REPRESENTATIVES FOR PETITIONER:
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REPRESENTATIVES FOR RESPONDENT:
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Dirck H. Stahl, Ziemer, Stayman, Weitzel & Shoulders, LLP

BEFORE THE
INDIANA BOARD OF TAX REVIEW

LOWE'S HOME CENTERS, INC.,	)	Petition Nos.: 82-027-14-1-4-10177-15
	)	82-027-15-1-4-00660-17
Petitioner,	)	82-027-16-1-4-02028-17
	)	
v.	)	Parcel No.: 82-07-18-011-232.046-027
	)	
VANDERBURGH COUNTY ASSESSOR,	)	County: Vanderburgh
	)	
Respondent.	)	Assessment Years: 2014, 2015, 2016

January 22, 2021

FINAL DETERMINATION

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

I. Introduction

1. The parties offered competing valuation opinions from their respective appraisers—Lawrence Allen for Lowe's Home Centers, Inc., and Richard Borges for the Vanderburgh County Assessor. Both appraisals have some probative value, but they also suffer from problems that detract from their reliability. After weighing the evidence, we find Allen's income approach to be the most compelling valuation evidence presented to us and conclude it supports a reduction to the assessments at issue.

II. Procedural History

2. Lowe's contested its 2014, 2015, and 2016 assessments. The Vanderburgh County Property Tax Assessment Board of Appeals ("PTABOA") determined the following assessments:

Year	Land	Improvements	Total
2014	$4,374,000	$3,674,500	$8,048,500
2015	$4,374,000	$3,631,900	$8,005,900
2016	$4,374,000	$3,744,200	$8,118,200

3. Lowe's timely filed Form 131 petitions for all three years with the Board. Beginning on January 21, 2019, our designated administrative law judge, Jacob Robinson ("ALJ"), held a four-day hearing on Lowe's petitions. Neither he nor the Board inspected the property.

4. By Order dated September 18, 2019, the Board adopted the parties' First Amended Appeal Management Plan, in which they agreed to limit the scope of the hearing to the determination of the property's market value-in-use as of January 1, 2016, and stipulated to the use of a trending formula to make determinations for the 2014 and 2015 assessments[1].

[1] 2014 AV = 2016 AV (as finally determined) x 0.9974 (rounded to the nearest one hundred dollars)
2015 AV = 2016 AV (as finally determined) x 0.9966 (rounded to the nearest one hundred dollars)

5. The Assessor's Deputy Hearing Officer Jacqueline Doty-Fox and appraisers Lawrence Allen, David Hall, Richard Borges, II, and Irene Sokoloff testified under oath.

6. Lowe's submitted the following exhibits:

Exhibit No.	**Description**
P-1	Appraisal Report prepared by Allen & Associates
P-2	Subject property record card
P-3	2016 aerial of subject property
P-4	ESRI Community Profile of subject property
P-5A	ESRI Community Profile of 10400 Highland Road, Hartland, MI
P-5B	ESRI Community Profile of 8801 US Highway 24 W, Fort Wayne, IN
P-5C	ESRI Community Profile of 629 S. Randall Road, Elgin, IL
P-5D	ESRI Community Profile of 6300 W. Brown Deer Road, Milwaukee, WI
P-5E	ESRI Community Profile of 334 Chicago Drive, Jenison, MI
P-5F	ESRI Community Profile of 3530 W. Shore Drive, Holland, MI
P-5G	ESRI Community Profile of 7697 Winchester Road, Memphis, TN
P-6A	ESRI Community Profile of 8600 Allisonville Road, Indianapolis, IN
P-6B	ESRI Community Profile of 4405 Pheasant Ridge Drive NE, Minneapolis, MN
P-6C	ESRI Community Profile of 2101 Barrett Station Road, St. Louis, MO
P-6D	ESRI Community Profile of 3600 Park Mill Run Drive, Hilliard, OH
P-6E	ESRI Community Profile of 301 S. Towne East Mall Drive, Wichita, KS
P-6F	ESRI Community Profile of 2888 Brice Road, Columbus, OH
P-9	Situs RERC study
P-10	Situs RERC PowerPoint, "Big Box Valuation Realities"
P-11	Excerpts of Allen workfile
P-12	Excerpts of Marshall Valuation Service
P-15	Lowe's Capital Expenditure Authorization, 3/26/99 (CONFIDENTIAL)
P-17A	Allen Sale - Summary of Demographics Data (5-Mile)

P-17B	Borges Sale - Summary of Demographics Data (5-Mile)
P-17C	Allen Sale - Summary of Demographics Data (5-Mile)
P-17D	Borges Sale - Summary of Demographics Data (5-Mile)
P-17E	Excerpt of Addendum C to IRR Consulting Report
P-17F	Highlighted rows from Exhibit P-17E
P-17G	Demonstrative
P-19A	LoopNet report for 300 North Opdyke Road, Auburn Hills, MI
P-19B	Comparable land sale information
P-19C	Land Sale Profile for 8400 Hudson Road, Woodbury, MN
P-21-4	Emails between Borges, Meier, and Holtkamp
P-21-5	CoreLogic - Swift Estimator Summary Report
P-21-8	Comparable Sale
P-21-9	Summary of Leased Fee Adjustment Indicators
P-21-10	Retail Sale Profile for Sale Number 3

7. The Assessor submitted the following exhibits:

Exhibit No.	**Description**
R-2	Appraisal Report prepared by Richard L. Borges II, 6/26/19
R-2A	Photographs
R-2B	Comparable Improved Sales Grid (corrected)
R-3	Appraisal Review Report prepared by Integra Realty Resources, 8/26/19
R-5	Google Maps aerial photograph
R-6	Google Maps aerial photograph
R-7	Google Maps aerial photograph
R-12	Curriculum vitae
R-13	List of cases
R-14	Consulting Report prepared by Integra Realty Resources

R-17	IAAO Setting the Record Straight on Fee Simple
R-18	IAAO Commercial Big-Box Retail: A Guide to Market-Based Valuation
R-19	Property Rights Symposium Discussion Paper, 12/21/17
R-20	Exposure Draft of Proposed Guide Note, 3/1/19
R-21	Letter, 4/15/19, IAAO to Appraisal Institute
R-22	Exposure Draft of Proposed Guide Note: Consideration of Leases in Fee Simple Valuations
R-27	Dictionary of Real Estate Appraisal, Sixth Edition
R-28	Allen report calculation and IRR recalculation

8. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in these appeals, including the parties' post-hearing briefs and proposed findings of fact and conclusions of law, (2) all orders and notices issued by the Board or our ALJ, and (3) the hearing transcript[2].

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. THE SUBJECT PROPERTY

9. The subject property is located at 6717 Oak Grove Road in Evansville. It consists of building and site improvements situated on an irregularly shaped ±19.26-acre site that Lowe's purchased in 1999. The property sits within the Evansville, IN-KY Metropolitan Statistical Area ("Evansville MSA") and is zoned M-2, General Industrial, which allows for the property's current use as a retail store. It is serviced by three secondary streets that provide access from Morgan Avenue and Burkhardt Road. There is also an interchange connecting Morgan Avenue and Interstate 69 approximately ¼ mile to the west of the property. Although the property has some visibility from Burkhardt Road and Interstate 69, the building is oriented to provide primary visibility from Morgan Avenue. The property's immediate vicinity includes a mix of industrial, commercial, office, and

[2] The transcript is bound in four volumes, but the pages are numbered consecutively from 1 to 1,068. We will cite to the transcript, without reference to the volume, using the following format: Tr. at (page number).

retail developments. The area still had a significant amount of undeveloped land in 2016, and Lowe's was the only big box retail store near the intersection of Morgan Avenue and Burkhardt Road at that time. *Ex. P-1 at 1, 6, 11, 22, 23, 25, 48, 53; Ex. P-3; Ex. R-2 at 10, 12, 13, 18, 19, 26; Ex. R-5; Tr. at 35-38, 46-47, 52-55, 793.*

10. Lowe's had the improvements built to its specifications in 1999. The primary improvement is a single-story ±135,197 square foot Class C warehouse discount store of average quality. The building has poured concrete floors, concrete block walls, a ceiling height averaging about 24 feet, and a rubber membrane roof. It has an open floorplan with exposed roof framing and fluorescent light fixtures throughout. There are several finished areas including employee offices, a break room, and two restrooms. They have drop tile ceilings, laminate, tile, or sealed concrete floors, and drywall or tile walls. The building also has several canopies covering customer loading areas, the outdoor sales area (garden center), and across portions of the front of the building. It has roof-mounted HVAC units, plumbing, electrical service, and a full wet sprinkler system. Site improvements include approximately 708 paved asphalt parking spaces (many of which were resurfaced and restriped around 2010), curbing, sidewalks, truck aprons, interior roadways, chain-link fencing, pole lighting, and landscaped areas. Overall, the building and site improvements are in average condition for their age. *Ex. P-1 at 1, 26, 28-47; Ex. R-2 at 20-25; Tr. at 32, 35, 41-43, 45.*

B. EXPERT OPINIONS

1. Allen's Appraisal

11. Lowe's offered an appraisal report from Lawrence Allen. Allen holds a Bachelor of Arts degree from Linfield College and an MBA from the University of Michigan. He has been an appraiser since 1973. Allen founded Allen & Associates in 1991, where he serves as its president and chief appraiser. He holds several professional designations including the MAI from the Appraisal Institute and the CFA through the Chartered Financial Analyst Institute. In addition to being a certified general real estate appraiser in

Indiana and several other states, Allen is also a licensed real estate broker in Michigan. *Ex. P-1 at 109-111; Tr. at 19-20.*

12. During his career, Allen has appraised a wide variety of commercial, industrial, warehousing, manufacturing, and residential properties. Over the past two decades, Allen has appraised close to 200 big box stores, including stores used by at least twelve national retailers. He has also provided expert testimony regarding the value of big box stores before a state board, court, or tribunal around 15 times in the last six or seven years. Additionally, Allen has worked as a broker doing site selection work for potential development of several Walmart stores in the metro Detroit market and a Meijer store outside of Lansing. In that capacity, he had conversations regarding the factors that those retailers believe are important in a potential big box location. *Ex. P-1 at 109-111; Tr. at 21-27.*

13. Allen performed a physical inspection of the property in 2018. He also inspected each of the properties that he used as comparables. To him, it is important to inspect them to examine their physical characteristics and condition, along with their locational characteristics such as access and visibility. Allen also researched various economic indicators for the Evansville MSA, the state of Indiana, and the nation. Allen considers the most important economic indicator to be population, or the size of the market, which he placed at about 362,000 for the Evansville MSA. Other primary indicators of particular relevance to big box market participants include the number of households, median household income, retail sales per household, and the population growth rate. Based on his review of these indicators, Allen concluded that the Evansville MSA is a slower growth, medium-sized market because its gross domestic product declined in the years leading up to 2016, retail sales per household were trending lower, household growth did not rebound after the recession, and it had a stagnant labor and employment force. The statistics for Vanderburgh County and the property's zip code (47715) led Allen to conclude that they are also low-growth markets. *Ex. P-1 at 14-20; Tr. at 44-51.*

14. Allen defined the property's neighborhood as a half-mile radius around it. The neighborhood demographics include approximately 425 people who had a median household income of about $74,000. Outside of one mile, however, the median household income dropped to $40,000. The neighborhood had not seen significant development during the 16 years since the subject property was constructed, with all the land south of the property and many of the outlots in front remaining undeveloped. Allen concluded that the neighborhood was in a growth stage of its lifecycle. It supports a variety of land uses such as retail, office, institutional, and residential, and it has an established transportation network providing good access to major highways, including Interstate 69. *Ex. P-1 at 21-24; Ex. P-3; Tr. at 52-55.*

15. Although Allen valued the property based on its current use, he concluded that the current use and highest and best use are both retail. In his opinion, the improvements are not so specialized that they could not be used by another retail user, and they are of a type that is commonly exchanged in the market. Allen also opined that retailers, including Lowe's, are motivated by their desire to maximize the sales of their specific products—they do not design stores to maximize the real estate's resale potential. While some big box retailers do purchase existing stores, they typically modify the stores to make them as similar as possible to their other locations, which may require expanding the store or leasing out a portion of the space. *Ex. P-1 at 53; Tr. at 55-60.*

16. According to Allen, when a buyer purchases a fee simple interest, he acquires the right of ownership and the right of immediate possession, which is not true when a property is sold subject to an existing lease. Thus, when valuing a property's fee simple interest, it should be valued as though vacant and available for lease because if the buyer does not have the right to occupy the property, he is not purchasing a fee simple interest. This principle is generally accepted in the appraisal community. Because investors are looking to buy an income stream, they typically like to buy leased properties over vacant properties to avoid the need to find a tenant, negotiate a lease, and do any required build-out. In Allen's view, the increment of value between sales prices for leased property and

sales prices for unleased property is not attributable to the real estate itself, but to the lease. *Tr. at 60-62*.

