REPRESENTATIVES FOR PETITIONER: David Suess, Benjamin Blair, Abraham Benson, Faegre Drinker Biddle & Reath, LLP

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

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Target Corporation,	)	
	)	Petition Nos.: See attached
Petitioner,	)	
	)	
v.	)	Parcel No.: 45-11-33-304-002.000-035
	)	
Lake County Assessor,	)	
	)	Assessment Years: 2007-2010, 2011-2018
Respondent.	)	

November 8, 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. In these assessment appeals concerning a big-box store in St. John, the parties agreed to try the first (2007) and last (2018) years at issue and stipulated to a formula for valuing the intervening years. As is often the case, the appeals boil down to a battle of experts. The Lake County Assessor's expert, Mark Kenney, relied on incomparable or faulty data in some instances, and he made key judgments that were largely unsupported. We therefore find his valuation opinions too unreliable to carry probative weight for either year.

2. The opinion of Target Corporation's expert, Laurence Allen, while better, also had problems. In 2007, the property was essentially new, but Allen used comparison data from properties that were much older. When combined with other issues the Assessor identified, those shortcomings made Allen's analyses under the sales-comparison and income approaches too unreliable to be probative. And he did not reliably support his quantification of obsolescence, which was the most significant feature of his analysis under the cost approach. Because neither side offered probative evidence of the property's value for 2007, we leave that assessment undisturbed.

3. For 2018, Allen was no longer valuing a new building. While his valuation opinion was less than ideal, we find it sufficiently probative of the property's value and order the assessment to be changed accordingly.

II. Procedural History

4. The Assessor assigned the following values to the subject property for the dates at issue in these appeals:

Assessment Date	Value
March 1, 2007	$9,985,800
March 1, 2008	$10,285,000
March 1, 2009	$10,445,300
March 1, 2010	$9,912,200
March 1, 2012	$9,892,000
March 1, 2013	$9,916,100
March 1, 2014	$9,622,900
March 1, 2015	$9,754,400
January 1, 2016	$9,735,900
January 1, 2017	$9,499,200
January 1, 2018	$9,663,600

5. Target appealed each assessment to the Lake County Property Tax Assessment Board of Appeals ("PTABOA"). Well after the statutory deadlines for the PTABOA to hold hearings and issue decisions had passed (in some cases as much as 10 years after), Target filed Form 131 petitions with the Board.

6. We adopted the parties' agreed appeal management plan in which they stipulated that the scope of the hearing would address the subject property's market value-in-use as of the March 1, 2007 (adjusted to January 1, 2006) and January 1, 2018 assessment dates.[1] They stipulated to a formula for trending the intervening years. That formula and our calculations applying it are laid out in an attachment to this determination. The parties also agreed to incorporate the record from these appeals into the record for appeals addressing another Target Store located in Hobart,[2] where the same attorneys represented the parties and the same witnesses testified.

7. Beginning November 12, 2020, our designated administrative law judge, David Pardo ("ALJ"), held a five-day hearing on Target's petitions. Neither he nor the Board inspected the property. Allen, Kenney, and Irene Sokoloff were sworn as witnesses.

8. Target offered the following exhibits:

P1	Allen appraisal report for March 1, 2007 assessment date,
P2	Allen appraisal report for March 1, 2018 assessment dates,
P3	Situs RERC study,
P4	January 2019 Situs RERC PowerPoint "Big Box Valuation Realities,"
P5 A&B	Excerpts from Allen's workfile with information from *RealtyRates.com* investor surveys,
PI-1	Excerpt from Wikipedia,
PI-2	Excerpt from Wikipedia,
PI-3	Property Detail Report from Kenney's workfile for Sale 2,
PI-4	CoStar report from Kenney's workfile for Sale 4,
PI-5	CoStar report for Kenney's Sale 7,
PI-6	Property Record Card ("PRC") for Kenney's Sale 7.

9. The Assessor offered the following exhibits:

R1	Kenney appraisal for 2007 and 2018 assessment dates,
R2	Sokoloff's report for her review of Allen's 2007 appraisal,
R3	Sokoloff's report for her review of Allen's 2018 appraisal,

[1] The valuation and assessment dates for 2018 were both January 1, 2018. Ind. Code § 6-1.1-2-1.5. For 2007, the assessment date was March 1, 2007, but the valuation date was January 1, 2006. I.C. § 6-1.1-1-2 (2007); 50 IAC 21-3-3(b)(2007).
[2] The parties and counsel also sometimes referred to this store as being in Merrillville.

R5	Aerial photographs of the subject property,
R6	Photographs showing the Target sign at the subject property,
R10	Excerpts from THE APPRAISAL OF REAL ESTATE (14th ed.),
R12	Aerial images of some of Allen's comparable sales (pages 2, 3, 5-6, 12 and 14 admitted),
R14	Aerial images of properties Allen used as land sales in his 2007 appraisal,
R16	Aerial images of Allen's lease comparables for 2007 (pages 1-3, and 8-9 admitted),
R18	Information from the website of Blain's Farm & Fleet,
R19	Aerial images of Allen's 2018 Sale 2, a building permit, and an article from the *Los Angeles Times'* website,
R23	*Lowe's Home Ctrs., Inc. v. Monroe Cnty. Ass'r*, pet. nos. 53-012-14-1-4-00001 etc. (IBTR March 29, 2019),
R24	*Meijer Stores Ltd. P'ship v. Boone Cnty. Ass'r*, pet. nos. 06-021-14-1-4-10237-15 etc. (IBTR Aug. 28, 2019),
R28	Marketing brochure for Sale 6 from Allen's 2018 appraisal (pages 6-11admitted),
R29	Limited Warranty Deed and Reciprocal Easement and Operation Agreement for Sale 4 from Allen's 2018 appraisal,
R30	Aerial images of the subject property and surrounding areas,
R32	September 2018 Situs RERC PowerPoint "Big Box Valuation Realities,"
R33	Article from *Milwaukee Journal Sentinel* website,
R35	Aerial image of 5122 Pike Plaza Rd. to 4641 Lafayette Rd.

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

III. OBJECTIONS

11. The ALJ ruled on several objections at the hearing, and we adopt his rulings. He also took several objections under advisement, which we now address.

12. Target objected to Ex. R32, a September 2018 PowerPoint presentation from Situs/RERC entitled "Big Box Valuation Realities," on grounds that the Assessor did not timely identify and exchange the exhibit as required by the appeal management plan.[3] *Tr. at 324-25, 543-*

[3] The Assessor originally offered the exhibit while cross-examining Allen, who testified that he had not previously seen it. Target therefore also objected on grounds that the Assessor had failed to lay a foundation to authenticate the exhibit. It backed off that objection when the Assessor later called Irene Sokoloff, who testified as to the exhibit's source. *Tr. at 324-25, 543-45.*

45. The Assessor responded that he was offering the exhibit as rebuttal and that his review appraiser, Irene Sokoloff, first provided the document to Assessor's counsel after Allen testified about a 2019 Situs/RERC PowerPoint with the same title. *Id.*

13. The appeal management plan governing these appeals required the parties to serve each other with lists of all exhibits expected to be presented at hearing by October 22, 2020, and to provide copies of those exhibits by October 29. The plan further required a showing of good cause to admit any exhibits not exchanged by the deadline.

14. Generally, "the purpose of the discovery rules is 'to allow a free exchange of fact information and to permit each party to prepare its case for trial without concerns about trial by surprise or ambush.'" *Evansville Courier Co. v. Vanderburgh Cnty. Ass'r*, 78 N.E.3d 746, 752 (Ind. Tax Ct. 2017) (*quoting Brandenburg Indus. Serv. Co. v. Ind. Dep't of State Revenue*, 26 N.E.3d 147, 152 (Ind. Tax Ct. 2015)). The Indiana Supreme Court has "unequivocally and 'consistently rejected a gaming view of the litigation process.'" *Id.* (*quoting Outback Steakhouse of Fla., Inc. v. Markley*, 856 N.E.2d 65, 76 (Ind. 2006)). In enforcing the pre-hearing exchange deadlines from our procedural rules or an appeal management plan, the touchstone is whether the witness or exhibit at issue was known and anticipated. *See Evansville Courier*, 78 N.E.3d at 752 (explaining that the failure to disclose a known and anticipated exhibit within the deadlines laid out by the Board's procedural rules constituted "precisely the type of 'gotcha' litigation that Indiana courts abhor."). That is true even where the evidence is offered for rebuttal purposes. *See McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 179 (Ind. 1993) ("[T]he nondisclosure of a rebuttal witness is excused only when that witness was unknown and unanticipated . . . .").

15. There is nothing to suggest that the Assessor knew about the 2018 PowerPoint or anticipated using it before Allen's testimony triggered Sokoloff to remember having seen the document a couple of years earlier. But previous ignorance of a document does not equate to good cause if that ignorance stems from a lack of diligence. If the Assessor reasonably should have known about and anticipated using the document either before the

exchange deadline or substantially before first disclosing it at the hearing, the exhibit is inadmissible.

16. That question, in turn, hinges on when the Assessor first knew that Allen was relying on one of multiple versions of the Situs RERC PowerPoint. Allen's appraisal report, which Target presumably provided to the Assessor three months before the hearing in accordance with the appeal management plan, discusses a Situs RERC study but does not refer to any PowerPoint presentations. Although the parties were required to serve each other with exhibit lists on October 22, the list Target submitted with its exhibit binder (and presumably served on the Assessor) refers only to the title of the PowerPoint, not to the specific version (2018 or 2019). Thus, the Assessor reasonably would not have known about the specific version of the PowerPoint that Target intended to offer, and therefore would not have been alerted to the need to investigate whether there were other versions, until the seeing the exhibit itself. Under those circumstances, the Assessor had good cause for failing to identify and exchange the 2018 version within the appeal management plan's deadlines.

17. Of course, that does not excuse the Assessor from failing to promptly exchange the 2018 PowerPoint once he knew of its existence and anticipated offering it. But Sokoloff did not provide the document to counsel for the Assessor until sometime during Allen's direct examination. Counsel was entitled to take some time to examine the document and determine whether she wanted to offer it. The better practice would have been to alert opposing counsel and provide a copy of the document before offering it, even if only shortly before. But given the compressed timeframe, we find that the Assessor had good cause to offer the exhibit without having exchanged it. We therefore overrule Target's objection.

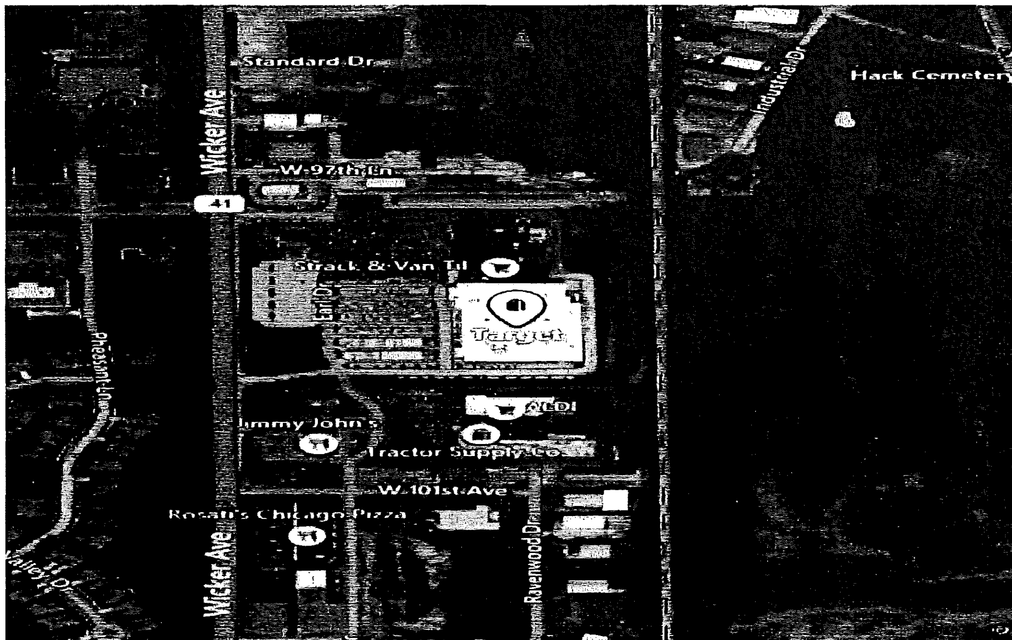
18. Target also made hearsay objections to Exhibits R18, R33, and portions of R19. *Tr. 300-01, 354-55, 425-26*. Exhibit R18 is a printout from the Blain's Farm & Fleet website, R33 is an article from the *Milwaukee Journal Sentinel*'s website, and the challenged portions of R19 (pp. 3-23) consist of an application for a building permit and an article from the *Los*

Angeles Times' website. The Assessor neither contested Target's characterization of the exhibits as hearsay nor argued that they fit within any recognized exception to the hearsay rule. He instead pointed to our procedural rule allowing us to admit hearsay evidence, with the caveat that if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, we may not base our determination solely on that hearsay evidence. *Id.*; 52 IAC 4-6-9(d). We overrule Target's hearsay objections and admit the contested exhibits, although we do not ultimately rely on them in determining these appeals.

IV. Findings of Fact

A. The Subject Property

19. The subject property contains a 124,474-square-foot big-box discount store on approximately 13.29 acres in St. John. Target bought the site in January 2005 for $2.3 million and completed building the store in 2006. The store is connected to a Strack &Van Til grocery store. A CVS Pharmacy and a Starbucks are also located at the front of the store. The building is part of a larger shopping center known as St. John Marketplace, which also had a McDonalds and a Fifth Third bank as of the valuation dates. There are commercial properties immediately to the north and south:



Exs. P1 at 6, R1 at iv-v, 43, 51, 58.

20. The property is situated along, and visible from, Wicker Ave. (U.S. 41), which is a major influence in the neighborhood. Wicker Ave. provides access to other retail and to the Chicago-area expressway systems. In 2009, the closest year to the valuation date for which data was available through the Indiana Department of Transportation and ESRI, an average of 24,474 vehicles per day drove on Wicker Ave. near the subject property. At various points in 2015 to 2019, average daily traffic counts ranged from 29,058 to 29,581. There are several ways to access the property from Wicker Ave. There is direct access along the south end of the property from a shared curb cut on the northbound lanes of Wicker Ave. There is also an intersection with a stop light to the north that provides access across the parking area of the Strack & Van Til site, likely through an easement. There is also access from Earl Drive, which connects with Wicker Ave. and runs by the Aldi and other commercial properties south of the subject property. *Exs. P1 at 26, R1 at 43-46, R30; Tr. at 42-43, 55, 297, 302-03; 765-66.*

B. Expert Opinions

1. Allen's appraisals

21. Target hired Allen to appraise the property. Allen is an MAI appraiser with significant experience appraising big-box stores, which he defined as single-occupant stores over 80,000 square feet. Through those assignments, Allen was able to study sales, offerings, and leases of big-box stores throughout the Midwest. As a broker, he has also located store sites for two big-box retailers, working directly with Meijer in one instance and with a developer who wanted to develop sites for Walmart stores in Michigan in another instance. In both cases, Allen had conversations with the retailers about factors they considered important in choosing store locations. *Tr. 26-32.*

22. Allen prepared a separate appraisal report for each date. In each case, he appraised the market value-in-use of the fee-simple interest in the property and certified that his

appraisals complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Exs. P1-P2 at 9.*

a. Area and market analyses

23. St. John is part of the Gary metropolitan subdivision of the Chicago-Joliet-Naperville, IL-IN-WI metropolitan statistical area ("Chicago MSA"). Allen began by examining key economic indicators and demographic information within the Gary subdivision. He also looked at other geographic divisions, such as Lake County, the subject property's zip code, and its neighborhood, which Allen defined as a one-half mile radius around the property. Given those demographics, which included growing population and income, he concluded that the neighborhood was in the growth stage of its lifecycle and that the property was in a desirable location for retail. *Exs. P1 at 14-25, P2 at 15-26; Tr. at 56.*

24. Counsel for Target advised Allen to appraise the property for its current use regardless of its highest-and-best use. But based on his investigation of the market, Allen concluded that the current use of the store as retail was also its highest-and-best use. *Exs. P1 at 51, P2 at 52; Tr. at 293.*

25. Allen, however, noted that during the years leading up to the 2018 valuation date and continuing forward, the retail industry has been in a transitionary phase as retailers struggle with an oversupply of malls, growth of e-commerce, and changes in financial positions. Allen cited to various sources detailing thousands of closings of brick-and-mortar stores, including big-box and department stores, from 2014 forward. The closures brought many more big-box stores on the market resulting in more transactions and changes in the types of users who wanted those stores. *Ex. P2 at 52-56; Tr. at 217-21.*

b. Valuation approaches

26. With those things in mind, Allen turned to the three generally recognized valuation approaches—the cost, sales-comparison, and income approaches. Although Allen relied on different data (and in some cases different data sources) for the two years at issue, he

applied the same underlying methodology for both years. Thus, he used the same basic selection criteria for examining comparable sales and rents and the same methodologies for (1) adjusting those sale prices and rental rates, (2) estimating expenses and an appropriate capitalization rate, and (3) calculating replacement costs, physical deterioration, and obsolescence. *See Exs. P1-P2 passim; Tr. at 213.*

