REPRESENTATIVE FOR PETITIONER:
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REPRESENTATIVES FOR RESPONDENT:
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BEFORE THE
INDIANA BOARD OF TAX REVIEW

APPLE AMERICAN GROUP, LLC and APPLE INDIANA, LLC,	)	Petition Nos.:	48-003-13-1-4-00639-16 48-003-14-1-4-00640-16 48-003-15-1-4-01302-16 48-003-16-1-4-00654-17
Petitioners,	)		
v.	)	Parcel No.:	48-12-30-404-026.000-003
MADISON COUNTY ASSESSOR,	)	County:	Madison
Respondent.	)	Years:	2013, 2014, 2015 and 2016

October 22, 2018

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Introduction

1. The parties offered competing valuation opinions from their respective appraisers—John C. Satter for Apple American Group, LLC and Apple Indiana, LLC (collectively, "Apple"), and David Hall for the Madison County Assessor.[1] Both appraisals have some probative value. But they also suffer from problems that detract from the reliability of the appraisers' valuation opinions. After weighing the evidence, we find Hall's conclusions under the cost approach to be the most persuasive evidence of the property's true tax value.

II. Procedural History

2. Apple contested its 2013, 2014, 2015 and 2016 assessments. The Madison County Assessor and Madison County Property Tax Assessment Board of Appeals ("PTABOA") determined the following assessments[2]:

YEAR	LAND	IMPROVEMENTS	TOTAL ASSESSMENT
2013	$229,500	$1,202,800	$1,432,300
2014	$229,500	$1,202,800	$1,432,300
2015	$229,500	$1,224,700	$1,454,200
2016	$229,500	$1,161,800	$1,391,300

3. On November 28, 2017, our designated administrative law judge, Jacob Robinson ("ALJ"), held a hearing on Apple's petitions. Neither he nor the Board inspected the property.

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

[2] Apple elected to appeal its assessments for 2013, 2014 and 2015 directly to the Board after the PTABOA failed to issue determinations within 180 days of it filing notices of appeal. *See* Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed).

4. John C. Satter and David Hall, both MAI appraisers, testified under oath.

5. Apple submitted the following exhibits:

Exhibit A:	Appraisal Report prepared by John C. Satter, MAI, GAA
Exhibit B:	Rebuttal evidence relating to Hall's Comparable Sale 1
Exhibit C:	Rebuttal evidence relating to Hall's Comparable Sale 2
Exhibit D:	Rebuttal evidence relating to Hall's Comparable Sale 3
Exhibit E:	Rebuttal evidence relating to Hall's Comparable Sale 4
Exhibit F:	Rebuttal evidence relating to Hall's Comparable Sale 5
Exhibit G:	Rebuttal evidence relating to Hall's Comparable Sale 6
Exhibit H:	Rebuttal evidence relating to Hall's Comparable Sale 7
Exhibit I:	Rebuttal evidence relating to Hall's Comparable Sale 8
Exhibit J:	Excerpt from Hall Appraisal of 104 Hively Avenue, Elkhart
Exhibit K:	Property Record Card for Hall's Comparable Sale 1
Exhibit L:	Retail Sale Profile of 620 W. Washington Center Road, Fort Wayne (excerpt from a prior Hall Appraisal)
Exhibit M:	Retail Sale Profile of 6709 Lima Road, Fort Wayne (excerpt from a prior Hall Appraisal)
Exhibit N:	Hall work file

6. The Assessor submitted the following exhibits:

Exhibit 1:	Appraisal Report prepared by David Hall, MAI, AICP
Exhibit 2A:	Photograph of the subject property's exterior with descriptive notes
Exhibit 2B:	Photograph of the subject property's exterior with descriptive notes
Exhibit 2C:	Photograph of the subject property's exterior with descriptive notes
Exhibit 2D:	Photograph of the subject property's interior with descriptive notes
Exhibit 2E:	Photograph of the subject property's interior with descriptive notes
Exhibit 2F:	Photograph of the subject property's interior with descriptive notes
Exhibit 2G:	Photograph of the subject property's interior with descriptive notes
Exhibit 2H:	Photograph of the subject property's rooftop HVAC with descriptive notes
Exhibit 3:	Class descriptions for restaurants—Marshall Valuation Service (May 2014)
Exhibit 4:	Excerpt from *Valuing the Leased Fee Simple Estate: The Answer for Ad Valorem Taxation Issues*, by Thomas W. Hamilton, Ph.D., CRE, MAI, REAL ESTATE ISSUES (VOLUME 40, NUMBER 1, 2015)
Exhibit 5:	IAAO Article, Commercial Big-Box Retail: A Guide to Market-Based Valuation (September 2017)
Exhibit 6A:	Subject property's 2012 Property Record Card
Exhibit 6B:	Subject property's 2013 Property Record Card

Exhibit 6C:	Subject property's 2014 Property Record Card
Exhibit 6D:	Subject property's 2015 Property Record Card
Exhibit 6E:	Subject property's 2016 Property Record Card
Exhibit 7:	Floor area/perimeter and story height multipliers for stores and commercial buildings—Marshall Valuation Service (May 2014)
Exhibit 8:	Photograph of Hall Rent Comparable 7 with descriptive notes
Exhibit 9:	Photographs of subject property and Greenwood Applebee's
Exhibit 10:	Demonstrative Exhibit – Income Calculation
Exhibit 11:	Closing Statement for subject property dated April 18, 2008
Exhibit 12:	Demonstrative Exhibit – Hypothetical Rent for an Arby's
Exhibit 13:	Sales Disclosure Form for 4008 W. Bethel Avenue, Muncie
Exhibit 14:	Hall Spreadsheet Comparing Cost Approaches
Exhibit 15:	Aerial maps and photographs with notes describing Vacancy and Access/Exposure issues relating to Satter Comparable Sales 3 and 5
Exhibit 16:	Indianapolis Business Journal Article dated June 18, 2011
Exhibit 17:	Photograph of Satter Comparable Sale 6 with excerpt from Richmond Gannett article dated May 16, 2015
Exhibit 18:	Demonstrative Exhibit

7. The record also includes the following: (1) all pleadings, motions, briefs, and 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) an audio recording of the hearing.

III. FINDINGS OF FACT

A. The Subject Property

8. The subject property is located at 1924 E. 53rd Street, Anderson. Its improvements include an approximately 5,377-square-foot freestanding restaurant building located on an approximately 0.92-acre site that is 100% leased and occupied by an Applebee's restaurant.[3] The building is a one-story masonry/steel frame structure with a brick and stone veneer built in 1995. The interior layout consists of an entrance vestibule, dining area, bar area, restrooms, and a kitchen/storage area. *Hall testimony; Satter testimony; Pet'r Ex. A at 26-28; Resp't Ex. 1 at 41-42.*

[3] That is the building area listed in Hall's appraisal report. *Resp't Ex. 1 at 1.* Satter's appraisal report lists the building area as 5,296 square feet. *Pet'r Ex. A at 1.* The discrepancy appears to stem from Hall's inclusion of the entrance vestibule. *See Pet'r Ex. N, pg. 2* (describing the 81 square foot area as an enclosed masonry porch).