17. Allen utilized all three approaches to value: the sales comparison approach, the income capitalization approach, and the cost approach. He concluded that the cost approach was less reliable than the other two approaches because of the substantial accrued depreciation and obsolescence, "which is difficult, if not impossible, to estimate" without extracting it from the other two approaches. Additionally, he believes that big box market participants do not generally make decisions based on the cost approach. Allen valued the retrospective market value-in-use of the property's fee simple interest as of January 1, 2016, and certified that his appraisal complies with Standard 1 and Standard 2 of the current edition of the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Ex. P-1 at 2-5, 9-10, 54; Tr. at 28-31, 63.*

a. Allen's Sales Comparison Approach

18. Allen relied on his sales comparison approach as the primary indicator of value. He focused his research on fee simple sales of big box stores of a similar size, age, and type as the subject. Limiting his search to fee simple sales was appropriate because his assignment was to appraise the fee simple interest. He specifically avoided leased-fee sales because they are difficult to analyze and adjust. Leased-fee sales must be adjusted for several factors that affect its sales price such as whether it has above or below market rent, the lease term, and the credit of the tenant. Additionally, an adjustment is necessary due to the fact that the buyer is purchasing a comparable property with a lease already in place, whereas for the subject property, a buyer would have to bear the cost of locating a tenant and putting a lease in place. *Ex. P-1 at 55; Tr. at 63-64, 66-68.*

19. Allen expanded his search area beyond the subject's neighborhood because there were no sales of big box stores to consider. He also searched for properties outside of Indiana because it was more important to find properties with similar economic and physical characteristics than it was to have sales from Indiana. He noted that the market for this

type of property is regional. Allen located seven primary comparable sales that sold between 2013 and 2016, and he verified the details of each sale with either the buyer, the seller, or the broker. They ranged in size from 65,111 to 186,763 square feet and all but one were big box stores. All seven properties were used for retail purposes prior to sale and were purchased for continued retail use. Two of the sales occurred after the 2016 assessment date, but Allen felt they were appropriate because the market had not changed significantly between the assessment date and their dates of sale in April and July of 2016. *Ex. P-1 at 56; Tr. at 68-69.*

20. The seven primary comparable sales Allen relied on are summarized as follows:

Sale Details	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7
Development	Lowe's	Walmart Super Ctr.	Former Kroger	Lowe's	Lowe's	Target	Home Depot	Target
Location	Evansville, IN	Hartland Twp., MI	Fort Wayne, IN	Elgin Twp., IL	Brown Deer, WI	Georgetown Twp., MI	Holland, MI	Memphis, TN
Sale Date		Jul-16	Jan-14	Apr-16	Dec-13	Oct-13	Jan-14	Jun-14
Building Area (SF)	135,197	186,763	65,111	139,410	139,571	104,113	103,540	124,287
Year Built	1999	2009	1999	2006	2006	1989	2006	2005
Land Size (acres)	15.51[3]	22.92	8.13	12.76	11.05	10.68	12.01	15.16
LTB Ratio	5.00	5.35	5.44	3.99	3.45	4.47	5.05	5.31
Rights Conveyed		Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Sale Price		$4,175,000	$2,300,000	$5,300,000	$4,000,000	$2,850,000	$1,750,000	$4,612,000
Price/SF		$22.35	$35.32	$38.02	$28.66	$27.37	$16.90	$37.11
Population (5 mile)	118,984	30,593	59,783	158,290	154,513	124,258	91,829	183,198
Households (5 mile)	49,773	10,888	24,184	51,116	60,014	46,528	32,723	69,834
Med HH Inc (5 mile)	$49,040	$102,345	$68,483	$76,672	$52,539	$62,989	$60,219	$60,370
Traffic Count	16,406	84,800	35,614	39,600	27,900	17,718	26,100	69,762

Ex. P-1 at 56-64; Tr. at 69-92.

21. Allen considered adjustments to the comparable sales for expenditures after sale, property rights, financing terms, conditions of sale, market conditions, size, arterial attributes, demographic attributes, retail submarket, and age/condition:

[3] The subject land size does not include the estimated 3.75 acres of excess land.

- Expenditures after sale - Allen concluded no adjustments were necessary because the post-sale changes were made to accommodate the buyers' specific retail operations, not items the seller would agree were necessary to make the properties suitable for retail use. *Ex. P-1 at 65; Tr. at 92-95.*
- Property rights - Allen applied upward property rights adjustments of 8% to Sales 1-3. These three sales were sold with deed restrictions restricting some future retail use of the properties for 25, 10, and 5 years, respectively. Although Allen concluded that the restrictions did not affect their sales prices, he reviewed two national studies that concluded deed restrictions depressed sales prices by 6% to 9%. *Ex. P-1 at 65, Ex. P-9 at 44, Ex. P-10 at 27; Tr. at 96-102.*
- Financing terms/conditions of sale – Allen concluded no adjustments were necessary because all the sales were arm's-length cash sales. *Ex. P-1 at 65-66; Tr. at 102-103.*
- Market conditions – After reviewing multiple market economic indicators for national, regional, big box properties, and the Evansville MSA, Allen concluded that market conditions were increasing by 1.00% per year between 2013 and 2015 and 2% per year in 2016. As a result, he applied 3% upward adjustments to Sales 2, 4, 5, 6, 7. *Ex. P-1 at 66-70; Tr. at 103-105.*
- Size – With the exception of Sale 2, Allen concluded that size adjustments were not necessary because he has not found a significant difference in price per square foot for big box stores with sizes between 80,000 and 200,000 square feet. The same is not true for retail properties with less than 80,000 square feet. Allen therefore applied a 10% downward adjustment to Sale 2 due to its smaller size (65,111 sq. ft.). *Ex. P-1 at 70-71, Ex. P-10 at 24; Tr. at 106, 137-138.*
- Arterial attributes - After reviewing the access, visibility, and traffic counts for the subject and the comparables, Allen concluded that all the comparables except Sale 5 have superior arterial attributes than the subject. He therefore adjusted them downward by either 5% or 10%. Sale 5 was deemed to have similar attributes and it did not receive an adjustment. *Ex. P-1 at 70-71, Tr. at 107-109.*
- Demographic attributes – Allen reviewed ESRI reports containing demographic data for each of the properties and arrayed that information to show how they compared to

the subject property. Although Sales 1 and 2 had higher median household incomes, their markets are smaller. Allen therefore concluded that they had inferior demographics and he adjusted them upward by 15% and 5%, respectively. He viewed Sales 3, 5, and 7 as superior to the subject in terms of market populations and median household incomes and applied downward adjustments of 5%, 5%, and 10%, respectively. Allen concluded that Sales 4 and 6 had similar demographics and required no adjustments. *Ex. P-1 at 71, Ex. P-4, Ex. P-5A thru P-5F; Ex. P-17A; Tr. at 112-113, 116-119, 121-122.*

- Retail submarket – Allen considered the relative supply and demand for retail space in each of the comparables' locations by reviewing the asking rents and vacancy rates in each market as reported by CoStar for the 4th Quarter of 2015. His analysis led him to conclude that Sales 2, 3, and 6 were in superior retail markets and required downward adjustments of 5%, 10%, and 5%, respectively. He considered Sales 4, 5, and 7 to be in inferior retail markets, and they received upward adjustments of 10%, 10%, and 5%, respectively. *Ex. P-1 at 71-72; Tr. at 122-126.*
- Age/Condition – Allen adjusted each of the comparables by 1% per year for the difference between their actual ages and the subject's actual age of 15 years. *Ex. P-1 at 72; Tr.at 126-128.*

22. Allen also examined six additional sales from Indiana, but he did not use them to derive an indicated value because they did not meet his selection criteria. Nevertheless, he felt they demonstrated that there is an active market for big box stores in Indiana. Additionally, Allen referenced a national study of big box sales prepared by Brett Harrington of the International Appraisal Company. The Harrington study included 272 sales that closed between January 2011 and December 31, 2016, of which 145 were fee simple sales. The fee simple sales had an average sales price of $28.27/SF, which was close to Allen's comparables' unadjusted average price of $29.39/SF. Allen also referred to a second study prepared by Situs RERC. That study looked at national data from 843 sales of big box and junior box stores from 2010 to 2018. Allen included it to further demonstrate the number of big box sales across the nation and to show the pricing

differences between leased fee and fee simple big box sales. *Ex. P-1 at 74-75; Tr. at 129-134.*

23. Allen arrived at adjusted sales prices ranging from $14.61/SF to $33.51/SF, resulting in an average price of $27.69/SF. He did not think Sales 1 and 6 were as reflective of the subject property as the other sales, so he gave them less weight. The remaining five sales produced a narrow range of adjusted sales prices from about $28/SF to almost $34/SF. Based on his analysis, Allen concluded that the most likely selling price for the subject was $31/SF. When applied to the subject's 135,197 square feet, his calculation produced a value estimate for the store and supporting land of $4,191,107. Allen then added in $510,000 for the contributory value of the 3.75 acres he determined were excess land, resulting in an indicated value of $4,700,000 (rounded) under the sales comparison approach. *Ex. P-1 at 73, 75-76; Tr. at 128, 139-141.*

b. Allen's Income Capitalization Approach

24. An income approach is based on an investor purchase. Most investor purchases are leased fee purchases—purchases of properties with leases in place. The subject does not have a lease in place, so an investor would have to find a tenant and negotiate a lease before it could be sold in the leased fee market. Because there is no lease, it is necessary to do a direct capitalization approach where the appraiser assumes the property is leased and then adjusts for the cost of leasing it up and putting a tenant in place. *Ex. P-1 at 77; Tr. at 141-142*.