(1) Sales-comparison approach

27. Allen began with the sales-comparison approach. He found that there were adequate sales of substitute properties from which to reliably estimate the subject property's value. The property does not have features making it specialized within its retail submarket. Allen explained that while big-box retailers typically choose to modify existing buildings to fit their own prototypes or business models, the subject building was suitable for retail use without modification. *Exs. P1 at 53-54, P2 at 58; Tr. at 60.*

i. Selection criteria

28. In searching for comparable sales, Allen looked for fee-simple transactions of properties with buildings that were like the subject building. For his 2007 report, he looked for sales from 2004-2009, and for his 2018 report, he looked for sales as close as possible to the valuation date. *Exs. P1 at 53-54, P2 at 58-59.*

29. Allen avoided using sale-leasebacks, which he explained are financing transactions and which he believes do not reflect market value-in-use. He also wanted to use only fee-simple transactions, explaining that sales of big-box properties with leases in place ("leased-fee" sales) are typically subject to above-market rent for build-to-suit buildings. To illustrate that point, Allen compared build-to-suit leases for big-box stores to other leases he used in his income approach. The build-to-suit leases were for new construction, while the other leases were for much older stores. The unadjusted rents for the build-to-suit stores were higher than the unadjusted rents for the other stores. The data from his 2007 report indicated a 37% difference, on average, while the data from his 2018 report indicated a 38% difference. According to Allen, the sale prices for properties with build-

to-suit leases typically reflect both that above-market rent and the tenant's creditworthiness. The underlying leases essentially finance the cost of construction and are not exposed to the market. Allen believes that adjusting for those things and for other factors, such as the time remaining on a lease, is challenging and that it is much easier to use fee-simple sales. *Exs. P1 at 53-54, 78, P2 at 58-59, 85; Tr. at 60-71, 137, 398-99, 484-85.*

30. Allen ultimately selected six sales for 2007 and eight for 2018. He inspected each property, which he finds helpful when applying location adjustments. He also gathered physical, transactional, and locational data for each property and sale.

ii. 2007 sales

31. For 2007, Allen used the following sales:

SALE DETAILS	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6
Development	Target	Super K	Walmart	AutoNation	Value City	Super K	Target
Location	St. John, IN	Dearborn, MI	Bloomington, IN	Fishers, IN	Orland Park, IL	Broadview, IL	Broadview, IL
Sale Date		Jan-06	Oct-06	May-04	Dec-09	Oct-04	Aug-07
Building Area (SF)	124,474	192,000	126,004	155,000	122,902	195,520	124,522
Year Built	2006	1993	1994	1996	1993	1994	1994
Land Size (acres)	13.29	18.10	15.54	16.86	15.36	17.93	9.48
LTB Ratio	4.65	4.11	5.37	4.74	5.44	3.99	3.32
Rights Conveyed		Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Sale Price		$9,650,000	$4,950,000	$6,500,000	$5,000,000	$9,700,000	$6,200,000
Price/SF		$50.26	$39.28	$41.94	$40.68	$49.61	$49.79
Community Data - 5 Mile							
2007 Population	61,683	426,081	53,439	172,850	208,221	475,230	475,230
2007 Households	21,952	152,927	18,964	64,710	73,219	168,551	168,551
2000-2007 Pop. Δ	10.73%	-5.60%	2.33%	23.76%	4.26%	-4.30%	-4.30%
2007 Avg HH Income	$75,325	$50,308	$44,469	$92,357	$75,536	$69,420	$69,420
2007 Avg HH Spending	$57,289	$43,294	$40,026	$65,686	$57,247	$51,710	$51,710
Traffic Count	24,474	59,990	23,560	42,661	31,800	36,300	36,300

Ex. P1 at 55; Tr.at 50.

32. Sale 3 was originally built as an Incredible Universe electronics store. AutoNation bought the property in 1997 to use for automobile sales. According to Allen, many big-box properties sell to auto dealerships. In May 2004, Frye's Electronics then bought the

property to use as an electronics store, which is the sale Allen used. Allen described the property as having good visibility from I-69. *Ex. P1 at 59; Tr. at 81, 90-91.*

33. Sale 2 is a former Walmart store that sold to an investor when Walmart built a new superstore nearby. It is located near the interchange of I-69 (previously Hwy. 37) and Hwy. 45 in Bloomington. Although the store's visibility from Hwy. 45 is somewhat impaired by a Sam's Club, it is visible from I-69. It can be accessed only through an easement across the Sam's Club parking lot, however. The store apparently sat vacant for six years after the sale Allen used in his appraisal, eventually reselling for less than half the price from the earlier sale. It is now occupied by a Rural King store. *Exs. P1 at 58, R12 at 2.*

34. Sale 6 was originally developed as a Target store in an Illinois shopping center known as Broadview Village Square. Target closed the store to move into another location in the same shopping center, which Allen believes indicates that the center was a good location for retail sales. Target's purchase of that other location—a former Super K—is Sale 5. Neither building is freestanding: they are both attached to other stores in the shopping center. *Exs. P1 at 61-62, R12 at 12-13; Tr. at 90-95, 341-43.*

35. The buyer converted the Broadview Village Target to multi-tenant use. Allen explained that there are basically two types of buyers for big-box properties: owner-occupiers and developers/investors. Although developers will sometimes pay more than owner-occupiers because they plan to divide the space and charge higher rents, sale prices generally are similar. Allen, however, acknowledged that he prepared an appraisal for the taxpayer in *Lowe's Home Centers, Inc. v. Monroe Cnty. Ass'r*, pet. nos. 3-012-14-1-4-00001 etc., (IBTR March 29, 2019), a case in which we found that the buyers' conversion of two of Allen's comparable properties to multi-tenant use called into question their continued viability for big-box occupants. *Exs. P1 at 62, R23 at 42-43; Tr. at 310-14.*

iii. 2018 Sales

36. Allen selected the following sales for 2018:

SALE DETAILS	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Development	Target	Lowe's	Super K	Kroger	Target	Target	Target	Target	Walmart
Location	St John, IN	Elgin Twp., IL	Portage, IN	Fort Wayne, IN	McHenry, IL	Georgetown Twp., MI	Muskegon, MI	Memphis, TN	Hammond, IN
Sale Date		Apr-16	Dec-11	Jan-14	Aug-15	Oct-13	Aug-16	Jun-14	Nov-17
Building Area (SF)	124,474	139,410	192,814	65,111	95,420	104,113	94,681	124,287	145,554
Year Built	2006	2006	1993	1999	1994	1989	1995	2005	2000
Land Size (acres)	13.29	12.76	16.64	8.13	8.93	10.68	7.49	15.16	11.27
LTB Ratio	4.65	3.99	3.76	5.44	4.08	4.47	3.45	5.31	3.37
Rights Conveyed		Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Sale Price		$5,300,000	$7,175,000	$2,300,000	$2,100,000	$2,850,000	$2,100,000	$4,612,000	$2,600,000
Price/SF		$38.02	$37.21	$35.32	$22.01	$27.37	$22.18	$37.11	$17.86
Community Data									
5-Mile Demo. Stats									
2010 Population	78,098	147,866	85,481	55,104	63,225	113,311	97,681	175,310	243,444
2020 Population	85,252	158,099	86,997	60,190	64,008	124,263	99,165	181,959	235,425
2010-20 Pop. Δ	9.16%	6.92%	1.77%	9.23%	1.24%	9.67%	1.52%	3.79%	-3.29%
Households	31,936	51,306	33,254	24,420	24,425	46,712	38,528	69,588	89,397
Med HH Income	$84,417	$79,543	$57,605	$70,766	$75,637	$65,393	$42,171	$59,328	$49,554
Avg HH Spending	$56,560	$57,530	$40,424	$54,188	$53,128	$46,395	$35,569	$49,838	$36,908
Traffic Count	29,058	36,900	39,395	35,614	35,614	17,178	12,616	69,762	16,757

Ex. P2 at 59.

37. The original owners of two of the properties—a Lowe's from Elgin Twp., Ill (Sale 1) and a Target from Memphis (Sale 7)—closed the stores relatively soon after they were built. Allen explained that there was a lot of competition from other home improvement stores in the area around the Lowe's, and Lowe's had other locations that served the market area. The Lowe's store sat vacant for more than four years before re-selling. But Allen did not view it as a distressed sale. Lowe's was not atypically motivated; it marketed the property through a broker and took time to get the highest price it could. According to Allen, appraisal theory recognizes that extended marketing time can provide an opportunity for additional buyers and lead to a higher sale price. He reached a similar conclusion for the Memphis Target, which was connected to another store and was a shadow anchor for Centennial Place shopping center. Target was not financially distressed, and it marketed the store in its normal manner. *Ex. P2 at 61, 67; Tr. at 225-27, 245-47, 478-79.*

38. Sale 6 was a former Target store from Muskegon, MI, that closed in 2007 and was marketed for more than eight years before an investor bought it to convert to multi-tenant retail use. Sale 8 was a former Walmart from Hammond that an investor bought to lease to other retailers. *Exs. P2 at 62; Tr. at 87-89, 247-48, 310-14.*

iv. Adjustments

39. Next, Allen considered adjusting his sales to account for transactional and property-related differences. According to his appraisal reports, Allen developed his adjustments based on a review of numerous market-area transactions and his experience in the market, and he checked his adjustments using statistical analyses. Allen began by discussing his decision whether to adjust for buyers' post-sale expenditures. He recognized that big-box retailers typically reconfigure buildings to meet their specific business plans, which for example, may involve changing facades, floor coverings, and lighting and electrical systems. It may also include relocating bathrooms. *Exs. P1 at 63, 72, P2 at 69, 76-78, R10 at 412-13; Tr. at 60, 76, 80, 83, 85, 87, 90-96, 232-33, 236, 307.*

40. In any case, Allen explained that an appraiser should only adjust for expenditures that both the seller and buyer recognize need to be made immediately after purchase. While the buyers of Allen's comparable properties renovated the buildings to reflect their specific business operations, he spoke to either the buyer, seller, or broker from each sale and confirmed that the renovations were not ones that the buyer and seller would have agreed were necessary for the property to be used for retail purposes. Allen acknowledged that Meijer renovated the Super K from Portage (2018 Sale 2) after buying it. Those renovations included demolishing part of the building and redoing the HVAC system and roof. But they were all part of re-imaging the property. *Exs. P1 at 63, P2 at 69, R19 at 1-3; Tr. at 60, 76, 80, 83, 85, 87, 90-96, 232-33, 236, 307, 351-52.*

41. Next, Allen examined whether to adjust for differences in property rights transferred. Several of his sales included deed covenants restricting the properties' uses. The restrictions varied in type and degree:

2007

- Sale 6 — The deed restricted the former Target store from being used as a grocery store or supermarket or as a discount department store of more than 50,000 square feet.

2018

- Sale 1 — The deed restricted the property from retail uses like Lowe's, Home Depot, Menards, 84 Lumber, etc. for five years. But it specifically allowed the store to be used as a Blain's Farm & Fleet, which the buyer operated. According to Allen, Blain's sells many of the same types of items as Lowe's. But he acknowledged that Lowe's is primarily a home-improvement store while Blain's' website advertises that it also sells things like boating and marine equipment and supplies, farm equipment and supplies, back-to-school supplies, and toys and games.

- Sale 3 — The deed restricted the property from being used as a supermarket or grocery store for 10 years. The buyer re-imaged the store from a Kroger to a Rural King.

- Sale 8 — The deed restricted the property from being used as a grocery store or discount department store of more than 50,000 square feet. It permitted Kohl's and other traditional department store uses, such as JC Penny and Bon-Ton.

Exs. P1 at 62-63, P2 at 61, 63, 68-69, R18; *Tr. at 77, 87-89, 224-25, 247-50, 424-26, 480-81, 503.*

42. Allen reported another property, the Muskegon Target (2018 Sale 6), as having sold without deed restrictions. But his workfile contained a marketing brochure for that property indicating that it would be sold with deed restrictions prohibiting any part of the property from being used for a discount department store greater than 40,000 square feet. Nonetheless, Allen testified that any deed restrictions must appear in a property's deed and be recorded. Between a deed and a sales brochure, the deed is conclusive. *Exs. P2 at 61, 63, 68-69, R28 at 7-11, R29; Tr. at 327-28, 428-33, 470, 481.*

43. Allen spoke to a party or broker from each sale that included deed restrictions. In each case, the parties had already settled on a sale price before the restriction was negotiated. And the unadjusted sale prices for his non-deed-restricted sales were similar to the unadjusted prices for the deed-restricted properties. Based on those factors, Allen did not

believe that the deed restrictions affected the properties' sale prices. *Tr. at 76-77, 228-29, 237.*

44. Despite that conclusion, Allen researched the issue further by reviewing two national studies of big-box stores. One was prepared by Brett Harrington, CMI, of the International Appraisal Co., and the other was prepared by Situs RERC. The Harrington study indicated that deed restrictions depressed sale prices by an average of 6%. By contrast, the relevant part of the Situs RERC study indicated a slightly higher average unit price for restricted sales than for unrestricted sales. The sample included 43 restricted sales and 94 unrestricted sales of stores greater 50,000 square feet. The properties from both categories largely mirrored each other in several respects, including average age, size, median household income (zip code), and population (zip code). *Exs. P1 at 63-64, P2 at 69-70, P3 at 44; Tr. at 98-102, 322.*

45. Allen also pointed to a January 2019 PowerPoint presentation by Situs RERC that included a larger sample of 162 fee-simple sales of big-box properties that were bigger than 50,000 square feet. The presentation showed that properties with deed restrictions sold for an average unit price of 8% less than unrestricted properties. An earlier PowerPoint from September 2018 that Allen did not rely on included a data set of 265 fee-simple transactions and showed that deed-restricted properties sold for an average unit price of 21% less than unrestricted properties. Unlike the 2019 PowerPoint, however, the 2018 presentation was not disaggregated by size, and it therefore represented sales of properties as small as 30,000 square feet. *Exs. P4 at 27, R32 at 4, 11; Tr. at 100-01, 465-69, 497.*

46. Based on his analysis of the specific transactions and his research from the national studies, Allen ultimately applied a positive 5% adjustment to all his deed-restricted sales. *Exs. P1 at 63-64, P2 at 69-70.*

47. Allen did not adjust for differences in marketing time, despite (1) having identified two sales for his 2018 appraisal (the Elgin, IL, Lowe's and the Muskegon Target) that were marketed for more than three years, and (2) estimating the subject property's exposure time

as 12 to 24 months. Again, Allen believed that taking additional time to market the properties led to higher sale prices. Nonetheless, the same 2019 Situs RERC PowerPoint that Allen cited to in discussing deed restrictions also disaggregated fee-simple sales of big-box properties exceeding 50,000 square feet by marketing time. Big boxes that were marketed for more than three years sold for an average unit price that was 36% less than properties that had been marketed between one and three years. *Exs. P2 at 61-68, P4 at 28; Tr. at 418-20, 478-89.*

48. Turning to market conditions, Allen examined an array of data sources, including CoStar, Loopnet, and various investor surveys. For his 2018 report, he also looked at the Harrington study. Some of his sources included national and regional data, while others covered the Chicago MSA or Indiana. Only the Harrington study was specific to big-box properties, although Allen believed that general retail was the next best indicator. The data reflected trends in sale prices, rental rates, vacancies, and capitalization rates. Based on those sources, and on his own experience of market conditions during the relevant times, Allen concluded annual appreciation rates of 3% to 10% between first quarter 2005 and first quarter 2010 and 2% annually from 2012 forward. *Exs. P1 at 64-69, P2 at 70-76; Tr. at 105-06.*

49. Allen further considered adjusting sale prices based on arterial attributes and demographics. For the first of those (arterial attributes) Allen considered visibility, access, and traffic counts, applying adjustments ranging from -10% to 10%. Allen rated the former AutoNation as superior and adjusted its price downward, apparently relying on the traffic count from I-65, even though an aerial image shows that the property was only accessible via a circuitous route along minor roads. *Exs. P1 at 70-71, P2 at 76-77, R12 at 3; Tr. at 109-11, 339.*