9. Beginning in 2012, there were significant capital expenditures made to renovate the building and site improvements. The cosmetic work and most of the renovation work was complete in 2013. The majority of the renovation expenses went toward kitchen equipment and other related personal property items. But the building renovations also included a rebuild of the interior bar area; new carpeting, lighting, paint, wood trim, and vinyl wall coverings in the dining rooms; new vanity countertops in the restrooms; work on the tile floor and wall coverings in the kitchen; and miscellaneous plumbing and electrical work throughout the building. *Hall testimony; Satter testimony; Pet'r Ex. A at 40; Pet'r Ex. N; Resp't Ex. 1 at 43-44, Addendum C.*

10. The renovations also involved expenses related to updating the exterior lighting and window awnings; repairing the shed; installing new exterior doors (front entrance, side exit and car side); repairing and paving the parking lot; installing new bumper blocks; repairing the outdoor plumbing; and landscaping work. Additionally, between 2013 and 2016, there were approximately $9,000 in roofing repairs and $18,000 in HVAC maintenance and repairs. The HVAC repairs included work on the compressor, ductwork, and collector plates. *Hall testimony; Satter testimony; Pet'r Ex. A at 40; Pet'r Ex. N; Resp't Ex. 1 at 43-44, Addendum C.*

B. Expert Opinions

1. Hall's Appraisal

11. The Assessor offered an appraisal report from Hall. He is an Indiana Certified General Real Estate Appraiser and Managing Director of Integra Realty Resources–Indianapolis. Additionally, Hall holds the following designations: MAI, AICP. Hall certified that he appraised the property and prepared his report in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He performed an appraisal of the retrospective market value-in-use of the subject property's fee simple interest as of January 1, 2016, and then trended that value to develop value conclusions for the March

1, 2013, March 1, 2014, and March 1, 2015 valuation dates. *Hall testimony; Resp't Ex. 1 at 4-5, 123-125, 132-33, Addendum A.*

a. Hall's Market Overview

12. Hall provided an overview of the subject's market, including a review of Madison County's economic and demographic data. He described the economic indicators and trends within Madison County during the relevant period as mixed. The county's population was experiencing a gradual decline during this time, with stable employment and a median household income slightly lower than the Indianapolis MSA. Based on this data, Hall projected relatively stable conditions as of the effective date of his valuation. *Hall testimony; Resp't Ex. 1 at 14-17.*

13. Hall performed a market area analysis of the Scatterfield Road Corridor, which he described as the primary retail corridor in Anderson. He defined the subject's competitive market area as the southern half of Scatterfield Road, extending north from 67th Street to State Road 232 (Ohio Avenue). Scatterfield Road provides the corridor with direct access to Interstate 69, with the interstate interchange located less than one mile south of the subject. This corridor has Anderson's largest concentration of retail development and other demand generators, including the Hoosier Park horse racing and casino facility, one of Anderson's largest employers. In comparison to other market areas in Madison County and within Anderson itself, Hall rated the subject's market area as above average in all categories of comparability. *Hall testimony; Resp't Ex. 1 at 19-22.*

14. As part of his appraisal process, Hall also developed a market segmentation analysis. *The Appraisal of Real Estate, 14th Edition*, defines market segmentation as "the process by which submarkets within a larger market are identified and analyzed." It "helps to define the most probable users for a particular property based on their consumer characteristics." Hall's analysis included a review of the subject's property type, its features, market area

boundaries and characteristics, the availability of substitute properties, access to complementary properties, and local and national supply and demand trends. *Hall testimony; Resp't Ex. 1 at 23-31.*

15. His analysis led him to describe the subject's current use as an existing restaurant/bar with maximized utility from the perspective of the owner or a similar user given its 100% occupancy by a single user. This process helped Hall identify what a comparable rent and a comparable sale should look like in terms of property features and characteristics. He identified the following as deserving of weight in the selection of comparable data: restaurant/bar properties, single tenant or user (as opposed to multi-tenant), freestanding, 3,000 to 10,000 square feet, built in 1990s or early 2000s, with good quality or better construction. *Hall testimony; Resp't Ex. 1 at 30-31.*

16. Because Indiana bases a property's true tax value on its current use, Hall emphasized that performing a highest and best use analysis was unnecessary to comply with USPAP. Nevertheless, he analyzed the subject's highest and best use because it can help determine whether a property's market value and market value-in-use are equivalent. It can also help identify functional or external obsolescence that might exist, though he found none for the subject property as of the effective date of valuation. He concluded that the subject's highest and best use, as vacant, was for retail use. And as improved, Hall found the subject's current use as a restaurant/bar was consistent with its highest and best use. *Hall testimony; Resp't Ex. 1 at 66-68.*

b. Hall's Cost Approach

17. Hall started his cost approach by first valuing the subject's land using the sales comparison approach. He searched for commercial land sales from 2010 to 2016 with site sizes from 0.75 to 2.25 acres. Hall focused on sites located within business districts in Madison County. He selected four comparable land sales from Anderson fitting his criteria:

- Land Sale No. 1 (1819 E. 60th St.) – 2.10-acre commercial site purchased by a nearby shopping center sold in January 2015 for $195,424/acre;
- Land Sale No. 2 (2743-2747 Nichol Ave.) – 1.09-acre site acquired for development into a Family Dollar store sold in June 2014 for $206,422/acre;
- Land Sale No. 3 (4131 S. Scatterfield Rd.) – 0.92-acre site developed into a small multi-tenant retail strip center sold in October 2011 for $341,945/acre;
- Land Sale No. 4 (1813 E. 53rd St.) – 2.05-acre site acquired in two separate transactions and assembled for development as a credit union sold in August 2010 and May 2011 for a combined price of $284,685/acre.

Hall testimony; Resp't Ex. 1 at 70-71.

18. Hall adjusted his comparable land sales' sale prices for differences in location appeal and size. Specifically, he made positive adjustments of 35% to Sales 1 and 2 to account for their inferior locations in neighborhoods with weak retail demand and high vacancy rates. He also made a negative 10% adjustment to Sale 3 given its superior location adjacent to a large shopping center. And Hall adjusted Sales 1 and 4 upward by 10% due to their larger site sizes based on the inverse relationship between size and price. *Hall testimony; Resp't Ex. 1 at 75-76.*

19. The adjusted prices ranged from $278,670 to $313,154, producing an average price of $295,735/acre. He placed the most weight on Sale 4 based on its proximity to the subject's site (approximately 500 feet west) and overall location appeal. After analyzing the measures of central tendency, he settled on a per acre value of $300,000, producing an indicated value of $280,000 (rounded) for the subject's 0.92 acres. *Hall testimony; Resp't Ex. 1 at 75-79.*

20. Hall relied on Marshall Valuation Service ("MVS") to estimate the replacement cost new of the improvements. Based on his analysis of the building's physical characteristics, Hall determined that they are consistent with the MVS's definition of "very good" quality Class C construction. MVS defines "very good" as follows:

> Individual design, brick, good metal and glass, ornamentation. Typically best chain restaurants, carpeted lounge and dining room. Good lighting/restrooms with good-quality fixtures and tile. Complete HVAC.

Hall testimony; Resp't Ex. 1 at 41-60, 80; Resp't Exs. 2A-2H.

