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STATE OF INDIANA
INDIANA BOARD OF TAX REVIEW

MEIJER STORES LIMITED PARTNERSHIP,	)	Petition Nos.: 06-021-14-1-4-10237-15 06-005-15-1-4-01987-17 06-005-16-1-4-01988-17 06-005-17-1-4-02182-17
Petitioner,	)	Parcel No.: 06-04-06-000-006.007-021
vs.	)	County: Boone
BOONE COUNTY ASSESSOR,	)	Assessment Years: 2014, 2015, 2016, 2017
Respondent.	)	

Appeals from Final Determinations of the
Boone County Property Tax Assessment Board of Appeals

August 28, 2019

I. Introduction

1. The subject property consists of a new retail store (the "Meijer Store") located in Whitestown. The store owner, Meijer Stores Limited Partnership, (the "Taxpayer") and the Boone County Assessor (the "Assessor"), each offered appraisals based on competing theories for valuing big box stores. Both appraisals were subjected to rigorous scrutiny

that exposed flaws and contradictions in methodology, data, and theory. In the final analysis, the Board determines the true tax value of the Meijer Store in accordance with the least disputed data and the methodology most appropriate for a new building.

II. Procedural History

2. The Taxpayer timely filed Form 130 petitions for the 2014, 2015, 2016, and 2017 assessments. The Boone County Property Tax Assessment Board of Appeals did not conduct a hearing. The Taxpayer timely filed Form 131 petitions for review with the Board.

3. All of the petitions for the 2014-2017 assessments were set for a single hearing. Pursuant to a joint appeal management plan, the parties presented evidence regarding only the 2016 assessment. The parties stipulated that the assessments for 2014, 2015, and 2017 would be based on pre-determined trending factors applied to the Board's decision for the 2016 assessment. Kyle Fletcher, designated as the Board's administrative law judge, held a hearing on the dates of December 17-20, 2018, in Indianapolis.

4. Four experts testified: Samuel Koon, Peter Korpacz, Steven Laposa, and Laurence Allen. All were sworn under oath.

5. The original Form 113 assessments were as follows:

Assessment Year	Land	Improvements	Total
2014	$2,448,000	$7,072,600	$9,520,600
2015	$2,448,000	$9,430,100	$11,878,900
2016	$2,448,000	$9,430,100	$11,878,900
2017	$2,448,000	$9,430,100	$11,878,900

For the 2016 assessment, the Taxpayer requested a reduction to $7,300,000, and the Assessor requested an increase to $16,550,000.

6. The Taxpayer offered the following exhibits, all of which were admitted:

Petitioner's Exhibit P-1:	Appraisal Report of Laurence Allen, MAI,
Petitioner's Exhibit P-18:	Print-out of Select Licensed Appraisers,

Petitioner's Exhibit P-24:	ESRI Data for Subject Property and Allen's Sales Comps and related Charts,
Petitioner's Exhibit P-26-A:	Lake County Appeals Brief,
Petitioner's Exhibit P-29-1	Shapiro's (demonstrative),
Petitioner's Exhibit P-29-2	Shapiro's (demonstrative),
Petitioner's Exhibit P-29-3	Shapiro's (demonstrative),
Petitioner's Exhibit P-29-4	Shapiro's (demonstrative).

7. The Respondent offered the following exhibits, all of which were admitted:

Respondent's Exhibit R-3:	June 8, 2018, Koon Appraisal with Corrected Pages,
Respondent's Exhibit R-4:	June 8, 2018, Korpacz Big Box Methodology Study,
Respondent's Exhibit R-5:	July 9, 2018, Korpacz Appraisal Review of Allen Appraisal,
Respondent's Exhibit R-8:	August 23, 2018 Revised Laposa Rebuttal of Allen,
Respondent's Exhibit R-10:	Laposa Power-Point Slide 1—U.S. Retail Real Estate New Supply, Net Absorption, and Vacancy Rates, 2010-2016,
Respondent's Exhibit R-11:	Laposa Power-Point Slide 2—U.S. All Retail Properties Sales Volume vs. Cap Rate 1st Quarter 2009 to 1st Quarter 2016,
Respondent's Exhibit R-12:	Laposa Power-Point Slide 3—U.S. Single Tenant Properties Sales Volume vs. Cap Rate 1st Quarter 2009 to 1st Quarter 2016,
Respondent's Exhibit R-15:	Laposa Power-Point Slide 6—Average Price per Square Foot U.S. All Retail Properties vs. Single Tenant Properties, 2009-2016,
Respondent's Exhibit R-16:	Laposa Power-Point Slide 7- Indianapolis MSA All Retail Properties Sales Transaction Volumes by Investor Type, 4th Quarter 2001 to 1st Quarter 2016,
Respondent's Exhibit R-17:	Laposa Power-Point Slide 8- Population density vs. population growth rates, Allen Appraisal sale comparables and Subject Property
Respondent's Exhibit R-18:	Laposa Power Point Slide 9- Three-Dimensional Scatter Graph, Subject Property vs. Allen Sale Comparables

Respondent's Exhibit R-20:	Laposa Power-Point Slide 11- Three-Dimensional Scatter Graph, Subject Property vs Allen Sale Comparables (10-mile)
Respondent's Exhibit R-21:	Laposa Power-Point Slide 12- 10-mile data
Respondent's Exhibit R-22:	Laposa Power-Point Slide 13- Population density vs. population growth rates, Allen Appraisal Sale comparables and Subject Property (5-mile)
Respondent's Exhibit R-23:	Laposa Power-Point Slide 14-Three-Dimentional Scatter Graph, Subject Property vs. Allen Sale Comparables (5-mile)
Respondent's Exhibit R-26:	Laposa Power-Point Slide 17- Cumulative store closings and openings (Allen p.49)
Respondent's Exhibit R-28:	Kaoisa Power-Point Slide 19- Loopnet asking price per square foot retail, State of Indiana (Allen p. 68)
Respondent's Exhibit R-30:	Laposa Power-Point Slide 21- Moody's /RCA CPPI National Retail Index representation. (Allen p. 69)
Respondent's Exhibit R-32:	Laposa Power-Point Slide 23- All retail property, › 60,000 square feet, Indianapolis MSA (Allen Report p.72)
Respondent's Exhibit R-34:	Laposa Power-Point Slide 25- All retail property, › 60,000 square feet, State of Indiana (Allen report p.73)
Respondent's Exhibit R-36:	Laposa Power-Point Slide 27-Indianapolis MSA retail market conditions (Allen report p. 70)
Respondent's Exhibit R-38:	Laposa Power-Point Slide 29- State of Indiana retail market conditions (Allen report. p. 71)
Respondent's Exhibit R-41:	Laposa Power-Point Slide 32- Top 25 Meijer stores ranked by 5-mile 2017 median household income
Respondent's Exhibit R-47:	Definitions of Fee Simple Over Time
Respondent's Exhibit R-68:	December 13, 2018, Revised Koon Appraisal

8. The admission of the following exhibits was taken under advisement.[1]

Petitioner's Exhibit Ex. P-3:	*A Qualitative Analysis of Big Box Sales Transactions,* International Appraisal Company (2016) - Harrington Study
Respondent's Exhibit R-13:	Laposa Power-Point Slide 4- U.S. Single Tenant, Freestanding Retail Properties Sales Volume vs. Price per Square Foot, ›50,000 Square Feet, 1st Quarter 2014 to 4th Quarter 2017
Respondent's Exhibit R-14:	Laposa Power-Point Slide 5- U.S. Single Tenant, Freestanding Retail Properties Sales Volume vs. Price per Square foot, › 80,000 Square Feet, 1st Quarter 2014 to 4th Quarter 2017
Respondent's Exhibit R-19:	Laposa Power-Point Slide 10- Population Density vs Population Growth Rates, Allen Appraisal sale comparables and Subject Property (10- mile)
Respondent's Exhibit R-27:	Laposa Power-Point Slide 18- U.S. Single Tenant, Freestanding Cumulative Retail New Supply By Property Square Footage Size
Respondent's Exhibit R-29:	Laposa Power-Point Slide 20- Actual Price per Square Foot Sold, All Retail Properties, State of Indiana 2009 through 2016
Respondent's Exhibit R-31:	Laposa Power-Point Slide 22- Actual Moody's/RCA CPPI and Moody's RCA Index using December 2006
Respondent's Exhibit R-33:	Laposa Power-Point Slide 24- CoStar, All Retail Properties, › 60,000 Square Feet Indianapolis MSA
Respondent's Exhibit R-35:	Laposa Power-Point Slide 26- CoStar, All Retail Properties › 60,000 Square Feet, State of Indiana
Respondent's Exhibit R-37:	Laposa Power-Point Slide 28- CoStar Median Cap Rate vs. RealtyRates Survey Cap Rates All Retail Properties (Indianapolis MSA)

[1] The Taxpayer objected to a press release included in the Assessor's post hearing brief. The press release was not part of the record at the hearing, and the Board does not consider it, or any argument related to it. Likewise the Board does not consider any references to legislation before the General Assembly.