50. Allen based his demographic adjustments on the community data listed in the preceding tables. While he considered all the demographic data, he gave the greatest weight to population density. He explained that big-box market participants place more weight on total population than on population growth. Although the population surrounding the

subject property was growing, it was going to take a long time until it reached a similar density as the areas surrounding many of his comparable sales. Allen acknowledged that household income was important, but he believed it was secondary to population density. And he did not view the highest income levels as necessarily the most desirable, explaining that discount retailers look for middle-income customers. As a result, Allen either did not adjust or made downward adjustments to properties that were inferior to the subject property in various demographic categories but that had comparable or higher population densities. In one instance, a former Target from McHenry, IL (2018 Sale 4), he made no adjustment even though the property was inferior in all demographic categories, including population density. Overall, Allen's demographics adjustments ranged from -10% to 10%. *Exs. P1 at 71-72, P2 at 77-79; Tr. at 114-19, 291-92, 335-38, 462-63.*

51. Allen also considered adjusting for differences in retail submarkets. He based that adjustment on the effective asking rent for the five-mile radius surrounding each property, which was a function of asking rent and vacancy. He quantified the amount of his adjustments based on his experience. *Exs. P1 at 71, P2 at 77-78; Tr. at 114-19, 217, 291-92, 338.*

52. Next, Allen considered differences in store sizes. He explained that larger developments generally command lower unit prices compared to developments that are smaller than his big-box threshold of 80,000 square feet. According to Allen, superstores were in demand, so his data showed that larger stores were not selling at a discount. He believed that stores as large as 190,000 square feet were in the same market or submarket as the subject property. He adjusted the one sale that fell below his big-box threshold downward by 10%, but he did not adjust any of the others. *Exs. P1 at 72, P2 at 76, 79; Tr. at 497.*

53. The 2019 Situs RERC PowerPoint showed steep declines in sale prices between stores in the 30,000-to-50,000 square foot range and sales of larger stores. But the decline in price was generally more gradual as store size increased. The PowerPoint shows at least some disparity in average and median unit prices between stores in the 100,000-to-130,000 square foot range and those above 130,000 square feet. In fact, those disparities were even

greater than the disparities between the 70,000-to-100,000 and 100,000-to-130,000 square foot categories. When confronted with those numbers, Allen reiterated that he did not see those disparities in the subject property's market. *Exs. P2 at 76, 79, P4 at 24, R32 at 13; Tr. at 439-44, 482-83, 497.*

54. Finally, Allen determined that the subject property was in average condition for its age as of both valuation dates. He adjusted the sale prices by 1% for each year difference in age, which he arrived at after considering the buildings' useful lives and the contribution of land to each property's overall market value. According to Allen, that was how the market evaluates the age of existing big-box properties. The Situs RERC study, however, showed that big-boxes built in the 1990s, with 1994 as the average year of construction, sold for an average of $32.24/sf, while big-boxes built after 2000, with 2005 as the average year of construction, sold for an average of $41.51/sf. *Exs. P1 at 71, 75; P2 at 78, 82; Tr. at 121-24, 347.*

55. For 2007, Allen determined the following adjusted sale prices:

Sale	1	2	3	4	5	6
Adjusted unit price	$55.06	$53.29	$43.74	$51.43	$51.95	$53.53

Average: $51.50
Concluded: $50.00
Value: $6,220,000

He relied on each sale. Sales 1-2 and 4-6 provided a tight range of value. Overall, he relied most heavily on the sales from the Chicago MSA (Sales 4-6). *Ex. P1 at 72, 76.*

56. For 2018, Allen determined the following adjusted sale prices:

Sale	1	2	3	4	5	6	7	8
Adjusted unit price	$38.28	$42.34	$41.16	$25.19	$36.76	$33.14	$32.93	$22.75

Average: $34.07
Concluded: $40.00
Value: $4,980,000

He looked at various characteristics, including the size, location, age, and number of adjustments for each sale. He relied more heavily on the sales from the Chicagoland and Indiana markets in reaching his conclusion. He did not give the Hammond Walmart sale

(Sale 8) much weight, however. Even though it was up the road from the subject property, it was in a less desirable retail area. *Ex. P2 at 79, 83; Tr. at 134, 254-55.*

57. For each appraisal report, Allen reviewed additional fee-simple big-box sales. He did not adjust the sale prices or use those sales directly to derive a value for the subject property. But he claimed they showed the market was a little more active than just his selected comparable sales and, for 2007, that they offered additional support for sale prices of Indiana properties. He selected one of those sales, the former Super K from Portage, as a comparable sale for his 2018 analysis. He also pointed to data from the Harrington and Situs RERC studies as support for his conclusions. *Exs. P1 at 73-75, P2 at 79-82; Tr. at 125, 127-32, 253, 350-51.*

(2) Income approach

58. Having completed his analysis under the sales-comparison approach, Allen turned to the income approach. He used direct capitalization, which required him to capitalize one year of the property's net operating income ("NOI"). He estimated the property's NOI assuming a triple-net lease, under which the tenant pays, as additional rent, the costs of insurance, real estate taxes, and exterior maintenance. *Exs. P1 at 77-78, P2 at 85-86; Tr. at 139.*

59. The first step in determining NOI required Allen to estimate market rent for the property. To do so, he selected several comparable leased spaces for analysis, all of which he visited or inspected. But he did not talk to the parties to the leases. Nor did he read the full leases for any of the comparable spaces for his 2007 analysis, although he did have a full lease for one of the spaces from his 2018 analysis.

2007

	Subject	4	5	6	8	9
Tenant	Target	JC Penney	Burlington Coat	Goodwill	Garden Ridge	Strack and Van Til
Street	Wicker Ave.	Michigan Rd.	E. Main St.	W. Washington	Lafayette	East Ridge
City	St. John	Indianapolis	Plainfield	Indianapolis	Indianapolis	Hobart
Lease Date		Jul-06	Oct-06	Nov-06	Oct-07	Aug-09
Building Size	124,474	99,704	60,000	96,508	108,900	85,252
Year Built	2006	1984	1985	1988	1994	1988
Rental Rate		$4.00	$4.00	$4.92	$4.75	$3.52
Market Conditions (3/2007)		106.0%	104.0%	104.0%	100.0%	98.0%
		$4.24	$4.16	$5.12	$4.75	$3.45
Characteristic Adjustments						
Arterial		95%	100%	95%	85%	105%
Demographic		95%	100%	100%	95%	105%
Retail Submarket		110%	100%	115%	120%	105%
Age/Condition		110%	110%	110%	105%	110%
Total Adjustments		109.20%	110.00%	120.18%	101.75%	127.34%
Adjusted Rent per SF		**$4.63**	**$4.58**	**$6.15**	**$4.83**	**$4.39**
Traffic	24,474	29,606	27,286	31,971	91,264	19,078
Population (2007)	61,683	150,575	62,384	128,148	215,644	111,008
2000-2007 Pop. Δ	10.73%	12.27%	30.04%	-0.51%	-0.21%	5.50%
Avg. HH Inc. (2007)	$75,325	$91,682	$75,384	$46,151	$56,206	$55,122
Avg. HH Spending (2007)	$57,289	$64,821	$57,418	$41,033	$46,450	$46,119
Retail SubMkt. Eff. Rent	$16.07	$13.00	$17.33	$11.19	$9.34	$13.85

2018

	Subject	2	3	7	10	11	12
Tenant	Target	Garden Ridge	Strack and Van Til	Walmart	Floor & Décor	At Home	G4CE Entertainment
Street	Wicker Ave.	Lafayette	E. Ridge Rd.	Halsted Rd.	Highland Ave.	S. Telegraph	Dequindre Rd.
City	St. John, IN	Indianapolis, IN	Hobart, IN	Homewood, IL	Cincinnati, OH	Bloom. Hills, MI	Warren, MI
Lease Date		Oct-07	Aug-09	Aug-13	Jun-14	Sep-16	Nov-17
Building Size	124,474	108,900	85,252	196,000	118,977	120,650	101,773
Year Built	2006	1994	1988	1992	1994	1993	1993
Rental Rate		$4.75	$3.52	$3.06	$5.50	$5.60	$4.75
Market Conditions (1/2018)		92.0%	91.0%	100.0%	100.0%	99.0%	100.0%
		$4.37	$3.20	$3.06	$5.50	$5.54	$4.75
Characteristic Adjustments							
Size		1.000	1.000	1.100	1.000	1.000	1.000
Arterial		0.900	1.100	1.000	1.000	0.900	0.950
Demographic		0.950	1.050	0.950	0.950	0.950	0.950
Retail Submarket		1.000	1.000	1.000	1.000	1.000	0.950
Age/Condition		1.000	1.030	1.030	1.030	1.050	1.050
Total Adjustments		0.855	1.190	1.076	0.979	0.898	0.900
Indicated Rent per SF		$3.74	$3.81	$3.29	$5.38	$4.98	$4.28
Traffic	29,058	91,264	19,078	34,900	33,325	52,898	38,003
Population	85,252	212,049	103,008	216,996	231,081	157,181	336,496
Med HH Income	$84,417	$46,265	$49,419	$55,359	$55,545	$63,586	$55,846
Avg. HH Spending	$56,560	$36,934	$35,727	$42,130	$49,080	$62,290	$42,545
SubMkt. Eff. Ask. Rent	$12.76	$11.51	$11.94	$11.10	$13.75	$11.88	$15.59

Exs. P1 at 78-80, P2 at 85-87; Tr. at 358-59, 364.

60. Allen used a lease to Garden Ridge in his 2007 report (Lease 8) and a renewal of that lease in his 2018 report (Lease 2). The Garden Ridge store is roughly one-half mile from Lafayette Square Mall, which is a declining mall with a lot of vacancy. But the location is desirable because it is near both the interchange of Lafayette Rd. and I-65 and a shopping center with a Super Walmart. Allen admitted that the area around the Goodwill outlet store from Indianapolis (2018 Lease 6) was not very desirable, although it had good retail traffic. *Exs. P1 at 77-78, P2 at 85-86, R16, R35; Tr. at 361-65, 370-73, 449.*

61. Allen recognized that the buildings were older than the subject property, which tends to correlate with lower rent. But they were also smaller, which tends to correlate with higher unit rates. Although he did not observe size differences as impacting *sale prices* for properties above his big-box threshold of 80,000 square feet, he observed an inverse relationship between size and *rental rates*. That was particularly true for buildings 60,000 square feet and smaller, where unit rent increases significantly as stores get smaller. Allen also explained that building age, while relevant, is less significant to rental rates than it is to sale prices, because lessees are not responsible for structural repairs. *Exs. P1 at 77-78, P2 at 85-86, R35; Tr. at 141, 145-46.*

62. Allen adjusted his rental rates along the same lines as he adjusted his comparable sales, although he based his market-conditions adjustment on asking rent trends for the Chicago MSA and Indiana. He used overall trends because he did not have data specifically for big boxes. As for the other adjustments, Allen explained that his analysis was more qualitative than was his sales-comparison analysis and that he based it on his observations and interpretation of the market. Giving all the leases similar weight, he settled on $5.00/sf, and $4.50/sf, respectively for 2007 and 2018. In each case, his concluded rent was slightly above the average adjusted rate for his comparable leases. *Exs. P1 at 79-80, P2 at 86-87; Tr. at 143-44, 257-58.*

63. To arrive at potential gross income ("PGI"), Allen added two reimbursable operating expenses—common area maintenance ("CAM") and insurance. He did not include real estate taxes as an expense or reimbursement because he addressed them in his

capitalization rate. While he recognized that freestanding big-box stores differ from inline tenants at a shopping center, there would still be expenses associated with maintaining parking areas, lighting, and landscaping. Allen estimated his CAM expenses based on: (1) ranges reported in publications for community shopping centers, which have anchors, junior anchors, and department stores, and which he believed would have a lot of activity on parking areas and lighting; (2) his analysis of four comparable big-box properties he had appraised; and (3) his experience with other retail developments. The publications were national, but he used their data from the Midwest. For insurance costs, he again consulted shopping center publications. *Exs. P1 at 81-82, P2 at 88-89; Tr. at 153-54, 374-75.*

64. Allen next estimated the property's effective gross income ("EGI") by adjusting his PGI to account for vacancy and credit loss. He explained that stores of comparable size and design as the subject property take longer to lease than other types of retail properties and can remain on the market for years. But when they do lease, it is usually for at least 10 years. Allen examined CoStar data from 4th quarter 2007 through 4th quarter 2016 within the Chicago MSA and Indiana. While the data was for all types of retail properties, Allen explained that high vacancy for retail generally also means high vacancy for big boxes. He also explained that "CoStar vacancy figures underestimate the market vacancy as it includes owner-user retail properties." He settled on 5% stabilized vacancy and credit loss for both years at issue. Allen, however, explained that his estimate did not consider the costs needed to achieve stabilization, which he believed had to be included under his fee-simple valuation premise. He dealt with those costs later in his analysis. *Exs. P1 at 81, P2 at 88; Tr. at 149-50.*

65. To arrive at NOI, Allen subtracted operating expenses from the property's EGI. In addition to CAM and insurance, Allen also needed to subtract un-reimbursable expenses, which he identified as a management fee and replacement reserves. According to Allen, management fees for properties like the subject property typically range from 2% to 5% of EGI. Because the property would be leased to a single tenant under a triple-net structure,

he settled on 3%. For replacement reserves, Allen looked at ranges reported by the Korpacz Real Estate Investment survey.[4] *Exs. P1 at 82, P2 at 89.*

66. Allen next considered how to choose an appropriate capitalization rate. As he explained, the goal was to estimate an overall rate that valued the fee-simple, rather than the leased-fee, interest in the property. Unfortunately, sources for overall rates, such as extraction from market sales, are for leased-fee interests. Allen explained that leased-fee rates are lower because they do not include many of the risks associated with buying the fee-simple interest, such as the need to find a tenant, the creditworthiness of which is unknown at the time of sale; negotiating a lease; and possibly having to provide tenant improvements. *Exs. P1 at 83-84, P2 at 90-91.*

67. Keeping that in mind, Allen used several methods and sources to determine a capitalization rate. He calculated a rate using a band-of-investment analysis. He also looked at rates reported through investor surveys, rates extracted through market sales, and rates reported in the Situs RERC study. For his band-of-investment analysis, Allen used national data for various types of retail properties that was not filtered by store size. He acknowledged that his analysis yielded "pretty wide" ranges. *Exs. P1 at 87-90, P2 at 94-98; Tr. at 376-77; Tr. II at 75, 133.*

68. Much of Allen's survey data was also national. But he believed that the Indiana market was riskier than what was reflected in the national averages because of economic conditions in the Midwest and greater demand in major markets on the east and west coasts. That was borne out by two of the surveys, which indicated higher rates for the Midwest. Because much of the survey data was not specific to big boxes, Allen chose what he considered the most applicable categories—such as power centers, which he explained are groups of big-boxes or combinations of big-boxes and junior anchors—while keeping in mind the subject property's uncertain tenancy, above-average size, and single-occupant

[4] PWC bought the publication. Going forward, we will refer to the publisher as Korpacz/PWC.

design. None of the survey information was ideal, but he found all of it useful. *Exs. P1 at 87-90, P2 at 94-98; Tr. at 158-64, 261-63, 378, 381, 452; Tr. II at 75, 133.*

69. Allen included market-extracted rates to illustrate how not having a lease in place affects capitalization rates. He used sales and listings with less than five years remaining on the existing leases where, at a minimum, there was a risk of the tenant leaving at the end of the term. *Exs. P1 at 87-90, P2 at 94-98; Tr. at 382-83; Tr. II at 75, 133.*

70. The Situs RERC study segmented capitalization rates based on credit ratings for tenants in big-box stores over 50,000 square feet, further breaking down the data into investment grade, non-investment grade, and "Not Rated." Given his fee-simple construct, Allen believed that the Not Rated category was most relevant. Because the subject property was 50% larger than the average store size from the sample and had much lower population and household income in the surrounding area, he believed a cap rate higher than the 7.5% median would be appropriate. *Exs. P1 at 84-86, P2 at 91-94, P3 at 57; Tr. at 168.*

71. Based on all his data, as well as on the subject property's attributes, Allen estimated a capitalization rate of 8% for both years, even though interest rates and most of the surveyed capitalization rates were lower in 2018. His goal was to determine a rate that did not reflect a particular tenant's credit. His rate was not as high as it would be for a pure investment-grade property, nor as low as it would be for a property built on speculation. It was more of a compromise rate. Allen then loaded his concluded rate with the landlord's share of each year's tax rate (the tax rate multiplied by his estimated vacancy rate) and divided that loaded rate into the property's NOI. *Exs. P1 at 86, P2 at 94; Tr. at 169-70, 384.*

72. But Allen had one final step. Because his definition of the fee-simple interest contemplates the property being available for lease on the valuation dates, he felt he needed to account for lease-up costs and the loss of income over the period leading to stabilized occupancy. One such cost is a leasing commission. Even though Allen separately adjusted his potential gross income for vacancy, he did not view his deduction for lease-up costs as double

counting. His vacancy adjustment was part of his estimated stabilized NOI. But he had to first get the property to stabilized occupancy before it could be sold to an investor on a stabilized basis. *Exs. P1 at 87-89, P2 at 94-95; Tr. at 171-74, 385.*

73. Because Allen found that the big-box market treats leasing commissions as a one-time cost, he applied those commissions "below the line" (meaning he did not deduct it as an expense in his calculation of NOI). Based on interviews with brokers, he used a commission of 6% of PGI over the first five years of his hypothesized lease. Allen also deducted holding costs, such as lost rent and reimbursement income during the lease-up period, which he estimated at nine months. Allen, however, acknowledged that he did not deduct leasing commissions and holding costs in his appraisal of the Monroe County Lowe's store. *Exs. P1 at 87-89, P2 at 94-95; Tr. at 171-74, 385.*

74. After capitalizing his estimated NOI for each year and subtracting a leasing commission and holding costs, Allen arrived at the following values:

2007		**2018**	
Rent	$622,370	Rent	$560,133
Reimbursement		Reimbursement	
CAM	$155,593 ($1.25/sf)	CAM	$174,264 ($1.40/sf)
Insurance	$31,119 ($.25/sf)	Insurance	$24,895 ($.20/sf)
PGI	**$809,082**	**PGI**	**$759,292**
Vacancy	.95	Vacancy	.95
EGI	**$768,628**	**EGI**	**$721,327**
CAM	($155,593)	CAM	($174,264)
Insurance	($31,119)	Insurance	($24,895)
Mgmt. Fee	($23,059) (3%)	Mgmt. Fee	($21,640) (3%)
Repl. Reserves	($18,671) ($.15/sf)	Repl. Reserves	($24,895 ($.20/sf)
NOI	**$540,186**	**NOI**	$475,633
Cap Rate	÷.081062%	Cap Rate	÷.0810255
Capitalized Value	**$6,664,013**	**Capitalized Value**	**$5,870,381**
Leasing Comm.	($186,711)	Leasing Comm.	($168,040)
Holding Costs	($606,812)	Holding Costs	($569,469)
Rounded Value	**$5,870,000**	**Rounded Value**	**$5,130,000**

Exs. P1 at 83, 89, P2 at 90, 96.

