440	153,007	120,448
Yr. Built	2009	1982	1992	1987	1983	2009
Av. HH income	$90,874	$123,189	$121,445	$125,595	$112,461	$118,507
Pop. (5-mile)	112,685	86,022	154,553	176,086	134,770	559,085
Pop growth	5%	11.1%	11.4%	15.8%	0.2%	20.2%
Supporting & Complimentary Uses	Good	Good	Good	Excellent	Good	Fair (primarily residential)
Traffic Count	19,635	27,245	26,518	61,400 (Hwy.)	55,000 (Interstate)	31,000
Proximity to Arterial Rd. or Hwy.	Average	Good	Average	Excellent	Excellent	Good
Visibility/ Orientation	Average	Average	Average	Good	Average	Average
Accessibility	Average	Average	Good	Good	Good	Good

Ex. R-1 at 136-54.

109. Four of the five properties Hall selected were bought for owner occupancy. The former Shopko from Rochester, Minnesota (Sale 1) was sold to an investor, who then leased the property to At Home. The parties had originally negotiated a price of $4.6 million. After the buyer completed due diligence, it developed a construction budget totaling $786,185 to cure deferred maintenance. Three days later, the parties agreed to a reduced price of $4,390,000 ($48.54/SF) for the property. *Ex. R-1 at 136-37, 141-42; Tr. at 619-21, 1006-09.*

110. As explained above, two of Hall's sales—the former Sam's Clubs from Indianapolis and Madison—were part of the portfolio transaction where At Home was allowed to allocate the individual sale prices for its own business purposes. He used those sales despite being aware that (1) we had previously credited Allen's testimony about those facts, and (2) appraisers from Integra had appraised the "fair value" of those two properties at about $3 million each. *Tr. at 1022-32, 1039-49.*

111. Hall nonetheless justified his decision to use the sales in his original report on several grounds: (1) fair value is not the same standard as market value or market value-in-use, (2) CoStar did not disclose that the sales were part of a portfolio transaction, (3) it has become increasingly difficult to get market participants to respond to verification requests, and (4) he had not heard Allen testify in that earlier appeal and he did not see any documentation to back up Allen's claims until he was presented with the email from Walmart's senior manager during the September 2023 hearing on the Clark County Target appeals. *Tr. at 646-62, 1029-48.*

112. Despite some misgivings about the email from Walmart's senior manager, Hall concluded that the Indianapolis and Madison Sam's Club sales are not reliable as individual transactions and that no weight should be given to their unit prices. He therefore prepared what he described as a supplement to his sales-comparison analysis (but which is labeled as "Corrections") in which he used average data for the portfolio. That was true not only for the unit sale price, which he computed by dividing the overall portfolio price by the total area of all five stores, but for all physical and locational characteristics as well. Thus, Hall used the average building age and size, the average population density, and so on. He then applied adjustments to those averages along the same lines as he adjusted the sale prices for his other comparable sales. Unlike his original appraisal report, Hall neither signed the document nor certified that it conformed to USPAP, although he testified that he believed it did. *Ex. R-3; Tr. at 657-61, 667-68, 692-703, 843-45.*

113. Except for the Indianapolis Sam's Club (Sale 2), Hall did not visit the locations of any of his comparable sales in connection with the appraisal assignment. Nor had he ever appraised property in those markets, outside his work in appraising post offices in Denver, Rochester, and Wisconsin. He did not look at asking rent or sale prices for retail properties in the areas surrounding each comparable sale (or comparable lease in his analysis under the income approach). And he did not perform a statewide analysis of those metrics for Colorado, Minnesota, Virginia, or Wisconsin. *Tr. at 471-72, 858-59, 875-768, 976-83.*

114. Hall claimed that doing so was not standard appraisal practice. According to Hall, nothing in *The Appraisal of Real Estate*, USPAP, or any course he has attended requires an appraiser to analyze sale or lease prices in comparable markets, and he has never seen an appraiser from his office do that. He was unsure how one could even use market-data from the properties' primary trade areas as a basis for comparison without knowing whether the mix of properties within those trade areas was similar. Marketing memoranda do not analyze rental rates within a property's trade area. In any case, Hall talked to Integra appraisers who had initially verified the sales. He explained that such conversations help him determine whether a sale is relevant and informs his understanding of appropriate adjustments to apply. *Tr. at 982-83, 1291-94.*

115. Yet in 2019, Hall prepared a review of an appraisal that Allen had completed for an Evansville, Indiana Lowe's store in which Hall questioned Allen's decision to use sales from more than 200 miles away from the property being appraised. In his review, Hall explained that without information about things like supply trends, competitive inventory levels and deliveries, and new construction, there is no way to confirm the relative strength of each retail submarket or to compare comparable properties to the property being appraised. Hall, however, explained that the role of a review appraiser differs from that of an appraiser. The scope of a review is limited to looking at the criteria of the

report being reviewed through the lens of USPAP to determine if it is credible, complete, and accurate. *Tr. at 974-79, 1294-96.*

116. In any case, Hall felt comfortable using two sales from locations outside the Midwest: Virginia Beach and Denver. He considered them relevant because they were for continued big-box use. The Virginia Beach property was located in a growing suburb and the Denver property was located in a metropolitan area. And Hall believed he had adequate data to adjust for locational differences. *Ex. R-1 at 135.*

117. Hall, however, acknowledged that unlike Jeffersonville, Virginia Beach is a tourist destination, and the census data he relied on would not include vacationers in the area. And while Hall did not use data from his comparable properties' primary trade areas, CoStar reported that market rent for the Denver store's trade area was almost 200% above market rent for the subject property's trade area. Similarly, the average market sale price for the area around the Denver store was more than double what it was for the area around the subject property. Hall brushed off those concerns by explaining that the trade area around the Denver store included the city's entire central business district, while the subject property's trade area does not include Louisville's entire central business district. *Tr. at 1048-54, 1312-13.*

ii. Adjustments

118. Like Allen, Hall adjusted his sale prices to account for differences between his comparable properties and the subject property. He used the buyer's construction budget to adjust the sale price of the former Shopko (Sale 1) to account for post-sale expenditures. But he did not believe that any adjustment for property rights transferred was necessary, indicating that all of the sales reflected transfer of the fee simple interest. *Ex. R-1 at 141-42; Tr. at 618-21.*

119. Hall next considered differences in market conditions. Relying largely on his data for the subject property's primary trade area and for large freestanding retail properties in

Indiana, he concluded that a compound annual growth rate of 3% was appropriate. Again, he did not analyze similar data, such as changes in rent, for the markets in which his comparable sales were located. Yet in his review of Allen's Evansville appraisal, Hall found that Allen should not have given primary weight to sales located more than 100 miles away from Evansville because he had not analyzed rent changes in their MSAs. *Ex. R-1 at 143-45; Tr. at 622-24, 1330-31.*