25. To determine a market rent for the property, Allen estimated a rental rate based on the comparison of market rent for other retail buildings that were in existence when leased. He identified 10 lease comparables and selected 4 of them for further analysis. Leases 1 and 2 are older leases but are in strong retail locations in Indianapolis. Leases 9 and 10

are in strong retail locations in Cincinnati and Des Moines, respectively.[4] All four are big box stores leased for single-occupancy retail use prior to the 2016 assessment date. They range in size from 91,030 to 118,977 square feet. Allen adjusted his comparable leases for arterial, demographic, retail submarket attributes, and age/condition based on his review of traffic counts, access, visibility, 5-mile population density, median household incomes, and submarket rents and occupancy rates. The adjusted leases had rental rates ranging from \$3.44/SF to \$5.46/SF, with an average rate of \$4.43/SF on a triple-net basis ("NNN"). After considering their locations and features as compared to the subject property, Allen placed more weight on the leases from Indiana and concluded to a retrospective NNN market rental rate of \$4.50/SF for the subject. *Ex. P-1 at 78-80; Tr. at 146-150.*

26. Allen determined the amount of vacancy and credit loss by reviewing a CoStar survey showing changes in market vacancy and availability for retail properties from 2008 to 2016 for an area including the Evansville MSA. He asserted that buildings like the subject have an increased risk of vacancy compared to the average retail property due to their size, design, and location. Allen concluded to a vacancy and credit loss factor of 5%, which was similar to vacancy levels in the general retail submarket. *Ex. P-1 at 80-81; Tr. at 153-155.*

27. The next step was to estimate reimbursable operating expenses. After reviewing data from an IREM Income/Expense Analysis for shopping centers in the Midwest, Allen estimated a common area maintenance ("CAM") expense of \$1.50/SF and an insurance expense of \$0.25/SF. Allen also estimated unreimbursed expenses. These included a 3% management fee based on surveys of management companies for retail properties, and a reserve for replacement expense of \$0.25/SF based on a PwC real estate investment survey and replacement reserve data published by RealtyRates. After accounting for

[4] Lease 10 is in Clive, IA, which is a suburb of Des Moines. Additionally, there is a typographical error in Allen's Comparable Lease Adjustment Grid that incorrectly lists Lease 10 (No. 4 in the grid) as being in Hobart, Indiana. *Ex. P-1 at 80; Tr. at 147.*

vacancy and deducting expenses from his rental income conclusions, Allen concluded to an annual net operating income ("NOI") of $508,257. *Ex. P-1 at 81-83; Tr. at 155-161.*

28. To develop a capitalization rate, Allen prepared a band-of-investment analysis, reviewed six investment surveys, analyzed market derived capitalization rates, and reviewed an RERC sales study. He based his band-of-investment analysis on a RealtyRates survey of mortgage data for freestanding retail properties. It produced cap rates ranging from 4.69% to 14.73%, with an average rate of 8.38%. Allen acknowledged that the freestanding retail category includes properties smaller than a big box store. However, he felt it provided a range to work with. The inclusion of smaller properties reduced the average rate. If the survey had only included big box stores, it would have produced a higher cap rate. The investment surveys Allen reviewed included three net lease big box surveys from the Boulder Group covering the 4th quarter of 2015, two CBRE cap rate surveys from mid-2016, and a RealtyRates survey of freestanding retail from the 1st quarter of 2016. They reported cap rates ranging from 5.50% to 14.01%. Of these surveys, Allen considered the RealtyRates survey of freestanding retail, which had an average cap rate of 10.71%, to be the most applicable to the subject property. *Ex. P-1 at 83-86; Tr. at 162-176, 179-180.*

29. Allen also derived capitalization rates from seven leased fee big box stores with short remaining lease terms. He included this data to demonstrate that the shorter the remaining lease term is for leased fee big box stores, the higher their cap rates are due to the shorter period of guaranteed rent and the potential loss of income at the end of the lease, along with the cost and risk associated with finding a new tenant willing to pay a similar rent. Finally, Allen concluded that the RERC sales study of 407 leased fee sales confirmed his premise that cap rates increase as the remaining lease term gets shorter. *Ex. P-1 at 85-86; Tr. at 177-179.*

30. After considering the data, Allen concluded to an overall capitalization rate of 10%. He then loaded his cap rate to reflect the portion of property taxes the owner would pay

during periods of vacancy. Dividing his estimated NOI by his loaded cap rate of 10.15919% produced capitalized net operating income of $5,002,926. Based on his interviews with leasing brokers experienced in leasing big box stores, Allen deducted $182,516, representing a broker's leasing commission of 6% on the first five years of the lease term. Additionally, Allen estimated that it would take one year to find a tenant, negotiate a new lease, and build out the space for the new tenant. He therefore deducted $508,257, representing one year's worth of lost income. Finally, Allen added in $510,000 for the contributory value of the 3.75 acres of excess land, resulting in an indicated value of $4,820,000 (rounded) under the income capitalization approach. *Ex. P-1 at 86-88; Tr. at 181-186.*

c. Allen's Cost Approach

31. Allen started his cost approach by determining the value of the land. He confined his search for comparable land sales to large commercial sites in the Evansville market that sold between 2013 and 2018. Allen identified three sales and one property under contract:

- Land Sale 1 is an 11.33-acre commercial site purchased for $1,750,000 in April 2015 for development of a Walmart Neighborhood Market.
- Land Sale 2 is a 28.13-acre commercial site purchased for $3,450,000 in April 2013 for development of a Meijer.
- Land Sale 3 is a 13.68-acre commercial site purchased for $1,944,270 in March 2018 by a medical group for development of a healthcare facility.
- Land Sale 4 is a 22.07-acre commercial site located on Green River Road across from the Meijer and a recently built Menards. It was under contract in July 2018 for a price below its $3,800,000 list price.

Ex. P-1 at 89-92; Tr. at 187-195.

32. The four land sales had unadjusted sales prices ranging from $122,649/acre to $172,179/acre (list price for Land Sale 4), with an average price of $147,852/acre. Allen then applied adjustments for conditions of sale (only to Land Sale 4), market conditions, demographic attributes, arterial attributes, and size. After adjustment, his sales ranged in price from $118,550/acre to $140,792/acre, with an average price of $131,366/acre. After considering each of his comparable land sales, Allen concluded to a market value of $135,000/acre, producing a total land value of $2,600,000. Allen allocated $2,090,000 of the total value to the 15.51 acres of land supporting the subject's big box store, with the remaining $510,000 allocated to the 3.75 acres of excess land. *Ex. P-1 at 89, 93-94; Tr. at 195-200.*

33. Allen relied on a replacement cost estimate guide published by Marshall Valuation Service ("MVS") published in 2015 to estimate the replacement cost of the building. He classified it as a Class C warehouse discount store and selected a building cost estimate of $51.33/SF (including a $2.15/SF adjustment for sprinklers). Allen then adjusted the resulting base building cost for story height and perimeter, producing an adjusted base building cost of $6,923,874. After adding the contributory value of the 17,427 square feet of canopy area at a cost of $38/SF and the local and current cost multipliers, Allen arrived at a total building replacement cost estimate of $7,661,961. *Ex. P-1 at 94-95; Tr. at 201, 204-205.*

34. For site improvements, Allen calculated replacement costs for the surface parking improvements, concrete paving, interior roadway, landscaping, and chain link fence. He adjusted the base costs using the local and current cost multipliers, producing a replacement cost estimate for the site improvements of $2,518,928. *Ex. P-1 at 95-96; Tr. at 205-206.*

35. In addition to the hard costs, Allen estimated that soft costs would be 5% of site and building costs. These soft costs represent the costs a developer would incur beyond the actual building costs such as permits, architectural and engineering fees, interest during

construction, and management fees. Also, because the cost approach produces a value indication that assumes stabilized occupancy, he included $182,516 for the leasing commissions necessary to get it leased up. Allen allocated $520,457 (75.26%) of the total soft costs and leasing commissions to the building improvements, with the remaining $171,104 (24.74%) allocated to the site improvements. This resulted in undepreciated replacement cost estimates of $8,182,418 for the building improvements and $2,690,032 for the site improvements. *Ex. P-1 at 96-97; Tr. at 206-207.*

36. Allen considered three elements of depreciation: physical deterioration, functional obsolescence, and external obsolescence. Physical depreciation is a loss of value due to wear and tear on the building and site improvements, functional obsolescence is a loss of value due to the characteristics of the improvements themselves, and external obsolescence is a loss of value due to factors outside of the property's boundaries. Allen calculated physical depreciation using the age/life method. He concluded that the building had a physical age of 16 years and a useful life of 30 years and that the site improvements had a physical age of 8 years and a useful life of 15 years. This produced a depreciation factor of 53.3% for both the building and site improvements, resulting in total physical depreciation of $5,798,640. *Ex. P-1 at 97-98; Tr. at 208-209.*

37. Although he reviewed other data, Allen ultimately relied on the capitalization of deficient income method to quantify both functional and external obsolescence. This method involved estimating the income necessary to support the value of the property by taking the total improvement cost produced by his cost approach, deducting physical depreciation, adding in the land value, and multiplying the resulting value by the overall cap rate from his income approach. Allen's calculation produced a required NOI for feasibility of $727,785. From that, he subtracted the projected NOI value of $508,257 produced by his income approach to arrive at a deficient income estimate of $219,528. Allen then capitalized his deficient income estimate using the overall cap rate from his income approach, resulting in a total obsolescence estimate of $2,160,884, or

approximately 20% of the improvement's replacement cost new. *Ex. P-1 at 98-101; Tr. at 214-216.*

38. Allen also applied property rights adjustments of $182,516 for a leasing commission and $508,257 for lost rent because the cost approach produces a value indication that assumes stabilized occupancy and Allen is valuing the unencumbered fee simple interest. Deducting Allen's property rights adjustments from the depreciated cost of the improvements and land value estimate produced an indicated value of $4,820,000 (rounded) under the cost approach. *Ex. P-1 at 102-103; Tr. at 220-221.*

d. Allen's Reconciliation

39. In his reconciliation, Allen gave the sales comparison approach primary consideration. He emphasized the large number of big box sales across the nation and that the typical price for such stores is between $25/SF and $30/SF. He also gave some consideration to the income approach, but not as much as the sales comparison because the subject property is not leased. Allen did not rely on the cost approach in his reconciliation due to the large amount of depreciation and the need to look to his other approaches to determine it. He also stressed that the cost approach is not used by buyers and sellers in the big box market. Allen ultimately reconciled to a final value conclusion of $4,720,000 as of January 1, 2016. *Ex. P-1 at 104-105; Tr. at 223-226.*

2. Hall's Review Appraisal

40. The Assessor offered a Review Appraisal prepared by David Hall, MAI, AICP.[5] He has a bachelor's degree from the College of Architectural and Planning at Ball State University and a master's degree in business administration from the Ohio State University. Hall is a licensed Indiana Certified General Real Estate Appraiser. He has been a commercial real estate appraiser for 15 years and is currently a Managing Director for Integra Realty Resources in Indianapolis. He received his MAI designation from the

[5] Although an additional appraiser, Michael C. Lady, also signed the review appraisal offered by the Assessor, Hall was the only one who testified. For simplicity, we will refer to it as Hall's.