21. Relying on MVS's "very good" quality rating for Class C construction, Hall selected a unit cost of $198.13/SF. He adjusted this base cost using MVS's current, local, story height, and perimeter multipliers to arrive at a final unit cost of $212.56/SF, producing an estimated cost new for the building of $1,142,935. Hall estimated the replacement cost new of the site improvements to be $139,780. The site improvement estimate included separate cost estimates for the parking lot, concrete paving and sidewalks, and a dumpster enclosure. *Hall testimony; Resp't Ex. 1 at 80-83, Resp't Ex. 7.*

22. MVS does not include all of the indirect costs necessary for developing replacement cost estimates for building and site improvements. Hall therefore applied a 10% allowance to account for indirect costs such as taxes and carrying costs on land during construction, legal and accounting fees, and marketing and finance costs prior to stabilization. He also applied a 10% allowance for entrepreneurial profit to his building and site improvement estimates. Hall explained that *The Appraisal of Real Estate, 14th Edition* supports the inclusion of entrepreneurial profit in a cost approach because there needs to be an economic reward sufficient to convince an investor, developer, or entrepreneur to take on the risk associated with a given project. Based on his experience working with developers and property owners and his review of project budgets, Hall estimated that entrepreneurial profit typically ranges from 10% to 15% of total direct and indirect costs. Hall concluded a 10% allowance for entrepreneurial profit was appropriate given recent and projected market trends, and the subject's property type and construction complexity. Adding in his indirect cost and entrepreneurial profit estimates resulted in a total replacement cost new of $1,552,085 before depreciation. *Hall testimony; Resp't Ex. 1 at 80-82.*

23. Hall found no items of deferred maintenance during his inspection of the subject property. Nor did any property representatives report any to him. Given the results of his market segmentation and highest and best use analyses, Hall also concluded that no deductions for economic or functional obsolescence were necessary. *Hall testimony; Resp't Ex. 1 at 83-85.*

24. Hall relied on the age-life method to estimate depreciation due to physical deterioration. Based on the extensive renovations to the building between 2012 and 2016, his inspection of the property, a side-by-side comparison of the property to an Applebee's property constructed in 2004, and the information gleaned from property representatives, public records, and historic photographs, Hall concluded to an effective age of 10 years (approximately half of the property's physical age). For a restaurant of comparable type and quality, MVS estimates an economic life of 40 years. Dividing the building's effective age of 10 years by its economic life of 40 years resulted in estimated depreciation of 25%, which Hall then applied to the building on a straight-line basis. He also applied age-life depreciation of 48.8% to the site improvements. *Hall testimony; Resp't Ex. 1 at 43-44, 83-86; Resp't Ex. 9.*

25. Hall calculated total age-life depreciation to be $428,333, resulting in a depreciated replacement cost for the building and site improvements of $1,120,000 (rounded). Adding his land value to the depreciated replacement cost of the building and site improvements produced an indicated property value of $1,400,000 as of January 1, 2016. *Hall testimony; Resp't Ex. 1 at 86.*

d. Hall's Sales-Comparison Approaches

26. Hall first developed a sales-comparison approach for the retrospective market value-in-use of the subject's fee simple interest. For this approach, Hall's market segmentation analysis led him to focus on the following features and characteristics when selecting

comparable properties: restaurant/bar properties, single tenant or user, freestanding, 3,000 to 10,000 square feet, built in 1990s or early 2000s, with good quality or better construction. Due to the limited comparable data from the Scatterfield Road Corridor, Hall expanded his search for comparable sales to other markets with similar characteristics. He considered the subject's occupancy as a defining characteristic of its current use and felt it had maximum utility due to it being 100% occupied by a tenant. This led Hall to select five leased fee sales that had 100% occupancy at the time of sale. Because he was solving for the fee simple value, however, Hall also included three fee simple sales of vacant properties that he thought were relevant. *Hall testimony; Resp't Ex. 1 at 87-89, 97.*

27. The eight comparable sales Hall selected are as follows:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Property Name	Applebee's	Max & Erma's	Former Restaurant	Former Shapiro's Delicatessen	Panera Bread	O'Charley's	Charleston's Restaurant	Biaggi's	Former Restaurant
Location	Anderson	Edinburgh	Fort Wayne	Carmel	Indianapolis	Bloomington	Indianapolis	Fort Wayne	Jasper
Sale Date		Nov-2016	Jul-2016	Oct-2014	Dec-2013	Apr-2013	Nov-2012	Mar-2012	Nov-2011
Year Built	1995	2003	2002	2002	2003	1998	1988	2001	2003
Acres	0.92	1.33	1.61	0.76	1.04	1.55	1.08	1.21	1.68
Building Area (SF)	5,377	5,867	6,559	10,600	4,671	6,608	7,226	9,455	3,903
Sale Price/SF		$355.38	$225.64[4]	$198.11	$283.24	$373.79	$338.50	$346.17	$192.16
Rights Conveyed		Leased Fee	Fee Simple	Fee Simple	Leased Fee	Leased Fee	Leased Fee	Leased Fee	Fee Simple

Hall testimony; Pet'r Ex. M; Resp't Ex. 1 at 87-89,102.

28. Hall made a number of adjustments using a qualitative analysis to account for differences between the subject property and his comparable sales. He first discussed his

[4] Sale 2 had previously sold for $205.82/SF in September 2013.

adjustments for expenditures after sale. *The Appraisal of Real Estate, 14th Edition,* counsels appraisers to account for the costs incurred by a buyer post-sale by adding them to the price of the comparable sale. If an appraiser finds evidence that a buyer made expenditures after sale to make the property suitable for its use, then he needs to adjust for them. Hall testified that this is particularly true for comparable properties that were vacant at the time of sale. He therefore made positive adjustments to Sales 2, 3, and 8 (all vacant at the time of sale) because the buyers of all three properties renovated them subsequent to sale. *Hall testimony; Resp't Ex. 1 at 91-92, 94-96,102.*

29. Five of Hall's comparable sales are leased fee sales. He analyzed them to determine whether they required adjustments for real property rights. *The Appraisal of Real Estate, 14th Edition,* states that "to compare the leased fee interest to the fee simple estate of the subject property, the appraiser must determine if the contract rent of the comparable property was above, below, or equal to market rent." According to Hall, "[a]ssuming no other differences, a property leased at market rent tends to yield a price that is consistent with the expected 'fee simple' range. This is true because fee simple transactions tend to incorporate the same assumption–that the property could be leased at market rent." Hall performed a market rent analysis for each of his five leased fee sales and determined that only Sale 6 needed an adjustment (downward) to bring it within its market rental range. *Hall testimony; Resp't Ex. 1 at 97-98.*

30. Hall's other adjustments included location/access adjustments to all of his sales except Sale 1, an upward adjustment to Sale 3 due to its insufficient parking, and upward adjustments to Sales 3 and 7 due to their square footages exceeding the subject's by more than 3,000 square feet. He also adjusted all of his comparable sales for age/condition, making an upward adjustment to Sale 6 due to it being an older property and downward adjustments to the remaining sales because they are all newer than the subject. Finally, Hall made downward adjustments to Sales 1 and 5 for economic characteristics because

they benefitted from long-term leases to national chain/credit tenants and sold at capitalization rates lower than his concluded fee simple cap rate for the subject. He determined that no adjustments were necessary for financing terms, conditions of sale, market conditions, or physical characteristics. *Hall testimony; Resp't Ex. 1 at 98-102.*

31. After applying all of his adjustments, Hall had three sales he considered inferior to the subject, four sales he rated as superior, and one that was similar. In arriving at an indicated value per square foot, he noted that Sale 4, the one sale that did not require an adjustment, sold for $283.24/SF, while the average and median sale prices of his eight comparable sales was $289.12/SF and $310.87/SF, respectively. Hall felt that these three measures bracketed his indicated value of $290.00/SF. After multiplying that value by the subject's square footage, Hall concluded to a value of $1,560,000 (rounded) as of January 1, 2016. *Hall testimony; Resp't Ex. 1 at 102-104.*