Respondent's Exhibit Ex R-39:	Laposa Power-Point Slide 30- CoStar Median Cap Rate vs RealtyRates Survey Cap Rates All Retail Properties (State of Indiana)
Respondent's Exhibit Ex. R-40:	Laposa Power-Point Slide 31- Location of 242 Meijer locations
Respondent's Exhibit R-63:	Meijer's Dec. 4, 2018 Supplemental Production- CONFIDENTIAL ATTORNEY'S EYES ONLY
Respondent's Exhibit R-64:	Meijer's Dec.10, 2018 Supplemental Production CONFIDENTIAL ATTORNEY'S EYES ONLY
Respondent's Exhibit R-67:	Meijer's legible detail of Construction Costs- CONFIDENTIAL ATTORNEY'S EYES ONLY

9. The Assessor objected to *Ex. P-3*, the Harrington Study, on the grounds of hearsay. The Taxpayer initially made no effort to justify its admissibility, but later argued an expert exception to the hearsay rule. Because both parties presented expert testimony referencing data from the report, the Board finds it should be admitted. *Tr*. at 988-89.

10. The Taxpayer objected to several exhibits on the grounds of surprise and failure to timely exchange: *Ex.'s R-13, R-14, R-19, R-27, R-29, R-31, R-33, R-35, R-37*, and *R-39*. The Board agrees and excludes them. *Tr*. at 1113-14.

11. The Taxpayer made a broader and continuing objection to any testimony from Laposa relating to Allen's appraisal on the grounds that Laposa was not "qualified to discuss the relevance of this data as applied to an appraisal, a review appraisal, or any opinion of value whatsoever." The Board finds Laposa did not offer an opinion of value, and he was competent to present evidence that might impeach the facts or presumptions underlying Allen's appraisal. *Tr*. at 1120-21.

12. The Taxpayer objected to *Ex. R-40*, a map of Meijer locations as of January 2017, on the grounds of surprise, relevance, and the inability of the witness to state whether any stores were added after the assessment date. The Board fails to see how the Taxpayer can be surprised by an exhibit detailing the locations of its own stores. In any event, the Taxpayer withdrew its objection in its post-hearing brief. *Tr*. at 1150-54.

13. As for *Ex. R-63, Ex. R-64*, and *Ex. R-67*, which included actual costs, license data, and store rankings, the Taxpayer raised the objection of relevance. The Board already determined they were relevant for purposes of discovery, and they are admissible in determining the issue of sanctions. As for purposes of direct evidence, the Board finds that actual construction costs are relevant in valuing a property. Data regarding leases and licenses for a subject property are commonly included in appraisals as relevant data. The ranking of the Meijer Store among the Taxpayer's other locations may cast light on whether the opinions underlying an appraiser's adjustments reflect reality; e.g. if a particular demographic factor is considered a substantial liability, the store's relative performance may tend to confirm or refute the appraiser's opinion. The Board admits these exhibits.[2]

III. Preliminary Matters

14. The Board resolved a number of discovery disputes through an order on November 30, 2018, which compelled the Taxpayer to produce a several items. By order of December 7, 2018, the Board found the Taxpayer's responses were insufficient and reserved the issue of sanctions for after the trial while providing an opportunity to remedy the deficiency. In response, the Taxpayer produced additional documents that were responsive. Because the primary dispute relates to the untimely disclosure of the actual construction costs, the Board limits its analysis to that issue.

15. The Assessor argued it was prejudiced by the untimely and incomplete discovery responses. Specifically, it was too late for the Assessor to follow up on the responses with depositions of the Taxpayer's employees, and the documents had to be accepted at face value. More importantly, the Assessor lacked sufficient time to integrate the documents into a litigation strategy, both offensively and defensively.

16. The Board agrees the Assessor was prejudiced. If the Meijer Store was constructed differently (with different grades, designs, features, or materials) than initially presumed

[2] The Board rejects the Taxpayer's arguments that any data that is not publicly available is irrelevant in developing a market value for a property. All appraisers, including the witnesses in this matter, rely on private conversations with industry participants and assemblages of work files, none of which is publicly available. The Board also rejects the Taxpayer's argument that evidence should be excluded when an expert does not substantially rely on the data. Appraisals are typically full of data relevant to context but not directly utilized in calculating a value.

by the appraisers, then the Assessor was handicapped by the last-minute revelation. On the other hand, the Board agrees with the Taxpayer that the Assessor could and should have been more diligent regarding its discovery earlier in the course of litigation.

17. As for sanctions, the Assessor requested the Board to "strike Meijer's examination of Koon regarding his opinions that were based on Meijer's actual cost information," or, in the alternative, dismiss the appeals entirely. The Assessor also requested reasonable expenses and attorney's fees.

18. The Board finds that the Assessor's first proposal is reasonable. As sanctions, the Taxpayer is precluded from challenging Koon's premise that the Meijer Store's actual construction costs were [redacted]. This sanction in no way compels the Board to adopt Koon's valuation nor reject Allen's valuation.

19. The Taxpayer likewise requested sanctions and attorney's fees for several acts of perceived bad faith,[3] and specifically regarding the Assessor's unintentional disclosure of an un-redacted brief, which the Assessor immediately disclosed and sought to ameliorate. The Board declines to sanction the Assessor, and as the Taxpayer has argued the Board is without authority to award attorney's fees, declines to grant them. *See Pet'r.'s Response to Assessor's Post-Hearing Br.* at 10-11.

IV. Findings of Fact and Conclusions of Law

A. Description of the Meijer Store

20. The Meijer Store is a 194,380 s/f structure located on 17.63 acres in Eagle Township, southeastern Boone County. It was erected in 2014, and was less than 2 years old on the assessment date. It was in "very good condition/average condition for its age" when inspected in 2018. Not including the value of the land, the cost of construction was [redacted]. It has always been owned and occupied by the Taxpayer. *Ex. P-1* at 1, 3, 31; *Ex. R-64*.

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[3] The Board rejects the Taxpayer's arguments that the Assessor acted in bad faith simply by requesting items that the Taxpayer labeled as trade secrets. *See Pet'r.'s Supp. Response to Resp.'s M. for Sanctions and Request for Sanctions*. The Board stands by its conclusion that the items were discoverable and the Taxpayer acted in bad faith.

21. The property is roughly equidistant from the town centers of Whitestown and Zionsville. It is located within the town limits of Whitestown, but it has a Zionsville postal address, and much of the economic data is based on the Zionsville zip code.[4] The Meijer Store is in the Indianapolis-Carmel-Anderson Metropolitan Statistical Area, and its trade area, extending from northwestern Marion County into Hendricks, Boone, and Hamilton Counties, is labeled "Michigan Rd/Zionsville" or "Traders Point/Zionsville." The Meijer Store is located adjacent to the Anson development, and it is roughly a half mile from Interstate 65. *Ex. P-1* at 12, 20, 22; *Ex. R-68* at B8-B11; *Tr.* at 396.

22. The Meijer Store's immediate and broader neighborhood was in the growth stage as of the date of value.[5] The neighborhood had substantially greater growth and wealth than Indianapolis and the nation. The area supported a variety of land uses, including suburban residential, multi-family residential, gas stations, restaurants, office buildings, religious facilities, and retail. It continued to add new developments and retained "a large amount of available land in the neighborhood" for commercial and residential development. The Michigan Rd/Zionsville trade area had a 3% vacancy rate and Traders Point/Zionsville had a 5.4% vacancy rate compared to Indianapolis as a whole at 5.5%. The "primary neighborhood influence" was the access to Interstate 65. The neighborhood had an established transportation network that provided good access to major highways. Greater competition for big box stores was anticipated in the area as population expands. *Ex. P-1* at 14, 20, 23-24; *Ex. R-68* at B10-12; *Tr.* at 551.

23. The design of the Meijer Store was intended for a single user. This fact was largely due to the "size, depth (most is 350+ deep), and interior layout." Because the building is 100%-150% larger than most large discount or big box stores, it is classified as a "mega warehouse store." The ceiling heights (22 feet), location of truck doors, and large open spaces are more similar to a warehouse than a retail store. The Meijer Store is also a "superstore," which means it has "both groceries and non-groceries" as found in a Super

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[4] The Taxpayer argued that Koon "falsely testified" that the Meijer Store was located in Zionsville, but in accusing the Assessor's witness of falsehoods, the Taxpayer omitted the fact that the Meijer Store's postal address was Zionsville. *Post-Hearing Br. of Pet'r*. at 31. This aggressive posturing is counter-productive and impedes the Board's role as fact-finder.