Appraisal Institute in 2012, and he has also received the AICP designation from American Institute of Certified Planners. *Ex. R-3 at Addenda A; Tr. at 280-282.*

41. Hall was engaged to conduct an appraisal review of Allen's appraisal to determine whether it is credible. This involved developing opinions regarding whether Allen's opinions and conclusions were sufficiently supported, and whether the appraisal was accurate and complete. Although Hall was not given formal access to the subject property, he was able to inspect the public areas inside the building, its perimeter, and the site. He was also able to drive along the highway to observe its visibility. Hall also noted that he has appraised properties in Evansville before, so he is somewhat familiar with the market area. *Ex. R-3 at 6; Tr. at 283-284, 287-288.*

42. Hall started his review with Allen's description of the building as a Class C average quality warehouse discount store, which he agreed was a fair description of the property. However, based on his review of the photographs of the building's roof contained in Allen's report, Hall concluded that the building has a package HVAC unit, which is more typical of MVS's description of good quality construction. Hall also noted that while he believes the building is aligned most closely with MVS's description of average quality construction, MVS lists fluorescent lighting and adequate restrooms like the subject has as characteristics that tend to indicate good quality construction. Lastly, Hall concluded that Allen's description of the building's functional utility and condition was credible and reasonable. *Ex. R-3 at 9-12; Tr. at 288, 291-294.*

a. Review of Allen's Sales Comparison Approach

43. Hall felt that Allen's focus on finding fee simple sales of big box properties from 2013 to 2016 to use as comparable sales was reasonable. He also agreed that for purposes of valuing a property's market value-in-use, it is the fee simple interest that is being appraised, and that if an appraiser can find a fee simple transaction, it is "absolutely worthy of consideration." However, Hall did not think that leased fee sales must be excluded. Hall also disagreed with Allen's assertion that it is generally

accepted in the appraisal community that a property can only be valued on a fee simple basis if it is vacant. According to Hall, that assertion is contrary to accepted cost approach methodology, which assumes stabilized occupancy and market rent. *Tr. at 294-297.*

44. Hall also criticized the fact that the majority of Allen's comparable sales are located more than 200 miles from the subject property. While he found it reasonable to expand the geographic search area given the limited number of competitive properties in Evansville, he thought Allen's analysis of and adjustments for locational differences were insufficient. According to Hall, Allen's use of comparable leases from Indiana demonstrated Allen's understanding that transactions in closer geographic proximity to the subject are better indicators of its value. Hall further noted that his search of CoStar using the same selection criteria employed by Allen identified more than 50 documented sales transactions in Indiana, only one of which was used by Allen. Hall concluded that while not all of the transactions could have been used, Allen's failure to include any sales from within 200 miles of the subject undermines the credibility of his sales comparison approach. *Ex. R-3 at 297-299; Tr. at 13-16.*

45. After reviewing Allen's adjustments, Hall concluded that all of Allen's adjustments for financing terms, market conditions, and age/condition were credible. However, Hall found insufficient support for many of the other adjustments that Allen applied to his comparable sales. Hall concluded that Allen should have adjusted Sales 2, 4, and 6 for expenditures after sale. Given Sale 2's prior use as a grocery store, he felt that any non-grocery store user would need to make modifications to the building's structural components to convert it into a big box retail store. Hall was also concerned with the lack of adjustment to Sale 4 because he located a building permit application documenting the buyer's intention to perform over $6,000,000.00 worth of work to the property, including the replacement of sidewalks, HVAC, lighting, roofing, and concrete slab. Hall felt Allen should have acknowledged the permit in his report and made a

suitable adjustment. Finally, Hall was concerned by the lack of an adjustment for Sale 6 due to its subsequent conversion to multi-tenant use. *Ex. R-3 at 28, 45-46, 61; Tr. at 314, 327-330, 335-337.*

46. Hall also took issue with Allen's property rights adjustments to Sales 1, 2, and 3, which were subject to deed restrictions of varying lengths. While Hall agreed that there are situations where deed restrictions have no impact on sales price, he believes that it is far more common for deed restrictions to have an impact. Hall referenced a study he did showing deed restrictions can reduce purchase prices by 34% to 76%. He therefore concluded Allen's 8% upward adjustments for Sales 1 and 2 were only minimally supported. Hall also thought that Sale 3's deed restriction would eliminate many potential big box users, resulting in a significant impact to its sales price. *Ex. R-3 at 19, 28, 37; Tr. at 299-303, 315-316, 322-324.*

47. According to Hall, Allen should have made conditions of sale adjustments to Sales 3, 4, and 7. Sale 3 is a Lowe's store in Elgin, Illinois that sat vacant for approximately 55 months before it sold to Rural King. Multiple media sources reported that Lowe's was struggling financially and had to close seven stores nationwide as it struggled with a downturn in the housing industry. Hall concluded that Allen therefore failed to properly consider the seller's financial motivations, which should have prompted Allen to make an upward adjustment. Hall concluded Sales 4 and 7 should have received upward adjustments for the same reason. Additionally, Hall noted that Sale 4 sits in a commercial corridor that was experiencing unprecedented decline during the year preceding the sale. *Ex. R-3 at 38-39, 47-49, 68-69; Tr. at 324-326, 331-332, 339.*

48. Additionally, Hall criticized Allen's failure to explain how he quantified the 10% downward size adjustment applied to Sale 2. Hall also questioned Allen's decision to even include Sale 2 as a comparable sale because the property does not meet Allen's own definition of a big box store. *Ex. R-3 at 29; Tr. at 316-317.*

49. Hall found insufficient support for all of Allen's arterial attributes adjustments, and he concluded that Allen's reported traffic count was not credible. Hall thinks that if an appraiser is considering traffic count, he should be looking at the streets from which traffic feeds into the property. However, Allen simply looked at the traffic count along Morgan Avenue, which does not even offer an access point to the property. Anyone travelling to the subject property would get there from the other roads in the immediate area. Hall therefore felt that Allen should have given at least some consideration to their traffic counts. *Ex. R-3 at 20-22, 29-31, 40-41, 50-51, 56-57, 63-64, 70-71; Tr. at 305-308, 317-320, 326, 333-335, 337-338, 340.*

50. Hall concluded that Allen's demographic attributes adjustments for Sales 1 and 2 were also insufficiently supported. He noted that Allen did not explain how he quantified his respective adjustments of 15% and 5%. Hall also pointed out that compared to the subject, Sale 1 had 74% less population and 78% fewer households within a five-mile radius, while Sale 2 had 50% less population and 51% fewer households within a five-mile radius. *Ex. R-3 at 23-24, 32-33; Tr. at 308-309, 320-321.*

51. Finally, Hall found all of Allen's adjustments for retail submarket trends to be unsupported because while they reference data that is an indicator of market demand, they do not reference any indicators of market supply. Based on his review, Hall ultimately concluded that Allen's opinion of value under the sales comparison approach was not sufficiently supported or reasonable. *Ex. R-3 at 25, 34, 42, 52, 58, 65, 72, 75; Tr. at 309-313, 321, 327, 333.*

b. Review of Allen's Income Approach

52. Hall began his review of Allen's income approach by discussing the four lease comparables:

- Lease 1 - Hall was primarily concerned by the fact that this lease was signed almost ten years before the valuation date at issue. Given that span of time, Hall thought it would be difficult to support adjustments for market conditions or location.

Additionally, while he felt it was reasonable to expand the search area beyond the Evansville market, he considers Indianapolis to be a very different market. *Ex. R-3 at 77-79; Tr. at 343-348.*

- Lease 2 – This property is located in Indianapolis in a market area near Lafayette Square Mall that has been suffering from high vacancy and decline over many years, so Hall thought Allen should have provided some analysis of the mall's influence. Additionally, Hall questioned whether rental data from 2007 was relevant. *Ex. R-3 at 80-82; Tr. at 348-350.*
- Lease 3 – This property is located in an established mixed-use area on the northeast side of Cincinnati. Hall agreed that the lease, which commenced in 2014, was from within a reasonable range of time. However, he thinks the Cincinnati market is very different from Evansville and he faulted Allen for not providing an analysis of its submarket. *Ex. R-3 at 83-85; Tr. at 350-352.*
- Lease 4 – Hall agreed that this lease was worthy of consideration given that it was a relatively recent lease (2015). *Ex. R-3 at 86-88; Tr. at 352.*

53. Hall went on to express particular concern with Allen's use of leases spanning a 15-year period and the fact that more than half of them commenced prior to, during, or immediately after the Great Recession (December 2007 to June 2009). Hall noted that if one only uses the leases that were signed in the same three-year period Allen used to find comparable sales (2013-2016), the market rents would range from \$4.00/SF to \$6.39/SF, with an unadjusted average of \$5.50/SF. Hall ultimately concluded that Allen's adjustments for demographic attributes and age/condition were credible, but that Allen failed to sufficiently support his analysis of and adjustments for market conditions, arterial attributes, and retail submarkets for all four lease comparables. *Ex. R-3 at 76, 89; Tr. at 352-354.*

54. After reviewing Allen's reimbursable operating expense estimates, Hall concluded that they are misleading and not credible because they are based on survey data from multi-tenant shopping centers instead of a single-user property like the subject. According to

Hall, the expense structures for these two types of properties are different. In fact, there is no expense data reported for big box properties because it is an expense structure that does not exist in the real world. Tenants such as Lowe's are sophisticated, so it does not require much management expertise to help the tenant pay the bills for insurance and real estate taxes or to manage the property. *Ex. R-3 at 90; Tr. at 355-358.*

55. Hall found Allen's unreimbursed operating expense estimates for management and reserves for capital improvements to be credible. He was, however, highly critical of Allen's deduction for leasing commissions. In Hall's opinion, a leasing commission would not be incurred because the subject property is owner-occupied. Hall argued that throughout his appraisal, Allen viewed the property through the lens of an owner-occupant. For example, Allen did not include entrepreneurial profit in the cost approach presumably because he is valuing the property as owner-occupied. Similarly, six of Allen's seven comparable sales were purchased by an owner-occupant. Thus, Hall questioned why Allen would decide to deduct a leasing commission as if the subject is investor-owned. It is also unlikely that an investor would buy a big box property without knowing who the tenant would be, or that the owner would need an outside broker's assistance in finding one. *Ex. R-3 at 90-91; Tr. at 359-361.*

56. Hall concluded that Allen's NOI estimate was mathematically correct, but that its credibility was compromised by the flaws in Allen's market rent and expense estimates. *Ex. R-3 at 91; Tr. at 363-364.*

57. Next, Hall reviewed Allen's development of a capitalization rate. He criticized Allen's reliance on RealtyRates survey data to develop his band-of-investment method because it includes a variety of freestanding retail properties such as bank branches, fast food restaurants and other small retail properties that are not competitive with the subject property. He also felt that it was inconsistent with Allen's conclusion that the property is a warehouse discount store. Hall further noted that Allen did not discuss which rate indications were applicable or how Allen weighted them in his reconciliation. Hall had

no objection to Allen's use of investment surveys, but he faulted Allen for not disclosing how he weighted the data or identifying which indicator was deemed the most relevant. Of the surveys Allen included, Hall believed that the 7.88% cap rate from the Boulder Group's survey of non-investment grade properties with remaining lease terms of less than five years best aligned with Allen's description of the subject property. *Ex. R-3 at 92; Tr. at 364-367*.