120. Turning to location, Hall considered various demographics from each property's primary trade area: average household income, population density and growth, and supporting and complimentary land uses. He qualitatively compared the subject property to his comparable properties regarding each demographic characteristic, noting degrees to which they were superior or inferior to the subject property. He assigned a 5% impact to each increment of difference. He then totaled those increments to arrive at an overall adjustment. *Ex. R-1 at 146-47, 149; Tr. at 624-32.*

121. Starting with household income, Hall explained that recent research showed little correlation between people's income levels and their likelihood to shop at big-box stores. Nor did income appear to affect brand loyalty: Walmart, Amazon, and Target were the top three retailers across all income groups, and there was significant overlap among big-box retailers. Hall also recently found some research from 2015 showing that states with the highest per-capita spending at Walmart were among those with the lowest income levels. He ultimately decided to adjust only for differences of more than $40,000 in average household income, a threshold that none of the properties met even though their primary trade areas had average household incomes between $21,587 and $34,721 higher than the subject property's trade area. He acknowledged that he chose that threshold based purely on his own subjective judgment. Hall has not always used such a threshold. In his appraisal of the Westfield Target store, he made a 10% upward adjustment to account for a difference as small as $24,160. *Ex. R-1 at 146-47, 149; Ex. R-23 at 3-4; Ex. R-24; Tr. at 626-28, 769-71, 1105-16.*

122. Moving to the next demographic characteristic, Hall explained that market participants view population in broad categories. So he stratified his adjustments accordingly, making single-increment positive adjustments for populations of less than 100,000, no adjustment for populations between 100,000 and 200,000, a single-increment negative adjustment for populations between 200,000 and 400,000, and a double-increment negative adjustment for populations above 400,000. He similarly created categories for each 5% change in population growth, although he made a double-increment positive adjustment for any negative growth. He explained that his general conversations with brokers over the years showed that market participants view declining population as a red flag. *Ex. R-1 at 148-49; Tr. at 629-30, 1142-44.*

123. Using those cut-offs, Hall adjusted the Denver sale downward by only 10% for population, despite it having roughly 446,000 more people within its primary trade area than the subject property, but he adjusted the Rochester sale upward by 5% despite a population difference of less than 27,000. He based that adjustment on his experience. He also claimed at the hearing that price differences in his comparable sales was a test of reasonableness for his adjustments. But he admitted there was not enough data to draw any conclusions about the magnitude of adjustments from those sales alone. In his review of Allen's appraisal of the Evansville Lowe's store, Hall found that a 15% upward adjustment for one of the comparable properties might be insufficient because (1) there was a 74% difference between its surrounding population and the surrounding population of the property being appraised, and (2) Allen did not explain how the adjustment was quantified. *Ex. R-1 at 149; Tr. at 1119-34.*

124. Turning to access and exposure, Hall considered traffic counts and proximity to an arterial road or highway; visibility and orientation; and accessibility as impacted by the number and type of entrances to the property. Regarding the first element, Hall gave less weight to traffic counts than he did to proximity to an arterial road or highway. He offered four reasons for that choice: (1) click-and-collect consumers buy goods online before driving to the location, (2) GPS navigation systems have decreased the need for

visibility, (3) most national chains have loyal customers who know the store locations, and (4) traffic-count data is not always available for all streets that provide access. *Ex. R-1 at 149-51; Tr. at 633-35.*

125. Hall previously gave more weight to traffic counts. But his analysis of how traffic impacts demand for big-box stores has evolved based on information he has gathered over the past two years. According to Hall, the pandemic transformed how big-box retailers operate, and the continued evolution of technology has changed how market participants look at traffic counts. *Tr. at 1154-57, 1315-17.*

126. He recognized that there is generally an inverse relationship between building size and unit price, which was also true for his set of comparable properties. Because that data set was small and other factors also contributed to price differences, an adjustment was difficult to quantify. Nonetheless, he applied adjustments for size differences greater than 30,000 square feet. Finally, like Allen, Hall adjusted his comparable properties' sale prices by 1% per year to account for differences in effective age. *Ex. R-1 at 151-53; Tr. at 636-40.*

127. Hall's adjusted sale prices ranged from $61.86/SF to 74.01/SF. He settled on $70/SF for the subject property's ground floor space. *Ex. R-1 at 154; Tr. at 642.*

128. Although Hall's original reconciliation was based on five sales, including the two former Sam's Clubs, he now acknowledges that those two sales are not reliable as individual transactions. But that fact did not change his valuation opinion. In his analysis of the portfolio transaction as a whole, he indicated that the subject property's unit price would be similar to the portfolio's average unadjusted unit price of $63.97/SF, without explaining how that supported his original reconciled value. Instead, he said that his analysis was available to us if we "feel[] that viewing these transactions as part of a portfolio is appropriate." Indeed, he justified performing his analysis on grounds that the overall portfolio price was an indication of market demand, and that *The Appraisal of*

Real Estate recognizes that even where sales are not appropriate for inclusion in a comparison grid, they can be useful market information and contribute to an appraisal in other ways. *Ex. R-3; Tr. at 667-68, 692-703, 843-45.*

129. Like Allen, Hall applied a reduced rate to the mezzanine area, which he calculated as $136,000 based on its depreciated replacement cost. All told, Hall estimated a value of $6.4 million under the sales-comparison approach. *Ex. R-1 at 156-58.*

(3) <u>Income capitalization approach</u>

130. Like Allen, Hall began his analysis under the income approach by estimating market rent for the subject property. He identified six leases of comparable properties, including a lease of the Rochester, Minnesota Shopko building from his sales-comparison analysis. The leases were from the Midwest and Southern United States, and they all had a triple-net expense structure:

	Lease 1	**Lease 2**	**Lease 3**	**Lease 4**	**Lease 5**	**Lease 6**
Location	Rochester, MN	Madison, WI	Farragut, TN	Wauwatosa, WI	Rotterdam, NY	Cincinnati, OH
Former Occupant	Shopko	Shopko	Gander Mtn.	Kmart	BJ's Wholesale Club	Walmart
Tenant	At Home	At Home	At Home	At Home	BJ's Wholesale Club	Floor & Decor
Date	Mar-22	Oct-19	Apr-18	Oct-15	Feb-15	Jun-14
Rent/sf	$7.50	$6.95	$8.97	$5.35	$8.13	$5.50
Bldg. Size	90,432	94,105	81,202	100,801	115,650	79,300
Age/Eff. Age	40/25	32/25	12/12	46/30	17/17	20/20
Av. HH income (5-mile)	$123,189	$96,291	$140,846	$89,591	$84,277	$102,213
Pop. (5-mile)	86,022	121,561	81,905	301,043	125,132	232,862
Pop growth	11.1%	14.6%	20.4%	-0.7%	5.0%	1.8%
Supporting & Complimentary Uses	Good	Good	Good	Good	Good	Good
Traffic Count	27,245	38,700	24,705	21,000	20,528	20,024
Proximity to Arterial Rd. or Hwy.	Good	Good	Good	Good	Good	Good
Visibility/ Orientation	Average	Average	Good	Average	Fair	Average
Accessibility	Average	Good	Good	Good	Good	Average

Ex. R-1 at 164-78.