(3) Cost approach

75. Allen began his analysis under the cost approach by estimating the value of the subject site. To do so, he looked for sales of large commercial sites as close to the subject property's neighborhood as possible. He identified four sales for each report and adjusted the sale prices largely along the same lines and using similar methodology as his adjustments of improved sales. *Exs. P1 at 90-96, P2 at 97-103; Tr. at 182, 387-92, 455.*

76. For 2007, Allen's adjusted sale prices averaged $236,650/acre. Just two years before the valuation date, Target had bought the subject site for a market-conditions-adjusted price of $184,000/acre. Considering his comparable sales as well as the sale of the subject site, Allen estimated a land value of $185,000/acre. For 2018, he settled on $250,000/acre, which was slightly above the average adjusted price for his comparable sales. *Exs. P1 at 90-96, P2 at 97-103; Tr. at 182, 387-88.*

77. Next, Allen used Marshall Valuation Service ("MVS") to estimate the replacement cost new for the improvements. He used the base costs for an average quality, class-C discount store and adjusted those costs with various multipliers to account for things like current costs, local costs, story height, perimeter, and the store's sprinkler system. He used a similar process for the site improvements. *Exs. P1 at 96-98, P2 at 103-05.*

78. Allen also included soft costs necessary to complete developing the site, which he estimated at 5% of hard costs. He described that percentage as a "rule of thumb" that he based on his experience with multiple construction projects. The 14th edition of THE APPRAISAL OF REAL ESTATE explains that the cost approach estimates the fee-simple interest in a property at market rent and stabilized occupancy. Because Allen was valuing the property as if it was unencumbered by a lease and available for occupancy, he believed he needed to add a leasing commission. But he did not include entrepreneurial profit, explaining that freestanding big-box properties are not built to sell or lease. *Exs. P1 at 98-100, P2 at 105-07; Tr. at 186-87.*

79. Allen then turned to depreciation, which he explained is a loss in value that can stem from three causes: (1) physical deterioration, (2) functional obsolescence, and (3) external (or economic) obsolescence. He used the age-life method to estimate physical depreciation for the building and site improvements. That entailed dividing the useful lives of the building and site improvements (35 and 15 years, respectively) by their ages as of each valuation date. For the building, that depreciation equaled 2.9% per year. *Exs. P1 at 100-01, P2 at 107-08.*

80. Having estimated physical deterioration, Allen next considered whether the property suffered from obsolescence. According to Allen, appraisers need to test their cost conclusions against the market to see if a property suffers from obsolescence. Big boxes are only built to suit specific retailers. If those properties did not suffer from obsolescence—that is to say, if selling them on the market would support their cost new—developers would build them on speculation. *Tr. at 190-92, 395.*

81. While it is difficult to separate between the two types of obsolescence, Allen believed that the property suffered from both. As for functional obsolescence, which he described as a loss in value from an inherent deficiency caused by physical factors, he found that the store was oversized for what the market generally required and that it had a façade and other features, such as its interior design, that were specific to Target's business. Any buyer would either spend money to renovate or modify the features that are specific to Target's business or be forced to use features different than those it desires. According to Allen, this type of loss in value from cost new occurs in both rentals and sales. And the size of the store amplifies that loss. Allen did not know of any big-box properties of the subject property's size that were still being built. Target has switched to a larger format store. *Exs. P1 at 100-101, P2 at 107-08; Tr. at 60-63, 192-93, 396.*

82. Allen explained that external obsolescence is a loss stemming from factors external to a property, such as economic or environmental factors that affect supply and demand. In his view, the subject property suffered from external obsolescence because demand for large

commercial buildings of its type was limited in its market area and in surrounding market areas. *Exs. P1 at 101, P2 at 108; Tr. at 193-94.*

83. Having concluded that the property suffered from obsolescence, Allen used several methods and examples to estimate the amount of that obsolescence: an analysis of build-to-suit leases compared to re-leases; market extraction from sales; capitalization of deficient income; and an analysis of modification costs. *Exs. P1 at 101-06, P2 at 108-13.*

84. Allen's studies of the big-box market indicated a discount when retailers re-leased existing buildings that were originally built-to-suit compared to when they signed leases as the original tenants before buildings were constructed to their specifications. He pointed to his rent analysis from the income approach showing a 37%-38% reduction as an example. That discount was for land and buildings together; it would be even greater if applied only to the improvements. But Allen's analysis compared leases for brand new build-to-suit buildings to leases for existing buildings that were between nine and 52 years old on the date of lease, with most being at least 20 years old. He did not adjust for those age differences, or for any other differences between the properties. *Exs. P1 at 101-03, P2 at 108-10; Tr. at 196-202, 400.*

85. To extract obsolescence from market sales, Allen analyzed five sales, two of which he used as comparables under the sales-comparison approach. They were 10 years old or less at the time of sale and were like the subject property in use and design. In his obsolescence analysis, however, Allen did not consider changes in market conditions between the construction and sale dates, nor did he consider any changes to demographics or other locational characteristics during that period. At most, he testified that although one of the properties was near a mall that had closed years ago, Walmart liked the location enough to move there from a larger market, and that another property was located not far from a mall that had been reconfigured and re-tenanted. The sale prices indicated a significant discount from the physically depreciated replacement cost plus land for the properties, which Allen attributed to buyers needing to modify the properties to fit their operations. *Exs. P1 at 101-03, P2 at 108-10; Tr. at 196-202, 400-401.*

86. Next, Allen capitalized the income deficiency caused by obsolescence, which he explained is an approach recommended by the 13th edition of THE APPRAISAL OF REAL ESTATE, but which he acknowledged depended on the accuracy of his judgments under the income approach, such as his estimates of NOI and selection of a capitalization rate. For his final method of estimating obsolescence, Allen examined the cost of modifying big box stores for new users. He both consulted an architectural and construction firm that specializes in modifying big-box stores and examined modification costs for four stores. *Exs. P1 at 103-05, P2 at 110-12; Tr. at 196-202, 402.*

87. Allen ultimately arrived at obsolescence of $40/sf for both years at issue. For 2007, that represented 52% of replacement cost new for the improvements and 41% of the total cost including land. For 2018 it represented 38% of replacement cost new for improvements and 31% of total cost. *Exs. P1 at 105-06, P2 at 112-13.*

88. For his last step under the cost approach, Allen made a property-rights adjustment, deducting leasing commissions and holding costs during his projected lease-up period. That left him with the following values:

2007		**2018**	
Replacement Cost	$9,653,362	Replacement Cost	$12,950,381
Physical Depreciation	($351,273)	Physical Depreciation	($5,585,428)
Obsolescence	($4,978,960)	Obsolescence	($4,878,960)
Depreciated Cost	$4,323,129	Depreciated Cost	$2,385,993
Land	$2,460,000	Land	$3,320,000
Total Depreciated Value	$6,783,129	Total Depreciated Value	$5,705,993
Leasing Comm.	($186,711)	Leasing Comm.	($168,040)
Holding Cost	($606,812)	Holding Cost	($569,469)
Rounded Value	**$5,990,000**	**Rounded Value**	**$4,970,000**

Exs. P1 at 107, P2 at 114; Tr. at 202.

c. Reconciliation

89. In reconciling his conclusions, Allen explained that his sales-comparison analysis provided a reliable primary indicator of the property's value. He believed that his conclusions under the income approach were also reliable, although they possibly overstated the property's

value because they did not reflect unknown allowances for tenant improvements. He also recognized the challenge posed by estimating a capitalization rate that does not reflect the creditworthiness of a particular tenant. So he gave his conclusions under that approach slightly less weight. According to Allen's reports, the cost approach was unreliable, and he did not consider it in his reconciliation because of the large amount of depreciation and the fact that buyers and sellers do not use the cost approach for properties like the subject property. But his testimony was less clear on that point. He ultimately reached the following conclusions:

Date	Sales	Income	Cost	Concluded Value
March 1, 2007	$6,220,000	$5,870,000	$5,990,000	$6,130,000
January 1, 2018	$4,980,000	$5,130,000	$4,970,000	$5,020,000

Exs. P1 at 76, 89, 107, 110, P2 at 85, 96, 114, 117; Tr. at 204-05, 280-81, 404.

90. As explained above, Allen valued the property based on its physical condition and prevailing economic conditions as of the March 1, 2007 assessment date. But the valuation date for that year was January 1, 2006. Pointing to several previous decisions of ours, he used changes in the consumer price index ("CPI") to trend his conclusion to a value of $5,920,000. *Ex. P1 at 5, 110.*

2. Sokoloff's review of Allen's appraisals

91. The Assessor hired Irene Sokoloff to review Allen's appraisal reports. Sokoloff has been designated as an MAI from the Appraisal Institute and as a Certified Assessing Evaluator by the International Association of Assessing Officers ("IAAO"). In addition to her experience as an appraiser, she has worked in an assessor's office doing mass appraisal. A significant portion of her work involves appraisal review. *Tr. at 509-16.*

92. Sokoloff reviewed Allen's appraisal reports and workfiles. She did not visit the subject property, inspect any of the comparable sale or lease properties from Allen's reports, or speak to any parties or brokers involved in those transactions. She concluded (1) that Allen's reports did not accurately convey the subject property's physical and economic

characteristics, and (2) that several of Allen's methodologies and techniques were misleading and resulted in inaccurate value conclusions. *Exs. R2-R3 at 1-6; Tr. at 566, 649.*

93. Sokoloff primarily criticized Allen's underlying valuation premise of treating the property as if it was vacant and available for lease or sale. Because that was contrary to what existed on the valuation dates, she believed that Allen should have invoked a hypothetical condition in his reports. According to Sokoloff, appraisers can use sales of vacant stores to second-generation users when valuing an occupied store, but it depends on the reasons for the vacancy. If those reasons can be adjusted for, using the sale is okay. But she believes it is easier to find occupied sales and avoid having to make "that kind of speculative adjustment." In her view, sales of stores occupied by first-generation users are appropriate if adjustments can be made for favorable or disadvantageous attributes. *Exs. R2-R3 at 6-9; Tr. at 527-28, 561, 568.*

94. Sokoloff's overarching criticism of Allen's assumption that the property was vacant also permeated her more specific criticisms of Allen's appraisals. She criticized Allen's choice of comparable sales. According to Sokoloff, many of his sales involved older, seemingly distressed properties that had been on the market for a long time. In her opinion, those were not adequate substitutes for the subject property, particularly in 2007 when it was only one year old. In many instances, there were significant post-sale expenditures that she believed needed to be adjusted for, such as money spent to convert the AutoNation to an electronics store or to renovate the former Super K from Portage. She was also troubled by Allen's use of sales with deed restrictions. In Sokoloff's view, Allen's sales required adjustments either that could not be made at all or that were in such significant amounts that they would not be supportable or reliable. By using those vacant sales instead of using sales of stores occupied by first-generation users, Sokoloff believes that Allen did not estimate the property's market value or market-value-in-use. At a minimum, she did not think Allen should have relied primarily on his conclusions under the sales-comparison approach. *Exs. R2-R3 at 9-10; Tr. at 527, 571, 646, 707-08, 723, 726-27.*

95. But Sokoloff had no direct knowledge that Allen's sales were distressed: she based her conclusion solely on what she characterized as their extended exposure time, information from Allen's workfiles regarding post-sale expenditures, verified data for one property (although she did not say which one) given to her by another appraiser, and a reference in our determination for the Monroe County Lowe's appeal that there was deferred maintenance at one property. Although she referred to the former Walmart from Bloomington as having been on the market for six years, Walmart closed that store in 2006—the same year as Allen's sale. Similarly, while she agreed that adjustments for post-sale buyer expenditures should only be made for expenditures that both buyer and seller anticipated, she did not talk to anybody involved in the sales. And she admitted that not all post-sale expenditures relate to deferred maintenance. *Tr. at 527-32, 575, 621-22, 628-30, 632-34, 707-08, 723.*

96. In addition to her belief that it was wrong to use properties that sold with deed restrictions as a benchmark for an unrestricted property, Sokoloff criticized how Allen addressed, or in the case of the Muskegon Target failed to address, those restrictions.[5] While the assessment record indicates that the Target sold by covenant deed with no restrictions, she would not be surprised if there was a reference to an operating agreement somewhere in the roughly 20-page deed. As for the former Lowe's that sold to Blain's Farm & Fleet, Sokoloff did not believe Blain's and Lowe's were direct competitors; Blain's is more farm oriented than some of the home improvement stores. *Exs. R2-R3 at 9; Tr. at 529, 534-35, 571-76, 636, 638, 695, 698-704*

97. In any case, Sokoloff does not believe it is possible to adjust for deed restrictions due to the difficulty in quantifying how many potential buyers may have walked away. And given that deed restrictions vary in the types of uses they restrict and their duration, she found Allen's one-size-fits-all adjustment inappropriate. She acknowledged that she did not have

[5] In her report, Sokoloff criticized Allen for ignoring what she mischaracterized as a deed restriction for the former Value City from Orland Park, IL (2007 Sale 4) that limited the property's use as a discount store. *Ex. R2 at 9.* But that deed only restricted certain restaurant uses, which Sokoloff admitted would not have had a real-world impact on the sale price. *Ex. R 29; Tr. at 638.*

any data proving that deed restrictions affect sale prices, but she thought it was a reasonable assumption. *Exs. R2-R3 at 9; Tr. at 534-35, 574, 636, 695, 698-704.*

98. Sokoloff found other issues with Allen's comparable sales. She pointed to the lack of access other than by easement for the former Walmart from Bloomington, although she did not explain why that access was inferior to the subject property's access and acknowledged she had no data showing the extent to which easement-only access affected the property's sale price. Indeed, Kenney used the same sale and rated it as having similar access and visibility as the subject property. Sokoloff also criticized Allen for using sales from shopping centers because she viewed them as being dissimilar to the subject property, which was more like a freestanding store. *Exs. R1 at 80, R2 & R3 at 2, 9; Tr. at 529, 535-36, 627, 640-45.*

99. Sokoloff also had concerns about Allen's use of the former Target from Georgetown Twp. MI (2018 Sale 5), which sold for $2,850,000 in October 2013 and resold in August 2016 for $7,641,251. Allen did not disclose the second sale in his appraisal. Beyond saying that she thought the buyer from the first sale had renovated the building before reselling it, she did not address the circumstances surrounding the later sale either, including whether it was part of a sale-leaseback transaction as Allen testified. *Ex. R3 at 9-10; Tr. at 438-39, 709-12.*