58. As for Allen's use of market derived capitalization rates, Hall agreed that there can be a relationship between the remaining lease term and the cap rate, but he did not think that Allen's data was compelling evidence of that. Hall was also troubled by Allen's assertion that short term leases are closer to a fee simple capitalization rate because that would mean owner-occupancy is riskier than leasing property. He further criticized Allen's decision to use Kmart stores to derive market capitalization rates. *Ex. R-3 at 93-95; Tr. at 367-374*.

c. Review of Allen's Cost Approach

59. Hall first reviewed the four land sale transactions Allen relied on to develop a land value. He found all four sales to be relevant and noted that two were subsequently developed with big box retail stores. Hall also found all of Allen's adjustments for demographic attributes and size to be credible. However, Hall concluded that Allen failed to provide sufficient support for any of his adjustments for market conditions or arterial attributes. Hall also felt that Allen's 15% downward conditions of sale adjustment to Land Sale 4 (listing) was unsupported. *Ex. R-3 at 97-110; Tr. at 375-382.*

60. As for Allen's cost estimate, Hall felt that Allen should have adjusted for the package HVAC system, which would have added about \$3.65/SF to the base cost and would have increased Allen's building cost estimate by more than 7%. Hall also criticized Allen's lack of explanation for using 5% to estimate soft costs. Additionally, Hall took issue with Allen's deduction of a leasing commission and lost rent. In Hall's view, Allen's assertion that it would need to be leased and occupied by a tenant is inconsistent with

Allen's sales comparison approach, which treats the property as owner-occupied. *Ex. R-3 at 111-114, 124; Tr. at 383-386, 400-401*.

61. Hall also questioned Allen's deduction for functional and external obsolescence. The property sits squarely in the middle of the size range of Allen's comparable sales and it is on the smaller end of big box properties in the Evansville MSA. Hall therefore disagrees with Allen's assertion that it is oversized for the market. He also criticized Allen's assertion that specific façade and features are detrimental to a property and generate functional obsolescence. Hall noted that when Allen considered the issue of exterior facades and related features in his sales comparison approach, Allen made no adjustments for rebranding and changes to façade. Hall also disapproved of Allen's external obsolescence adjustment. Allen justified the adjustment by claiming that "market demand for large commercial buildings like that of the property is limited in the subject market, as well as the surrounding market areas." But Hall concluded that Allen's assertion was contradicted by at least two of the land sales Allen used in his cost approach. Hall found that there were six big box stores and one proposed store in the subject's market area between 2008 and the present. He therefore found Allen's conclusion that the property suffered from external obsolescence unreliable. *Ex. R-3 at 115-118; Tr. at 386-392*.

62. Hall recalculated Allen's cost approach using Allen's data but adjusting for the cost of package HVAC and removing Allen's deductions for obsolescence, leasing commission, and lost rent. Doing so resulted in a value of $7,917,472. *Ex. R-28; Tr. at 399-400*.

3. Sokoloff Testimony

63. The Assessor also presented testimony from Irene Sokoloff, owner and president of IES Valuation Services. Sokoloff has a bachelor's degree in English literature from the University of Miami. She is licensed as a Certified General Real Estate Appraiser in Indiana and five additional states. Sokoloff was awarded her MAI designation from the Appraisal Institute in 2014. She is also a member of the International Association of

Assessing Officers ("IAAO"). As a member of the IAAO, Sokoloff has been involved with the development of several white papers and guide notes related to the use of the term "fee simple estate" in the appraisal profession. She has also co-authored two papers published by the IAAO on the topics of fee simple and the market-based valuation of commercial big box properties. *Ex. R-12; Ex. R-17; Ex. R-19; Tr. at 955, 958-59, 962-964, 966-970, 987-988.*

64. The Dictionary of Real Estate Appraisal, Sixth Edition, defines "fee simple estate" as "[a]bsolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat." The presence of encumbrances can disqualify properties from being used as comparables in an appraisal. For example, a deed restriction could potentially change a property's potential use to such an extent that it would be less suitable than another comp without a similar restriction. However, encumbrances such as leases and mortgages do not render a comp unusable. *Tr. at 973-976, 986, 991-992.*

65. The dark store or dark box theories employ a hypothetical condition that emanates from a misinterpretation of the definition of fee simple that requires an appraiser to value the property as if it is vacant and available for use or for sale. But Sokoloff is not aware of any jurisdictions that require an appraiser to assess a property as if it is vacant when the property is occupied on the date of value. When some appraisers choose to use the hypothetical condition of vacancy while others do not, the resulting widely disparate values impact the public's trust in the profession. *Tr. at 976, 979-981.*

66. Sokoloff argued that valuing a property assuming that it is vacant and available for lease or for sale will produce a different result than considering the lease and asking whether the lease is at market, or if it has above or below market rent. If it is at above or below market rent, then it must be adjusted. The presence of a lease does not defeat fee simple—fee simple ownership can be subject to a lease. *Tr. at 981-982.*

67. The attractiveness of a leased property to a buyer depends on the buyer. A building that has been vacant for a number of years would raise questions for the buyer about how long it will take to lease up, whether the vacancy is caused by distress or foreclosure, and whether the use is still viable. It is part of an appraiser's job to figure out the answers to those questions when considering a vacant building's value because a comp is a benchmark of value for the subject property, and it must be a similar property. If the subject property is not a distressed or failed property, and it is occupied as a functioning store, the appraiser should be looking for comps that are similar. *Tr. at 983-985.*

4. Borges' Appraisal

68. The Assessor offered an appraisal report prepared by Richard Borges, II. He has a bachelor's degree in general studies from Indiana University. In addition to IU, he attended Wabash College, Vincennes University, and Purdue. Borges is a valuation professional and co-founder of Rick Borges Real Estate Services, Inc. His experience in the profession started in 1974. Since then, he has served a wide range of clients in lending, litigation, eminent domain matters, and dispute resolution related to appraisal review. Borges has also worked on the valuation of property for tax purposes in the state of Indiana, including a full county land value study back in the 1980's. Except for major lodging and CBD office buildings, Borges has appraised every type of property in his 40-plus years including agricultural, industrial, retail, multi-family, and single-family housing. *Tr. at 673-674.*

69. Borges first associated with the Appraisal Institute in 1978. He received his MAI designation in 1986 and his SRA in the early 2000's, with the general review and residential review specialist designations following in 2014 and 2015. His involvement with the Appraisal Institute has also included holding chair offices and serving on the board of directors and as a regional representative for the local and Indiana chapters. Borges has also served in all the chair offices of the Appraisal Institute's international organization, including as president in 2013. *Tr. at 675*.

70. Additionally, Borges holds the CRE designation from the Counselors of Real Estate. He has been a realtor since 1974 and is a GRI graduate of the Realtor Institute. Borges is also a certified distance education instructor, and he has taught basic, intermediate, and advanced appraisal for residential and non-residential properties for 30 years. *Tr. at 727-728.*

71. To familiarize himself with the subject property, Borges looked at the aerial photographs and property records from the Assessor's office. He also did a walk through, followed by a full inspection of the entire building on May 9, 2019. While in the city, Borges also looked at the Lowe's store on Red Bank Road in west Evansville. His impression was that the level of retail activity, and the accessibility and visibility of the subject property was much stronger than the west Evansville store. *Tr. at 679-681.*

72. To complete his location analysis, Borges reviewed various sources for population size, change in population count, labor force, and per-capita income data. Instead of using governmental boundaries or a radius to look at the demographic data, he relied on a 15-minute drive time. Based on his review, Borges concluded that the Evansville market was stable-to-improving in the time leading up to the valuation date. Although it was not fast paced, the market was recovering well, similar to most of the state of Indiana. *Tr. at 681-683.*

73. Borges identified the neighborhood as the east Evansville market, which is generally bounded by Green River Road on the west, the interstate corridor on the east, Lloyd Expressway on the south, and Morgan Avenue on the north. The neighborhood is as dynamic a community as one of its size can be. Other than some hiccups during the Great Recession, it has been steadily improving for a significant period of time. Burkhardt Boulevard splits the neighborhood and is a heavily trafficked main artery. The subject property's site is very attractive, with a lot of road frontage. It is easily accessible from either Burkhardt Boulevard or Morgan Avenue, and it has some heavily trafficked businesses around the north and west sides of the building. The subject's proximity to

the interstate also enhances its accessibility by reducing drive-times from the north and south. *Ex. R-2 at 13, 15; Tr. at 681-688.*

74. A highest and best use analysis was not part of Borges' scope of work. He focused on establishing the property's market value-in-use, which by Indiana's definition is the value of the utility of the property to the owner or a similar user. Borges considers the subject property to be appropriate for commercial retail occupancy by Lowe's or several similar retailers. When economic conditions and demographic data favor profitable operation, other retail users such as furniture, appliance, grocery, department, and discount stores frequently develop, purchase, or lease large-footprint warehouse style properties for retail operations. The market area for such properties ranges from regional to national. *Ex. R-2 at 26; Tr. at 688-689.*

75. Borges used the cost approach, sales comparison approach, and the income capitalization approach to develop an opinion of market value-in-use. He valued the fee simple estate interest in the subject property as of January 1, 2016, and certified that he developed and prepared his appraisal in conformity with USPAP and the Code of Professional Ethics and Standards of Professional Appraisal Practice. *Ex. R-2 at 9-12; Tr. at 689.*

a. Borges' Cost Approach

76. Borges started his cost approach analysis by estimating direct costs. He developed his estimate using the comparative-unit method (both using costs from similar projects and costs from the Marshall & Swift SwiftEstimator cost service) and the quantity survey method. Borges did not use cost index trending, in which the subject's actual construction expenditures would be trended using an independent price change index, because it is not reliable for a project developed 15 years before his appraisal's effective date. *Ex. R-2 at 26-28; Tr. at 690-691.*

77. Borges' first comparative-unit analysis used costs from seven actual development projects with some similar improvement characteristics. The projects he reviewed

included single occupant commercial retail properties ranging in size from 43,232 to 179,552 square feet constructed between 2000 and 2016. Five of the projects were in Louisiana and two were in Wisconsin. They had a median total unit cost of $81.14/SF. For his second comparative-unit analysis, Borges used SwiftEstimator to estimate the cost new of the building and site improvements for an average quality Class C discount warehouse store. This method produced a cost new of $8,531,856 for the building and $3,160,000 for paving and lighting, for a total unit cost of $85.43/SF. Finally, Borges obtained a quantity survey estimate from Hagerman Construction Group, a central Indiana firm with construction experience involving large retail stores similar to the subject. Hagerman estimated the cost necessary for site development and building construction on January 1, 2016, would have been $13,103,621, or $95.75/SF. Borges placed the most weight on the estimate from Hagerman and the SwiftEstimator and reconciled to a direct cost of $90.00/SF for the subject property. *Ex. R-2 at 27-28; Tr. at 691*- 699.