[5] The four neighborhood life cycles are: Growth, Stability, Decline, and Revitalization. *Ex. P-1* at 23.

Walmart, Super K, Meijer, and some Target stores. The Meijer Store has seven truck docks and "more HVAC," unlike big box stores without a grocery. Generally, big box stores with groceries "have been doing better than other big box stores." Its current use as of the assessment date was its highest and best use. *Ex. P-1* at 29-31, 48; *Tr*. at 566, 559-60, 584-85, 784.

24. Big box stores are never built on a speculative basis, and they are never built before the developer finds a tenant. This is because it would be unlikely a developer would find a tenant for the size and type of the store after construction. Big box stores are constructed for a specific retailer to the retailer's specific requirements. Leases are entered into prior to construction between the retailer and the developer. The developer enters into the lease "to build the building and make a profit on the building," and the lease reflects the "construction cost and profit to the developer." Vacant big box stores tend to sell for much less than their replacement cost. When a developer purchases a vacant big box, it is often divided into into smaller spaces because "there's a larger market for smaller spaces" than single tenant big box use. *Tr*. at 560, 562, 665-66, 711-12, 717.

25. In 2016, the Taxpayer operated 230 store locations across Indiana, Illinois, Kentucky, Michigan, Ohio, and Wisconsin, with roughly 30 in Indiana. Evidence was presented regarding three Meijer closures, but none of the appraisers identified a comparable sale of a Meijer property. The Meijer Store's location has the highest median income of any of the Taxpayer's locations, [redacted]. The Taxpayer added 17 stores between 2014 and 2016 (an increase of 8%), and this fact reflects consumer demand for mega warehouse superstores. *Ex. R-8* at 23; *Ex. R-40*; *Ex. R-41*; *Ex. R-64*.

B. Expert Opinions

1. Allen's Appraisal

26. The Taxpayer offered the testimony of Laurence G. Allen, a Member of the Appraisal Institute (MAI), and a licensed appraiser in several states including Indiana. He has an MBA from the University of Michigan. He has decades of experience as an appraiser and expert witness, and he has authored several publications for and held positions within

the Appraisal Institute. He has taught courses at colleges including the University of Michigan. Allen has represented both taxpayers and local governments in regard to tax appeals, but he has appraised big box stores for the Taxpayer for more than 20 years. *Ex. P-1* at 111-12; *Tr*. at 517-18, 520, 524, 760.

27. Allen's methodology hinged on two related premises that foreclosed consideration of any properties that were leased at the time of sale. The first premise was that a "fee simple" valuation required a presumption of "absolute ownership unencumbered by any other interest" based on a definition from THE APPRAISAL OF REAL ESTATE. Allen theorized that the big box "market for purchasing a leased property, leased fee interest, is different than the market for purchasing fee simple." The leased-fee buyer based the "criteria" for the purchase price on the facts of the existing lease (length, rent, guarantees, credit), while a fee simple buyer bases the purchase on the "risk" in finding a tenant, negotiating a lease, lease commissions, and costs during vacancy. In this market segmentation, Allen considered that the appropriate market would consist of fee simple sales of big-box stores rather than the market for leased fee sales. In support of establishing separate markets for leased and fee simple properties, Allen cited to a study by Brett Harrington of the International Appraisal Company ("Harrington Study"), which indicated that leased fee big box stores sell for substantially more than fee simple big box stores. Allen admitted that the market for leased-fee sales is substantially larger than the market for fee simple sales. *Ex. P-3*; *Tr*. at 535-36, 538-41.

28. Allen's second premise held that the market for an "existing facility" was distinguishable from the market for "build-to-suit." An "existing facility" was assumed to be both "exposed to the market" and sold prior to the valuation date. Conversely "build-to-suit" properties involved "yet-to-be-constructed facilities." He explained:

> Build-to-suit rents or sales prices are based upon the costs of construction; whereas, the "existing property" sale price or lease is a function of supply and demand and the open interaction of buyers and sellers or landlords and tenants in the marketplace for an existing property.

Allen's report did not cite to any treatise in support of this theory of "existing" and "yet-to-be-constructed" properties. In a more conventional explanation, Allen stated that he did not use "leased fees [sic] sales because most leased fee sales are subject to above market build-to-suit leases and sell for prices reflective of both the above-market rent and credit of the tenant." *Ex. P-1* at 6, 53-54.

29. Allen also drew a distinction based on "use," considering an investor's use to be different from a retailer's use. He believed that an investor's purchase of a retail property was not a "retail use," but rather "to generate an income stream." This was the case even if the investor intended to lease the property to a retailer. He did not value the Meijer Store based on a hypothetical lease at market rent because he believed that would not result in a fee simple valuation. *Tr*. at 536-38, 541, 570.

30. Allen considered and applied all three appraisal approaches. However, he considered the cost approach to be "unreliable" because the Meijer Store's "market value-in-use is adversely impacted by substantial depreciation due to obsolescence." He opined that buyers and sellers "do not generally buy and sell based on the cost approach to value." He further argued that obsolescence was difficult if not impossible to estimate without extracting from other approaches. And when an appraiser uses "the other approaches to essentially determine [the] value" through calculating depreciation, the cost approach "is not adding a lot" in terms of a stand-alone approach to value. *Ex. P-1* at 53; *Tr*. at 583, 640.

31. Allen considered the sales comparison approach to be "the primary indicator of value." He believed more data was available for the sales comparison approach than the income approach because there were fewer leases than sales.

32. Allen considered his income approach "less reliable" due to his difficulty in identifying market rent for "existing big box stores." He also stated that "there's no fee simple capitalization rates," and accordingly, "the income approach is more problematic than the sales comparison approach" in valuing fee simple properties. *Ex. P-1* at 53-54; *Tr*. at 580-81.

a. Allen's Sales Comparison Approach

33. Allen looked across 5 states to find comparable sales. He considered several factors in comparing his Sales:

	Subject	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Comp 6	Comp 7	Comp 8
Location	Whites-town, IN	Hartland Twp, MI	Portage, IN	Southgate, MI	Brown Deer, MI	Elgin Twp., IL	Oswego, IL	Memphis, TN	Fort Wayne, IN
Orig. User	Meijer	Walmart	Super-K	Super-K	Lowe's	Lowe's	Lowe's	Target	Kroger
New User		Rural King	Meijer	Multi-Ten.	Walmart	Blain's FF	Multi-Ten.	At Home	Rural King
Yr. Constr.	2014	2009	1993	1998	2006	2006	2005	2005	1999
Sale Date	2016	2016	2011	2016	2013	2016	2014	2014	2014
Vac. at Sale		6 mo.	0 mo.	18 mo.	27 mo.	8 mo.	26 mo.	3-6 mo.	
Bldg. Size	194380	186783	192814	174758	139571	139410	140061	124287	65111
Acreage	17.63	22.92	16.64	15.69	11.05	12.76	16.31	15.16	8.13
Pop.	37632	29637	86105	185461	155059	157277	219716	183198	59620
Househld	13237	10509	32497	76627	60055	50563	66907	69834	24016
HH Inc.	108763	88826	53009	50963	47105	72741	74369	60370	66871
Traffic	25702	84800	30935	51960	27900	36900	29500	69972	35614
Sale Pr.		4175000	7175000	5500000	4000000	5300000	3650000	4612000	2300000
Pr. Per s/f		22.35	37.21	31.47	28.66	38.02	26.06	37.11	35.32
Adj. Pr.	37	23.53	43.24	31.35	28.03	37.12	25.97	35.13	37.17

Allen made adjustments to the raw data for some of the Sales in regard to acreage, traffic count, and sale price. Sale 2 (Super-K) involved a superstore purchased for use as a superstore (Meijer). Sale 3 (Super-K) was purchased by a grocery (Kroger) and partially occupied. Sale 4 (Lowe's) was a non-superstore converted to a warehouse retailer (Walmart). *Ex. P-1* at 54, 56-65; *Tr*. at 601-15, 764-68.

34. Allen considered adjustments for "expenditures after sale," but he believed these were warranted only when renovations included "items that both the buyer and seller recognize need to be immediately done." For all of his sales, he concluded that the after-sale renovations "weren't items that the seller would agree were necessary for the retail use of these properties." *Ex. P-1* at 66.