131. As with his sales-comparison approach, Hall did not research market data from the primary trade areas for any of the properties. *Tr. at 1175.*

132. Hall adjusted the stated rent for the former Shopko from Rochester downward to account for the fact that the lease included a tenant-improvement allowance. He also adjusted the rent for the store in Rotterdam, New York to account for the likelihood of atypical motivation because it was a new lease for an existing tenant. *Ex. R-1 at 164-65, 169; Tr. at 729-30, 1186-87.*

133. The rest of Hall's adjustments followed the same lines as his adjustments under the sales-comparison approach. For his market-conditions adjustment, he once again relied on the market-rent trends from his market-segmentation analysis. But he estimated 2% compound annual growth instead of the 3% in his sales-comparison analysis. He used the same demographic and accessibility characteristics and gave them the same relative weight as he did in his sales-comparison analysis. *Ex. R-1 at 168-78; Tr. at 731, 1194-96.*

134. Hall's population cut-offs led to similar disparities as they did in his sales-comparison analysis. For example, he adjusted leases for stores with surrounding populations within roughly 31,000 of the subject property's population upward by 5%, while adjusting leases for stores that had in excess of 100,000 more people in their surrounding populations downward by only 5%. *Ex. R-1 at 173-74; Tr. at 1196-1203.*

135. The adjusted rents ranged from \$6.45/SF to \$7.65/SF. Hall settled on market rent of \$7.00/SF, just one cent less than the average. He applied that rate to the ground floor area to arrive at PGI of \$626,332. *Ex. R-1 at 178-80.*

136. Like Allen, Hall did not include property taxes as an expense or reimbursement, although as explained below, he did not load his capitalization rate to account for those taxes either. Nor did Hall include expenses or reimbursements for insurance or CAM, explaining that under his assumed triple-net expense structure, tenants pay those expenses directly. Hall, however, acknowledged that during periods of vacancy, the owner bears

the property's expenses and does not receive any income. *Ex. R-1 at 180; Tr. at 744-48, 1210-11.*

137. To project a vacancy rate, Hall again relied on vacancy data from his market-segmentation analysis and settled on vacancy and collection loss of 10%. Finally, Hall subtracted a management expense equaling 2.65% of EGI to arrive at NOI of $548,761. *Ex. R-1 at 180-83; Tr. at 752-55.*

138. Hall did not subtract replacement reserves as an expense. He justified his decision by pointing to PwC's quarterly Real Estate Investor Survey for net lease properties, which indicated that most investors were not deducting replacement reserves as an expense for the first quarter of 2022. The survey, however, was not specific to big-box properties and could even include non-retail properties. Some offering memoranda for big-box properties include replacement reserves as expenses while others do not. Hall himself previously deducted replacement reserves as an expense in his appraisals of the Hamilton County Target stores and in his 2016 appraisal of the Clark County Target store. *Ex. R-1 at 182; Tr. at 755-56, 1211-22.*

139. He looked to several sources to estimate a capitalization rate: five-mile and statewide data from his market-segmentation analysis; investor surveys; sales, including sales with five or fewer years remaining on the existing leases; and a band-of-investment analysis. One of the surveys was from the SRS National Net Lease Group. For the third quarter of 2021, that survey indicated continuing diminished activity in the big-box sector stemming from the pressure of online spending and the "evolving smaller square footage of business restructure." Another source, The Boulder Group, indicated that median capitalization rates for big-box stores over 80,000 square feet were between 37 and 65 basis points higher than they were for mid- and junior-box stores. *Ex. R-1 at 44, 184-89; Tr. at 757-62, 930-31.*

140. Hall settled on a rate of 8.25%. That was higher than the averages from all his sources (7.48%) and from the subject property's primary trade area (7.56%), but lower than the indicator for freestanding big-box stores in Indiana (8.32%). Unlike Allen, Hall did not load his capitalization rate to account for the possibility that an owner would pay those taxes during periods of vacancy. He acknowledged that those taxes should be accounted for when doing an appraisal for property-tax purposes. He further acknowledged that either deducting them as an expense or loading the capitalization rate with the owner's share of the property's effective tax rate were accepted ways for doing so. But he claimed that they did not reflect market practice. So he did neither of those things. *Ex. R-1 at 182, 184-90; Tr. at 1236-37.*

141. After capitalizing his projected NOI, Hall deducted his estimated leasing commission and added the contributory value of the mezzanine. Unlike Allen, Hall did not subtract holding costs or a tenant-improvement allowance. In neither the marketing memoranda he has reviewed nor in his experience as an appraiser has Hall seen any evidence that landlords pay tenant improvements as a market norm. *Ex. R-1 at 190-92; Tr. at 749.*

142. Based on his analysis, Hall arrived at the following value under the income approach:

	2022
PGI	$626,332
Vacancy	($62,333)
EGI	$563,699
Mgmt. Fee	($14,938)
NOI	$548,761
Cap Rate	÷.0825
Value	$6,651,646
Leasing Comm.	($122,135)
Mezzanine	$136,000
Value (rounded)	$6,670,000

Ex. R-1 at 183, 190-92.

(4) Reconciliation

143. Hall believed that all three approaches were applicable, but he gave his conclusions under the cost approach the most weight. In his view, the building's design and construction

were consistent with contemporary norms, and owners and users of big-box stores tend to be highly educated about construction and renovation costs. Hall acknowledged that cost and market value are most closely related when properties are new and that the cost approach is less reliable when properties are older and depreciation is difficult to extract from the market. Hall felt that he had credible market data to develop reliable estimates for replacement costs and depreciation and sufficient local market data to estimate a credible land value. *Ex. R-1 at 193-94; Tr. at 572-73, 593-94, 764, 879-81.*

144. By contrast, under the sales-comparison approach, there were limited recent fee-simple sales from the local market or Indiana involving properties sold for continued big-box use. And some of Hall's sales required adjustments that were difficult to quantify with supporting market data. He believed that many of the same things were true for the income approach. *Ex. R-1 at 193-94; Tr. at 572-73, 764-66.*

145. Hall settled on a value of $6.5 million for the subject property. *Ex. R-1 at 193-94.*

V. CONCLUSIONS OF LAW

A. Because the assessment did not increase by more than 5% between 2021 and 2022, Kohl's had the burden of proof.

146. Generally, a taxpayer has the burden of proof when challenging a property's tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." I.C. § 6-1.1-15-20(a) (effective March 21, 2022).

147. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b). Subject to certain exceptions, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.* If the burden has shifted, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year

assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).

148. Here, the assessment increased by only 0.77% between 2021 and 2022. Kohl's therefore had the burden of proof.

B. Based on the totality of the evidence, including the appraisers' overall credibility in this appraisal assignment, we find that Allen's conclusion under the income approach is the most persuasive evidence of the property's true tax value.

1. <u>We must weigh the evidence to determine the property's market value-in-use.</u>

149. As the trier-of-fact in property tax appeals, we are charged to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence" before us. I.C. § 6-1.1-15-20(f). Our conclusion of a property's true tax value "may be higher or lower than the assessment or the value proposed by a party or witness." *Id.* Regardless of which party has the initial burden of proof, either party "may present evidence of the true tax value of the property, seeking to decrease or increase the assessment." I.C. § 6-1.1-15-20(e).

150. True tax value does not mean fair market value. I.C. § 6-1.1-31-6(c). Nor does it mean the value of the property to the user. I.C. § 6-1.1-31-6(e). Subject to these somewhat tautological directives, the Legislature relies on the Indiana Department of Local Government Finance ("DLGF") to define true tax value. I.C. § 6-1.1-31-6(f). In its 2021 Real Property Assessment Manual, the DLGF defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2021 REAL PROPERTY ASSESSMENT MANUAL at 2. The Manual offers further guidance, defining "market value-in-use," "value-in-use," and "use value," as being synonymous. MANUAL at 6, 8. But it also states that market value-in-use contains a value-in-exchange component where properties are regularly exchanged for their current use. MANUAL at 2; *see also, Millenium Real Estate Investment, LLC v. Benton Cty. Ass'r*, 979 N.E.2d 192, 196 (Ind. Tax Ct. 2012) ("[W]hen a property's

current use is consistent with its highest and best use, and there are regular exchanges within its market so that ask and offer prices converge, a property's market value-in-use will equal its market value because the sales price fully captures the property's utility.")

151. Thus, true tax value is something other than purely market value or value-in-use. Given mandates from the Indiana Supreme Court and Legislature, the DLGF created a valuation standard that relies heavily on what it terms as objectively verifiable data from the market, but that still maintains the notion of property wealth gained through utility and therefore recognizes situations where true tax value will differ from market value.

152. The Tax Court has historically interpreted what constitutes a property's current use or a similar user broadly. For example, it reversed a determination in which we had rejected an appraiser's sales-comparison analysis where he relied on sales to "secondary users" such as Big Lots or Hobby Lobby to value a Meijer store. We reasoned that they were not truly comparable users. In our view, comparable users were entities like Lowe's or Walmart that built their own stores using their specific marketing schemes and layouts. *Meijer Stores Ltd. P'ship v. Smith,* 926 N.E.2d 1134, 1136-37 (Ind. Tax Ct. 2010). The Court, however, explained that an appraiser need only locate sales "'of comparable *properties*'" and adjust their selling prices. *Id.* at 1137 (*quoting* 2002 REAL PROPERTY ASSESSMENT MANUAL at 13) (emphasis in original). The Court held that it was therefore improper to discount the appraiser's sales-comparison analysis on grounds that he used sales to secondary users instead of sales to entities like Walmart. *Id.*

153. These well-worn guideposts for determining true tax value may be in flux. As recently announced in *Majestic Props., LLC v. Tippecanoe Cty. Ass'r,* applying the "regulation" requires an analysis of the "utility received" by the owner. *Majestic Props., LLC v. Tippecanoe Cty. Ass'r, 2024 Ind. Tax LEXIS* 37 at **5-9 (Ind. Tax Ct. 2024). It may be too broad to define a use as simply residential, because a landlord and a homeowner might derive a different utility. *Id.* at * 8. Applied here, defining the use as "retail" may be too broad, and a first-generation owner derives much more utility than purchasers on

the secondary market. But until a more decisive precedent is issued by the Tax Court, we will hew closely to the well-established body of law in valuing big-box stores.

2. Allen's value conclusion under the income approach, minus his unsupported deduction for a tenant-improvement allowance, was the most reliable value indication from his appraisal.

154. Allen relied on generally accepted appraisal methods and objectively verifiable market data to value the subject property's fee-simple interest as of January 1, 2022. Although there are issues with Allen's analyses under each valuation approach, we find that his conclusion under the income capitalization approach, minus his unsupported deduction for a tenant-improvement allowance, provides the most reliable evidence of the property's market value-in-use.

a. Allen's value conclusion under the sales-comparison approach did not reliably show the subject property's value.

155. We start with Allen's sales-comparison analysis. The Assessor primarily argued that several of Allen's comparable sales were dissimilar to the subject property, either because they were converted to multi-tenant or non-retail uses or because they did not meet the definition of a big-box store. The Assessor also found fault with many of Allen's adjustments to his comparable properties' sale prices. We agree with several of the Assessor's criticisms.

156. We have consistently found that converting a property into multi-tenant use calls into question its continued viability for use as a big-box store. Thus, Allen's decision to rely on Sales 5 and 7 is problematic.

157. And while Allen claimed that all of his comparable properties were used for retail purposes after sale, we agree with the Assessor that the buyers converted two of the properties to non-retail uses: the buyer intended to convert Sale 4 to an entertainment center and Sale 6 was converted largely to a self-storage facility and showroom for truck rentals. We recognize that Allen treated Sale 4 as an outlier and therefore did not give its

adjusted sale price much weight. But that does little to diminish our concern over his selection of the sale to begin with. The former Kmart (Sale 8) was sold for continued retail use: essentially as a flea market. Nonetheless, that use differs enough from the big-box retail use for which the subject property was designed that we find its comparability to be marginal. And after becoming aware that the existing tenant bought the property, Allen himself recognized that the sale was not entitled to as much weight.