78. Next, Borges developed an estimate of indirect costs, also known as soft costs. In his experience, indirect costs range from 3% to 10% depending on the scope and type of project. Because properties like the subject are frequently developed for owner-occupancy, the indirect costs do not include any marketing, sales, or lease-up costs incurred to achieve occupancy or sale. Borges therefore reconciled at the low end of the range and used 3% of direct costs. He also included a nominal entrepreneurial incentive allowance of 5% of direct and indirect costs, representing the premium above the direct and indirect costs a developer would want to pursue the project. Borges' estimates for the direct costs, indirect costs, and entrepreneurial incentive produced an undepreciated replacement cost new of $13,224,809. *Ex. R-2 at 29; Tr. at 699-703.*

79. Borges estimated the subject's physical depreciation using the age/life method. He viewed the property as being well-maintained, with no significant excess wear or damage, and estimated its effective physical age to be 15 years old. Using the expected physical life of 35 years that SwiftEstimator reported for a property with the same class,

use, and quality as the subject produced a physical deterioration estimate of 42.9%, or $5,673,443. *Ex. R-2 at 30; Tr. at 707-709.*

80. In Borges' view, it was not necessary to develop separate estimates of functional and external obsolescence for this assignment. In order to estimate the total amount of obsolescence, he completed mini-appraisals of the six comparable sales from his sales comparison approach to extract an annual accrued depreciation rate. The extracted rates ranged from 2.4% to 5.2%, with a median of 3.35%. Borges placed the most weight on the 5.2% rate extracted from Sale 2, which is the most similar to the subject in terms of actual and effective age, and selected an annual rate of 4%. This resulted in a total economic life conclusion of 25 years. The ratio of the subject's actual age of 17 to its 25 years of estimated total economic life indicates total depreciation of 68%. Deducting his physical deterioration estimate from his total depreciation estimate resulted in a total obsolescence estimate of 25.1%, or $3,319,427. *Ex. R-2 at 30-31; Tr. at 709-713.*

81. The final step in Borges' cost approach was to develop an opinion of the land value. He selected three comparable land sales ranging in size from 8.61 acres to 33.281 acres. Each was an unimproved property purchased for development of a large-footprint retail store. Two are in east Evansville and one is in nearby Newburgh. After applying adjustments for market conditions, location, size, topography, and utilities, the comps had prices from $81,342/acre to $223,491/acre. Borges also considered a 15.77-acre tract in Indianapolis that sold in 2014 for an unadjusted price of $221,940/acre. He reconciled to a value of $200,000/acre, resulting in a total value of $3,852,000 for the subject's 19.26 acres of land. *Ex. R-2 at 31-38; Tr. at 713-723.*

82. Adding Borges' land value to his depreciated cost of the improvements produced an indicated value of $8,085,000 (rounded) under the cost approach. *Ex. R-2 at 38; Tr. at 725-726.*

b. Borges' Sales Comparison Approach

83. Borges searched for large footprint, single-occupant warehouse stores in the Evansville MSA, but there were no sales of similar properties. After expanding his search, Borges selected six comparable improved sales from Indiana, Minnesota, Missouri, Ohio (2), and Kansas. Because assessments in Indiana value the land and improvements separately and the comparable sales Borges selected were in distant locations from the subject's market, he thought it was best to bifurcate the land and improvements contributions. It is difficult to compare land from one market to another due to zoning and other things that factor into land value, and this approach helps control for locational differences. He isolated the contributory value of his comparable sales' site and building improvements and added his resulting improvement value conclusions to the land value conclusion from his cost approach to reach a total value for each property. *Ex. R-2 at 40-46; Tr. at 730-731, 733-734.*

84. Sale 1 has three connected Class C and D buildings in good condition situated on 9.22 acres in Indianapolis with very good access and visibility at a heavily trafficked interstate interchange. The buildings contain 147,835 square feet (along with 14,172 square feet of mezzanine office space) used for retail furniture sales. They were built in 1973 and 1978 and renovated in 1998 (25-year effective age). The property sold on April 1, 2016 to the long-term lessee for $10,000,000 ($67.64/SF not including mezzanine) after being marketed as a leased fee sale for two years. Both parties publicly acknowledged that lessee was the ideal buyer. Borges estimated its contributory site value to be $5,993,000 ($650,000/acre). Deducting the site value from the sales price resulted in a net improvement sales price of $27.10/SF. *Ex. R-2 at 41; Tr. at 734-735.*

85. Sale 2 is a former Walmart with a 140,684 square foot Class C building in average condition situated on 16.36 acres in a power center near an interstate interchange in Blaine, Minnesota. The building was built in 2001 (15-year effective age). The buyer purchased it for retail furniture sales and approximately 35,000 square feet of leasable space. It sold on January 8, 2016 for $5,200,000 ($36.96/SF) with use restrictions and

limited mineral rights. Borges estimated its contributory site value to be $2,045,000 ($125,000/acre). Deducting the site value from the sales price resulted in a net improvement sales price of $22.43/SF. *Ex. R-2 at 42; Tr. at 735-736.*

86. Sale 3 is an 88,365 square foot Class C building in fair condition situated on 9.64 acres in a commercial center in St. Louis, Missouri. It was originally developed as a Walmart store in 1988 (25-year effective age). It is also served as a Kohl's (1995 to 1999) and as a Burlington Coat Factory (1999 to 2015). The buyer purchased the property on September 3, 2015 for $4,250,000 ($48.10/SF) with the seller under lender pressure and with limited marketing. Borges estimated its contributory site value to be $2,322,000 ($200,000/acre). Deducting the site value from the sales price resulted in a net improvement sales price of $21.82/SF. *Ex. R-2 at 43; Ex. R-2A; Tr. at 736-737.*

87. Sale 4 is a 130,352 square foot Class C building in good condition situated on 12.56 acres in Hilliard, Ohio with very good visibility from the adjacent, heavily trafficked interstate. It was built to be a Lowe's store in 1994 (20-year effective age). The buyer purchased the property on August 13, 2015 for $13,103,471 ($100.52/SF) subject to a lease (leased fee) and on the condition that the existing tenant (Lowe's) sign a 10-year lease extension, with 5% rental increases every 5 years. Borges estimated its contributory site value to be $3,768,000 ($300,000/acre). Deducting the site value from the sales price resulted in a net improvement sales price of $71.62/SF. *Ex. R-2 at 44; Tr. at 737-738.*

88. Sale 5 is a 103,124 square foot Class C building in fair condition situated on 8.92 acres in a commercial area near a mall in Wichita, Kansas. It was originally developed as a Target store in 1980 (25-year effective age). The property was purchased for retail furniture sales on April 2, 2015 for $4,005,000 ($38.84), which was above its list price of $3,900,000. Borges estimated its contributory site value to be $1,561,000 ($175,000/acre). Deducting the site value from the sales price resulted in a net improvement sales price of $23.70/SF. *Ex. R-2 at 45; Tr. at 738.*

89. Sale 6 is a 128,022 square foot Class C building in average condition situated on 12.84 acres in Columbus, Ohio. It was built to be a Lowe's store in 1994 (20-year effective age). The buyer purchased the property on October 17, 2014 for $6,445,959 ($50.35/SF) subject to a lease to Lowe's (leased fee). The lease, which had about five years remaining on it (expired on December 31, 2019), had recently been renewed "at rate renegotiated to market in order to increase likelihood of renewal." Borges estimated its contributory site value to be $1,605,000 ($125,000/acre). Deducting the site value from the sales price resulted in a net improvement sales price of $37.81/SF. *Ex. R-2 at 46; Tr. at 738-739.*

90. Borges adjusted his six sales' net improvement sales prices for property rights, conditions of sale, market conditions, location, construction quality, age/condition, extra features, functional utility, and size:

- Property rights – Borges applied a positive 5% adjustment to Sale 2 due to its use restrictions. Sales 4 and 6 both received adjustments because they were leased fee transactions, with the sales receiving negative adjustments of 20% and 15%, respectively. Borges calculated the leased fee adjustment factors by discounting the projected income streams for the property at its actual contract rent and at its market rent at a 9% yield rate and taking the difference. His adjustment factors represent the premium attributable to the lease. *Ex. R-2 at 47, 49; Ex. R-2B at 48; Tr. at 750-751.*
- Conditions of sale – Borges adjusted Sale 1 upward by 18% (approximately half of the 36.3% discount from the list price for the leased fee estate) to account for the non-arm's length influence of the buyer also being the lessee. He applied a positive 5% adjustment to Sale 3 due to the seller being under pressure from its lender and abnormal marketing. Additionally, Sales 4 and 6 received negative adjustments of 20% and 10%, respectively, because the existing lessee was remaining in place, which lowered the risk of vacancy and collection loss. Borges calculated the adjustments by applying 2% per year for each year of remaining lease term. *Ex. R-2 at 47, 49; Ex. R-2B at 48; Tr. at 751-752.*

- Market conditions – Sales 3-6 received adjustments of 1% to 2.5% based on an annual rate of 2%. *Ex. R-2 at 47, 49; Ex. R-2B at 48; Tr. at 757-758.*
- Location – Borges rated Sales 1 and 4 as far superior due to their access and visibility characteristics, and he rated Sales 2 and 3 as similar based on those same characteristics. Sale 5 also received rating of similar due to its commercial center synergy, while Sale 6 received a rating of much inferior because of its "off-interstate" setting and poor visibility from the major thoroughfare. *Ex. R-2 at 47, 49; Ex. R-2B at 48.*
- Construction quality – Borges concluded that Sale 1's interior finish and Sale 4's full-brick exterior made them superior to the subject in terms of quality. *Ex. R-2 at 47, 50; Ex. R-2B at 48.*
- Age/Condition – Age was the primary factor making Sales 3, 5, and 6 inferior to the subject, while Sales 1 and 4's older ages were somewhat offset by renovations. Overall, Borges found Sale 2 to be the most similar to the subject's age and condition. *Id.*
- Extra features – This element of comparison was intended to address the subject's garden center and staging area. Borges rated Sales 1-3 as inferior due to their smaller garden centers or lack thereof. He rated Sales 4-6 as similar. Sales 4 and 6 are Lowe's properties with the same general characteristics, and Sale 5 has a mezzanine and loading dock that are not included in the building size calculation. *Id.*
- Functional utility – All of the comps have similar functional utility compared to the subject. However, Sale 1 is inferior due to the poor flow between its three individual buildings and their different appearances, ages, and finishes. *Id.*
- Property size – Borges felt Sales 3 and 5 needed to be trended to a marginally higher price per square foot due to their smaller sizes relative to the subject. *Ex. R-2 at 47, 50; Ex. R-2B at 48; Tr. at 754-755.*

91. After the adjustments for property rights, conditions of sale, market conditions, the comps' prices ranged from $23.14/SF to $46.30/SF. Borges then ranked the comparable sales using his qualitative analysis of location, construction quality, age/condition, extra

features, functional utility, and size. He placed the subject as falling between Sale 5 at $24.06/SF and Sale 6 at $29.65/SF, and reconciled to a value of $28.00/SF. Applying Borges' reconciled value by his building square footage calculation of 136,859 square feet produced a total improvement value of $3,832,052. Adding in his land value conclusion from the cost approach resulted in an indicated value of $7,685,000 (rounded) under the sales comparison approach. *Ex. R-2B at 51; Tr. at 758-759.*

c. Borges' Income Capitalization Approach

92. Borges also developed an income capitalization approach, which, using the principle of substitution, attempts to develop an indication of a total property value by capitalizing the property's potential income. The first step is to identify data to help form an opinion of market rent. Borges selected the leases for the two sales identified as Sales 4 and 6 in his sales comparison approach. He also selected an additional lease for a property in Corbin, Kentucky that Lowe's had renegotiated to a new rate. *Ex. R-2 at 52; Tr. at 759-760.*

93. It is not uncommon in the retail world for lessees to go back and renegotiate to lower rates to stay put, which lessors like because they get the security of an income stream. These three leases are "the best…pretty darn good" proxy of what a property used as a home improvement center or as a discount warehouse store might rent for, keeping in mind the market value-in-use's utility value to the owner or similar user. *Tr. at 760-761.*