32. Hall also developed an opinion of the retrospective market value of the leased fee interest for informational purposes. He based his valuation on four comparable properties leased and occupied for use as Applebee's restaurants in Richmond, Angola, Evansville, and Vincennes. All four properties had very similar square footage to the subject property. Three were built in the same year as the subject property (1995), while one was constructed in 2002. The sales occurred between March 2013 and November 2014. Hall made a negative 5% adjustment to Comparable 2 (Angola) for age/condition to account for the fact it was built in 2002, but he made no further adjustments.[5] His range of adjusted prices was $399.48/SF to $440.27/SF. This produced an average price of $427.37/SF, which he rounded to reach an indicated value of $430.00/SF. Hall ultimately concluded to a leased fee valuation of $2,300,000 (rounded). *Hall testimony; Resp't Ex. 1 at 126-131.*

[5] Hall explained that his Comparable Sales Adjustment Grid contained a typographical error. The negative 5% adjustment to Comparable 2 was supposed to be for Age/Condition, not for Physical Characteristics.

e. Hall's Income Approach

33. Hall also completed an income capitalization approach using the direct capitalization method. He felt this approach was particularly important given that the subject is an income producing property. Because he was valuing the property's fee simple interest, Hall did not consider the subject's contract rent in developing a potential gross rent or net operating income. Instead, he relied on estimates of market rent to derive those projections. Hall used the same criteria developed in his market segmentation analysis to find rent comparables. And as with his sales-comparison approach, he expanded his search for comparable properties beyond the Scatterfield Road Corridor due to the limited supply of rent comparables in that area. *Hall testimony; Resp't Ex. 1 at 105-109.*

34. Hall selected and analyzed the leases of seven comparable properties operated as chain restaurants. He tried to find transactions that were not reflective of an original lease agreement with the original tenant at the time the comparable property was new because the subject was not in new condition as of the effective date. The leases are all absolute net or triple net that commenced between December 2011 and December 2014. None of them is a build-to-suit lease or the result of a sale-leaseback transaction. The buildings ranged from 3,206 to 10,003 square feet, and were built between 1985 and 2003. Their unadjusted rents ranged from \$17.43 to \$25.61/SF. *Hall testimony; Resp't Ex. 1 at 107-113.*

35. Hall considered the following elements in his analysis of the comparable rents: expense structure, conditions of lease, market conditions, location, access/exposure, size, physical characteristics, age/condition, and economic characteristics. But he did not adjust any of the rents either qualitatively or quantitatively. Instead, Hall considered the midpoint of the range and three averages in his final reconciliation. The midpoint of his unadjusted rents was \$21.52. The average rent of the comparables he identified as having Class C construction quality was \$21.54. The average rent of those properties operating as restaurants/bars was \$24.43. And his average of rent comparables with absolute net

leases was $22.47. He reconciled the midpoint and these three averages to a market rent of $22.00/SF. *Hall testimony; Resp't Ex. 1 at 112-114.*

36. Because he applied an absolute net expense structure in which the tenant is responsible for all expenses, Hall made no deductions for owner expenses. Similarly, he made no deductions for vacancy or collection loss because his concluded capitalization rate implicitly reflects any loss due to those factors. Using his market rent conclusion of $22.00/SF, he estimated the subject's net operating income ("NOI") to be $118,294 as of January 1, 2016. *Hall testimony; Resp't Ex. 1 at 116-117.*

37. Hall relied on three methods to select an appropriate capitalization rate. First, he analyzed the capitalization rates from the five leased-fee sales he used in his sales-comparison analysis and concluded that the average rate of 8.23% was reasonable. Second, he averaged the cap rates reported by three national investor surveys conducted by The Boulder Group, Calkain Research, and PwC, producing an indicated cap rate of 7.89%. Finally, he used the band of investment method. This method derives a cap rate from the weighted average of mortgage and equity requirements, which in this case produced a cap rate of 7.91%. Hall ultimately concluded to a cap rate of 8.00% based on the average of these three methods. He did not load his cap rate because under the absolute net lease expense structure, the owner does not share in the expenses that would otherwise get loaded. *Hall testimony; Resp't Ex. 1 at 118-121.*

38. Hall then capitalized his estimated NOI by his 8.00% capitalization rate, producing a value conclusion of $1,480,000 (rounded) for the January 1, 2016 assessment. *Hall testimony; Resp't Ex. 1 at 122.*

f. Hall's Reconciliation and Trending

39. In his reconciliation, Hall placed similar weight on all three approaches in concluding to a retrospective market value-in-use of $1,500,000 as of January 1, 2016. He then trended

that value to develop value conclusions for the March 1, 2013, March 1, 2014, and March 1, 2015 valuation dates. Hall specifically looked at changes in local market conditions, changes in the CPI-U index, changes in actual age and physical condition, and changes in investor demand as shown by cap rate fluctuations. His review of local market conditions indicated relatively little change from March 1, 2013 through January 1, 2016. During that time, the CPI-U index also showed little change, varying by less than 1.75%. Hall felt that taking age and condition into account would produce slightly higher trended values for prior years given the subject was newer. But that consideration was somewhat offset by changes in investor demand, which were trending lower over the relevant period. Based on these factors, Hall decided that no trending adjustments were necessary and concluded to a value of $1,500,000 for each of the dates under appeal. *Hall testimony; Resp't Ex. 1 at 123-125.*

2. Satter's Appraisal

40. Apple engaged Satter, the Managing Director and Midwest Regional Manager for Hilco Real Estate Appraisal, LLC, to appraise the property. Satter is an Indiana certified general appraiser who also holds MAI and GAA designations. Like Hall, Satter certified that he appraised the subject property and prepared his appraisal report in accordance with USPAP. *Satter testimony; Pet'r Ex. A at 52, Qualifications of the Appraiser(s) Addenda.*

41. Satter appraised the market value-in-use of the fee simple estate. He noted that a fee simple estate is an ownership interest unencumbered by a lease, so he did not consider the subject's existing lease or its effect on value. Satter found the cost and sales-comparison approaches applicable for this assignment. But he decided that the income capitalization approach was inapplicable because it "is a reliable indication of value for estimating the value of a leased fee interest," instead of the fee simple interest. He further noted that capitalization rates extracted from leased fee sales reflect investment decisions that involve considerations such as tenancy and lease terms. In his opinion, use of such rates

can produce misleading valuations unless the appraiser addresses the economic value of those characteristics. *Satter testimony; Pet'r Ex. A at 4, 33, 48.*

a. Satter's Market Overview

42. Satter performed a market segmentation analysis to determine the subject's competitive market and to identify comparable properties. Based on the market participants actively buying and selling properties like the subject property, Satter defined its market segment to be investors/speculators and owner-users. He described its market as consisting of casual dining restaurants of good to very good construction quality that are occupied by a single tenant/single user with a local to regional customer base. He felt two other important property attributes were having an adequate land to building ratio for parking or access to shared parking and having a gross building area ranging from 3,000 to 8,000 square feet. Satter designated its market area as "the northeast outlying areas of Indianapolis, Indiana." He considered restaurant properties with these attributes to be appropriate substitute properties, while he identified complementary properties as consisting of other freestanding retail properties that were suitable for restaurant use. Additionally, Satter estimated a marketing period and exposure time of 6-12 months during the years at issue. *Satter testimony; Pet'r Ex. A at 5-7.*