158. We, however, are not persuaded by the Assessor's other main criticism of Allen's selection of comparable sales: that two of the stores (Sales 1 and 4) were more than 24,000 square feet smaller than the subject store. The Assessor pointed to the fact that Allen previously defined big-box stores as being at least 80,000 square feet. Of course, the Assessor's own appraiser, Hall, previously included stores as small as 50,000 square feet when appraising other big-box stores. And Allen explained that the price differential between much larger stores and stores closer to the subject property's size has led him to abandon his previous definition. So we find that the mere fact that the two sales involved stores with less than 80,000 square feet did not disqualify them.

159. The Assessor also took issue with many of Allen's adjustments, which the Assessor argued led Allen to grossly undervalue the subject property. We do not give much weight to the Assessor's bare claim that the size of Allen's gross adjustments for differences in property characteristics necessarily made his conclusions under the sales-comparison and income-capitalization approaches less persuasive than Hall's conclusions under those approaches.

160. As to the Assessor's more specific concerns, we are unpersuaded by his criticisms of Allen's conclusion that there were no differences in conditions of sale or land-to-building ratios that merited adjustment. The Assessor also did little to show that Allen's adjustments for arterial and demographic attributes were inappropriate. And while the Assessor characterized Allen's adjustments for differences in building size as inconsistent, we find that they generally reflected relationships Allen identified from the

Situs RERC study and his own matched-pair analysis.

161. Nor are we particularly troubled by Allen's age/condition and retail submarket adjustments. As to the second adjustment, while we recognize that the CoStar data for each comparable property's primary trade area may have included a different mix of properties than the data for the subject property's trade area, we have no qualms with Allen using that data as a basic way to compare the relative strengths of the submarkets. Unlike Hall, Allen at least tried to understand and account for basic supply-and-demand characteristics of the markets from which he drew his comparable sales and leases and how those characteristics compared to the subject property's market.

162. That said, we have doubts about Allen's adjustment to four of his comparable properties' sale prices to account for restrictive covenants in their deeds. Despite the fact that the covenants subjected the properties to varying levels of restrictions for terms ranging from 4 to 50 years, and contrary to his conclusion that none of the deed restrictions actually affected the properties' sale prices, Allen inexplicably applied the same 5% adjustment to all four sales.

163. Lastly, we agree with the Assessor that Allen should have included some appreciation during 2020 when determining his market-conditions adjustment. Allen cited the Covid-19 pandemic as his justification for not doing so. But as the Assessor observed, Allen's own data showed that retail value trends were generally increasing from 2017 through 2021, including over the course of 2020.

164. In sum, we find that four of Allen's comparable sales were unreliable indicators of the subject property's market value-in-use. And we have significant questions about a fifth, which Allen himself acknowledged should be given less weight. Allen also made questionable adjustments for deed restrictions and failed to account for market appreciation in 2020 when adjusting for market conditions. We therefore find that his conclusion under the sales-comparison approach does not reliably show the subject

property's market value-in-use.

b. Although less than ideal, Allen's analysis under the income capitalization approach was generally reliable, and we find that his conclusion, minus his unsupported deduction for a tenant-improvement allowance, credibly reflects the property's value.

165. As with Allen's sales-comparison analysis, most of the Assessor's criticisms of Allen's analysis under the income capitalization approach stem from his selection of comparable leases and the adjustments he applied to their rental rates. The Assessor also criticized Allen's treatment of operating expenses and his selection of a capitalization rate.

166. The Assessor complained that two of Allen's comparable leases were for spaces with significantly less than 80,000 square feet. As explained above, however, we do not find that to be disqualifying. But we agree with the Assessor that two of the properties (Leases 14 and 16) were leased for non-retail use as entertainment centers. Those properties therefore likely competed in different market segments than the subject property.

167. Turning to Allen's adjustments to the rental rates for his comparable leases, the Assessor showed that Allen erred in converting Lease 18 to a triple-net expense structure. His adjustment was higher than the reported operating expenses from the property's offering memorandum. And his claim that the difference stemmed from using the property's 2022, rather than 2021, property taxes was not supported by the operating expenses reported in the memorandum.

168. To a much lesser extent, we also have some concerns about Allen's adjustments for building size and age/condition. Allen admitted that he mistakenly adjusted two of his leases for building size and therefore recalculated their adjusted rent, which ultimately did not change his conclusion regarding the subject property's unit rent. Nonetheless, Allen's size adjustments were still inconsistent with the size adjustments from his sales-comparison analysis. And he adjusted the lease for a building that was roughly 10,000 square feet smaller than the subject building downward by 10% without making any

adjustment to the lease for a building that was roughly 12,000 square feet larger than the subject building. His failure to explain those inconsistencies detracts somewhat from the reliability of his market-rent estimate.

169. We reach a similar conclusion regarding Allen's age/condition adjustments. The Assessor first faulted Allen for failing to describe the condition of the properties at the time of lease in his report. But Allen identified their ages. And he inspected seven of the eight properties, providing him with personal knowledge from which to make informed decisions about the condition of all but one of the properties at the time they were leased.

170. Nonetheless, the Assessor also pointed to the fact that most of Allen's adjustments amounted to less than 0.5% per year, which was half the rate he applied for his age/condition adjustments in the sales-comparison approach, and that the rate he applied to Leases 16-18 was even smaller. Allen, however, credibly explained why he applied smaller adjustments to lease rates than to sale prices: tenants are not as concerned with physical deterioration because the landlord is responsible for exterior maintenance under a triple-net lease. Thus, our concern stems from a lack of explanation more than from any showing that the adjustments were inappropriate.

171. Indeed, Allen's report's lack of detailed explanation and underlying data is a consistent theme to the Assessor's criticism of all Allen's adjustments to his comparable leases. In most instances, however, the Assessor did little to show that those adjustments were inappropriate.

172. Finally, as we explained in discussing Allen's sales-comparison analysis, we agree with the Assessor that Allen should have included appreciation during the course of 2020 when determining his market-conditions adjustment. Also, Allen failed to explain why he considered data addressing market appreciation in his comparable sales' primary trade areas but did not consider similar data from his comparable leases' trade areas.

173. Turning to the rest of Allen's inputs in estimating NOI, the Assessor criticized him for including CAM and insurance as reimbursable operating expenses. According to the Assessor, Allen should not have included those expenses because tenants are responsible for them under a triple-net lease. But as Allen credibly explained—and Hall himself admitted—a property owner will bear those expenses during periods of vacancy, which both appraisers projected in their analyses. We therefore find that Allen properly included those items.

174. The Assessor also raised several concerns about Allen's capitalization rate. He faulted Allen for his decision to rely solely on survey data to select a rate. But that ignores the fact that Allen also estimated a rate based on bands of investment. And Hall relied on survey data to develop his capitalization rate as well. In any case, the Assessor pointed to no authority requiring appraisers to develop their own market-derived rates from sales.