94. The lease from Hilliard, Ohio ("Hilliard Lease") was signed at the time of sale in August 2015 (Sale 4 above). The parties extended the lease for 10 years at $6.50/SF, with a 5% rent increase every five years. The lease from Reynoldsburg/Columbus, Ohio ("Columbus Lease") was signed at the time of sale in October 2014 (Sale 6 above). The parties renegotiated and extended the lease for five years (expired on December 31, 2019) at a rent of $4.16/SF. Finally, the lease from Corbin, Kentucky ("Corbin Lease") was signed in 2017. The parties renegotiated to a 10-year lease at a new rate of $6.37 to entice renewal in anticipation of listing the property for sale. *Ex. R-2 at 52; Tr. at 761.*

95. Borges also reviewed leases for five other large footprint retail buildings that were signed between March 2012 and June 2016. They had annual net rents from $3.54/SF to $6.14/SF with terms from 2-15 years, which he felt shows that his three primary leases are within a reasonable market range. *Ex. R-2 at 53; Tr. at 761.*

96. Borges thought that the subject property was better than the property associated with the Columbus Lease, but felt that it fell below the properties associated with the Corbin and Hilliard Leases. He reconciled to a market rent of $4.50/SF based on a flat 10-year initial lease term on a net basis. Borges adjusted for vacancy and collection loss at a rate of 3%. He also deducted 2% for non-reimbursable expenses. Those inputs produced an estimated NOI of $585,442. *Ex. R-2 at 53; Tr. at 763-765.*

97. To determine an appropriate capitalization rate, Borges looked to the Hilliard and Columbus Leases. He calculated a NOI of $771,797 for the Hilliard Lease, producing an overall cap rate of 5.89% when divided by its sales price. He used the reported NOI of $506,263 from the Columbus Lease to develop an overall cap rate of 7.85% using the same method. Borges felt that the subject should have a higher rate than the Hilliard Lease due to the property's strong location in Hilliard and its long-term lease. He also concluded that the subject's rate should be lower than the Columbus Lease because the property's location in Columbus is inferior and has limited growth potential. *Ex. R-2 at 44, 46, 53; Tr. at 765-766.*

98. Borges also reviewed cap rate data from RealtyRates and a PwC Real Estate Survey. RealtyRates' data for the retail category had a cap rate range from 9.00% to 9.16% in 2015 and 2016. The PwC Real Estate Survey's regional mall category moved down from a 6.03% rate in the last two quarters of 2015 to 6.0% in the first quarter of 2016. Based on his review and analysis, Borges selected an overall capitalization rate of 6.75%. *Ex. R-2 at 54; Tr. at 766-767.*

99. Capitalizing Borges' estimated NOI by his overall capitalization rate produced a value of $8,672,919. He then made below-the-line allowances for a one-year absorption period, including deductions for lost income ($585,442), owner expenses ($316,750), and a leasing commission ($369,519). This resulted in an indicated value of $7,400,000 (rounded) under the income capitalization approach. *Ex. R-2 at 54; Tr. at 767-768, 770.*

d. Borges' Reconciliation

100. Borges placed the most emphasis on the cost and sales comparison approaches because in his view they are more reflective of the utility component of the market value-in-use standard. The income approach received less weight because the subject property was not leased. After reconciling the three approaches, Borges reached a final opinion of market value-in-use of $7,850,000 as of January 1, 2016. *Ex. R-2B at 55-56; Tr. at 771.*

C. OTHER TESTIMONY

101. Jacqueline Doty-Fox has lived in Evansville and worked in the Assessor's Office for over 30 years. She serves as a deputy hearing officer for the Assessor. In that position, she supervises the appeals department and reviews all commercial appeals. Doty-Fox briefly discussed the relative locations of Allen's land sales. With respect to Land Sale 4 (listing), she noted that it was still for sale and explained that the intersection of Constellation Avenue and Green River Road was not signalized on January 1, 2016. *Ex. R-3 at 108*; *Tr. at 1050-1054.*

D. ANALYSIS

1. Objections

102. During the course of the hearing, our ALJ ruled on multiple objections to questions posed to witnesses. We need not revisit those objections, and we adopt our ALJ's rulings. However, we will briefly review one group of objections. Lowe's objected to the admission of Exhibits R-19 thru R-22, a collection of opinion and discussion papers on appraisal theory, on relevance grounds. According to Lowe's, no witness tied them to the

subject matter of the case, making them irrelevant. Our ALJ overruled the objections and admitted the exhibits. While the Assessor's witness, Sokoloff, only briefly discussed each document during her direct examination (*see Tr. at 966-969*), we conclude that they are at least minimally relevant. We therefore adopt our ALJ's ruling, noting, however, that this ruling has no effect on our final determination.

2. Burden of Proof

103. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d).

104. Lowe's stipulated that it has the burden of proof for 2014, and the determination of which party would bear the burden for 2015 and 2016 would normally depend on the outcome of the prior year's appeal. However, in a case like this, where both parties offered probative USPAP-compliant appraisals prepared by qualified experts, the question of who has the burden for any given year is largely theoretical. Given the parties' stipulation discussed above, we must weigh the evidence to determine which party presented the most credible and reliable opinion of the subject property's true tax value for the 2016 assessment. We will then trend that determination using the agreed upon formula to determine the correct assessments for 2014 and 2015.

3. True Tax Value

105. In Indiana, assessments are based on a property's "true tax value." True tax value does not mean fair market value. Ind. Code § 6-1.1-31-6(c). Nor does true tax value mean the value of the property to the user. Ind. Code § 6.1-1.1-31-6(e). Subject to these somewhat tautological directives, the Legislature relies on the Indiana Department of Local

Government Finance ("DLGF") to define true tax value. Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as: "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." MANUAL at 2.

106. The MANUAL offers further guidance. It defines "market value-in-use," "value in use," and "use value," as being synonymous. MANUAL at 6-8. But it also states that a property's true tax value will equal its value-in-exchange when properties are frequently exchanged and used for the same purposes by the buyer and seller. *Id*. at 2, 4.

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

4. Fee Simple

108. Here, both Allen and Borges purported to appraise the property's fee simple interest and used the same definition of fee simple taken from the 6th Edition of The Dictionary of Real Estate Appraisal, which defines it as:

> [a]bsolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

The Assessor argues, however, that Allen has incorrectly interpreted it to mean that he should value the subject property under the hypothetical condition that it is vacant and available for lease (the "dark box" theory), and that this misinterpretation undermines the credibility of his appraisal.

109. As recently stated by the Indiana Tax Court, Indiana tax law neither compels nor forbids the consideration of vacant property comparables in the sales comparison approach:

> The Court has put to rest any purported controversy about fee simple valuation by holding that because property taxes apply exclusively to real property (i.e., the land and improvements to the land) and not to intangible business value, investment value, or the value of contractual rights, the use of vacant property comparables can be appropriate. See, e.g., *Switzerland Cty. Assessor v. Belterra Resort Ind., LLC*, 101 N.E.3d 895, 905 *(Ind. Tax Ct. 2018)*, reviewd denied; *Stinson v. Trimas Fasteners, Inc., 923 N.E.2d 496, 501 (Ind. Tax Ct. 2010)* (rejecting the Assessor's claim that "while the [market] value-in-use of a vacant property is just the value of the 'sticks and bricks,' the [market] value-in-use of [an occupied] property should be 'over and above' that.").

Meijer Stores Ltd. P'ship v. Boone Cty. Assessor, 2020 Ind. Tax LEXIS 81 *17; 2020 WL 7779010 (upholding the Board's adoption of a valuation of a big box under the cost approach). *See also Lowe's Home Ctrs., Inc. v. Monroe Cty. Assessor,* 2020 Ind. Tax LEXIS 75 (upholding the Board's adoption of a valuation of a big box under the cost approach).

5. Valuation Evidence

110. In Indiana "each assessment and each tax year stands alone" and the Board "evaluates each property's value based on its specific facts and circumstances." *CVS Corp. v. Monroe Cty. Assessor*, 83 N.E.3d 1286, 1292 (Ind. Tax Ct. 2017). The Board is "not bound to reach the same conclusions regarding the persuasive value of an appraiser's reports and valuation methods for different tax years or different properties." *Id*. The Tax Court has held that the "valuation of property is an opinion and not an exact science." *Monroe Cty. Assessor v. SCP 2007-C-26-002*, LLC, 62 N.E.3d 478, 482 (Ind. Tax Ct. 2016).

111. A trier of fact is often "faced with [multiple] qualified experts who presented diametrically opposed opinions, supported by extensive reports and reasoning, as to the

value of [certain] real estate." *Crider v. Crider*, 15 N.E.3d 1042 (Ind. Ct. App. 2014). It is up to the trier of fact to "judge the credibility of the battling expert witnesses." *Id*. at 1059 (quoting *Goodwine v. Goodwine*, 819 N.E.2d 824, 830 (Ind. Ct. App. 2004)). The Board must determine what portions of an appraisal are supported by the evidence:

> The Indiana Board is Indiana's property valuation and assessment expert. Consequently, when the Indiana Board ascertains . . . that parts of an appraisal are not probative, it should not then accept those parts of the appraisal to value the property.

Marion County Assessor v. Wash. Square Mall, LLC, 46 N.E.3d 1, 14 (Ind. Tax Ct. 2015).

a. Cost Approaches

112. With the Tax Court's guidance in mind, we start our analysis of the parties' competing valuation evidence by reviewing the appraisers' cost approaches. Both of their approaches suffer from a host of issues that significantly undermine their persuasive value.

113. Hall agreed that Allen's Land Sale 4 was relevant and worthy of consideration. However, it was a listing as opposed to a consummated sale. We also note that it was still for sale in 2020 according to Doty-Fox. The larger problem with its inclusion, however, is that we agree with Hall that Allen failed to sufficiently support his 15% condition of sale adjustment meant to account for its status as a listing.

114. We also question Allen's decision to forgo an adjustment for the package HVAC system, which Hall testified would have increased Allen's building cost estimate by more than 7%. While we accept Allen's description of the subject's improvements as "average quality," we agree that his explanation for deciding not to apply an adjustment to his base cost for the package HVAC system was unconvincing. Likewise, we agree with Hall that there is no support for Allen's deductions for leasing costs and lost rent. The cost

approach theory assumes stabilized occupancy and market rent without those adjustments.

115. Finally, we find Allen's obsolescence estimate unreliable. He calculated total obsolescence using the capitalization of deficient income method. In doing so, he relied on his estimate of the total improvement cost as a starting point, which, as discussed above, is unconvincing due to the HVAC and leasing commission issues.

116. We now turn to Borges' cost approach. The comparative-unit analysis he put together using costs from seven actual development projects was unconvincing. Five of the seven projects Borges reviewed were located in Louisiana, which is well outside of the search area he used to find comparable sales. The majority of the projects he relied on were also completed many years prior to the 2016 valuation date. Of the two projects completed closer to the valuation date, one was for a 43,232 square foot Walmart Neighborhood Center with a fuel station that had the highest overall total unit cost. Also of concern is the fact that the oldest project (from 2000) involved developing an improvement with rooftop parking, making it an even less reliable indicator. Yet it had the same total unit cost as the median total unit cost for all seven projects ($81.14) that ultimately informed Borges' opinion.

117. We also conclude that Borges failed to explain how he arrived at a base cost estimate using the SwiftEstimator in sufficient detail. The same is true of the development estimate Borges received from Hagerman Construction. Given the large discrepancy between Allen and Borges' cost estimates ($51.33/SF versus $90.00/SF), and that Hall did not dispute most of Allen's cost schedules, these failures further erode our confidence in his direct cost estimate.