43. Because the subject's location falls within the Indianapolis MSA, Satter examined a variety of economic and statistical data covering national, Midwest, and Indianapolis trends and forecasts through February 2017. Among other things, this included information on population, employment, income, education, and housing prices. Most of this data supported a favorable outlook for the Indianapolis MSA. He described Anderson as having a stable population with below average household income. In addition to looking at the population growth, household income, and employment data for Anderson, Satter also reviewed its location, access, and development characteristics. He thinks Anderson has average access via the interstate highway system and is in a stable

stage of the development cycle. Overall, Satter felt that these characteristics would remain stable for the foreseeable future. *Satter testimony; Pet'r Ex. A at 8-20.*

44. Satter also provided a general overview of the local retail market within Anderson and Madison County. The demand characteristics were improving through 2016, but the improvement in occupancy was largely attributable to the power center segment with general retail remaining relatively stable. There was some modest rent growth with average rental rates for retail properties ranging from $8.15/SF to $9.01/SF between 2013 and 2016. But Satter ultimately concluded that the analytics for the five-mile area surrounding the subject had mixed market metrics. *Satter testimony; Pet'r Ex. A at 21-23.*

45. The highest and best use analysis Satter performed focused on four criteria: uses that are physically possible, legally permissible, financially feasible, and maximally productive. His conclusion regarding the subject's highest and best use, as vacant, was for future commercial development. And Satter concluded that its highest and best use, as improved, was the continued use of the existing improvement for its current use. *Satter testimony; Pet'r Ex. A at 31-32.*

b. Satter's Cost Approach

46. Like Hall, Satter valued the subject's land using the sales comparison approach. He noted that there was limited vacant land sale data due to the maturity of the subject's market area. Satter selected eight comparable land sales:

- Land Sale No. 1 (13455 Tegler Dr., Noblesville) – 1.80-acre commercial site acquired for development into a Famous Dave's BBQ restaurant sold in December 2011 for $11.80/SF ($513,889/acre);
- Land Sale No. 2 (1080 S. Peru St., Cicero) – 0.79-acre commercial site purchased for future development sold in June 2010 for $4.50/SF ($196,203/acre);
- Land Sale No. 3 (129 S. Memorial Dr., New Castle) – 0.79-acre site acquired for redevelopment into a Hardee's sold in August 2012 for $8.75/SF ($381,194/acre);

- Land Sale No. 4 (5903 S. Scatterfield Rd., Anderson) – 1.51-acre site acquired for development of a Buffalo Wild Wings sold in November 2011 for $9.93/SF ($432,629/acre);
- Land Sale No. 5 (2743-2747 Nichol Ave., Anderson) – 1.09-acre site consisting of two adjacent parcels acquired for development of a Family Dollar sold in July 2014 for $4.32/SF ($188,073/acre);
- Land Sale No. 6 (1816 E. 53rd St., Anderson) – 0.45-acre site improved with a freestanding retail building; land sold in December 2015 for an estimated value of $125,000, or $6.41/SF ($279,231/acre);
- Land Sale No. 7 (2536 Broadway Ave., Anderson) – 0.74-acre site was improved with small retail building that was razed for redevelopment into a Dollar General when assembled with three additional parcels; sold in March 2016 for $4.67/SF ($203,252/acre);
- Land Sale No. 8 (3328 S. Scatterfield Rd., Anderson) – 1.34-acre improved residential site acquired for development into a Sherwin Williams sold in March 2017 for $2.48/SF ($108,209/acre).

Satter testimony; Pet'r Ex. A at 34-37, Comparable Land Sales Addenda.

47. Satter employed a qualitative analysis to make adjustments because the data he relied on lacked uniformity, making support for specific adjustments too subjective. He considered making qualitative adjustments for property rights conveyed, financing, conditions of sale, market conditions (date of sale), location, size, zoning, topography, utilities, and shape. Satter decided against a market conditions adjustment based on his review of sale data that indicated limited price appreciation during the relevant years. And he determined that Sales 3 and 6 were similar enough to require no adjustment. While Satter found the remaining comparable land sales to be similar to the subject in most respects, he ultimately rated Sales 1 and 4 as superior, with Sales 2, 5, 7, and 8 rated as inferior. Based on his analysis, he expected the subject's value to be higher than the inferior sales, lower than the superior sales, and similar to Sales 3 and 6. The two similar sales had a range of $6.41 to $8.75 and Satter settled on a value of $7.00/SF, resulting in a total land value of $280,000 for the years under appeal. *Satter testimony; Pet'r Ex. A at 37-38.*

48. To estimate the replacement cost new of the subject's improvements, Satter used information from MVS. He felt the building matched MVS's Restaurants (350) classification and fell between the Class C category for "good" to "very good" construction quality rating. MVS's base cost for a building of this type ranged from $157.20/SF to $201.91/SF, for an average cost of $179.56. Satter reconciled these base costs to $180.00/SF. To this base cost, he added $4.40/SF for the building's wet sprinkler system and $1.87/SF for its extreme climate HVAC system. While he made no adjustments for ceiling height or perimeter, Satter did apply a current cost multiplier and a local cost multiplier, producing an adjusted cost for the building of $946,482. He acknowledged that the MVS base costs he employed were from 2016 and were slightly higher than the base costs MVS reported for prior years. But he felt that the lower base costs in those earlier years were offset by the building's lower physical depreciation during those years. *Satter testimony; Pet'r Ex. A at 39, 42.*

49. Because the replacement cost produced by MVS does not account for off-site costs, Satter included soft costs equaling 5.0% of the undepreciated replacement cost new for the building. And based on interviews he conducted with merchant developers, he estimated entrepreneurial incentives to range from 5% to 15%. Given the subject's property type, Satter settled on entrepreneurial profit of 10% of the building's cost. Including his estimated soft costs and entrepreneurial incentive resulted in a total replacement cost new of $1,093,187 before accounting for depreciation. *Satter testimony; Pet'r Ex. A at 40, 42.*

50. Satter estimated accrued depreciation using the economic age-life method. He described depreciation as the difference between the replacement cost of the improvement and its contributory value. The subject's building was originally constructed in 1995. Based on his discussions with the property contact and his inspection, Satter reported limited replacement of long or short-lived items. He provided details regarding the expenses incurred to repair or replace some of those items, including several dollar figures relating

to roof and HVAC repairs. Satter noted that despite those repairs, the roof and HVAC equipment will require replacement in the near term given that they are original. Satter estimated the building's effective age at 15-20 years and concluded to the midpoint of 17.5. MVS fixed the economic life of a Class C restaurant of comparable type and quality at 40 years. Thus, his estimate of accrued depreciation came in at 43.75% (17.5 divided by 40), resulting in total age-life depreciation of $478,269. He considered 10% of that estimate to represent curable physical depreciation, and he treated the remaining 33.75% as non-curable. *Satter testimony; Pet'r Ex. A at 27-28, 40-42.*

51. Given that the building conforms to similar regional properties in terms of design and physical characteristics, Satter allocated no accrued depreciation for functional obsolescence. He pointed out that his cost approach is forecasting the replacement cost of a contemporary structure, which would not have any functional obsolescence. He also concluded that no deductions for external (economic) obsolescence were necessary based on his review of existing demand for similar properties in its area as well as a broker interview. *Satter testimony; Pet'r Ex. A at 41.*

52. Satter also used MVS to estimate the replacement cost new of the site improvements, which he described as consisting of asphalt and concrete paving, a utility shed, and fencing and landscaping. He estimated their undepreciated replacement cost new to be $87,016. Satter applied depreciation of 66.7% to the asphalt and concrete paving and the utility shed. And he applied 50% depreciation to the fencing and landscaping. This produced a total cost of $32,339 for the site improvements. *Satter testimony; Pet'r Ex. A at 39, 42.*