175. The Assessor also complained that Allen concluded to a capitalization rate (8.5%) that was higher than the rates indicated from all but one of his data sources. The Assessor characterized Allen's explanation for concluding to a higher rate—that fee-simple rates are riskier and that rates from the Midwest are generally higher than the national average—as conclusory. Yet Hall largely did the same thing. The average capitalization rate from all of Hall's sources was 7.48%, and he concluded to a rate of 8.25%. Given that the two appraisers concluded to rates only 25 basis points apart, we are unpersuaded that Allen's reliance on survey data led him astray, or that he incorrectly judged the subject property's risk profile.

176. Next, the Assessor took issue with Allen's decision to load his overall rate to account for property taxes that the owner would pay during periods of vacancy. While the market does not typically use tax-loaded capitalization rates, Allen credibly explained that appraisers do so in property tax appeals. And Hall agreed (1) that when preparing an appraisal for property tax purposes, an appraiser must account for any property taxes for which the owner will be responsible, and (2) that loading the capitalization rate is an

acceptable way of doing so. Thus, we conclude that Allen's decision to load his capitalization rate was appropriate.

177. Finally, the Assessor criticized two of Allen's below-the-line deductions: his deductions for a tenant-improvement allowance and for holding costs during his estimated lease-up period. As to the second deduction, the Assessor argued Allen did not support his estimated lease-up period of 12 months. We disagree.

178. But we agree with the Assessor's criticism of Allen's deduction for a tenant-improvement allowance. The Assessor disputed Allen's claim that such allowances are typical for properties like the subject property, pointing to Hall's testimony that those allowances are not the market norm. Although we have doubts about Hall's overall credibility, his testimony is largely backed up by Allen's own data. Out of Allen's eight comparable leases, only two included a tenant-improvement allowance or something similar: Lease 15, where the landlord provided a $4.61/SF allowance, and Lease 14, where the tenant received a six-month rent concession. In addition, one offering memorandum from Allen's workfile advertised a tenant-improvement allowance and Kohl's offered such an allowance when it marketed part of the subject building for lease. We recognize Allen's claim about the difficulty in obtaining data on tenant-improvement allowances. But we find that he did not adequately support his decision to deduct for a tenant-improvement allowance, much less his quantification of $5/SF for that allowance.

179. To sum up, two of the eight leases Allen selected were for non-retail uses. And we have some concerns about his adjustments, particularly his large unsupported deduction for a tenant-improvement allowance. But overall, Allen used sufficiently reliable data to support a value for the subject property. We ultimately find that Allen's value conclusion under the income approach, minus his unsupported deduction for a tenant-improvement allowance, produced a credible opinion of the property's market value-in-use. Without the deduction, Allen's valuation would be $4,267,100.

c. Allen's conclusion under the cost approach is not reliable as an independent indicator of the property's value.

180. The Assessor focused his criticisms of Allen's analysis under the cost approach primarily on his substantial adjustment for obsolescence. Indiana defines obsolescence as:

> A diminishing of a property's desirability and usefulness brought about by either functional inadequacies or super-adequacies inherent in the property itself, or adverse economic factors external to the property.

2021 REAL PROPERTY ASSESSMENT GUIDELINES, Glossary at 23.

181. To determine whether the subject property was affected by obsolescence, Allen reviewed various market trends. They included trends regarding store closings in the retail market as a whole as well as trends in the big-box market, particularly concerning the downsizing of new stores and the rightsizing of existing stores, such as Kohl's' attempt to rightsize the subject property by marketing a portion of the store for lease. He attributed those trends largely to the effects of e-commerce. And he concluded that they reflected obsolescence through reduced demand and an oversupply of big-box properties in the market, which led to lower prices for stores like the subject property. Indeed, one of Hall's sources for market data, the SRS National Net Lease Group, corroborates Allen's views about the pressures of e-commerce and the "evolving smaller square footage of business restructure." *Tr. at 931.*

182. We recognize that large-format stores were still being built, albeit at much lower rates than in the 1990s and 2000s. And the shift toward building smaller format stores is not due solely to the effects of e-commerce. Instead, some of it is attributable to big-box retailers entering new markets, like big cities and college campuses, where building large-format stores may not always be feasible. We also recognize that click-and-collect may have lessened the impact of e-commerce on the demand for big-box stores to some degree. We therefore agree with the Assessor that there is still market demand for buildings like the subject property, as indicated by stable or rising sale prices and rents, and to some extent by falling capitalization rates for big-box stores as a whole.

183. Allen may have overestimated the extent of external obsolescence. But we find his basic conclusion that there was external obsolescence affecting the market for big-box properties more credible than Hall's conclusion that there was no external obsolescence. We credit Allen's testimony that retail properties like the subject property continue to sell for less than their replacement costs new. Allen also credibly explained that big-box stores like the subject property, which was built specifically to suit Kohl's, suffer from functional obsolescence because they are never built on a speculative basis and because buyers typically modify the buildings by changing physical characteristics to adapt them to their own retailing needs.

184. Allen's methods for quantifying obsolescence, however, render his conclusion under the cost approach unreliable as an independent measure of value. Both of his methods rely heavily on data and conclusions from his other valuation approaches. After considering the problems we identified with Allen's sales-comparison approach and the sheer size of his obsolescence adjustment ($3,612,794 or 40% of replacement cost new), we conclude—as Allen did—that the cost approach is the least reliable of his three valuation approaches. And we find that it is not probative of the subject property's market value-in-use.

d. Allen's conclusion under the income approach, minus his deduction for a tenant-improvement allowance, is the most persuasive evidence of the property's value.

185. While Allen analyzed the subject property's value using all three generally accepted valuation approaches, we find that the most persuasive estimate of the subject property's value is $4,267,100, which is the value from Allen's income capitalization approach minus his unsupported deduction for tenant improvements.

3. <u>Hall's conclusions under the cost and sales-comparison approaches were unreliable, but his conclusion under the income-capitalization approach was minimally reliable.</u>

186. We now turn to Hall's appraisal. Like Allen, Hall relied on generally accepted appraisal approaches to value the subject property's fee-simple interest as of January 1, 2022. We

find that Hall's conclusions under the cost and sales-comparison approach were unreliable but that his conclusion under the income approach was minimally reliable evidence of the property's market value-in-use.

a. Hall's conclusion under the cost approach was unreliable.

187. Kohl's claims that Hall's conclusion under the cost approach is not credible. It criticized Hall for his unsupported and inconsistent estimate of soft costs. And it argued that Hall's failure to deduct for obsolescence meant that his value conclusion did not reflect the subject property's market value-in-use. We find these arguments persuasive.