100. In her report, Sokoloff pointed to a deed showing a different price for the former Walmart in Hammond than Allen had reported, although she acknowledged that the deed was a prior sale of land only. But the land-only sale price exceeded the improved property sale that Allen used. She questioned why that was the case if land was appreciating. She believed Allen should have investigated that question and provided more information in his report. *Ex. R3 at 9-10; Tr. at 573.*

101. Turning to Allen's income approach, Sokoloff criticized his decision to automatically disqualify build-to-suit leases on grounds that they necessarily reflected above-market rent. According to Sokoloff, the assumption that build-to-suit leases are above market is often

based on comparing them to older second- and third-generation leases for existing buildings that were negotiated long ago. To illustrate her point, Sokoloff determined an implied cap rate for each built-to-suit property Allen listed in his reports. According to Sokoloff, the average and median implied rates were bracketed by the rates reported in the investor surveys that Allen used. *Exs. R2-R3 at 11, Addenda A-B; Tr. at 547-48.*

102. To calculate the implied cap rates, Sokoloff divided each property's PGI (based on the build-to-suit lease rate) by its cost new, including land. But she used incorrect land sizes in some instances, including one property where she used the land area for an entire shopping center. And she used Allen's per-acre rates for the subject property rather than estimating the land value for the properties for which she was calculating implied cap rates, despite acknowledging that values might vary among the properties due to things like arterial and demographic attributes and rental rates. Even then, she got it wrong in all but one instance, using $170,000/acre when Allen concluded a rate of $185,000/acre. Sokoloff's replacement costs were similarly untethered to the buildings she was analyzing. Instead, she used Allen's MVS base cost for the subject building with no adjustments or multipliers other than for sprinklers. On re-direct examination, Sokoloff re-calculated costs using Allen's actual land values and came out with slightly different implied cap rates. But she did not address any of the other issues. *Ex. R2 at 11, Addendum B, R3 at 11, Addendum A; Tr. at 549-54, 580-81, 656-70, 725-26.*

103. Sokoloff testified that her implied-cap-rate analysis was intended only to show that build-to-suit rents can be adjusted and as a "back of an envelope" test of reasonableness, rather than to show that the build-to-suit leases in Allen's reports were at market rent. But her reports say otherwise: "I did a cost approach (fee simple) breakdown of the build-to-suit comparables to determine whether the rents are above market and warrant a property rights adjustment . . . . In other words, [the] leased fee contract rents . . . are not above market levels." *R2 at 11; see also Ex. R3 at 11; Tr. at 654, 658-59, 662-63, 666-67, 732.*

104. Sokoloff also criticized Allen's analysis of operating expenses. Allen took his expense data from shopping centers, which Sokoloff explained are not comparable to the subject

property. Big-box tenants in shopping centers often negotiate reduced CAM compared to the smaller tenants. Sokoloff believed that Allen should have used surveys from different publications, such as one from the Boulder Group that he used elsewhere in his appraisal, which would have provided data that was more comparable. *Exs. R2-R3 at 12; Tr. at 556-57, 582, 676.*

105. Sokoloff believed that Allen determined a "go dark" or liquidation value, which inappropriately estimated risk, including the risk of vacancy. The subject property was 100% occupied. According to Sokoloff, the required fee-simple assumption that a property is leased at market simply allows an appraiser to apply the income approach using market rents. It does not require an appraiser to assume an occupied property is vacant. Sokoloff therefore believed that Allen wrongly deducted lease-up and holding costs in his analyses under the income and cost approaches. And his estimate of a nine-month holding period was entirely speculative. In any case, if lease-up and holding costs are applied, Sokoloff believed that an additional vacancy allowance was inappropriate. She would not have ascribed any vacancy to the store in 2007, when it was a newly built, thriving store. *Exs. R2-R3 at 6, 9, 13; Tr. at 555, 558-61, 576-77, 581-82, 648.*

106. Turning to the cost approach, Sokoloff primarily criticized Allen's findings of obsolescence. Allen pointed to supposed deficiencies in things like the store's design and layout, even though big-box stores are typically occupied by the original tenant for many years. According to Sokoloff, the subject property is a prototype that continues to be built in the same size and layout. In her view, that shows the store is not functionally obsolete for big-box retail use. As for items tailored to Target, THE APPRAISAL OF REAL ESTATE explains that replacement costs do not include allotments for super-adequacies. Using replacement costs, as Allen did, therefore eliminates some forms of functional obsolescence. Just because a second-generation user needs to retrofit the property does not mean it suffers from obsolescence. Sokoloff also took issue with Allen not adjusting for post-sale expenditures in his sales-comparison analysis while pointing to those same types of expenditures as functional obsolescence under the cost approach. *Exs. R2-R3 at 7, 14-15; Tr. at 584-85, 687.*

107. Sokoloff was equally critical of how Allen addressed external obsolescence. Allen's table comparing build-to-suit rents to rents from leases of existing buildings showed only that new buildings rent for more than buildings that are 20 years old or older. As for Allen's extraction of obsolescence from sales of other big-box properties, he did not explain the circumstances surrounding the sales or whether they had deed restrictions that may have affected the sale prices. There is no way to determine whether the lower sale prices stemmed from obsolescence rather than from deed restrictions, failed locations, or other unexplained factors. *Exs. R2-R3 at 15; Tr. at 562-64, 685-86.*

3. Kenney's appraisal

108. The Assessor hired Mark Kenney, an MAI appraiser with additional designations as a Senior Residential Appraiser and Member of the Royal Institute of Chartered Surveyors, to appraise the subject property. Kenney has appraised various types of properties over his long career, including big boxes, which he described as being generally within the range of 50,000 square feet or more. He certified that he performed his appraisal in conformity with USPAP. *Ex. R1 at 125*; *Tr. at 735-38.*

a. Valuation premise and highest-and-best use

109. Like Allen, Kenney set out to estimate the market-value-in-use of the fee-simple interest in the property. He explained that in the appraisal industry, the fee-simple estate is often defined as "absolute ownership unencumbered by any interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat." Based on recent papers proposing to re-examine that definition, Kenney appraised the fee-simple estate "based on the premise that the property is leased at market rates and terms and is at stabilized occupancy on the date of value." Kenney further looked to guidance from the Indiana Tax Court, which he interpreted as supporting the use of "dark store" comparable sales as the appropriate basis for estimating the market value-in-use of the fee-simple estate, although he elsewhere cited to an article from the journal REAL ESTATE ISSUES indicating that an appraiser should not use "second-generation, distressed or

'dark' transactions" as comparable properties for first-generation space. *Ex. R1 at 19-21, 73; Tr. at 778-79, 934-35.*

110. Kenney concluded that the property's highest-and-best use as improved was continued use as a discount department store or similar big-box use, which he believed was a general retail use consistent with the Tax Court's Decision in *Howard Cnty. Ass'r v. Kohl's Indiana LP*, 57 N.E.2d 913 (Ind. Tax Ct. 2016). He emphasized that its highest-and-best use was not for liquidation by the current owner, redevelopment for other uses, or partitioning and renovation for multi-tenant use. Based on the property's current use, Kenney believed that its property's market value and market value-in-use were the same. *Ex. R1 at v., 63*; *Tr. at 748, 772-73.*

b. Area analysis and inspection of property

111. In his area analysis, swaths of which were taken directly from a Wikipedia article without attribution, Kenney noted that Lake County's 2015 median household income ranked 13th out of 14 counties in the Chicago MSA but ranked fourth in terms of retail sales. He attributed that to the ability to draw regional shoppers from outside the county. He also pointed to the fact that St. John is one of Indiana's most sought-after places to live and continues to thrive with retail corridors, light industry, great schools, and an active commercial district. Its population increased 26.6% and annual household income was projected to grow from 2020-2025. Investors, developers, and retailers like population and income growth. The presence of other retailers in the neighborhood was also attractive. The subject property's location along U.S. 41 and proximity to U.S. 30 made it highly accessible to regional traffic, and Kenney viewed nearby traffic counts as strong. He concluded that the property was in a very good retail location for the foreseeable future. *Exs. R1 at 28-47, PI-1; Tr. at 754-57, 762-66, 781, 915-27.*

112. Kenney inspected the property on July 30, 2020. He was accompanied by Target's store director and a tax analyst with the law firm representing Target. Based on their

representations, Kenney made a confusingly worded extraordinary assumption about the property's condition:

> According to on-site personnel, there were no major changes to the subject property subsequent to the dates of value. Therefore, the physical features and condition are assumed to be as represented by the assessor and on-site personnel, and to have been similar for all the pre-renovation value dates. Similarly, physical features and condition for all post-renovation value date of 2017 were assumed to be the same as on the inspection date. If these assumptions are found to be untrue, then the market values herein may be impacted.

Ex. R1 at vi, 25.

c. Valuation approaches

113. With those preliminary analyses in mind, Kenney turned to valuation. He developed all three generally recognized approaches, beginning with the sales-comparison approach.

(1) Sales-comparison approach

i. Selection of sales

114. Kenney identified 10 sales, the first four of which he used for 2007 and the last six of which he used for 2018:

	Subject	**Sale 1**	**Sale 2**	**Sale 3**	**Sale 4**	**Sale 5**
		Walmart Crystal Lake IL	Mervyn's Lynwood, WA	Walmart Bloomington, IN	Kmart Chicago, IL	Sam's Indianapolis, IN
Price		$5,800,000	$7,607,500	$4,950,000	$6,800,000	$8,400,000
Date		Jan-08	Mar-07	Oct-06	Oct-05	Dec-18
Unit price		$63.65	$98.80	$39.28	$62.13	$62.04
Bldg. size		91,124 sf	77,000 sf	126,004 sf	109,441sf	135,393 sf
Year built		1990	1986	1994	1980	1992
Land size		10.16 acres	6.88 acres	14.29 acres	6.63 acres	18.51 acres
2010 Cnty. pop.	496,095	308,760	713,296	137,959	5,195,026	903,389
2017 Cnty. Median HH income	$52,559	$82,230	$78,020	$45,689	$59,426	$44,869
Av. HH income one mile radius	$115,362	$73,066	$90,315	$45,386	$53,275	$63,633
2012 retail sales per capita	$15,184	$11,892	$12,456	$11,781	$11,998	$15,693

Total traffic	29,161	31,870	15,840	29,725	21,450	42,625
Near mall	No	No	Yes	No	No	No
Near interstate intersection	No	Yes	Yes	Yes	Yes	Yes

	Sale 6	**Sale 7**	**Sale 8**	**Sale 9**	**Sale 10**
	Vacant Naperville, IL	Kmart Hammond, IN	Sam's Farmington Hills, MI	Kittles Indianapolis, IN	Walmart & Sam's Rolling Meadows, IL
Price	$4,750,000	$6,750,000	$4,550,000	$10,000,000	$24,300,000
Date	Apr-17	Dec-16	Apr-16	Mar-16	Sep-15
Unit price	$53.74	$61.64	$42.86	$67.64	$93.53
Bldg. area	88,382 sf	109,500 sf	106,167 sf	147,835 sf	259,816 sf
Year built	1987	1968	1989	1973	2000
Land area	8 acres	8.06 acres	9.77 acres	9.22 acres	15.59 acres
2010 Cnty. pop.	916,771	496,095	1,202,384	903,389	5,195,026
2017 Median HH income	$84,442	$52,559	$73,369	$44,869	$59,426
Av. HH income one mile radius	$131,915	$75,016	$89,598	$76,533	$93,950
2012 retail sales per capita	$19,137	$15,184	$17,111	$15,693	$11,998
Total traffic	12,400	47,652	29,725	55,852	58,800
Near mall	Yes	No	Yes	Yes	Yes
Near interstate intersection	Yes	Yes	Yes	Yes	Yes

Ex. R1 at 74-83.

115. Kenney used CoStar as the source for most of his data, although he drew from other sources as well. He did not speak to any of the parties to the sales or inspect the properties. He reported Sale 7, a former Kmart from Hammond, as having only 109,500 square feet of building area. A CoStar report from his workfile, however, repeatedly listed the property as having 149,500 square feet, although it also made one reference to a 110,000 square foot structure. But CoStar reported a unit price $34.78/sf based on a total sale price of $5.2 million, which is consistent with the property having 149,500 square feet. Kenney, by contrast, reported the sale price as $6.75 million ($61.64/sf). He testified that he must have gotten his information from somewhere else, although he did not say where. *Exs. R1 at 74-83, PI-5; Tr. at 788, 794-95, 1026, 1034, 1036-37, 1063-67, 1230.*

116. Most of the sales were bought for owner occupancy or single-tenant use. But the buyer of Sale 8, a former Sam's Club from Farmington Hills, MI, converted the building to multi-tenant use. Similarly, Sale 6 was bought for development as an owner-occupied grocery store with additional retail uses, and the developer-buyer spent $10 million to renovate the property. *Ex. R1 at 74-79; Tr. at 809.*

117. Half of the buildings were completely vacant at the time of the sales. Sale 6 had been vacant for 15 years and was in fair condition. Kenney's report indicates that four properties—the Hammond Kmart, the Farmington Hills Sam's Club, the Kittle's from Indianapolis (Sale 9), and a property from Rolling Meadows IL (Sale 10)—were partially leased at the time of sale. The Kittle's store was bought by the existing tenant, which continued to operate its furniture store after the purchase, and Kenney presumed the sale price included the tenant buying out its lease. Approximately 110,000 square feet of the Hammond Kmart was occupied by three different tenants. The Rolling Meadows property included two different buildings: a Walmart and a former Sam's Club. At the time of sale, the larger of the two buildings was leased to Walmart, a strong credit tenant, with 10 years remaining on the lease plus several renewal options. Although CoStar allocated the sale price between the two stores, the sales occurred at the same time and Kenney considered it as a single deal for the two buildings. While Kenney did not indicate so in his report, a fifth property was also fully leased on its sale date: the former Kmart from Chicago (Sale 4). *Ex. R1 at 74-79; Ex. PI-4; Tr. at 811-14, 1044-45, 1067, 1080-84, 1090-92.*

ii. Adjustments

118. Turning to adjustments, Kenney said that he qualitatively analyzed various elements of comparison and bracketed the subject property between superior and inferior properties. While he expressly ranked location characteristics qualitatively, he ultimately quantified a location adjustment as well as adjustments for all his other elements of comparison. *See Ex. R1 at 70-80.*

119. Kenney applied a -20% "Ownership Interest" adjustment to the Rolling Meadows sale to account for the Walmart lease. But he did not adjust the sale prices for any of the other leased properties. Nor did he explain how he quantified his ownership-interest adjustment other than to say that he used his subjective judgment and that the amount of such an adjustment depends on the circumstances, such as the rent at the time of sale. Although Kenney knew what the rent was for each property, he did not have the actual leases, and he agreed that it is difficult to know whether a property's rent is at market or not without knowing all the lease terms. When Kenney appraised two other Target stores in Lake County, he made the same -20% adjustment for other leased-fee sales. *Ex. R1 at 80-83; Tr. at 801, 803, 805, 1044-52, 1084.*

120. He next applied adjustments ranging from -3% to 7% for differences in market conditions. Kenney relied on CoStar to identify trends in market conditions, but the percentages were his professional opinion. *Ex. R1 at 80-83; Tr. at 801, 803, 805.*

121. He assigned each property a rating of superior (+), inferior (-) or equal (=) for each relevant demographic characteristic, which he then translated to an overall location adjustment ranging from -10% to 15% for the various sales. Kenney acknowledged that his population and per-capita retail-sales data was countywide even though a five-mile radius is likely far more reflective of local market economics. In any case, his adjustments were simply subjective judgments about the relative strengths of the locations. *Ex. R1 at 80-83; Tr. at 805, 1106-09.*

122. Kenney also considered, and in some instances made percentage adjustments for, building size, age and condition, construction quality, access/visibility, parking, and building-coverage ratio. For his age and condition adjustment, Kenney compared the properties' effective ages. He estimated the subject property's effective age at 10 years for the 2018 valuation date, even though it was 12 years old at the time. That is because he rated the store's condition as "very good," a rating that he largely based on his inspection of the property in 2020. Kenney explained that "these stores" are usually very well maintained, which he considered to be an improvement over routine maintenance. He was not aware of

any significant investment in the subject property between 2006 and 2018 beyond ongoing maintenance, but he said that such maintenance can nonetheless lower a property's effective age. *Ex. R1 at 56, 80-83; Tr. at 768-69, 896, 898, 996-98.*

123. Kenney, however, acknowledged that the subject property was remodeled in 2019, between the last valuation date and his inspection. He later backpedaled, pointing to the statement in his report that Target's store director said there had been no major changes to the property since the valuation date. Of course, that same passage confusingly refers to "a post-renovation value date of 2017," and mirrors a corresponding passage in his appraisal report for the Merrillville Target store verbatim. He acknowledged the possibility that he had inadvertently copied the passage from the Merrillville report. We find that is what happened, and that the subject property was remodeled between the 2018 valuation date and Kenney's inspection. *Ex. R1 at 56, 80-83; Tr. at 768-69, 896, 898, 996-98, 1215-16, 1228.*