53. After totaling up his land value and the replacement costs new for the building and site improvements, Satter concluded to a value of $930,000 under the cost approach. Due to the limited changes in market conditions, the replacement cost new and its refinements, current and local cost multipliers, and accrued depreciation from March 1, 2012 to

January 1, 2017, he concluded to the same $930,000 valuation for all of the dates under appeal. *Satter testimony; Pet'r Ex. A at 42.*

d. Satter's Sales-Comparison Approach

54. Satter researched the Madison County and northwest suburban Indianapolis area for restaurant and freestanding retail sales. He noted that the price range of his sales varied widely because of the lack of fee simple sales in the market area. Satter excluded transactions of build-to-suit and sale-leaseback properties because they are not arms-length sales and/or have structured finance terms that affect the purchase price. He identified six comparable sales to include in his analysis:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6
Property Name	Applebee's	Former Show Me's Sports Bar	Former Taco Bell	Former Macaroni Grill	Former Great Wall of China Buffet	Former Major's Sports Café	Former Ruby Tuesdays
Location	Anderson	Muncie	Muncie	Carmel	Anderson	Carmel	Richmond
Sale Date		Oct-2010	Sept-2011	Aug-2015	Mar-2015	Jul-2016	Oct-2014
Year Built	1995	1993	1988	2001	1988	2001	2002
Land Area (SF)	39,975	39,640	21,240	55,757	31,500	68,825	51,400
Building Area (SF)	5,296	5,754	3,158	7,031	5,508	7,708	3,786
Sale Price/SF		$66.04	$107.66	$199.12	$108.75	$145.95	$145.27
Rights Conveyed		Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple

Satter testimony; Pet'r Ex. A at 46.

55. Satter completed a qualitative analysis to make adjustments based on cost data, market surveys, and his experience. He considered making qualitative adjustments for property rights conveyed, financing, conditions of sale, market conditions (date of sale), location, and size. Although the closing dates for his comparable sales ranged from 2010 to 2016,

Satter rated them as similar and made no adjustments for market conditions. As for the remaining transactional adjustments (property rights conveyed, financing, conditions of sale), he found his comparable sales similar to the subject in all respects save one. He rated Sale 5 as having an inferior condition of sale because its buyer was an investor who offered a quick closing and an all cash purchase. *Satter testimony; Pet'r Ex. A at 43-44, 46-47.*

56. Regarding location attributes, Satter determined that Sale 1 was similar to the subject property, with Sales 2, 3, and 5 rated as superior and Sales 4 and 6 rated as inferior. The two sales from Carmel (Sales 3 and 5) had superior demographics, higher traffic counts and better proximity to Indianapolis, making their locations superior to the subject's. He noted that Sale 4 (located in the same shopping center as the subject) had a higher traffic count but inferior access due to a road median. Satter also judged Sale 6 inferior to the subject due to lower consumer spending in that area. *Satter testimony; Pet'r Ex. A at 44, 46-47.*

57. For size adjustments, Satter rated Sales 1 and 4 as similar, Sales 2 and 6 as superior, and Sales 3 and 5 as inferior to the subject. He considered Sales 1, 2, and 4 as inferior in condition because they required renovation for continued use as restaurants, but found the remaining comparable sales to have similar quality construction. *Satter testimony; Pet'r Ex. A at 44, 46-47.*

58. In his overall comparison, Satter ultimately rated Sale 3 as superior, Sales 1, 2, and 4 as inferior, and Sales 5 and 6 as similar. Based on his analysis and "input from local real estate professionals," he expected the subject's value to be lower than the superior sale, higher than the sales rated as inferior, and similar to Sale 5, or between a range of $108.75/SF and $199.12/SF. He settled on a value of $160.00/SF, resulting in an estimated market value-in-use of $850,000. As with his cost approach, the limited changes Satter observed in market conditions and similar metrics led him to conclude to

the same $850,000 valuation for all of the dates under appeal. *Satter testimony; Pet'r Ex. A at 47*.

e. Satter's Reconciliation

59. Satter relied on both of his approaches to develop an opinion of value, but he gave less weight to his sales-comparison approach in his final value estimate. Based on his analysis, his final reconciled opinion of value was $900,000 as of March 1, 2013, March 1, 2014, March 1, 2015 and January 1, 2016. *Satter testimony; Pet'r Ex. A at 49.*

IV. ANALYSIS AND CONCLUSIONS OF LAW

A. OBJECTIONS

60. Apple objected to the admission of Respondent's Exhibit 12 on grounds of relevance. Our ALJ took the objection under advisement. Exhibit 12 is a demonstrative exhibit illustrating Satter's testimony on cross-examination regarding the calculation of a per square foot price for a sale Satter excluded from his comparable sales analysis. Apple did not object to the testimony the Assessor elicited from Satter that served as the basis for the calculations depicted in Exhibit 12. The exhibit simply illustrates Satter's unchallenged testimony in demonstrative form and we find that the information it contains is at least marginally relevant to the ultimate valuation question. We therefore overrule Apple's objection and admit Exhibit 12.

B. BURDEN OF PROOF

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

62. The Assessor stipulated that he bears the burden of proof for the 2013 assessment year. Apple argued that the subject property's 2013 assessment should revert to its 2012 assessed value because the Assessor admitted the 2013 assessment is incorrect. Apple claimed that because Hall testified the Assessor's original assessment was wrong and concluded to a value above that assessment in his appraisal report, the Assessor effectively conceded that he could not prove the original assessment was correct. Apple further claimed that the remaining assessment years under appeal should revert to the 2012 value for the same reason. However, the Indiana Tax Court rejected this argument in *CVS Corp. v. Monroe Cty. Assessor*, 83 N.E.3d 1286, (Ind. Tax Ct. 2017), finding that when the burden has shifted the reversion applies if "the burden to prove the property's correct assessed value has not been met by either party." *Id.* at 1290.

63. Here, both parties offered USPAP-compliant appraisals prepared by qualified appraisers, and their respective appraisals are at least generally probative of the property's true tax value for all of the years under appeal. Because the parties both offered probative evidence sufficient to prove the property's correct assessed value, reversion is inapplicable for 2013 and the question of who has the burden for any of the subsequent assessment years is largely theoretical. We must therefore weigh the evidence to determine which party presented the most credible and reliable opinion of the subject property's true tax value for each year.

C. TRUE TAX VALUE

64. Indiana assesses property based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he 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 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id*; *see also*, *Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

65. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2013, 2014, 2015 and 2016, the valuation dates were March 1, 2013, March 1, 2014, March 1, 2015 and January 1, 2016, respectively. Ind. Code § 6-1.1-2-1.5(a).

D. VALUATION EVIDENCE

66. Before turning to particular criticisms of the individual approaches to value, we will briefly address some of the similarities between Hall's and Satter's appraisals. The appraisers generally agreed on the characteristics of the subject property's market segment, with both describing the essential features for comparable and substitute properties in very similar terms. For example, Hall and Satter both described its market segment to include single tenant restaurants of good quality or better construction with building sizes ranging from 3,000 to 8,000-10,000 square feet. Both appraisers also came to similar conclusions regarding the subject's highest and best use. We see little difference between describing its highest and best use as vacant, as being for retail use as Hall did, versus it being for future commercial development as Satter did. More importantly, they both thought that its highest and best use as improved was the continuation of its current use as a restaurant.