188. We begin with Kohl's' criticism of Hall's estimate of soft costs as equaling 10% of direct costs. Kohl's pointed to Hall's previous big-box appraisals where he estimated substantially lower soft costs, including his appraisal of a nearby Target store in which he estimated soft costs of only 3%, and it claimed that he arbitrarily increased his estimate when appraising the subject property. Although we have no issue with Hall's use of a different estimate per se, he failed to convince us that the data from *Billd* and *Buildxact* are reliable sources of market data for big-box properties. Hall admitted that they did not identify the specific projects or budgets used to develop their wide-ranging estimates of soft costs, and that they are little more than aggregated sources of information unrelated to big-box properties. And he failed to sufficiently explain how his experience appraising new and proposed construction projects, his review of construction budgets, or his discussions with owners, developers, and contractors independently supported tripling his estimate of soft costs from what he had previously estimated for a nearby big-box property.

189. Next, Kohl's faulted Hall for not making an obsolescence adjustment. Hall concluded that the property did not suffer from external locational or market obsolescence because market demand was strengthening and the property's neighborhood had a mix of supporting and complementary land uses. We agree that Hall's data shows a strong local retail market. We therefore credit his conclusion that the subject property did not suffer

from locational obsolescence.

190. As discussed above, however, we find Allen's opinion that the property suffered from external obsolescence, even if to a lesser degree than what he concluded, more credible than Hall's opinion that the property did not suffer from any external market obsolescence.

191. We similarly find that the property suffered from at least some functional obsolescence. Again we credit Allen's conclusion that big-box properties, which both appraisers agree are not built on speculation, suffer from functional obsolescence because buyers typically modify the buildings to adapt them to their own needs. Hall's reliance on the fact that the subject property and seven other big-box stores from the same market were continuously occupied does not alter our conclusion. Indeed, Kohl's believed it could operate more efficiently in a smaller space and tried to lease out a portion of the subject store. In any case, the question is not whether properties like the subject property continue to have at least some utility, but whether that utility is less than what is indicated by their physically depreciated replacement costs.

192. Finally, we are unconvinced that Hall's age-life calculation, in which he estimated the subject store's effective age as the same as its actual age, would have captured all depreciation, including any existing obsolescence. We therefore find that Hall should have made an adjustment to account for obsolescence.

193. Hall gave the greatest weight to his conclusion under the cost approach. But he based his analysis on an inconsistent and unsupported estimate of soft costs, and he failed to properly account for external and functional obsolescence. Given those issues, we find that Hall's conclusion under the cost approach does not credibly show the subject property's market value-in-use.

b. Hall's conclusion under the sales-comparison approach was unreliable.

194. Kohl's offered several reasons why it believes that Hall's conclusions under the sales-comparison approach were not probative of the subject property's market value-in-use. First, Kohl's pointed to Hall's admission that two of the five comparable sales contained in his original report were not reliable as individual transactions and that no weight should be given to their unit prices. Second, Kohl's argued that Hall's failure to perform competent research led him to select sales from distant, dissimilar markets. Finally, Kohl's took issue with several adjustments Hall applied to his comparable properties' sale prices.

195. We agree that Hall's use of the two Sam's Club stores from the portfolio sale detracts significantly from the reliability of his value conclusion under the sales-comparison approach. They composed 40% of his comparable sales. Hall was on notice that those sales might have been part of a portfolio transaction where the buyer was allowed to allocate the sale price for its own purposes. And Integra had appraised the two stores at far less than half of the reported sale prices, albeit using a different standard than market value. Those facts should have raised a red flag. That Hall used the sales without being able to clearly rule out the possibility that the sale prices were the buyer's independent allocation of a larger portfolio price speaks to the care with which he performed his appraisal.

196. And Hall's "correction" exacerbates our concerns with his credibility in this appraisal assignment. Unlike his original appraisal report, Hall did not certify that his analysis of the portfolio transaction as a whole complied with USPAP, although he testified that it did. Hall claimed that his analysis was appropriate because he was offering it as an indication of market demand. But he did not just analyze market demand. He concluded that the subject property's sale price would be similar to the average unit price from the portfolio sale. And he did so despite his previous testimony that portfolio sales where properties are assigned a sale price based on a mathematical allocation should be categorically excluded.

197. We also agree with Kohl's that Hall relied on sales from far-flung markets with which he was largely unfamiliar. Although Hall searched for comparable sales in Clark County and within Indiana, his search produced only one sale that he included in his analysis. Rather than doing a similar search for contiguous or Midwestern states, Hall selected additional sales that were already in Integra's database from appraisal assignments he was not involved with.

198. Two of the sales Hall used were from outside the Midwest: one from Denver and another from Virginia Beach. Other than having appraised post offices in Denver, Hall had not appraised properties in those markets, and he did not visit the markets in connection with any appraisal assignment. Hall did not analyze statewide data or data from the Denver or Virginia Beach properties' primary trade areas like he did for the subject property. Indeed, there is no indication that he examined rents, sale prices, or other supply-and-demand indicators for those markets, even though he previously expressed concerns about Allen having failed to do so for markets from which he had drawn comparable properties in other appraisals. Allen, who is licensed in Colorado and has appraised big-box properties there, credibly testified that sale prices for big-box properties are two-to-three times what they are in Indiana. That is backed-up by the fact that rents for retail properties in the Denver property's primary trade area were at least double what they were around the subject property and that the difference in sale prices was even greater.

199. Hall nonetheless claimed he had adequate data to adjust for differences in location. We disagree, as evidenced by the comparatively paltry location-related adjustment he applied to the Denver sale. Hall did not account for the disparity between the two locations in rents and sale prices for big-box stores and other retail properties. And given the vastly larger population and superior household income in the area surrounding the Denver store, his demographics adjustments were unconvincingly low.

200. Indeed we agree with Kohl's' general criticism of how Hall treated average household

income in applying his demographics adjustments. Even though his comparable properties had primary trade areas with average household income ranging between $21,587 and $34,721 higher than income from the subject property's trade area, he did not adjust any of the sale prices for those differences because he applied a $40,000 threshold for making an adjustment. But he admitted he had no market data to support that threshold. And he made *upward* adjustments of 10% in previous big-box appraisals for income differences as small as $24,160.

201. Hall attributed the change in his approach to his evolving understanding of the role household income plays in customers' patronage of big-box stores and to data he had not previously considered. But that data mostly shows that people of varying income levels are roughly equally likely to shop at big-box retailers, not whether they spend similar amounts at those stores. The only data addressing spending was an article regarding per-capita spending at one discount retailer: Walmart. We find Allen's view regarding the role of household income more credible, particularly in light of his vast experience in appraising big-box stores and his work as a broker to find locations for proposed big-box stores.