118. Our next area of concern is Borges' obsolescence estimate. We conclude that he failed to sufficiently explain the mini-appraisal method he employed to extract an annual accrued depreciation rate from his six comparable sales. Thus, we have little confidence in his

resulting 25-year economic life conclusion or the 25.1% obsolescence adjustment it produced.

119. We also take issue with Borges' opinion of land value. We conclude that Land Sale 2 is not comparable to the subject. Although it was purchased for a retail development and its location is in close proximity to the subject, we are unconvinced that Borges' adjustment process adequately accounted for its appreciably smaller size. We also find no merit in Borges' reliance on the unadjusted sales price for an undisclosed 15.77-acre tract in Indianapolis. Excluding those two unreliable data points would have left him with two land sales with an average sales price of $109,000/acre—well below his concluded value of $200,000/acre.

b. Sales Comparison Approaches

120. As with Allen and Borges' cost approaches, we conclude that their sales comparison approaches are not well-supported and do not offer persuasive evidence of value.

121. Hall asserted that Allen's failure to include any comparable sales from within 200 miles of the subject property undermined the credibility of his entire sales comparison approach. But Hall generally agreed with Allen's selection criteria for comparable sales. Given the limited number of competitive properties in Evansville, he also found Allen's decision to expand the geographic search area reasonable. Like Allen, Borges also expanded his search to areas well outside of Indiana due to the lack of comps in the local market. We therefore find Allen's description of the subject's market as regional reasonable. Nevertheless, we conclude that some of his comps are not good substitutes for the subject property. We further conclude that Allen failed to credibly adjust several of his comparable sales for relevant differences.

122. Given Hall's agreement, we take no issue with Allen's adjustments for financing terms, market conditions, and age/condition. However, we do share Hall's concern regarding

the lack of an expenditure after sale adjustment for Sale 4. While Allen purported to talk with someone involved in the transaction, he was short on details. We are simply not convinced that the parties agreed to the sales price without factoring in some portion of the $6,000,000 worth of work the buyer subsequently undertook for the replacement of sidewalks, HVAC, lighting, roofing, and concrete slab.

123. That said, Hall failed to convince us that Sales 2 and 6 required adjustments for expenditures after sale. Still, we find that Sale 2's prior use as a grocery store, its small size (65,111 SF), and its smaller site size (8.13 acres) make it a poor substitute for the subject, reducing the reliability of Allen's analysis. As Hall pointed out, Sale 2 does not even meet Allen's own definition of a big box store, and Allen failed to explain how he quantified the 10% downward size adjustment he applied. Similarly, we find Sale 6's subsequent conversion to multi-tenant use calls into question its continued viability for big box retail. While we recognize that Allen gave less weight to Sale 6 in reconciling to an indicated sales price, its inclusion as a comp makes his analysis less persuasive.

124. We are also perplexed by Allen's decision to apply 8% adjustments to Sales 1-3 due to deed restrictions when he concluded that they had no effect on the comps' sales prices. This sort of hedging does little to instill confidence. Additionally, the fact that these restrictions limited the types of retail for which the properties could be used leaves us wondering whether Allen's 8% adjustments were sufficient. This is particularly true for the deed restrictions on Sales 1 and 2, which had terms of 25 and 10 years, respectively. We also give credence to Hall's opinion that Sale 3's deed restriction, which specifically eliminated many potential big box users like Lowe's for a period of five years, likely had an impact on its sales price exceeding 8%.

125. Allen's decision to forgo conditions of sale adjustments to Sales 3, 4, and 7 is also troubling. Sale 3 sat vacant for almost five years before it sold, while Sale 4 was vacant for more than two. Furthermore, given the reports that the sellers in these transactions were struggling financially around the dates of sale and the fact that Sale 4 was located in

a commercial corridor experiencing substantial decline during the year preceding the sale, we agree with Hall's conclusion that Allen should have adjusted them upward to some degree.

126. We also agree with Hall's conclusion that Allen's reported traffic count for the subject property was not credible and diminishes the reliability of Allen's adjustments for arterial attributes. The subject's building may be oriented to provide primary visibility from Morgan Avenue, but the traffic count along Morgan Avenue, which does not even offer an access point to the property, is clearly not the only relevant street to consider. Allen's demographic attributes adjustments for Sales 1 and 2 were also insufficiently supported. Although we agree with Allen's conclusion that they had inferior demographics, Allen provided little support for his respective upward adjustments of 15% and 5%.

127. Borges' sales comparison approach is compromised by both his selection of comparable sales and his adjustment process. He relied on sales to existing tenants and leased fee sales that required significant adjustments that he either failed to make or for which he offered insufficient support.

128. We start with Sale 1. While its overall size is within an acceptable range, we find that many of its other characteristics are too dissimilar to the subject for it to serve as a viable substitute. Beyond its lack of comparability, we are also concerned by the fact that the existing tenant was the buyer in a sale for which the fee simple interest was never exposed to the market, a fact that Borges failed to meaningfully address. While he applied a positive 18% conditions of sale adjustment on the premise that the tenant/buyer received a discounted sales price, the price the tenant/buyer paid represented a discount from the property's leased fee list price. Additionally, Borges had no market support for his 18% adjustment factor—he just divided the 36% discount in half. We therefore conclude that this adjustment is unsupported.

129. Similar issues plague Sales 4 and 6, which were both leased fee sales. The buyer in Sale 4 purchased the property on the condition that the existing tenant (Lowe's) sign a 10-year lease extension with a 5% rent increase after 5 years, while the buyer in Sale 6 purchased the property subject to a lease to Lowe's that had about five years remaining on it. Although Borges applied adjustments for the amount of the premium he claimed was attributable to each lease, we are not convinced that his adjustments were sufficient. He purported to calculate his adjustments by discounting the projected income streams of each property's actual rent and its market rent and then taking the difference. But he failed to explain how he arrived at a market rent for either property, leaving us with no confidence in his resulting adjustment factors. Borges also made conditions of sale adjustments to Sales 4 and 6 due to the lowered risk of vacancy and collection loss given that the existing tenants were remaining in place. However, there is no indication that his adjustments were based on any type of market data.

130. While we find much benefit in the theory of separating the contributory value of land, Borges failed to walk us through the mini-appraisals he purported to use to extract his comps' improvement values. Thus, we have no way to judge the credibility of his analysis. Even if properly calculated, its probative value depended on the land value conclusion he developed in the cost approach, which we have already found to be unreliable.

131. While some of the comparable sales Borges selected were acceptable, we conclude that his reliance on Sales 1, 4, and 6, combined with his flawed bifurcation process and land value conclusion produced an unreliable value indication.

c. Income Capitalization Approaches

132. Unlike the other two valuation approaches, there was significant agreement between Allen and Borges' income capitalization approaches. Despite selecting very different rent comparables, they both reconciled to a market rental rate of $4.50/SF. They also accounted for similar levels of vacancy/collection loss and unreimbursed expenses.

While there were minor differences, this level of agreement between the appraisers leads us to conclude that their individual decisions regarding these particular elements of the income approach were reasonable and helped them both produce reliable NOI estimates. Additionally, we conclude that both appraisers made reasonable below-the-line deductions for lost income and leasing commissions based on a one-year absorption period. Thus, to decide which appraiser produced the more persuasive valuation, we focus our analysis on the one input that contributed the most to producing indicated values that are more than $2,500,000 apart—the capitalization rate.

133. Allen concluded to an overall capitalization rate of 10%. He based his decision on a band-of-investment analysis, six investment surveys, and an analysis of market-derived cap rates. Allen prepared his band-of-investment analysis using a RealtyRates survey of mortgage data for freestanding retail properties that produced an average rate of 8.38%. Hall took issue with the use of RealtyRates survey data because it includes a variety of freestanding retail properties that are not competitive with the subject property. However, Hall agreed that RealtyRates is a reliable source and that he had personally used it to develop band-of-investment analyses for big box store valuations. *Tr. at 567-568.* Furthermore, Allen openly acknowledged the weaknesses in the data and credibly explained that the inclusion of smaller properties *reduced* the average cap rate.

134. Hall did not object to Allen's use of investment surveys, but he criticized Allen for not disclosing how he weighted the data or identifying which indicator he considered to be the most relevant. But Allen did just that—he stated that he considered the RealtyRates survey of freestanding retail, which had an average cap rate of 10.71%, to be the most applicable to the subject property.

135. Allen also derived capitalization rates from seven leased fee big box stores with short remaining lease terms to demonstrate that leases with shorter remaining terms produce higher cap rates. Hall agreed that there can be a relationship between the remaining lease term and the cap rate, but he did not think that Allen's data was particularly compelling

evidence of that. However, given that Allen included this information primarily for illustrative purposes and ultimately concluded to a cap rate well below any of the market derived rates produced by his analysis, we find this data (and the RERC study Allen included as additional support) to be of little consequence one way or the other.

136. Borges selected an overall capitalization rate of 6.75% primarily based on rates he extracted from the leases for the two Ohio Lowe's properties he included as comparable sales. The Hilliard Lease (Sale 4) had an overall cap rate of 5.89%, while the Columbus Lease (Sale 6) had an overall cap rate of 7.85%. However, we are not convinced that the rates Borges developed from these leases represent market rates. Recall that the buyer of Sale 4 purchased the property on the condition that *the existing tenant* sign a 10-year lease extension. Similarly, the lease for Sale 6 was to *the existing tenant*. While Borges claimed that it had recently been renewed at a rate renegotiated to market, he offered nothing to substantiate his claim.

137. Thus, the two primary cap rate indicators Borges relied on are the result of non-arm's length negotiations between the current tenants and the owners instead of cap rates resulting from leases that were properly exposed to and negotiated on the open market. While we recognize that Borges might have thought the Hilliard Lease was exposed to the market through the buyer's conditional purchase, he failed to provide the details to establish that point. Lowe's also persuasively demonstrated that both properties have far superior demographics, with nearly double the population, households, and median household income in a 5-mile radius around each property than the subject (*See Ex. P-17B)*, further eroding our confidence in Borges' cap rate conclusion.[6]

138. Finally, we conclude that Borges' cap rate data from RealtyRates and the PwC Real Estate Survey does nothing to bolster his capitalization rate. In fact, the data from RealtyRates, which reported cap rates ranging from 9.00% to 9.16%, does more to

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[6] We also note that the cap rates were all based on Lowe's store leases. Indiana law requires a valuation based on the market, and the Board would be reluctant to base a value solely on the leases of one retailer.

support Allen's 10% cap rate than it does Borges' 6.75% cap rate, and given its focus on a completely dissimilar property type (regional malls), the PwC Real Estate Survey offers no support for Borges' cap rate either.

6. Weighing the Evidence

139. Both appraisers analyzed the subject property's value using all three generally accepted valuation approaches. Neither of their respective cost or sales comparison approaches produced persuasive valuations. However, their income approaches were fairly similar, and both delivered reliable NOI estimates. Thus, this case ultimately boils down to deciding which appraiser selected a more reliable capitalization rate. After reviewing their supporting data and analyses, we are persuaded that Allen's capitalization rate is more reflective of a market rate for the subject property. We therefore conclude that Allen's value conclusion under the income capitalization approach is the most persuasive evidence of the subject's true tax value for the 2016 assessment.

IV. CONCLUSION

140. We find for Lowe's and order the assessments changed as follows:

Assessment Date	Total Assessment
March 1, 2014	$4,807,500
March 1, 2015	$4,803,600
January 1, 2016	$4,820,000

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

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