35. Half of Allen's sales included restrictions on use (Sales 1, 5, 6, and 8). Allen concluded that because the restrictions were "added subsequent to the sale agreement after the identified use had been identified," no adjustments were necessary. Allen admitted that it was possible for a deed restriction to impact the purchase price for a big box property. But when they were "agreed to after the sale price has been established," it did not "affect the price or marketability." Allen recognized that his unrestricted Sales had a roughly $3 higher unadjusted sale price per s/f ($30.44 vs. $33.61), or 10%. This was consistent

with the Harrington Study that indicated a 9% variance between restricted and unrestricted sales. However, Allen did not adjust for deed restrictions. *Ex. P-1* at 66; *Ex. P-3* at 5-7; *Tr*. at 662.

36. In adjusting for market conditions, Allen looked to data from several sources: Loopnet for the "asking retail prices for all retail properties for Indiana," Moody's/RCA CPPI National Retail Index, and a combination of Costar and Realty Rates Investor Survey data for Indianapolis MSA and Indiana retail market values. Additionally, he reviewed Costar data for sales of retail properties in excess of 60,000 s/f in the Indianapolis MSA and in Indiana. Allen made modest adjustments of 5% for the 2011 sale (Sale 2), and 3% adjustments for the late 2013 and 2014 sales (Sales 4, 6-8), which was basically a 1% annual adjustment for market conditions.[6] *Ex. P-1* at 68-74.

37. Allen adjusted only Sale 8 for size. Allen adjusted for "arterial attributes" based on a number of factors including access, visibility,[7] and traffic counts. He did not include an analysis of Interstate 65 in his discussion of arterial attributes. As for "demographic attributes," he placed less emphasis on household income and more emphasis on the number of households in the 5 mile radius. He adjusted for age at a rate of 1% a year, noting that the land portion does not depreciate over time. He did not explain how he chose his age rate other than to mention he used the same rate in other appraisals. *Ex. P-1* at 74-76; *Tr*. at 643.

38. Allen stated that Sales 1, 2, and 8 were most comparable in terms of "overall location" (Hartland, MI, Portage, IN, and Fort Wayne, IN). Allen's "actual adjustments" to his sales comparison grid were based on undisclosed "numerous market area transactions" and "statistical analysis." The result was a range of $23.53 to $43.24 per s/f, and an average of $32.69 per s/f. *Ex. P-1* at 75-77.

39. In addition to his review of comparable Sales, Allen looked at 3 former Meijer store listings, 8 "additional" comparable sales, and 2 more comparable listings. He stated that the Meijer listings were not comparable "due to their age/condition when sold and their

[6] Allen testified he used 2% for 2016, 1% for 2013-2015, and .75% for 2012.

[7] Allen made downward adjustments for sales with developed outlots along the frontage of the property.

specific neighborhood locations." The other sales and listings were provided to "demonstrate an active marketplace and the range in sale prices and sale offerings." Five of the 8 "additional" sales were under 100,000 s/f, and only one of the sales and listings was of a similar size. Finally, Allen noted the Harrington Study range of fee simple big box sale prices of $8.72 to $66.84 s/f during the period of 2011-2016. The average was $27.73 per s/f and "61% of the sales sold for less than $30/SF." *Ex. P-1* at 77-79.

40. Allen concluded to an above average $37 per s/f, which resulted in a valuation of $7,190,000 for his sales comparison approach.

b. Allen's Income Approach

41. For Allen's income approach, he chose ten comparable leases from "retail buildings that were in existence when leased."[8] He explained that second generation tenants pay lower rents because the construction is specific to the initial user, and "there might not be perfect size/fit," or the façade or layout "might not be quite right" for a subsequent tenant. Accordingly, the buyers "have to make modifications," and they "end up leasing it for less than they would if they had a build-to-suit." He believed only a developer or retailer would buy the Meijer Store, and not an investor, without a lease in place. *Ex. P-1* at 82; *Tr*. at 668-69, 708.

42. The Leases were chosen from across five states, and as distant as Iowa and Missouri. After Allen adjusted the rent rates for market conditions, they ranged from $3.00 to $6.44 per s/f. He singled out four of his ten comparable Leases for a grid analysis: two that reflected "strong retail locations in Indianapolis," and two that were the most recent leases in Des Moines[9] and Cincinnati.

[8] Allen listed four build-to-suit leases for purposes of comparison only. *Ex. P-1* at 82.

[9] In his grid, Allen mistakenly lists Hobart instead of Clive, a suburb of Des Moines, Iowa. *Ex. P-1* at 82, 84.

	Comp 1	Comp 2	Comp 3	Comp 4
Location	Indianapolis, IN	Indianapolis, IN	Cincinnati, OH	Clive, IA
Current Tenant	JC Penney	Garden Ridge	Floor N Décor	At Home
Bldg. Size	99704	108900	118977	91030
Yr. Constr.	1984	1994	1994	1991
Lease Date	2006	2007	2014	2015
Lease Term	20	12	10	
Lease Rate	$ 4.00	$ 4.75	$ 5.50	$ 6.39
Adj. Lease Rate	$ 4.02	$ 4.43	$ 5.38	$ 6.09

He adjusted for age, demographics, and arterial attributes. He made 10% adjustments for buildings that were 20-22 years old at the time of lease, and 5% adjustments for buildings that were 13-14 years old.[10] As in Allen's sales comparison approach, his demographic adjustments placed more emphasis on the number of households than household income. He pegged market rent at the average, selecting $5.00 per s/f. *Ex. P-1* at 82, 84.

43. Allen reviewed vacancy survey data for all retail properties from a number of publications and selected 8% for vacancy and credit loss, a rate substantially above average. He believed big box stores have significantly greater vacancy risk, and he placed more weight on the data for available space. For expenses, Allen used data from IREM Income/Expense Analysis and Dollars and Cents of Shopping Centers. He pegged expenses at the IREM average, selecting Common Area Maintenance (CAM) at $1.50 per s/f and insurance at $.25 per s/f. Allen selected a management fee of 3% of effective gross income and a replacement reserve of $.25 per s/f. Allen concluded to net operating income (NOI) of $782,127. *Ex. P-1* at 85-88.

44. For his capitalization rate (also referred to as Overall Rate and OAR), Allen believed he needed to exclude leased fee rates. He believed that a leased fee capitalization rate "is generally lower than a fee simple rate because of the many risks involved in a fee simple interest" which include "the need to find a tenant," "uncertainty of the strength of tenant and length of the lease," and "tenant improvements." In his testimony, Allen admitted that there is no such thing as a fee simple capitalization rate: "if there's no income,

[10] These age adjustments were significantly less than his adjustments under his sales comparison and cost approaches. He explained this discrepancy based on the fact that the landlord rather than the tenant would pay for repairs. *Tr*. at 689.

there's no capitalization rate;" and "if there's no tenant in place . . . , there's no capitalization rate." He also stated that there is no source for a fee simple capitalization rate. Nonetheless, he focused on sales with short lease terms and higher cap rates because this was "as close as I could get to the fee simple cap rate." *Ex. P-1* at 88-89; *Tr.* at 697-99, 793.

45. Allen calculated his capitalization rate through band of investment techniques and investment survey analysis.[11] He considered Indiana a risky market compared to "the east and west coasts," and Indianapolis in the third and lowest tier. Relying mostly on leased fee data and specifically the Realtyrates national freestanding data (4.09% to 14.01%), Allen selected 9.5% which was higher than his band of investment average and at the high end of the Retail Power Center Class C Indianapolis CBRE survey data. He testified that the most significant data was from the short term leases. *Ex. P-1* at 89-91; *Tr*. at 707.

46. After loading the capitalization rate with the owner's share of the tax rate, Allen's capitalized value was $8,040,630. He then deducted a one-time leasing commission after the capitalization process. He also hypothesized the existence of a 5-year lease with a 6% broker's commission in order to exclude it.[12] Allen's final income approach value was $7,750,000. *Ex. P-1* at 87, 91-92.

c. Allen's Cost Approach

47. Allen began his cost approach through a sales comparison of five sales of vacant acreage in the Indianapolis area. He adjusted his Sales for market conditions, size, and location. He placed the most weight on the two neighborhood Sales, and arrived at $170,000 per acre, and concluded to $3,000,000. *Ex. P-1* at 93-94.

48. Allen relied on the Marshall Valuation Service schedule for "Average Cost Quality Class C Mega Warehouse Store" in estimating replacement costs. From this he allocated a

[11] Allen included a "market derived capitalization rate" analysis, but only for demonstration purposes. *Ex. P-1* at 90.

[12] Allen explained this was necessary to reflect the cost in bringing the property to stabilized income. He did not cite to authority for this proposition.

management fee and deducted depreciation based on a useful life of 35 years for the building and 15 years for the site improvements. His calculations were as follows:

Building Improvements	$	9,269,195
Site Improvements	$	1,725,841
5% Construction Management Fee	$	549,752
Total	$	11,544,788
Building Depreciation (4.3%)	$	(417,114)
Site Improvement Depreciation (10%)	$	(598,327)
Total	$	10,529,347

Ex. P-1 at 94, 96-98.