67. There was some disparity in how the appraisers initially regarded the subject property's market area, but both ultimately found it necessary to enlarge their search areas. While Hall defined its market area as a narrow slice of the Scatterfield Road Corridor in

Anderson, he eventually expanded his search for comparable data to include markets from across Indiana. Similarly, Satter designated the subject's market area as the northeast outlying areas of Indianapolis, but pulled comparable data from as far away as Richmond. To some extent, the parties attempted to use these varying descriptions to criticize the opposing appraiser's selection of comparable data. However, we find both appraisers had sufficient justification to look outside their designated market areas given the apparent scarcity of pertinent data.

68. Additionally, we give no weight to Apple's criticism of Hall's decision to develop an opinion of value only for the January 1, 2016 valuation date and then trend it back to the other dates under appeal. Hall specifically looked at changes in local market conditions, changes in the CPI-U index, changes in actual age and physical condition, and changes in investor demand as shown by cap rate fluctuations in deciding that no trending adjustments were necessary. Satter admittedly developed an opinion of value for the January 1, 2017 valuation date (a date not under appeal) and likewise concluded his valuation required no trending adjustments to relate it to the 2013-2016 valuation dates. Satter based his decision on the limited changes in market conditions, replacement costs, current and local cost multipliers, and accrued depreciation from March 1, 2012 to January 1, 2017. Although we have very little confidence in Satter's approach, the fact that both appraisers reached the same conclusion after reviewing a variety of market-based indicators convinces us that the subject property's value remained relatively stable over the relevant valuation dates.

69. Apple briefly argued that Hall's comparable Sale 2, which sold in 2013 for $1,350,000 and then sold again in 2015 for $1,480,000, demonstrates a trend that Hall simply disregarded. If such a trend existed, however, it would undermine Satter's appraisal to the same extent as it would Hall's. And one paired sale from Fort Wayne is insufficient to establish a trend, let alone a trend capable of undermining the broad mix of analyses offered by both parties' appraisers. That is particularly true because their analyses

included reviews of changes within the local market and to the subject property itself. We therefore conclude that the application of a trending factor was unnecessary to relate either appraisers' value conclusions to any of the specific valuation dates under appeal.

1. Hall's cost approach was more credible than Satter's

70. Both appraisers presented credible land valuations. Despite having only one sales comparable in common, both appraisers ultimately valued the subject property's land at $280,000 for all of the years under appeal. The only real criticism of either appraisers' land valuations was Apple's claim that Hall failed to use comparable sales with the same current use as the subject property. But Satter selected comparable sales with an even broader mix of uses and zoning classifications. Thus, if we gave Apple's criticism any weight (which we do not), it would detract more from the reliability of Satter's land valuation than Hall's. Because both appraisers reached the same conclusion, however, we find the $280,000 land valuation highly probative.

71. Although both appraisers also offered credible improvement valuations, they had two significant disagreements that led them to arrive at considerably different value conclusions. First, the appraisers disagreed on the building's proper construction quality rating within MVS's base cost model for Class C restaurants. Hall decided that the building's physical characteristics are consistent with the MVS's definition of "very good" construction quality. That decision led Hall to select a base cost of $198.13/SF. Satter, on the other hand, felt the building fell somewhere between the "good" and "very good" construction quality ratings. Satter therefore took the average of the base costs for "good" and "very good" and reconciled them to $180.00/SF.

72. MVS's descriptions of the two quality ratings are certainly similar in many respects, but Hall offered more support for his decision. He submitted pictures of the interior and exterior of the building highlighting several relevant characteristics. Specifically, Hall's pictures show the building incorporates a section of stonework around a main entrance

further individualized with a metal canopy. And the dining areas have carpet instead of the vinyl or ceramic floors associated with "good" quality restaurants. The restrooms also have solid surface countertops and undermount sinks that are consistent with the "very good" standard. In contrast, Satter did little to compare the building's exterior and interior characteristics with MVS's descriptions. While it is still a close call, we find Hall's opinion of the building's construction quality more persuasive.

73. The second major disagreement stems from the appraisers' differing views regarding the impact the renovations had on the building's effective age. Hall concluded to an effective age of 10 years, whereas Satter estimated the building's effective age to be 17.5 years. Apple argued that most of the renovation expenses incurred were for cosmetic changes related to personal property items such as signage and branding as opposed to real property improvements. And Satter characterized the expenses that were unquestionably related to the real property as insufficient to improve the overall condition of the property in an appreciable way. Satter principally focused on the roof and HVAC system, which he thinks will require replacement in the near term because they are original to the building.

74. While the remodeling clearly included significant expenses for personal property items, the real property renovations were not merely window dressing as posited by Apple. They included a rebuild of the interior bar area; new carpeting, lighting, paint, wood trim, and vinyl wall coverings in the dining rooms; new vanity countertops in the restrooms; work on the tile floor and wall coverings in the kitchen; and plumbing and electrical work throughout the building. And the exterior renovations included outdoor plumbing work and the installation of new lighting, window awnings, and exterior doors.

75. We also give little weight to Satter's comments regarding the roof and HVAC system. Although both items will undoubtedly require replacement at some point, Satter acknowledged that the property required no immediate repairs. Further, there were

substantial roofing repairs and nearly $18,000 worth of maintenance and repair work performed on the HVAC system between 2013 and 2016. And the HVAC repairs included work on key components such as the compressor, ductwork, and collector plates. Given the amount of repair work dedicated to maintaining the functionality of the roof and HVAC system, we are unconvinced that they will require replacement in the near term just because they are original to the building.

76. Hall also provided a side-by-side comparison of the subject property and an Applebee's property constructed in 2004 that further supports a conclusion that the renovations substantially renewed the building's condition. We recognize that one exterior picture does not tell the whole story. However, when taken together with the complete list of real property renovations and repairs outlined above and the additional pictures of the subject property in the record, we find Hall's opinion of the building's effective age to be more reliable. Accordingly, we also conclude that Hall produced a more accurate estimate of physical depreciation.

77. Beyond these two primary differences, there were also discrepancies between the appraisers' estimates of indirect costs, site improvement costs and associated depreciation. But the parties failed to meaningfully challenge either appraiser's opinion. While neither appraiser did much to support their indirect cost estimates, we find both of their estimates minimally credible. And finding no specific reasons to doubt the reliability of their site improvement costs and associated depreciation estimates, we conclude that both appraisers produced reasonable estimates for those items.

78. In sum, we find both appraisers presented credible cost approaches. But Hall's opinions regarding the building's construction quality and effective age (along with his resulting physical depreciation estimate) were more persuasive than Satter's. We therefore find Hall's value conclusion under the cost approach to be the more credible estimate of the subject property's market value-in-use.

2. Neither appraiser's sales-comparison approach was reliable

79. We start by noting that both parties believed the cost approach produced a better valuation than the sales-comparison approach. Although Hall placed similar weight on all three of the approaches he developed, the Assessor described the use of the sales-comparison approach as "the least reliable valuation method" for single tenant, freestanding retail properties like the subject. *Resp't Brief at 22.* And Satter gave his cost approach more weight than his sales-comparison approach when reconciling his two approaches. Nevertheless, we will briefly address the criticisms raised by the parties.

80. Apple's main criticism of Hall's sales-comparison approach was his decision to include leased-fee sales. Apple argued that Hall failed to properly adjust his five leased-fee sales for property rights. *The Appraisal of Real Estate, 14th Edition,* states that "to compare the leased fee interest to the fee simple estate of the subject property, the appraiser must determine if the contract rent of the comparable property was above, below, or equal to market rent." In Hall's view, if the properties are leased at market rent, the appraiser may use the sales without any adjustment for property rights conveyed. If the properties are not leased at market rent, they may still be used with appropriate adjustments.