124. Kenney reported most of his comparable sales—including a former Mervyn's department store from Lynwood, WA (Sale 2)—as being in average condition, and he therefore treated their actual and effective ages as the same. A property detail report from his workfile, however, listed the Mervyn's as being in excellent condition. Kenney agreed that he based his condition rating at least partly on that detail report. Nonetheless, he testified that he disagreed with the report's rating because the building was 24 years old, and the buyer redeveloped it after the sale. Similarly, although Kenney treated the former Kmart from Hammond as being 48 years old at the time of its sale in 2016, a property record card for that property listed used 2005 for its effective age, which the card indicates was based on building permits from 2014 and 2015. That would have made its effective age 11 years, comparable to Kenney's effective-age rating for the subject property. Kenney acknowledged that he relies on public records, like property record cards, for information about physical characteristics. A similar discrepancy arose regarding the Kittle's from Indianapolis, which was renovated in 1999, but which Kenney treated as being 43 years old on the date of its sale in 2016. *Ex. R1 at 74-83; Ex. PI-3; Ex. PI-6; Tr. at 1037-41, 1069-72, 1085-86, 1222.*

125. In any case, Kenney did not explain how he quantified his age adjustments and admitted that he had no support for their magnitude. He also made what he acknowledged appear to be inconsistent adjustments for size differences. *Ex. R1 at 74-83; Tr. at 1103-06, 1060-62.*

126. For construction quality, the only feature Kenney noted in his report was how the other buildings compared to the subject building's masonry and steel construction. At hearing, Kenney testified that he did not base his adjustment solely on that characteristic. But he did not identify what other characteristics he considered, aside from referencing "interior finishings" for the former Mervyns, which he did not inspect, and for which he made no adjustment. All the comparable buildings were masonry and steel. He applied a 10% adjustment to three sales but did not adjust the others. And while he made several upward adjustments between 5% and 15% for differences in building-coverage ratios, he acknowledged that he based those adjustments solely on his judgment; he did not have any specific objectively verifiable information supporting those adjustments. *Ex. R1 at 74-79, Tr. at 1031-35, 1040-42, 1221-22, 1230.*

127. After adjustment, Kenney settled on values close to the median and average of his adjusted sale prices:

Year	**Range/sf**	**Median**	**Average**	**Concluded**	**Rounded Value**
2007	$55.82 - $93.86	$79.17	$77.00	$78.00	$9,700,000
2018	$51.75 - $88.07	$72.70	$71.79	$72.00	$9,000,000

Ex. R1 at 80-83.

(2) Income approach

128. Like Allen, Kenney began his analysis under the income approach by identifying leases of comparable spaces from which to estimate market rent. He identified 11 leases, the first five of which he used for his 2007 valuation and the last six of which he used for 2018:

	Lease 1	Lease 2	Lease 3	Lease 4	Lease 5	Lease 6
	Gordman's Coralville, IA	Kohl's Columbia, SC	Goodwill Indianapolis, IN	Boston Store Regency Mall Racine, WI	Gander Mtn. Southlake Mall Merrillville, IN	Kohl's Holland, MI
Start	May-08	2007	Nov-06	Mar-06	Feb-05	Aug-16
Term	10 yrs.	20 yrs.	5 yrs.	15 yrs.	10 yrs.	10 yrs.
Rent/sf	$9.00	$9.95	$4.92	$10.71	$7.42	$7.22
Bldg. area	50,000 sf	89,706 sf	96,508 sf	101,612 sf	39,996 sf	76,402 sf
Year built/ Renovated	New	2007	1966	1981 ('97)	1989	1994

	Lease 7	Lease 8	Lease 9	Lease 10	Lease 11
	Lowe's Benton Harbor, MI	Art Van Furniture Batvia, IL	Best Buy Merrillville, IN	Michael's Clarksville, IN	The Room Place Merrillville, IN
Start	Nov-14	Feb-14	2013	Apr-13	Dec-11
Term	20 yrs.	10 yrs.	10 yrs.	10 yrs.	10 yrs.
Rent/sf	$5.80	$8.50	$8.49	$9.56	$9.75
Bldg. area	125,357 sf	42,500 sf	44,997 sf	21,811 sf	42,375 sf
Year built/ Renovated	1994	2006	1997	2006	1995

Ex. R1 at 86-88; *Tr. at 828.*

129. Kenney agreed that atypical lease terms can affect whether rent is at market rates. He did not read any of the leases for his comparable spaces, although he had an abstract for the South Carolina Gander Mountain (Lease 5). He acknowledged that Gander Mountain originally leased that space in 1994 and that the lease he used was a renewal that was not exposed to the market. The same was true for three other renewals: the Kohl's from Holland, MI (Lease 6), the Lowe's from Benton Harbor, MI (Lease 7), and the Best Buy from Merrillville (Lease 9). The Lowe's lease was build-to-suit, as was the lease for the South Carolina Kohl's. A document from Kenney's workfile indicates that market rent for the Boston Store from Racine, WI (Lease 4) was over $6.00/sf less than the contract rent that Kenney used. He did not independently analyze the market rent for that space. *Tr. at 1120-24, 1127-31, 1134-38, 1148-49.*

130. The average of Kenney's unadjusted rents for 2007 was $8.40/sf and the average weighted by size was $8.48/sf. In analyzing the leases, Kenney claimed to have considered "various qualitative adjustments" and explained that, while all the comparable buildings were smaller than the subject property, they were all from the Midwest and all but one of the leases were triple net. He concluded $7.00/sf for the subject property. He recognized that his conclusion was below the average, but he explained that he considered downward qualitative adjustments that applied to market conditions and building size and "kind of ma[de] an overall adjustment to the average." He also indicated that he gave rents that were closer to the valuation date greater consideration. *Ex. R1 at 89; Tr. at 824, 827.*

131. For 2018, the average and weighted average comparable rents were $8.17/sf and $7.33/sf, respectively. Kenney noted that the building sizes bracketed the subject building's size, but that Leases 8-10 were for considerably smaller buildings and warranted substantial downward adjustment. After "considering the differences between the comparable rents and the subject property," Kenney concluded market rent of $6.50 for the subject property. *Ex. R1 at 89; Tr. at 831.*

132. For both years, Kenney claimed that he applied an overall qualitative adjustment, and his report at least contains information about various attributes of the properties. But he admitted that he had no market evidence to support the amount of his overall qualitative adjustments. *Ex. R1 at 89; Tr. at 1141.*

133. Unlike Allen, Kenney did not add any reimbursement income to his market rent, choosing instead to account for the landlord's responsibility of tenant-borne expenses during periods of vacancy in his expense analysis. His PGI therefore consisted solely of market rent. Like Allen, Kenney adjusted his PGI to account for vacancy and collection loss. To estimate that loss, Kenney looked to CoStar data for power centers and other retail property types in the Northwest Indiana submarket. He also looked at vacancy assumptions from Korpacz/PWC, which indicated that most investors used a low vacancy and credit loss

allowance in their pricing models. He settled on a rate of 6% (5% vacancy and 1% credit loss) for both years. *Ex. R1 at 90-91; Tr. at 834.*

134. Kenney projected the same management fee as Allen—3% of EGI. Unlike Allen, Kenney did not include leasing commissions as an expense either above or below the line. For replacement reserves, he considered investor surveys at or near the valuation dates. As explained above, he also included tenant-borne expenses during periods of vacancy, which he alternately labeled "other operating expenses," and "expenses on vacancy." But Kenney did not explain what those expenses were or how he arrived at his numbers. *Ex. R1 at 92-94; Tr. at 836, 838-39, 842-43.*

135. He used the band-of-investment technique to determine his overall capitalization rate. He began with the debt component, or mortgage constant, which consisted of two metrics: a mortgage interest rate and an amortization period. For the interest rate, Kenney asserted that a typical approach to establishing a commercial mortgage rate for this class of property is to add between 1% and 3% to the current rate for 10-year treasury notes, because most commercial mortgages have a 10-year call or balloon provision. But he acknowledged that he did not have any support for that statement. He further acknowledged that bond rates do not relate to property investment. While Kenney said that he also considered typical mortgage interest rates and corporate bond rates, he ultimately simply added 2% to the treasury rates as a risk premium. He knew of no real-world loans for big-box properties having been based on adding a 2% risk premium to the rate for a 10-year treasury note. He used the same 2% premium when he appraised Southlake Mall, a different property type with a different risk profile than the subject property. *Ex. R1 at 94-99; Tr. at 845-47, 1168, 1171, 1173-78, 1180-81, 1191-92, 1197-98.*

136. Kenney then turned to various tables from a lending industry publication, the American Council of Life Insurance ("ACLI"), to determine both his equity-dividend component and loan-to-value ratio. Each table had information on loan-to-value ratios, mortgage constants, and capitalization rates. From that information, he mathematically derived an equity-dividend rate. Only one table was specific to the Chicago MSA, although there was

no indication as to where in the MSA the 16 sales came from. And the loans from that table were not restricted to retail. That was true of another table as well. Of the tables that reported only data for retail loans, the loans may or may not have included big-box properties. Nothing in the tables indicated whether the properties had comparable risk profiles as the subject property. Kenney took the median and average equity-dividend rates that he extracted from the ACLI tables and added a 1% risk premium for property type and market conditions to arrive at a 7.5% equity-dividend rate for each year. *Ex. R1 at 94-95, 99-101; Tr. at 849-52; 1182-90.*

137. Based on the equity and debt components he selected, Kenney settled on overall rates of 7.55% for 2007 and 6.65% for 2018. He compared those calculated rates to rates from Korpacz/PWC investor surveys for power centers, which showed averages of 7.14% for 4th quarter 2006 and 6.73% for 4th quarter 2017. He acknowledged that he did not know what questions were asked in the surveys. He further acknowledged that the surveys were for unidentified locations nationally and that he did not know how the risk factors for the properties compared to the subject property. Kenney also compared his calculated rates to rates derived from several sales, concluding that his overall rates were within the ranges indicated by those sales. But he did not review the leases or abstracts for any of those sales, and he did not know whether the leases were at market rent. In any case, he incorrectly included a capitalization rate from a sale of a former Mervyn's in Arizona, which he acknowledged did not really have a capitalization rate. *Ex. R1 at 94-95, 99-101, 104-06; Tr. at 849-53, 856-57, 1182, 1188-90, 1197-1208.*

138. Like Allen, Kenney loaded his overall rates with the owner's share of the property tax rate and divided those (rounded) loaded rates into his NOI for each year to arrive at the following values:

2007		**2018**	
PGI	**$871,318**	**PGI**	**$809,081**
Vacancy	.94	Vacancy	.94
EGI	**$819,039**	**EGI**	**$760,356**
Management	($24,571) (3%)	Management	($22,816) (3%)
Expenses on Vacancy	($9,336) ($1.25/sf)	Expenses on Vacancy	($9,896) ($1.33/sf)
Repl. Reserves	($31,119) ($.25/sf)	Repl. Reserves	($31,119) ($.25/sf)
NOI	**$754,104**	**NOI**	**$696,706**
Cap Rate	÷.077	Cap Rate	÷.068
Rounded Value	**$9,800,000**	**Rounded Value**	**$10,200,000**

Ex. R1 at 94-95, 106.

(3) Cost approach

139. Like Allen, Kenney examined sales of comparable sites to determine the value of the subject property's land. When choosing land sales, he tries to find sites located as close to the property being appraised as possible, which can be difficult when the area is already well developed with retail. He used a total of eight sales—four for each valuation date. All the sales for 2007 were located near the subject property, including one that was developed into the Fifth Third bank at St. John Marketplace and another that was developed for the Aldi grocery store just south of the subject property. For 2018, one sale was from Lake County while the other three were from Cook County, Illinois. *Ex. R1 at 107-14; Tr at 860-62; 866-70.*

140. For 2007, the sites ranged from .95 acres to 2.39 acres. They sold between November 2006 and November 2008 for unadjusted prices ranging from $328,571/acre to $842,105/acre. In his report, Kenney explained that "[b]ased on the characteristics identified and the qualitative considerations given to the comparable sales for their dissimilarities with the subject property," he concluded a value of $250,000/acre. At hearing, Kenney testified that he recognized the size disparities, acknowledging that none of the sites was large enough to support a big-box store like the subject property. But he said he adjusted for that. Because the sites were all in good locations, he did not need to adjust for that factor. Kenney

acknowledged that he did not discuss any market evidence that would support, nor did he otherwise explain, the magnitude of the difference between his conclusion and the per-acre prices for his comparable sales. *Ex. R1 at 114*; *Tr. at 862, 871-72, 957, 962-63.*

141. Although Kenney agreed that the 2005 sale of the subject site was valid for determining its value for 2007, he did not know about that sale when he prepared his appraisal report. According to Kenney, it was not in the assessment record, did not come up in CoStar's published record service, and was not provided to him through the discovery process. Yet his own report's section on the subject property's ownership and sales history references Target receiving a deed to the site on January 13, 2005. In any case, Kenney said he was going to do his own land analysis anyway. He was comfortable with his value and testified that the sale would not have changed his opinion. *R1 at 12; Tr. at 864-65*, *958-59.*

142. For 2018, Kenney's comparable sites ranged from 5.7 to 9.6 acres. They sold for unadjusted prices ranging from 366,492/acre to $830,499/acre. In September 2014, the site from one of his land sales sold for $2.2 million less than the sale price he used, and he was not aware of anything about the earlier sale that would make it unreliable. In concluding to a value of $300,000/acre, Kenney offered an identical explanation to the one he offered for 2007. He also testified that he again took size into account. But he also had to account for location, and one sale was in a much better location, diagonally across from the Kohl's at Southlake Mall. As with 2007, Kenney did not offer any market evidence to support, nor did he otherwise explain, the magnitude of the difference between his conclusion and the per-acre prices for his comparable sales. *Ex. R1 at 108-10, 114*; *Tr. at 862, 871-72, 969-75*.

143. To calculate replacement cost, Kenney used the same building model and base costs from MVS as Allen, although he used different multipliers to adjust those costs. But Kenney estimated higher soft costs (10% of hard costs as opposed to 5%). Kenney admitted that his quantification of soft costs was simply his judgment, which was unsupported by any market evidence. *Ex. R1 at 116-17; Tr. at 874-76, 981-82.*

144. Unlike Allen, Kenney also included entrepreneurial profit. According to Kenney, while entrepreneurial profit may either eventually be realized or be depreciated away on sale, it nevertheless is the motivation for development and is therefore relevant to the cost approach. Kenney asserted that typical margins range from 10% to 30% of total hard and soft costs and could be higher on successful projects. "[C]onsidering this range of profit, and the profit potential involved with discount department store ownership and development," he applied 20%. But Kenney admitted that he did not review, consider, or present in his report any transactions, market data, or other evidence showing that big-box properties typically experience that range of entrepreneurial profit, and that he did not have any support for the point within that range that he chose. *Ex. R1 at 116-17; Tr. at 874-76; 984-91.*

145. Kenney used the same basic age-life methodology to estimate physical depreciation as Allen, including the same economic life of 35 years for the building. Unlike Allen, Kenney appears to have also used 35 years as the economic life for the site improvements as well, applying the same depreciation percentage to the total improvement cost. More importantly, he used the same reduced effective age (10 yrs.) for the building in determining its remaining economic life in his 2018 analysis that he used in determining age/condition adjustments in his sales-comparison approach. Those choices led him to estimate substantially less physical depreciation than Allen did. *Ex. R1 at 117-21.*

146. Kenney also departed from Allen in finding that the improvements did not suffer from any functional obsolescence. In a single sentence of his report, which reflects all the work he did in determining whether there was functional obsolescence, Kenney indicated that he based his conclusion on the building's single-story design, proportion of finished space, interior layout, receiving capacity, and quality interior finish. He also testified that, according to MVS, an age-life estimate of depreciation accounts for normal functional obsolescence. *Ex. R1 at 119; Tr. at 770, 881, 999.*

147. As for external obsolescence, Kenney found that the property's excellent location with favorable demographics, strong traffic counts, and access to a regional transportation

system contributed to its competitive market position. But he also explained that trends in discount store competition and industry consolidation stemming from changing consumer trends and increased e-commerce had hurt the market for certain big-box formats, which caused store closings, especially after 2018. Considering market conditions for retail space as of both valuation dates, Target's longtime occupancy of the space, and the property's locational aspects, Kenney concluded that a "modest" deduction of 10% was appropriate for both valuation dates. He based that estimate solely on his judgment rather than on any specific market data. While he acknowledged that the appraisal profession recognizes several ways to quantify obsolescence, he did not apply any of those methods. *Ex. R1 at 119; Tr. at 770, 1003-05.*

148. For the reasons already discussed, Kenney disagreed that leasing commissions or holding costs should be subtracted. He ended up with the following values under the cost approach:

2007		**2018**	
Replacement Cost	$10,073,781	Replacement Cost	$13,671,991
Physical Depreciation	($287,822)	Physical Depreciation	($3,906,283)
Obsolescence	($1,007,378)	Obsolescence	($1,367,199)
Depreciated Cost	$8,788,581	Depreciated Cost	$8,398,509
Land	$3,300,000	Land	$4,000,000
Rounded Value	**$12,100,000**	**Rounded Value**	**$12,400,000**

Ex. R1 at 119-22.