49. Allen defined functional obsolescence as "loss in value" that results from physical factors such as "design, layout, materials, or orientation of the building." Allen concluded that the property was "oversized for what is generally required in the market." He also noted that the layout and design was "specific to a Meijer business," without further clarification. Additionally, he stated that a big box store owner can only "profit" from the "operation of the store" rather than the sale of the property, and likened it to "a residential swimming pool or a small building addition or purchase of a new car or a tailored suit." Based on these analogies,[13] Allen argued that a big box store "suffers an immediate reduction in value from the initial investment." *Ex. P-1* at 98.

50. Allen did not identify any external obsolescence, but he stated that "[m]arket demand for the fee simple interest for existing, large retail buildings like the subject is very limited." In his testimony, it became clear that his understanding of obsolescence is fundamentally based on resale values and leases for secondary users:

> I have been observing sales and leases of big box stores for many years, and they typically sell for significantly less than their replacement cost.

Ex. P-1 at 98-99; *Tr*. at 717.

51. Allen went about several "methodologies and examples" in order to estimate obsolescence. The examples included a reference to his income approach market lease

[13] He drew further analogies to the resale value of furniture, mattresses, food, boats, electronics, and office supplies. *Tr*. at 715-16.

grid, a comparison of the sales of several buildings from a chain that went out of business in the late 1990s,[14] four sales of "newly built" big box buildings that sold for less than the original land acquisition cost, and a cost of modification theory. Allen employed a capitalized rent loss method to actually calculate obsolescence in accordance with THE APPRAISAL OF REAL ESTATE. Based primarily on his income approach NOI and OAR, Allen estimated obsolescence of $5,710,268 which was 49% of the improvement replacement cost. Because the obsolescence adjustment was derivative of his income approach, Allen stated that his conclusion under the cost approach would be nearly the same even if the replacement cost were $20M. *Ex. P-1* at 98-103; *Tr*. at 738.

52. In his discussion of functional obsolescence, Allen stated that he did not include entrepreneurial profit because big box stores were not created for the purpose of "thereafter selling or leasing the property in the marketplace." He explained that the Meijer Store is "built for a user and not-for-profit." *Ex. P-1* at 98; *Tr*. at 713.

53. After deducting obsolescence, Allen concluded to $8,240,000 under the cost approach.

54. In his reconciliation, Allen disregarded his cost approach and primarily relied on the sales comparison approach. He chose a value slightly above his sales comparison conclusion at $7,300,000.

2. Koon's Appraisal

55. The Assessor relied on the expert opinion of Samuel D. Koon, a licensed appraiser since 1976 and an MAI since 1983. He has an MBA with a depth of field in real estate. He has appraised 30-50 big box stores in the last 5 years. He has taught real estate and appraisal courses at Ohio State and Kaplan. He has been licensed for assignments in Indiana through reciprocal recognition or temporary license. *Tr*. at 384-85, 387-88.

56. Koon provided two appraisals that were nearly identical except in regard to his cost approach and his final conclusion. The latter appraisal was completed shortly after the Taxpayer was compelled to respond to discovery, and just days before the hearing. *Ex. R-3*; *Ex. R-68*.

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[14] This chain, called Source Club, was a failed enterprise that was "set up by Meijer to compete with Sam's Club and Walmart as a membership retail store." *Tr*. at 728.

57. Koon argued that the cost approach objectively indicates a cost of creating or reproducing a commodity, and it is based on the presumption that a relationship exists between cost and value. He relied on his cost approach in his conclusion of value in his second appraisal, but not his first appraisal. Koon admitted that this was the first appraisal of a big box store where his final conclusion was based predominantly on the cost approach. But he also noted that this was the only big box he appraised that was almost new. He also admitted that his cost approach was usually based on cost schedules and replacement cost rather than actual costs and reproduction costs. *Ex. R-68* at D1; *Tr*. at 198-200.

58. Koon considered the sales comparison approach to be reliable if the properties were comparable and properly adjusted. He argued that "vacant, dark stores are not reflective of the subject property being operated at its highest and best use," and comparable sales must come from properties "operated [at] their highest and best use to the extent possible in neighborhoods which are reflective of continued retail operations." He believed that "dark or vacant" stores should only be used if the appraiser was charged (tasked) with estimating a dark value. *Ex. R-68* at F1; *Tr*. at 447.

59. In regard to the income approach, Koon believed that the Meijer Store and similar properties were "designed to produce income." Because the "typical purchaser of a discount retail store property" such as the Meijer Store would be an investor, he considered the income approach to be the most applicable method in his first appraisal. While he waivered on whether the most likely purchaser would be an investor in his testimony, suggesting it depended on whether a lease was in place, he elsewhere stated unequivocally that "the typical purchaser of this property would be an investor." *Ex. R-68* at A7, E1; *Tr*. at 123-24, 127-29, 442.

a. Koon's Cost Approach

60. Koon considered five comparable vacant land sales ranging from $137,900 to $251,295 per acre. Koon did not include a comparison grid in his report but made adjustments for location, configuration, and accessibility. He concluded to $175,000 per acre, totaling $3,090,000 for the land. *Ex. R-68* at D2.

61. Koon based his valuation of the improvements on two sources. First he looked to the Marshall Valuation Service for an average Class C Warehouse Discount Store. He also looked to the actual construction costs of the Meijer Store. The Marshall estimate of improvement costs included some soft costs for legal fees and interest totaling 2%. His estimate of improvement costs based on Actual Costs included [redacted]. Koon also trended the Actual Costs by .7%. His conclusions were as follows:

	Marshall Val. Serv.	Actual Costs
Building Improvements	$ 8,654,869	$ [redacted]
Site Improvements	$ 1,639,146	$ [redacted]
Total (rounded)	$ 10,290,000	$ [redacted]
Mgmt./Design/Reimburseables	$ -	$ [redacted]
Total Cost	$ 10,290,000	$ [redacted]
Trended Value (rounded)	$ -	$ [redacted]
Developer's Profit	$ 1,338,000	$ [redacted]
Total	$ 11,628,000	$ [redacted]
Building Depreciation (5%)	$ (581,400)	$ [redacted]
Total	$ 11,046,600	$ [redacted]

Ex. R-68 at D3-8; *Ex. R-3* at D2-6.

62. Koon included a 10% entrepreneurial profit (developer's profit).[15] He described this as a "managerial type fee for the coordination and conception of the project and a return on equity dollars invested for land acquisition, preliminary plans, engineering, etc." His entrepreneurial profit included a return on the value of the land. Koon did not cite to authority or research for the inclusion or calculation of his entrepreneurial profit, and he relied on his experience and "market observation." *Ex. R-68* at D6; *Tr.* at 406.

63. For depreciation, Koon considered the building to be 2 years old, and applied a 5% depreciation deduction based on a 40-year life expectancy. He did not identify any functional or economic obsolescence as the Meijer Store was functional and the neighborhood reflected strong signs of continued household and income growth. *Ex. R-68* at D7.

[15] Koon did not include entrepreneurial profit in a prior version of his first appraisal. *Tr.* at 402-3.

64. Koon opined that his Actual Costs could be more reliable than the generic national cost schedules because they were more detailed and took into consideration the specific building and site details. After adding the land value, he concluded to [redacted] under the cost approach. *Ex. R-68* at D6, D8.

b. Koon's Income Approach

65. In estimating market rent under the income approach, Koon identified five big box leases in Ohio, and made qualitative adjustments for lease date, size, condition, age, and level of finish.

	Lease 1	Lease 2	Lease 3	Lease 4	Lease 5
Location	Miamisburg, OH	Hilliard, OH	Zanesville, OH	Columbus, OH	Cincinnati, OH
Orig. Tenant	Lowe's	Super-K	Lowe's	Meijer	Walmart
Current Tenant	Lowe's	Multi-Tenant	Lowe's	FrontRoom	JC Penney
Bldg. Size	125357	121876	125357	210341	119113
Yr. Constr.	1994	1994	1995	1986	1989
Lease Date	2011	2010	2013	2014	2007
Lease Term	10	10	10	10	18
Lease Rate	$ 6.50	$ 8.50	$ 6.26	$ 2.50	$ 7.00
Adj. Lease Rate	$ 8.50	$ 10.50	$ 8.00	$ 4.50	$ 9.00

The lease rate for Lease 2 reflected only the Floor N Décor lease of 80,000 s/f. The lease rate for Lease 4 did not reflect anticipated percentage rent. Two of the leases were renewals of original tenants, and one was for multi-tenant use. He estimated the Meijer Store's market rent at the "low end of the adjusted range" and selected $6.25 per s/f. He did not perform a market rent analysis for his Leases. *Ex. R-68* at E2-E13; *Tr*. at 257.