81. We take no issue with Hall's general assertion that appraisers can use leased-fee sales in a fee-simple valuation after considering adjustments for property rights. Moreover, Hall purportedly performed a market rent analysis for each of his five leased fee sales. But he offered no meaningful support for the estimated market rent ranges in his appraisal report, his work file, or through his testimony. Hall's failure to demonstrate the validity of the market rent ranges leaves us unconvinced that the four leased-fee sales he claimed were leased at market rent actually were, or that his adjustment to Sale 6 was appropriate. We recognize that Hall also included three fee simple sales, but their inclusion does not remedy his failure to show the five leased-fee sales were leased at market rent. Because

the leased-fee sales factored so prominently into Hall's value conclusion, his sales-comparison approach is much less credible than his cost approach.

82. We likewise give no weight to Hall's informational opinion of the contract value of the subject property's leased fee interest. He based his valuation on four properties leased and occupied for use as Applebee's restaurants, but evidence that an Applebee's contract lease is even higher than his leased-fee comparables does not establish his comparable sales are at market rent.

83. Turning to Satter's sales-comparison approach, we first dispatch with the Assessor's assertion that Satter's exclusive reliance on the sale of vacant properties is a fatal flaw. The Assessor argues that properties that are vacant at the time of sale do not reflect the same utility as a property that is occupied and producing rental income. But the Tax Court has been clear that vacancy alone is insufficient to disregard comparable sales. *See, e.g., Stinson v. Trimas Fasteners*, 923 N.E.2d 496, 497 (Ind. Tax Ct. 2010) (rejecting assessor's "theory that vacant properties are not comparable to occupied properties").

84. The Assessor further argued that several of Satter's comparable sales compete in a different market segment than the subject property. Ind. Code § 6-1.1-31-6, sometimes referred to as the market segmentation statute, offers a way to impeach a valuation by showing that the comparable sales used in the valuation were not from appropriate markets:

> (d) With respect to the assessment of an improved property, a valuation does not reflect the true tax value of the improved property if the purportedly comparable sale properties supporting the valuation have a different market or submarket than the current use of the improved property, based on a market segmentation analysis. Any market segmentation analysis must be conducted in conformity with generally accepted appraisal principles and is not limited to the categories of markets and submarkets enumerated in the rules or guidance materials adopted by the department of local government finance.

Ind. Code § 6-1.1-31-6(d). We are not persuaded that the Assessor has presented the type of analysis on Satter's comparable sales as contemplated in this statute. However, we agree with a number of the Assessor's criticisms.

85. We harbor serious doubts concerning Satter's use of a former Taco Bell (Sale 2) and a former Ruby Tuesdays (Sale 6) as comparable sales. Satter described the subject as competing within a market segment for casual dining restaurants, but he described the Taco Bell as a fast food facility. And the buyer of the Ruby Tuesdays was a hospital that subsequently converted the building into a medical office, which is an entirely different use. Consequently, the inclusion of these two sales significantly diminishes the credibility of Satter's sales-comparison approach.

86. The Assessor also criticized many of Satter's qualitative adjustments and the lack of analysis supporting those adjustments. We agree with the Assessor that Satter seemed unfamiliar with basic data relating to the comparable properties he used in his sales-comparison analysis. That was particularly true for Sales 3 and 5, which are located in an area suffering from significant vacancy issues. Satter admitted he did not perform any analysis or research of these issues, but he acknowledged that they might have affected his value conclusions.

87. Additionally, Satter offered no analysis in support of his decision to forgo post-sale expenditure adjustments for Sales 2, 4, and 6. For example, Satter reported that the buyer of Sale 4 purchased the property anticipating the need for renovations, including a new roof and HVAC system. But when discussing his adjustments, Satter simply described Sale 4 as inferior in condition and in need of renovations for continued restaurant use without even mentioning post-sale expenditures as a concern. This oversight is especially troublesome given that *The Appraisal of Real Estate* contemplates quantifiable transactional adjustments for post-sale expenditures.

88. As the above examples illustrate, Satter repeatedly failed to provide meaningful analysis in support of his qualitative adjustments. Those failures further detract from the credibility of Satter's sales-comparison approach. As a result, we find his conclusions under the sales-comparison approach unreliable.

3. Hall's income approach is less reliable than his cost approach and Satter's failure to develop an income approach detracts from his overall credibility

89. Apple primarily criticized Hall's income approach because he relied on unadjusted contract rents to develop his market rent estimate. We find little merit in Apple's criticism. Apart from the specific issues discussed below, Hall reviewed many of the relevant characteristics that might require an adjustment and explained his rent comparables' inferiority or superiority in relation to the subject property's features. He then calculated the midpoint of the range of his unadjusted comparables; the average rent of the comparables with Class C construction quality; the average rent of the properties operating as restaurants/bars; and the average of the comparables with absolute net leases. Thus, while Hall did not quantitatively adjust any of his comparables' contract rents, he did not simply rely on the unadjusted rents to estimate an appropriate market rent for the subject property as claimed by Apple. Instead, Hall placed the most emphasis on the central tendencies produced by rent comparables with similar attributes.

90. Apple also claimed that Hall's rent comparables were all build-to-suit or sale-leaseback transactions, making them unsuitable for comparison because they were never available on the open market. While there is no indication that all of Hall's rent comparables were build-to-suit or sale-leaseback transactions, Comparables 2 and 3 were originally built-to-suit. And Hall failed to adequately address whether any adjustments were necessary to account for tenant build-out. That is less of a concern for Comparable 2 because the tenant signed a new lease in 2011, but Comparable 3's tenant simply exercised an option to renew. Hall's decision to include three lease renewals (Comparables 2 and 3 among them) and a renegotiated lease as rent comparables is even more troubling. He failed to

provide a sufficient explanation for how contract rents from leases that were never exposed to the market can accurately reflect market rent. We find these issues significantly detract from the reliability of Hall's income approach.

91. We now turn to Satter's decision to forgo the development of an income approach. Despite the fact that Satter described the subject property's market segment as including investors/speculators, he chose not to develop an income approach because he thinks the approach estimates the value of a property's leased-fee interest instead of its fee simple interest. In his opinion, use of capitalization rates extracted from leased-fee sales reflect investment decisions involving considerations such as tenancy and lease terms that can produce misleading valuations *unless the appraiser addresses the economic value of those characteristics*. Satter's explanation, however, demonstrates his error. While the economic value of characteristics such as tenancy and lease terms may be difficult to quantify, an appraiser can nevertheless produce a reliable valuation if he takes the time to address those characteristics in a careful manner.

92. As things stand, Satter appears to have ignored what is arguably the most relevant valuation approach for the subject property simply because it was challenging. Satter admittedly researched and identified rental transactions within the subject property's market, but he then stopped short of developing an income approach because he could not verify their specific lease terms. Nevertheless, we fail to see what prevented Satter from pursuing data on rental transactions from a broader area given that he was willing to pull comparable data from as far away as Richmond for use in his sales-comparison approach. Accordingly, we conclude his failure to develop an income approach detracts from his overall credibility.

V. CONCLUSION

93. We have two appraisals, both of which are flawed, although one significantly more than the other. Ultimately, we find Hall generally more credible than Satter, and Hall's

estimate under the cost approach more reliable than his estimates under the other two approaches or his reconciled opinion. We therefore order the assessments changed to $1,400,000 for 2013, 2014, 2015 and 2016.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

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