149. Those values were substantially higher than his conclusions under either of the other two approaches. Yet Kenney acknowledged that if a property had a depreciated cost of $60/sf, but comparable properties sold for $40/sf, the depreciated cost would not reflect market value because it would not account for obsolescence. He likewise acknowledged that if a properly conducted income approach yielded a lower value than depreciated cost, the difference would likely be a measure of some form of obsolescence. *Tr. at 945-47.*

d. Reconciliation

150. For 2007, Kenney gave the greatest weight (60%) to the cost approach because the improvements were only one year old, although he acknowledged that, outside of build-to-suit transactions, he did not know of any sales where the purchase price was just based on cost. He weighted the other two approaches at 20% each. For 2018, he gave equal weight to all three approaches. He ended up with the following values:

Date	Sales	Income	Cost	Concluded Value
March 1, 2007	$9,700,000	$9,800,000	$12,100,000	$11,200,000
January 1, 2018	$9,000,000	$10,200,000	$12,400,000	$10,500,000

Ex. R1 at 122-23; Tr. at 774, 886, 951-54.

151. Finally, Kenney chose a different source than Allen for trending his conclusion for 2007 to a value as of January 1, 2006, opting for the Moody's/Real Capital Analytics Commercial Property Price Index instead of the CPI. Kenney believed that an index of commercial real estate prices was more relevant than the CPI, which considers a basket of goods one buys at the supermarket. He ended up with a value of $10,600,000 as of January 1, 2006. *Ex. R1 at 123-24; Tr. at 887-88.*

V. Conclusions of Law and Analysis

A. Target had the burden of proof for 2007 and 2018, and determining the value for the intervening years is a ministerial task.

152. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Various statutes create an exception to that rule. The most cited statute, Indiana Code § 6-1.1-15-17.2, assigns the burden to the assessor in two circumstances: where the assessment under appeal represents an increase of more than 5% over the level last determined for the prior year's assessment, or where the assessment under appeal is above the level determined in a taxpayer's successful appeal of the prior year's assessment, regardless of by how much. I.C. § 6-1.1-15-17.2(a)-(b), (d). The subject property's assessment did not increase by more than 5% between 2006 and 2007, and Target did not

argue that the Assessor had the burden. *See 2007 Form 131 pet.; see also, Tr. at 8-9.* We therefore find that Target had the burden for its 2007 appeal.

153. Assigning the burden in the succeeding years would normally depend on our determination for each previous year's appeal, because a successful appeal in one year can operate to shift the burden for the next year. Given the parties' stipulation, however, we are only determining a value for the 2007 and 2018 appeals: setting values for the intervening years is a ministerial task based on the parties' agreed mathematical formula. So the only other year for which we need to assign the burden of proof is 2018. Under the parties' formula, which makes each intervening year's value dependent on our findings for both 2007 and 2018, Target cannot have successfully appealed its 2017 assessment until we have first decided 2018. Thus, the relevant question is whether the 2018 assessment increased by more than 5% over the value originally determined by the Assessor for 2017. It did not, and Target therefore had the burden of proof for its 2018 appeal.

B. Valuation Standard and Relevant Law

154. In Indiana, assessments are based on a property's "true tax value." True tax value does not mean fair market value. I.C. § 6-1.1-31-6(c). Nor does it mean the value of the property to the user. I.C. § 6.1-1.1-31-6(e). Subject to these somewhat tautological directives, the legislature relies on the Indiana Department of Local Government Finance ("DLGF") to define true tax value. I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as: "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.[6] The Manual offers further guidance, defining "market value-in-use," "value in use," and "use value," as being synonymous. MANUAL at 6-8. But it also states that a property's true tax value will equal its value-in-exchange when properties are frequently exchanged and used for the same purposes by the buyer and seller. MANUAL at

[6] The 2002 Manual, which applied to the 2007 assessment date, contained an almost identical definition. *See* 2002 REAL PROPERTY ASSESSMENT MANUAL at 2. The definition from the 2021 Real Property Assessment Manual, which applies to assessment dates after December 31, 2020, mirrors those definitions. *See* 52 IAC 2.4-1-1 (filed November 2, 2020); 50 IAC 2.4-1-2 (filed November 2, 2020); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

2. Thus, 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 that still maintains the notion of property wealth gained through utility and therefore recognizes situations where true tax value will differ from market value.

155. Connected with these concepts is the question of what property interest should be valued for ad valorem taxation, something the parties and their experts talked about at length. The Tax Court has spoken to this question, both within and outside the context of valuing big-box stores. It has repeatedly stressed that only real property interests may be valued. *See, e.g., Stinson v. Trimas Fasteners*, 923 N.E.2d 496, 501 (Ind. Tax Ct. 2010) (explaining that assessors cannot assess things other than real property rights and that market value-in-use is "the value of a property *for* its use, not the value *of* its use") (emphasis in original). In that vein, the Court explained that because sale-leasebacks are often financing transactions, appraisers must exercise caution when using rental data from those transactions and must either (1) adjust the rent to remove any non-taxable property values that are included, or (2) offer evidence showing that the rent reflects the market value of the real estate alone. *Southlake Ind., LLC (Kohl's) v. Lake Cnty. Ass'r*, 135 N.E.3d 692, 697 (Ind. Tax Ct. 2019) (*citing Grant Cnty. Ass'r v. Kerasotes Showplace Theatres*, 955 N.E.2d 876, 882)). The Court extended those requirements to the use of build-to-suit leases. *Id.*

156. Similarly, the Tax Court has long held that sales of vacant stores to secondary users may be employed to determine the value of a big-box store. *Meijer Stores Ltd. P'ship v. Smith*, 926 N.E.2d 1134, 1137 (Ind. Tax Ct. 2010). In addressing the disparity between construction cost and resale value in that case, the Court noted an expert's conclusion that "the majority of the obsolescence in the big-box retail market occurs immediately" and that big-box stores therefore may experience "an immediate loss in value." *Id.* at 1138. More recently, the Court wrote that it 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 improvement to the land) and not to intangible business value,

investment value, or the value of contractual rights, the use of vacant comparables can be appropriate.

Meijer Stores Ltd. P'ship v. Boone Cnty. Assessor, 162 N.E.3d 26, 33 (Ind Tax Ct. 2020).

157. The parties also point to previous decisions we have issued involving the same experts applying the same or similar methodologies, and in a few instances, using some of the same comparable sales or leases. While those decisions may be relevant, we "evaluate[] each property's value based on its specific facts and circumstances." *CVS Corp. v. Monroe Cnty. Ass'r*, 83 N.E.3d 1286, 1293 (Ind. Tax Ct. 2017). We therefore are "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.*

C. Neither appraisal is probative of the property's value for 2007, but Allen's valuation opinion is probative of its value for 2018.

158. Each party has argued that there are various flaws in the opposing expert's opinions. To a certain extent, we agree. This is normal. Appraisal is more art than science. *See Monroe Cnty. Ass'r v. SCP* 2007-C-26-002, LLC, 62 N.E.3d 478, 482 (Ind. Tax Ct. 2016) ("valuation of property is an opinion and not an exact science."). Rare indeed is the expert whose opinion emerges unscathed from rigorous cross-examination. Perfect data seldom exists, and the notion of generally accepted appraisal practice can be nebulous. Qualified opposing experts sometimes disagree about what is generally accepted within the profession, often without pointing to much support for their position. It is therefore up to us, as the trier of fact, to "judge the credibility of the battling expert witnesses," who may have diametrically opposed views. *See Crider v. Crider,* 15 N.E.3d 1042, 1059 (Ind. Ct. App. 2014) (*quoting Goodwine v. Goodwine*, 819 N.E.2d 824, 830 (Ind. Ct. App. 2004)).

1. Kenney's valuation opinions are too unreliable to be probative of the property's value for either assessment date.

159. That said, we find Kenney's valuation opinions too unreliable to be probative of the subject property's market value-in-use for either assessment date. At a macro level, Kenney used clearly incomparable data in some instances. For example, his land sales for 2007, which

could not support a big-box store like the subject property, would not compete for the same types of buyers. And in that instance, he ignored the most comparable data available—the recent sale of the subject site. Similarly, in determining an overall capitalization rate, Kenney used data, like the interest rate on 10-year treasury notes, that he acknowledged does not relate to property investment.

160. More importantly, Kenney's opinions are largely conclusory. Because there were no ideal substitutes for the subject property, his sales and rental data required substantial adjustment. Yet other than adjustments for demographics and market conditions in his sales-comparison approach, Kenney did not even attempt to support his adjustments. Even then, he used countywide demographic information rather than what he agreed was more applicable information for the five-mile radius surrounding each property.

161. We do not fault Kenney for analyzing the properties qualitatively rather than quantitatively. Nor do we have qualms with appraisers relying on their judgment in applying appraisal methodology. Sometimes the available data does not lend itself to adjustments that are easily quantifiable through methods like paired-data or statistical analysis, and appraisers must use their judgment and experience to interpret the data. In doing so, an appraiser might not always need to cite to a specific source for general market data gathered through years of experience or through interactions with market participants. But for their opinions to be probative, appraisers must explain their analyses and base their key judgments on market evidence. In far too many instances, Kenney did neither. Indeed, he repeatedly acknowledged that he did not have any market support for many of his judgments.

162. There were myriad other problems with Kenney's appraisal as well. For example, we have serious unanswered questions about some of his sales data, such as his reported unit price for the former Kmart from Hammond, which is belied by CoStar data from his own workfile. And he used several leased properties in his sales-comparison analyses, apparently without analyzing whether the leases were at market terms. He adjusted only one of those sales to account for differences in the ownership interest transferred. Even then, he offered no support for the size of his adjustment. As shown by his identical

adjustment for different properties from another appraisal, it appears he uniformly applies a 20% adjustment whenever he adjusts a leased-fee sale.

163. Kenney tied his age and condition adjustments for 2018 to his belief that the subject property was in very good condition and therefore had an effective age that was lower than its chronological age. We are not persuaded by his justification for those ratings. In any case, he based his ratings at least in part on his erroneous assumption that Target had not renovated the property between the valuation date and the date he inspected the property. He made the opposite error with three of his comparable properties, using their actual ages despite the properties having been renovated. In any case, Kenney gave no support for the magnitude of his age-and-condition adjustments. Nor did he support his adjustments for construction quality, which were also facially inconsistent.

164. Turning to Kenney's analyses under the income approach, he used contract rent for a Boston Store lease that was more than $6.00/sf higher than market level. And two of his leases were for built-to-suit properties. Contrary to the Tax Court's warning in *Southlake (Kohl's)*, Kenney did not exercise caution in using those leases. Indeed, it does not appear that he did anything to determine whether the leases were financing transactions or instead reflected market rent. In addition, four of his leases were renewals. Appraisers should use lease renewals with caution. The parties may have atypical motivations. *See Archway Mktg. Servs. v. County of Hennepin*, 882 N.W.2d 890, 897 (Minn. 2016) (*quoting* THE APPRAISAL OF REAL ESTATE (14th ed.) ("'[L]ease renewals or extensions negotiated with existing tenants should be used with caution' because existing tenants may be willing to pay higher rents to avoid relocating or may be offered lower rents to avoid vacancies[.]"). More importantly, the leased space may not have been exposed to the market.

165. As for the landlord's expenses during periods of vacancy, Kenney simply asserted numbers without explaining how he got them. He calculated his capitalization rate using bald assumptions about risk premiums that he did not bother to support with any market data, and using interest rates that were not tethered to the real-estate market.

166. Kenney's analysis under the cost approach fares no better. As already explained, he used incomparable data to estimate a land value for the subject store's site, especially for 2007. Even if it were possible to adequately adjust for such stark differences, we have already explained that Kenney failed to credibly do so. He similarly chose values for key components of his cost estimates, such as soft costs and entrepreneurial profit, without any supporting market data. Those were consequential decisions: his soft costs and entrepreneurial profit combined to add 30% to his estimate of cost new. Finally, Kenney's analysis of whether the property suffered from functional obsolescence, and his quantification of external obsolescence, were largely conclusory and lacked any market support.

2. Allen's opinion for the 2007 assessment date is too unreliable to be probative, but we find his opinion for 2018 sufficiently probative.

167. Allen's valuation opinions are more credible than Kenney's. Allen carefully applied all three valuation approaches and largely followed accepted appraisal practice and Indiana law. While he did not support all his judgments with as much data or detail as would be ideal, he did so to a far greater degree than Kenney. And Allen's experience appraising big-box stores bolstered his interpretation of demographics and other market data. So did his experience as a broker helping big-box retailers locate sites for new stores, which gave him insight into what those retailers care about when buying properties.

a. For 2007, Allen relied on comparable data that was too dissimilar to the subject property to produce a reliable valuation opinion under the sales-comparison or income approaches, and he failed to reliably quantify obsolescence under the cost approach.

168. That said, the Assessor pointed out various issues with Allen's appraisals, many of which appeared in his opinions for both years (although not always to the same extent), and some of which we agree represent imperfect data, methodology, or analysis. But we have an even more fundamental concern with Allen's 2007 appraisal, where he used sales and rent data from properties that were much older, and in some cases much smaller, than the

subject property. For that year, we find Allen's overall valuation opinion, as well as his conclusions under each approach, too problematic to carry any probative weight.

169. Many of the criticisms leveled by the Assessor and his review appraiser, Sokoloff, relate to Allen's decision to use sales of vacant properties and leases of existing buildings to second- or third-generation users, when they believed it would have been better to use sales or rents from properties with build-to-suit leases. Given the Tax Court's guidance in *Southlake (Kohl's)*, we can hardly blame Allen for his reluctance to use those transactions. And Sokoloff's own defective implied-cap-rate analysis belies her claims that the build-to-suit leases Allen identified in his report reflected market rent or that adjusting sale prices or lease rates for properties with build-to-suit leases is necessarily an easier task than making whatever adjustments might be needed when using sales of vacant buildings or leases to second- or third-generation tenants.

170. Nonetheless, by declining to use comparable data from properties with build-to-suit leases, Allen was left with buildings that were older and less physically comparable to the subject property. That was particularly true for 2007, where he was comparing the hypothesized sale of a one-year-old 124,474-square-foot-building to (1) sales of buildings that were almost exclusively between 10 and 16 years old on the date of sale, and (2) leases of buildings that were between 13 and 22 years old at the time of lease and that were as small as 68,000 square feet. Allen justified the age disparity of the buildings in his income approach by explaining that it was offset by his use of smaller stores, because unlike sale prices, there is an inverse correlation between building size and rent, even for properties above his 80,000 square foot big-box threshold. As in our determination of the Monroe County Lowe's appeals, we give little weight to that justification for using leases of buildings that are so much older than the subject property. We are even more skeptical here, where the subject property was essentially a brand-new building.

171. We recognize that valuing a new big-box store is a difficult assignment. Those stores are virtually never built on speculation. And absent significant issues that can make them problematic as substitutes, they seldom sell when they are relatively new. Those factors

may leave an appraiser with a dearth of truly comparable data from which to form an opinion.

172. Often, that might leave the cost approach as the only reliable way to estimate the property's value. Indeed, as Kenney testified, the cost approach can be useful in valuing a newly developed property, although Allen gave his conclusions under that approach either secondary or no weight. We have no qualms with many of Allen's judgments in applying the cost approach. But one of the areas where we do have concerns—his calculation of obsolescence—dwarfs all other aspects of his analysis. Allen looked to four sources to quantify obsolescence: the cost of modifying big-box properties for second-generation users, differences between rent from build-to-suit leases and rent from leases for existing buildings, differences in the depreciated costs and sale prices of relatively new big-box properties, and the capitalized value of what Allen characterized as the property's obsolescence-related income deficiency.

173. The cost of modifying big box buildings, while perhaps a decent indicator that obsolescence may exist even in newly built big boxes, does nothing to reliably quantify that obsolescence for big boxes generally, much less for the subject property specifically. Nor are we persuaded by Allen's analysis of the disparity between rent levels for six build-to-suit leases and levels for leases of existing buildings, which were between nine and 52 years old at the time of lease. Allen did not adjust for any differences between those properties, making it impossible to attribute the rent differential to things that he claimed cause obsolescence, such as build-to-suit design, rather than to differences in age, location, or other relevant characteristics.