66. After noting the difficulty in assessing vacancy in an emerging neighborhood market, Koon relied on data for general retail in the region and selected 5%. For operating expenses, he relied on his survey of seven properties, and projected insurance ($.16 per s/f), repairs and maintenance ($1.12 per s/f), utilities ($.69 per s/f), management fee ($.25 per s/f or 3% of EGI), general and administrative ($.30 per s/f), and replacement reserve ($.10 per s/f). After deducting noncollectable operating expenses and the reserve directly from Effective Gross Income, he concluded to NOI of $1,100,090. *Ex. R-68* at E14-E19.

67. In choosing a capitalization rate, Koon first looked to comparable big box sales, mostly in Ohio, which ranged from 6.1% to 10.66% and averaged 7.83%. Next he looked to investor surveys for the National Power Center market for 1st Quarter 2016, which ranged from 5.5% to 9% and an average of 6.33%. Additionally, Koon considered a debt coverage ratio analysis that suggested a range of 6.51% to 7.06%. He selected an above-average OAR of 7.5%. *Ex. R-68* at E20-E21.

68. After loading the capitalization rate for real estate taxes, Koon applied it to his NOI, and concluded to a value rounded to $14,400,000 under the income approach.

c. Koon's Sales Comparison Approach

69. Koon considered seven comparable sales,[16] all of which were subject to a lease at the time of sale.

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7
Location	Whites-town, IN	Greensburg, IN	Indianapolis, IN	Alliance, OH	Youngstown, OH	Cincinnati, OH	Hilliard, OH	Chillicothe, OH
Orig. User	Meijer	Walmart	Kittles	Walmart	Walmart	Walmart	Lowe's	Lowe's
Curr. User		Walmart	Kittles	Walmart	Walmart	Walmart	Lowe's	Lowe's
Yr. Constr.	2014	1999	1973	1997	1996	1996	1994	1995
Sale Date	2016	2016	2016	2017	2018	2017	2015	2015
Bldg. Size	192640	183531	147835	200084	124404	149429	125357	125394
Acreage	17.63	20.61	9.22	18.65	10.58	14.01	12.496	12.86
NOI		859155		1190000	923200	1157961	812409	748000
OAR		6.1		7.13	6.8	7.9	6.2	6.8
Pop.	15772	17494	61574	17996	61574	125429	205216	29369
HH Inc.	108804	43820	45599	40471	45599	39569	63540	36802
Sale Pr.		14084500	10000000	16700000	13575000	14650000	13103400	11000000
Pr. Per s/f		76.74	67.64	83.46	109.12	98.04	104.53	87.72
Adj. Pr.	75	80	65	85	87.5	93	102	100
NOI Adj.	75	93.61		80.2	104.22	72.25	92.11	83.98

He made adjustments for sale date, building size, location, age/condition, population, and household income. He also believed that "these properties were designed and purchased

[16] Koons corrected the population of Alliance, OH, in Sale 3 to 17,494. He corrected his Sale 3 adjusted value to $83.20. He also conceded that an error must have resulted in the same population and household income being entered for Sales 2 and 4, but never disclosed the correct numbers. *Tr.* at 263, 266-67, 441.

for their inherent ability to generate income," and accordingly, he considered NOI a relevant factor. *Ex. R-68* at F1-F19.

70. Koon selected $75 per s/f, at the lower range of his qualitative adjusted values and in the mid range of his NOI adjusted values. He concluded to $14,450,000 under the sales comparison approach. *Ex. R-68* at F19.

71. While Koon considered all three approaches to be reliable, he placed the greatest weight on his Actual Cost valuation. He considered it to be objective because of the age of the improvements and insignificant depreciation. He adopted his Actual Cost conclusion of [redacted]. *Ex. R-68* at G1.

3. Korpacz's Testimony

72. The Assessor presented the testimony of Peter Korpacz to provide a methodology study and a review appraisal of Allen's work. Korpacz is an appraiser and MAI with over 50 years of experience. He is licensed in 17 states. He has a degree from St. John's in New York. He was instrumental in creating the Korpacz Real Estate Investor Survey, and later expanding it through PriceWaterhouseCooper. He also ran the Emerging Trends publication in conjunction with the Urban Land Institute. He has authored numerous publications and served in several roles with the Appraisal Institute. *Ex. R-1* at 61-62; *Tr.* at 814.

73. Korpacz rejected the premise that "fee simple" requires a property to be unencumbered by a lease. He believed that fee simple should be understood as a type of ownership, and that leases, mortgages, liens, and easements do not impact ownership. He clarified that

> My conclusion is that [fee simple is] a term of ownership. It's not a term of value. It's not a concept of value, and . . . [t]here's nothing about the fee simple definition that clearly says it means vacant or occupied.

In contrast, the term "leased fee," is an appraisal rather than a legal term. The existence of a lease merely requires adjustment if the rent is above or below market, and "[c]omparables leased at market do not require an adjustment." He also noted a passage in THE APPRAISAL OF REAL ESTATE that states: "If the objective of the appraisal is to value the fee simple interest, income streams for the comparable properties analyzed must be at or around the level of market rent." *Ex. R-5* at 8-11.

74. Korpacz was involved in convening a panel of over 50 appraisers that issued a "Property Rights Symposium Discussion Paper" in 2017 addressing this issue.[17] The result was a proposal to change the fee simple definition in THE APPRAISAL OF REAL ESTATE and to discontinue the terms "leased fee" and "leased fee estate." Rather, a valuation of a property should simply indicate if the value reflects the fee simple estate:

> Subject to an existing lease;
> Subject to hypothesized leases at market rates and terms; or
> As though vacant and available to be occupied or leased at market rates and terms.

Additionally, Korpacz noted that broker listings frequently refer to properties as fee simple even when they are encumbered by a lease. *Ex. R-4* at 12-13; *Tr*. at 869-70.

75. In regard to build-to-suit leases, Korpacz stated that "[e]very income-generating property is built to suit a specific user or class of users, most of whom have specific space design requirements." But he did not believe the specialized features of big box designs were more specialized than the build-out for other commercial properties like single-tenant office buildings, gyms, child care facilities, or coffee shops. He further explained:

> Regarding specialized construction elements [for big boxes], they are minimal with little need for separate interior enclosed space and amenities. Often the customized elements refer to [the] retailer's logo, signage, and colors on facades, interior walls, and floors.

He concluded that as long as the property "conforms to competitive standards dictated by demand in the marketplace, the property will have little or no functional obsolescence." The modifications expected when a new tenant takes over in regard to signage and façade treatments "may be minimal and easily removed or changed." Furthermore, he noted that

[17] The Taxpayer objected to Korpazc's testimony regarding the symposium on the grounds of hearsay. The objection is overruled as proper expert testimony.

"[s]upply and demand factors" were present when the design and lease were negotiated, and "impact whether the development is undertaken."[18] *Ex. R-4* at 19, 23; *Ex. R-5* at 10.

76. Korpacz argued that the key to understanding big box stores is the concept of first and second generation properties. The Appraisal Institute defines them as follows:

> **First-generation space**: a building or space designed to be functionally and economically efficient for the original tenant or a similar class of tenants over a period of time, during which the space retains its original utility and desirability.
>
> **Second-generation space**: a building or space used by a tenant other than the original tenant; often functionally obsolete before refurbishment but sometimes containing tenant improvements that can be reused by a new tenant.[19]

(quoting from THE DICTIONARY OF REAL ESTATE APPRAISAL, 6th Edition, 2015 Appraisal Institute). Korpacz argued that market segmentation should draw a distinction between these classes. When big box retailers vacate and sell their stores, it "usually indicates that the properties have moved from first- to second-generation status and, thus not comparable to . . . first generation space." He also concluded that occupied properties should be valued "as an occupied property using comparable sales," and vacant properties should be valued "as a vacant property using similar comparable sales." *Ex. R-4* at 20-21, 23; *Ex. R-5* at 15.

[18] Korpacz further explained:

> There's nothing special about a big box property that . . . makes it unlike any other property. They're all built based on construction, based on the profit for the person doing the construction when they sell it, or lease it; so it's just like any other income property that's developed.
>
> . . .
>
> [R]etailers are very knowledgeable about the market. They have been doing this all over the country for years. They know exactly what they're doing. They know about rents, they know about construction costs, and so on and so forth."

Tr. at 881-83.

[19] Korpacz has proposed a modified definition for the next version of the dictionary.

77. According to Korpacz, deed restrictions limit the prospective pool of buyers. If a retailer is known to demand restrictions, "some potential buyers may not even come to the negotiating table." *Ex. R-4* at 23; *Tr*. at 892.