202. Kohl's argued that Hall's adjustment threshold for population growth was similarly unsupported. But the same may be said for Allen's demographic adjustments. And Hall credibly defended the most significant inconsistency about which Kohl's complained—his comparatively higher upward adjustment for a sale with negative growth in its primary trade area—on grounds that big-box retailers view negative growth as a red flag. Hall's adjustment for differences in population growth therefore does little to affect our conclusions about the reliability of his sales-comparison analysis.

203. Moving on, we agree with Kohl's' criticism of Hall's access/exposure adjustments. Kohl's faulted Hall for listing, but not placing any weight on, traffic counts. In light of Allen's vast experience appraising big-box stores and his work as a broker identifying locations for such stores, we find his view of the importance of traffic counts more

credible than Hall's. More importantly, Hall himself previously gave significant weight to traffic counts. And the reasons he gave for departing from his previous view—the rise of "click-and-collect," the use of GPS systems, customer loyalty, and the lack of available traffic count data for all streets that provide access—are unconvincing.

204. Finally, Kohl's criticized Hall's adjustment for changes in market conditions on grounds that he considered data from the subject property's primary trade area and the state of Indiana, but did not consider similar data from the markets where his comparable sales were located. While Hall now claims that doing so is not required by accepted appraisal practice, he previously found that Allen should not have given primary weight to comparable sales because he had not considered changes to market conditions in their MSAs. Given (1) that Hall did not credibly explain why it was important for another appraiser to consider such information but unnecessary for him to do so, and (2) that Hall was largely unfamiliar with the markets for his comparable properties to begin with, we agree that his market conditions adjustments were not very reliable.

205. In sum, Hall's inclusion of the two Sam's Club sales that he now admits were not reliable indicators of the subject property's market value, coupled with his analysis of the average unit price from the portfolio sale, severely undermines his credibility in applying the sales-comparison approach. And two of his other sales were from distant markets that he failed to fully evaluate. His attempts to address those locational differences through adjustments for differing demographics were largely unreliable, and we have at least some questions about his adjustments for access/exposure and market conditions. We therefore find that Hall's value conclusion under the sales-comparison approach does not credibly reflect the subject property's market value-in-use.

c. Hall's analysis under the income-capitalization approach was minimally credible.

206. Kohl's criticized Hall's selection of comparable leases as well as the adjustments he applied to them. Kohl's also asserted that Hall failed to properly account for replacement reserves and real estate taxes, and that his capitalization rate was artificially low. Lastly,

Kohl's challenged Hall's decision to reduce his leasing commission expense by 50% and his failure to deduct for other holding costs during the lease-up period.

207. We begin with Hall's selection of comparable leases. None of those leases were from Indiana, and only one was from a contiguous state. Once again, Hall did not research how supply and demand characteristics from the markets in which those properties were located compared to the subject property's market. But none of those markets were as demonstrably incomparable to the subject property's market as was the Denver market from his sales-comparison analysis. So our concerns about the comparability of the leases' locations are more muted.

208. We have similar questions about the adequacy of Hall's demographic, access/exposure, and market-conditions adjustments as we had with those same adjustments in Hall's sales-comparison analysis.

209. But we disagree with Kohl's' claim that Hall's capitalization rate was artificially low. As discussed above, the small spread between the two appraisers' estimated rates leads us to conclude they both selected reasonable rates. That said, Hall failed to account for real estate taxes an owner might be responsible for during periods of vacancy by either loading his overall capitalization rate as Allen did or by including real estate taxes as an expense deduction when calculating NOI.

210. Indeed, while Hall acknowledged that buyers would account for a risk of vacancy, he only partly captured that risk by applying a 10% deduction to his estimated rent. That lost rent, however, would be accompanied by maintenance and insurance expenses for which a tenant would either reimburse the owner for or pay directly, but that the owner would bear during vacancy. Hall likewise failed to account for replacement reserves. He concluded that no deduction for replacement reserves was necessary because most investors in the national net-lease market do not use reserves. But we are not convinced that a single investor survey covering an unknown variety of property types holds up in

the face of Hall's admissions that (1) replacement reserves are one of the two expense categories that landlords typically incur for properties like the subject property, and (2) he previously made deductions for replacement reserves when appraising other big-box stores.

211. Finally, Kohl's challenged Hall's decision to reduce his leasing-commission deduction by 50%, arguing that he had no support for doing so. We agree. The income capitalization approach presumes a property *is leased*. So the fact that an owner-user may buy the property is of no moment.

212. Hall's analysis under the income capitalization approach was the strongest of his three approaches. But given the multiple problems we have identified, we find his value conclusion only minimally credible. His selection of comparable leases was not as problematic as his selection of comparable sales, although his failure to research the supply-and-demand characteristics of the markets from which he drew those leases leaves us with some doubts about their usefulness as substitutes for the subject property. And his adjustments to the rental rates suffered from similar shortcomings as his adjustments to his comparable properties' sale prices did. He also failed to properly account for replacement reserves, real estate taxes, and other expenses that would be incurred in connection with his projected risk of vacancy.

4. <u>We view Allen as more credible than Hall and find that his conclusion under the income approach, minus his unsupported deduction for a tenant-improvement allowance, is the most persuasive evidence of the property's true tax value</u>.

213. We have significant questions about each appraiser's analyses, particularly their analyses under the cost and sales-comparison approaches. But we find Allen to be the more credible of the two appraisers in this appeal. He demonstrated a deeper understanding of the big-box retail market and more thoroughly investigated the underlying data. By contrast, we have significant concerns with Hall's credibility in this appraisal assignment. He frequently departed from judgments he made in earlier big-box appraisal and review assignments, often without offering convincing support for those changes. And his use of

the two Sam's Club sales that he now admits were not reliable indicators of the subject property's market value-in-use, coupled with his analysis of the average unit price from the portfolio sale, further undermines his credibility.

214. Based on the totality of the evidence, we conclude that Allen's value conclusion under the income capitalization approach, minus his unsupported deduction for a tenant-improvement allowance, is the most persuasive evidence of the subject property's true tax value for the January 1, 2022 assessment date.

VI. DETERMINATION

215. We find that the subject property's true tax value for the January 1, 2022, assessment date is $4,267,100. Applying the parties' stipulated formula, the assessed values for the remaining years under appeal are as follows:

Year	Formula	Rounded Value
2019	$4,267,100 x .93	$3,968,400
2020	$4,267,100 x .95	$4,053,700
2021	$4,267,100 x .97	$4,139,100.

Jonathan R. Elrod

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Betsy J. Brand

Commissioner, Indiana Board of Tax Review

Timothy Schultz

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>.