174. Allen's attempt to extract obsolescence from market sales fares a little better. He at least claimed that the properties, two of which he analyzed in his sales-comparison grids, were of similar use and design as the subject property. But he did not address changes in market conditions, demographics, or other locational factors for the properties between their construction and sale dates, although the adjustment grid in his sales-comparison approach arguably contains some of that information for one of the properties. And there is no

information about whether three of the sales were subject to deed restrictions. Finally, Allen acknowledged that his capitalization of deficient income relied on various inputs from his income approach, including the property's stabilized NOI. That in turn depended on his estimate of market rent, which we find too unreliable to carry any probative weight.

175. Thus, although we agree that the subject property suffered from obsolescence, neither Allen nor Kelly reliably quantified the amount of that obsolescence. While Allen's physically depreciated replacement costs at least set an upper limit on the property's value, they are higher than the property's assessment for 2007.

b. Although the Assessor raised valid concerns with some aspects of Allen's valuation opinion for 2018, we find that opinion sufficiently reliable to show the property's market value-in-use.

176. For 2018, Allen was no longer valuing a new building. While differences remained between his comparable sale and lease data and the subject property, the age differences were not as stark or problematic. Those differences still required adjustments, and we will deal with the Assessor's criticisms of those adjustments more specifically in our discussion below. But the differences did not make the properties fundamentally incomparable. We therefore turn to Allen's analysis under each approach. While we focus on his 2018 opinion, some of the issues we discuss apply to his 2007 analysis as well and reinforce our determination for that year.

(1) Despite some problems, Allen's sales-comparison analyses were sufficiently reliable.

177. We begin with the Assessor's criticisms of the comparable sales Allen selected. As the Assessor and Sokoloff point out, Allen used sales of three properties that the buyer either converted to multi-tenant use or bought intending to do so. Two of those sales—the former Target from Muskegon and the former Walmart from Hammond—were from Allen's 2018 appraisal. As we previously said in our determination of the Monroe County Lowe's appeals, that at least calls into question the viability of those properties for continued use as big-box stores. That said, Allen did not give either sale primary weight in his

reconciliation. Indeed, he gave little weight to the sale from Hammond, which he believed was in a less desirable area for retail.

178. We give less credence to Sokoloff's criticism of Allen using sales of buildings from shopping centers rather than solely relying on sales of freestanding, or dual-tenant buildings. Although Sokoloff claimed that shopping centers tend to have different expense structures and may give breaks to anchor or junior-anchor tenants, she offered nothing to show that was the case with any of Allen's sales or how those differences might have affected the sale prices.

179. Nor do we give too much weight to Sokoloff's claim that Allen largely used distressed sales. She had no direct knowledge that the sales were distressed or that any of the sellers were atypically motivated. To the contrary, Allen confirmed each sale with one of the parties or a broker. Sokoloff instead referred broadly to documents from Allen's workfile; verified information from another appraiser for an unidentified property; a reference to deferred maintenance at one property, presumably the former Super K from Portage; and the extended marketing time for several properties.

180. The first two points are not specific enough to raise any significant concerns. As to the third point, Allen explained that the post-sale renovations to the Super K from Portage, including the roof replacement and changes to the HVAC system, were tied to converting the property to Meijer's business operations. Neither Sokoloff nor the Assessor showed that the Super K was in worse condition than the subject property as of the 2018 valuation date. But as to Sokoloff's fourth point, the fact that two of Allen's sales—the former Lowe's from Elgin and the former Target from Muskegon—were marketed for more than three years before they sold raises at least some questions about their desirability. That is particularly true for the Target, which was marketed for more than eight years. While Allen's testimony that the sellers were willing to hold the properties until they got the highest possible price might show that they were not atypically motivated, it does not completely assuage any concerns about the properties' desirability. For that, we would need to know more about the marketing history and interest generated among potential

buyers. In any case, we have already explained that Allen did not give primary weight to the Muskegon Target sale.

181. The Assessor also criticized various adjustments that Allen made (or failed to make) to his comparable sale prices. The Assessor and Sokoloff first take issue with Allen's decision not to adjust several sale prices to account for the buyers' post-sale expenditures. But Sokoloff agreed that an adjustment is appropriate only for expenditures that both the buyer and seller anticipated. Allen spoke to someone involved in each sale and confirmed that none of the buyers' renovations covered things that the parties to the sales would have agreed were necessary for the properties to have utility. Instead, the renovations were for re-imaging the properties to fit the buyers' brands and business operations.

182. Next, the Assessor and Sokoloff criticized Allen's adjustments, and in one instance, the lack thereof, for deed covenants restricting the use of five properties: one from his 2007 appraisal and four from his 2018 appraisal. The parties and their respective witnesses disagreed as to whether one of those properties—the former Target from Muskegon—sold with restrictive covenants. But it was advertised as being subject to a restriction prohibiting use as a discount department store greater than 40,000 square feet—the very use for which it likely had the greatest utility. The brochure may have dissuaded a class of buyers who otherwise would have been willing to pay the highest price for the property. We therefore agree with the Assessor and Sokoloff that Allen should have considered how that brochure affected the property's sale price, regardless of whether it ultimately sold with restrictions. Again, Allen did not give primary weight to this problematic sale.

183. Allen investigated each restrictive covenant that he identified. He explained that the parties negotiated a sale price before agreeing to the restrictions. He therefore believed that the specific restrictions likely did not affect the sale prices. Although some of the restrictions limited things like use as a discount department store, they contained exceptions for the buyers. The parties and their experts argued about how similar the buyers, particularly Blain's Farm & Fleet, were to the previous big-box users. But the main point is that the restrictions were negotiated after a sale price was agreed upon and did not restrict the

buyers' intended uses. Unlike the Target from Muskegon, the Assessor offered no evidence that these properties were *marketed* as being subject to restrictions. So there is nothing to show that any potential buyers were dissuaded from bidding on the properties.

184. Nonetheless, Allen hedged his conclusions after examining two national studies of big-box sales, which reported varying levels of discount for big-box properties sold with deed restrictions. While the 2018 PowerPoint showed a significantly larger discount, it was less relevant because it included sales of properties as small as 30,000 square feet in its data set.

185. We have at least some reservations about Allen's adjustments for deed restrictions. As Sokoloff explained, restrictive covenants vary in duration and breadth. The generalized data from the big-box studies therefore is not particularly helpful in isolating the effect of a specific restriction. And Allen himself disregarded data from the 2019 PowerPoint when it came to other questions, such as size-based disparities in sale prices. But given how the restrictions were negotiated and Allen's experience with the big-box market, we are persuaded that the restrictions at issue here only minimally affected the properties' sale prices, and that a 5% adjustment was reasonable, if imprecise.

186. We give little weight to most of the Assessor's criticisms about Allen's adjustments, or lack thereof, for arterial attributes. True, Allen generally did not provide information in his reports about the visibility of his comparable sales. But he visited all the properties. While the Assessor may be right that Allen relied primarily on traffic counts, the Assessor offered nothing to dispute the importance of that factor. And his criticism of Allen's failure to adjust the former Walmart from Bloomington for purportedly inferior easement-only access rings hollow, especially given that Kenney echoed Allen's view that the Walmart property had access comparable to the subject property.[7]

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[7] We have some concerns with Allen's decision to rate the former AutoNation from his 2007 analysis as having superior arterial attributes. While that property was visible from I-69, it was accessible only via a circuitous route along minor roads. It is not readily apparent that the high traffic count would more than offset the property's clearly inferior access.

187. We likewise give little credence to the Assessor's criticisms of Allen's demographics adjustments. Allen gave the most weight to population density. But his experience both in appraising big-box stores and in acting as a broker working with big-box retailers to find store locations informed his judgment in that regard. Nonetheless, we agree with the Assessor that Allen should have adjusted the sale price for the former Target store from McHenry, IL, which had inferior demographics across the board.

188. Despite the Assessor's criticism, we find that Allen supported his decision not to adjust sales of larger stores for size differences. While the 2019 Situs RERC PowerPoint showed declining unit prices for stores above 130,000 square feet compared to those between 100,000–130,000 square feet, Allen did not see those disparities in the subject property's market. Indeed, some of Allen's highest unadjusted sales from both appraisals were for stores above 130,000 square feet. Even after adjustment, they were mostly near the top or huddled near the middle of Allen's ranges.

189. The Assessor again pointed to the Situs RERC study in criticizing Allen's age adjustments. While Allen adjusted each sale by 1% for each year it differed from the subject property's age, the unadjusted averages from the study showed a wider price disparity between buildings built in the 1990s and those built after 2000. And Allen himself used 2.9% annual depreciation under the cost approach. But depreciation was only one factor Allen considered in his age adjustment, which he based on his analysis of how the market considers age differences. Although the unadjusted data from the Situs RERC data may offer broad evidence of trends that at least raise questions about Allen's conclusions, it is not enough to completely undermine them.

190. To sum up, we find several issues with Allen's sales-comparison analysis. The most problematic were: (1) his use of properties bought for multi-tenant use, (2) his use of a property that was marketed for more than eight years before it sold without making any adjustment for that factor, and (3) his failure to adequately address how a brochure advertising another property as being sold subject to restrictions on use as a discount department store affected its sale price. But those issues largely affect sales to which Allen

did not give primary weight. Taken as a whole, we find Allen's value conclusions under the sales-comparison approach sufficiently reliable, if not overwhelmingly persuasive.

(2) Allen's analysis under the income approach was reliable enough to lend secondary support to his valuation opinion, and he gave little weight to the cost approach.

191. The Assessor argues that Allen's comparable leases were for inferior spaces because they involved regional, rather than national, tenants. In our determination of the Monroe County Lowe's appeals, we found that Allen failed to persuade us that the property under appeal, which was surrounded by national tenants, would rent to a Bounce City, Value City Renewal, or similar tenant. Here, while the subject property was desirably located, there is nothing to show that the surrounding properties were occupied by national-tier tenants. In fact, Kenney used some leases to similar tenants in his analysis. That said, Allen's lease comparables were far from ideal substitutes. And Allen used a renewal of a previous lease to Gander Mountain in his 2018 analysis without showing that he exercised the necessary care to assure it was at market terms.[8]

192. As for Allen's adjustments to his comparable lease rates, the Assessor repeats some of the same points from his critique of Allen's sales-comparison analysis. For example, the Assessor again accuses Allen of relying too heavily on population to the exclusion of other demographic data. The Assessor also criticizes Allen for using a different rate to adjust his lease comparables for building age than he used under the sales-comparison approach, a criticism we agreed with in our determination of the Boone County Meijer appeal. But here, Allen credibly explained that tenants are not as concerned with building age when renting stores as buyers are when purchasing them, because the owner, rather than the tenant, is responsible for structural repairs. And for 2018, the age disparities between the leased buildings and the subject building are not as stark as they were for his 2007 appraisal.

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[8] We also have doubts about the comparability of the Indianapolis Goodwill store from Allen's 2007 appraisal, which Allen admitted was not in a "real desirable" location.

193. Turning to Allen's treatment of vacancy, he did not just deduct a vacancy allowance from his stabilized NOI; he also deducted vacancy-related costs below the line. As evidenced by his appraisal from the Monroe County Lowe's appeals, Allen does not always do that when appraising the fee-simple interest in big-box stores. The Assessor tied his criticism of that deduction partly to the experts' debate on how to appropriately value a fee-simple interest. Aside from that debate, Sokoloff believed it was wrong to account for vacancy twice. We share Sokoloff's concern. Allen conclusorily asserted that he was not double counting. But he did little to show that the data he used to estimate his stabilized vacancy rate excluded existing properties that were sold to new owners who were in the process of locating tenants. That is precisely the scenario for which Allen made his below-the-line deduction. Without more information, we have concerns with Allen's overall treatment of vacancy.

194. Allen acknowledged the challenges inherent in estimating an appropriate capitalization rate when valuing the fee-simple interest in a property. None of his data was ideal, and he recognized the shortcomings where they existed. But taken as a whole, the data allowed Allen to estimate a compromise rate that accounted for the property's risk. Notwithstanding the Assessor's argument to the contrary, Allen supported his judgment that Indiana is riskier than what is indicated by the averages for national data, which include properties from the coasts. Like the Assessor, however, we find it curious that Allen arrived at identical rates for 2007 and 2018, when much of his survey data showed declining rates. Nonetheless, we find that Allen reasonably supported his compromise rate of 8% for each year.

195. Despite the issues we have identified, we find that Allen's conclusions under the income approach for 2018 were sufficiently reliable for him to give them secondary weight in reaching his valuation opinion. As for the cost approach, Allen's quantification of obsolescence suffers from most of the same problems as it did for 2007, although his capitalization of deficient income fares better. In any case, Allen gave that approach secondary weight at best in reaching his final value conclusion.

VI. Conclusion

196. We find the valuation opinions of the Assessor's expert, Mark Kenney, too unreliable to be probative of the subject property's market value-in-use. We similarly find the opinion of Target's appraiser, Laurence Allen, too unreliable to be probative of the property's value for 2007. For that year, we order no change to the assessment. While Allen's valuation opinion for 2018 was less than ideal, we find it sufficiently reliable to show the property's market value-in-use for that year. We therefore determine the following values:

Year	Value
2007	$9,985,800
2018	$5,020,000

Based on the parties' stipulated formula, we order the intervening assessments changed to the following amounts:

Year	Value
2008	$9,534,400
2009	$9,082,900
2010	$8,631,500
2012	$7,728,600
2013	$7,277,200
2014	$6,825,700
2015	$6,374,300
2016	$5,922,900
2017	$5,471,400

We issue this Final Determination on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days 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>.

Assessment Date	Petition Number
March 1, 2007	45-035-07-1-4-00836-19
March 1, 2008	45-035-08-1-4-00837-19
March 1, 2009	45-035-09-1-4-00838-19
March 1, 2010	45-035-10-1-4-00839-19
March 1, 2012	45-035-12-1-4-00110-17
March 1, 2013	45-035-13-1-4-00109-17
March 1, 2014	45-035-14-1-4-00108-17
March 1, 2015	45-035-15-1-4-00107-17
January 1, 2016	45-035-16-1-4-02014-17
January 1, 2017	45-035-17-1-4-01135-18
January 1, 2018	45-035-18-1-4-00127-20

Stipulated Formula

2008 AV = 2007 FD + ((2018 FD - 2007 FD)/11)
2009 AV = 2008 FD + ((2018 FD - 2007 FD)/11)
2010 AV = 2009 AV + ((2018 FD - 2007 FD)/11)
2012 AV = 2010 AV + (2*((2018 FD - 2007 FD)/11))
2013 AV = 2012 AV + ((2018 FD - 2007 FD)/11)
2014 AV = 2013 AV + ((2018 FD - 2007 FD)/11)
2015 AV = 2014 AV + ((2018 FD - 2007 FD)/11)
2016 AV = 2015 AV + ((2018 FD - 2007 FD)/11)
2017 AV = 2016 FD + ((2018 FD – 2007 FD)/11)[9]

"AV" refers to "assessed value."
"FD" refers to "final determination."

Calculated Values

Year	Formula	Calculations	Value	Rounded Value
2008	2007 FD + ((2018 FD - 2007 FD)/11)	9,985,800 + ((5,020,000-9,985,800)/11)	$9,534,364	$9,534,400
2009	2008 AV + ((2018 FD - 2007 FD)/11)	9,534,364 + ((5,020,000-9,985,800)/11)	$9,082,928	$9,082,900
2010	2009 AV + ((2018 FD - 2007 FD)/11)	9,082,928 + ((5,020,000-9,985,800)/11)	$8,631,492	$8,631,500
2012	2010 AV + (2*(2018 FD - 2007 FD)/11)	8,631,492 + (2(5,020,000-9,985,800)/11)	$7,728,619	$7,728,600
2013	2012 AV + ((2018 FD - 2007 FD)/11)	7,728,620 + ((5,020,000-9,985,800)/11)	$7,277,183	$7,277,200
2014	2013 AV + ((2018 FD - 2007 FD)/11)	7,277,184 + ((5,020,000-9,985,800)/11)	$6,825,747	$6,825,700
2015	2014 AV + ((2018 FD - 2007 FD)/11)	6,825,748 + ((5,020,000-9,985,800)/11)	$6,374,311	$6,374,300
2016	2015 AV + ((2018 FD - 2007 FD)/11)	6,374,312 + ((5,020,000-9,985,800)/11)	$5,922,875	$5,922,900
2017	2016 AV + ((2018 FD - 2007 FD)/11)	5,922,876 + ((5,020,000-9,985,800)/11)	$5,471,439	$5,471,400

[9] The references to the 2008 "FD" and 2016 "FD" appear to by typos. They should read "AV."