78. Korpacz argued that the cost approach "inherently values the fee simple property rights and eliminates debate about leases and deed restrictions." It also reflects what retailers do for "new store development." *Ex. R-4* at 23-24.

79. In applying these valuation concepts to his review of Allen's appraisal, Korpacz had both conceptual and methodological objections. Overall, he found Allen's appraisal to be "not credible or worthy of belief." This was mostly premised on the fact that the Meijer Store was not vacant, and that it should have been valued as an "occupied and operating big-box store." He believed Allen failed to comply with USPAP by not characterizing the vacancy of the Meijer Store as a hypothetical condition. He believed that Allen's "dark value" was likely commiserate with a liquidation value. *Ex. R-5* at 4-5, 7; *Tr*. at 846.

80. In regard to Allen's sales comparison approach, Korpacz noted that big-box retailers rarely sell their newly constructed stores to other retailers and argued that there is "no discernable market for this type of sale." Rather, the active market for big-box properties is found in the frequent sales by investors when the property is leased to a retailer. Korpacz also noted that Allen did not support his claim that build-to-suit sales are above-market. He should have identified particular sales and determined whether or not such leases should have been adjusted or rejected. *Ex. R-5* at 7, 9-11.

81. Among several criticisms, Korpacz believed all of Allen's comparable sales were second generation, and hence not comparable to the Meijer Store. He noted that Allen's age adjustments were very minimal and inconsistent with Allen's cost approach.[20] Additionally, some of the sales had restricted deeds, but Allen made no adjustments for

[20] Korpacz indicated that Sale 2 would have received a 60% adjustment if applied consistently with his cost approach, but that was an error based on a presumption of a 21 year age difference rather than an 18 year age difference. Additionally, an accurate estimate of depreciation would apply only to the building and not the land. Nonetheless, Allen's age adjustments were not consistent among his approaches. *Tr*. at 1063, 1065.

them. Finally, the lease-up costs should have been added to the sale prices to achieve comparability with the occupied Meijer Store. *Ex. R-5* at 12-13; *Tr.* at 895.

82. In regard to the income approach, Korpacz's chief criticism was Allen's failure to include first generation leases. Additionally, the four lease comps involved older, smaller buildings, with initial leases entered into during 2000-2005, and he concluded they lacked "sufficient comparability" or reliable adjustment. He found Allen's claim that the cap rates for sale-leaseback and long-term leases were based primarily on the credit of the tenant and term of the lease was unsupported and contrary to reality. Korpacz noted that "all leased income properties have a credit component," and that high credit tenants are the ones that can afford to occupy "prime locations." Additionally, Allen's lease data reflected a substantial rise in rents after the recession toward $6.00 and above, much higher than Allen's concluded rate of $4.65. *Ex. R-5* at 16-18; *Tr.* at 907.

83. As for selecting cap rates, Korpacz faulted Allen for not substantially relying on the Boulder Group data, which was the only source specific to big box stores. Likewise, Allen provided no basis for the conclusion that "the above average size for a single occupant designed building in the State of Indiana precludes the application of institutional capitalization rates." Because a typical big box store lease is 20 years, and the Meijer Store was 1.5 years old, Korpacz faulted Allen for relying on cap rates from short term leases. *Tr.* at 909-10, 912.

84. While Korpacz generally found the cost approach of little use in valuing big box stores, he would make an exception for a 1.5 year old building. He also found the cost approach more useful when the retailer owns rather than leases its buildings. As with the other approaches, Korpacz objected to the use of second generation property data in Allen's calculation of obsolescence. Had Allen considered comparable first generation leases, he would not have reached the same result. He also noted that the K-Marts and Source Club data likely reflect liquidation value rather than a valid sale price or estimate of obsolescence. *Ex. R-5* at 19; *Tr.* at 913-14, 918-19.

4. Laposa's Testimony

85. The Assessor presented the testimony of Dr. Steven P. Laposa who analyzed some of the data underlying Allen's report. Laposa has a PhD from the University of Reading, England, Department of Real Estate and Planning, and an MBA from the University of Denver with a concentration in Real Estate and Construction Management, and he is a Fellow of the Royal Institute of Chartered Surveyors. He previously was a professor and director of the Everitt Real Estate Center at Colorado State University, Fort Collins, and he has been recognized for leadership at the American Real Estate Society. For the last several years, he has worked for a consulting company and advised major retailers in several areas including site selection. Laposa reviewed Allen's appraisal and addressed four particular topics. *Ex. R-8* at 5; *Tr*. at 1100.

86. First, Laposa's research indicated that Allen's "Retail Industry Overview," discussing the "retail apocalypse" was misleading, incomplete, and a "weak foundation for valuation assumptions and adjustments." He cited national data reflecting steady new supply, rising absorption, and steeply declining vacancy rates. He also pointed out increasing single tenant retail sales volumes and declining cap rates. Additionally, single-tenant properties were outperforming all retail. Finally, he noted consistent absorption and extremely low vacancy (2.8%) rates in Boone County. His review of survey data suggested at least three of Allen's charts were inaccurate. He also testified that the Realty Rates survey data for cap rates did not reflect the actual trend in cap rates reflected in the Co-Star data. *Ex. R-8* at 6, 11-14; *Tr*. at 1127, 1137-39, 1144, 1146.

87. Second, Laposa concluded that the Mejier Store was "statistically different" from Allen's comparable sales. He noted that Allen's reliance on population and households was basically the same factor, and he should have used population density and population growth rates. Allen's sales also had substantially slower growth: in the 10-mile radius, the Meijer Store had growth of 1.22%, while the Allen sales ranged from -.22% to .68%.[21] He believed that his statistical analysis proved that three of Allen's Sales were

[21] Because annual growth for the U.S. was .87%, and for the Indianapolis MSA 1.14%, every one of Allen's comps were from 10-mile neighborhoods that substantially lagged in growth. *See Ex. P-1* at 14.

significantly different from the Meijer Store, and any conclusions based on that data would be potentially faulty and misleading. *Ex. R-8* at 6-7, 15-16, 19, 23.

88. Third, Laposa described the Harrington Study as "flawed and misleading" because it did not comply with academic peer-review research methodologies, but he also "applauded" the effort and considered it a good "first step."[22] *Ex. R-8* at 7; *Tr*. at 1187-88.

89. Fourth, Laposa criticized Allen for failing to present sufficient background information and for failing to use academically-sound real estate market methodologies. In particular, large retailers consider 5 and 10 mile radii, and the smaller .5-2.0 mile radii used by Allen would be relevant only to valuing the land. *Ex. R-8* at 7, 33.

C. Conclusions of Law and Analysis

1. Burden of Proof

90. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that the assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); see also *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to the rule. Ind. Code § 6.1-1.1-15-17.1. The Taxpayer conceded it had the burden of proof. *Tr*. at 10.

2. Conclusions of Law

91. In Indiana, assessments are based on a property's "true tax value." True tax value does not mean fair market value. Ind. Code § 6-1.1-31-6(c). Nor does true tax value mean the value of the property to the user. Ind. Code § 6.1-1.1-31-6(e). Subject to these somewhat tautological directives, the Legislature relies on the Indiana Department of Local Government Finance ("DLGF") to define true tax value. Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as: "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." MANUAL at 2.

[22] Laposa admitted that his own report and conclusions had likewise not been submitted for peer review scrutiny.

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

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

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

95. A trier of fact is often "faced with [multiple] qualified experts who presented diametrically opposed opinions, supported by extensive reports and reasoning, as to the value of [certain] real estate." *Crider v. Crider*, 15 N.E.3d 1042 (Ind. Ct. App. 2014). It is up to the trier of fact to "judge the credibility of the battling expert witnesses." *Id*. at 1059 (quoting *Goodwine v. Goodwine*, 819 N.E.2d 824, 830 (Ind. Ct. App. 2004)). The Board must determine what portions of an appraisal are supported by the evidence:

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

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

96. "Indiana's property tax system taxes the value of real property — and not intangible business value, investment value, or the value of contractual rights." *Switzerland. Cty. Assessor v. Belterra Resort Ind., LLC*, 101 N.E.3d 895, 905, (Ind. Tax Ct. 2018). Accordingly, the Tax Court has rejected arguments that assessments should include something more than "the value of the 'sticks and bricks.'" *Stinson v. Trimas Fasteners, Inc.*, 923 N.E.2d 496, 501 (Ind. Tax Ct. 2010). Rather, an assessment must value only the "real property rights for ad valorem taxation." *Grant County Assessor v. Kerasotes Showplace Theatres, LLC*, 955 N.E.2d 876, 882 (Ind. Tax Ct. 2011) (noting that sale lease-back transactions may include more than just the real property).

97. Indiana precedent has long held that secondary and vacant sales may be considered to determine the value of a big box store. The original *Meijer* case held that it was "improper" to reject a sales comparison approach merely because it relied on secondary sales. *Meijer Stores Ltd. P'ship v. Smith*, 926 N.E.2d at 1137 (Ind. Tax Ct. 2010). This conclusion was based on the Tax Court's interpretation of DLGF rules in finding that properties may be considered comparable if they "were used for retail purposes both pre- and post-sale."[23] *Id*. In addressing the disparity between construction cost and resale value, the Tax Court noted an expert's conclusion that "the majority of the obsolescence in the big-box retail market occurs immediately" and accordingly brand-new big-box stores may experience "an immediate loss in value." *Id*. at 1138. However, in no case has the Tax Court compelled a valuation based solely on secondary sales, and the Tax Court has not adopted a particular theory or methodology for valuing big box stores.

3. Analysis

98. In appraisal theory there are few absolutes, and nearly every appraisal concept has exceptions and corollaries that depend on context. An opinion establishing the market value-in-use of the Meijer Store must be based on the realities of the big box market and long-established appraisal principles.

[23] However, the DLGF has since issued regulations indicating that properties "used for retail purposes both presale and post-sale does not necessarily mean they are comparable sale properties." 50 IAC 30-4-1(a). This regulation has not yet been addressed by the Tax Court.

99. There is no dispute regarding how big box properties are developed. All big box stores are constructed build-to-suit. The demand for big box stores, and especially mega warehouse superstores, is limited to an extremely small number of retailers. Few retailers have business models that justify the construction costs of a mega warehouse store. Consequently, these big box stores are never built on a speculative basis. The developer always acquires an end-user prior to construction because it would be foolish (too risky) to build first and hope to find a tenant later. All big box stores are constructed to the retailer's specifications in anticipation of long-term occupancy by a build-to-suit tenant or owner-occupant.

100. If the original user vacates (ceases operations), the owner is put in the same situation as if the big box store had been speculatively built: the owner has an enormous empty building that was too risky to build without a user in the first place. Risk is the market factor that prevents speculative construction of big box stores and causes the loss of value upon vacancy.

101. On the other hand, big box stores leased to first generation tenants maintain high values, as denoted in the Harrington Study. Koon's data revealed that even 20 year old Walmarts, near the end of the initial lease term, maintain first generation prices in lower tier markets like rural Indiana and Ohio. These first generation prices are [redacted][24]

102. Among big box stores, mega warehouse superstores (with groceries) are an even smaller subset. They are constructed differently because the grocery area requires additional HVAC and more loading docks. Mega warehouse superstore retailers have been more successful than other big box retailers. The larger size of mega warehouse superstores also sets them apart. In the Harrington Study, only 8 of the 106 sales were more than 150,000 s/f. Likewise, Allen and Koon together identified only 5 comparable sales

[24] Presuming actual costs of [redacted] and a land value of $3,090,000, the 194,380 Meijer Store cost roughly [redacted] per s/f without considering entrepreneurial profit. The Harrington Study median sale price for leased sales was $105 per s/f. Koon's average sale price for his sales comparison approach was $90 per s/f. This is the strongest indication that the institutional investor market for build-to-suit leased big box properties may include above-market contract value.

greater than 150,000 s/f. For purposes of context, the Board notes that the Taxpayer is a major retailer with roughly 240 stores across 6 states. Yet after decades of work appraising Meijer stores, Allen only identified three that closed, and none of those were considered comparable. These facts lead the Board to find that mega warehouse superstores are a unique submarket even among big box stores. Furthermore, there are extremely few sales of these types of properties, and very limited data for appraisal purposes.

103. In this case, the experts disagreed as to whether vacant or leased properties should be excluded. Allen's interpretation of "fee simple" required him to consider only vacant sales of former big box stores. Accordingly, he considered only secondary sales and rejected all leased properties. Korpacz emphatically disagreed with Allen's interpretation and even shepherded an attempt to amend THE APPRAISAL OF REAL ESTATE in order to foreclose Allen's interpretation. Allen and Korpacz are clearly partisans in the big box and "dark box" controversy playing out nationally. Koon appeared agnostic; he did not utilize the valuation approach advocated by Korpacz and published by the IAAO (the A-D classification). But Koon clearly believed that build-to-suit and leased properties must be used to value a first generation functioning big box store.

104. The dark box controversy endures because both sides have compelling arguments and counter-arguments. Appraisers like Allen value the property based on the hypothetical assumption that the retailer closed and vacated on the assessment date. This valuation probably reflects the sale price if the Taxpayer closed due to financial troubles or a declining retail location, but the Meijer Store wasn't closed and the neighborhood wasn't declining on the assessment date. Appraisers like Koon value the property based on the hypothetical that the retailer was not an owner-occupant, but rather a tenant with a third-party investor selling the property. This is not an unusual presumption for some property types, like office buildings, that are always valued as rental properties even when owner-occupied, but the Meijer Store has never been leased. Consequently, the Board is faced with competing hypothetical valuations.

105. The big box debate remains a puzzle with evolving appraisal theories on both sides, and so far neither side has offered a completely satisfactory solution. Despite the Taxpayer's claims to the contrary, the Tax Court has not decided this dispute one way or the other. Based on the law and evidence before it, the Board is not compelled to adopt Allen's interpretation of "fee simple." Likewise the Board is not foreclosed from considering Koon's position that sales of leased first generation properties should be used to value a big box store. In this case, however, the Board finds it may avoid many of these thorny quarrels between the experts.

106. In the unique set of facts here, the Board finds that the cost approach is the most appropriate method for ascertaining the value of the Meijer Store. First, the cost approach avoids the controversies over the definition of fee simple ownership and estimating market rent:

> The application of the cost approach produces a valuation of the fee simple estate of a property at market rent and stabilized occupancy.[25]

THE APPRAISAL OF REAL ESTATE at 638. Among the three approaches, the cost approach "is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market."[26] *Id*. at 47. Moreover:

> The approach is especially persuasive when the land value is well-supported and the improvements are new or suffer only minor depreciation and, therefore, approximate the ideal improvement that is the highest and best use of the land as though vacant.

Id. at 566. The Board finds and concludes that this statement accurately describes the less than 2-year old Meijer Store. It is also clear that mega warehouse supermarket properties over 150,000 s/f are rarely exchanged. The witnesses agreed that the improvements were in good condition, and the current structure reflects the land's highest

[25] This is a consistent principle: "Typically the cost approach provides an indication of the value of the fee simple interest;" "The value of a property indicated by the cost approach is the value of a fee simple estate." THE APPRAISAL OF REAL ESTATE at 47, 565.

[26] As stated in more detail: "Because cost and market value are usually more closely related when properties are new, the cost approach is important in estimating the market value of new or relatively new construction." THE APPRAISAL OF REAL ESTATE at 566.

and best use. Moreover, the land value was well-supported by the data, with the experts reaching nearly identical conclusions: $3,000,000 v. $3,090,000.

107. In weighing the testimony, the Board rejects Allen's conclusion that the cost approach is not reliable. While the experts agreed that the cost approach is seldom used for big box stores, the Board credits Koon's explanation that he relied on the cost approach because it was the first time he valued a brand-new building.[27] Indiana law recognizes the cost approach as an appropriate method for determining market value-in-use. Moreover, the most reliable approach depends on the availability of data. Neither of the experts identified a comparable sale of a new building: of the 15 comparable sales, three were 7-9 years old, and the remainder even older. All of Allen's market data for his income approach involved buildings at least 15 years old when the Meijer Store was built. Appraisers can only work with the data available, and they looked across seven states. The experts also struggled to find sales of buildings of similar size as the Meijer Store. Based on the dearth of data for the income and sales comparison approaches, the Board finds, as trier of fact, that the cost approach was the most appropriate and reliable method for valuing the Meijer Store. Conversely, and for reasons more particularly described below, the Board finds that the income and sales comparison approaches presented here were less reliable than the cost approaches.

108. The Board also finds the cost approach compelling because there is little controversy regarding substantial portions of the cost approach process. As noted above, Allen and Koon reached nearly identical land values. Prior to deducting depreciation and obsolescence, Allen's cost estimate was very close to Koon's Marshall cost estimate: $11,544,788 v. $11,628,000.[28] After depreciation and before obsolescence, the appraisers remained close: $10,529,347 v. $11,046,600.[29] The experts disagreed on the

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[27] The Board likewise credits Korpacz's opinion that it would be appropriate to consider the cost approach in valuing a new big box store.

[28] For Allen, see the table in ¶48 above. For Koons, see *Ex. R-3* at D-4.

[29] For Allen, see the table in ¶48 above. For Koons, see *Ex. R-3* at D-6. The difference is mostly attributable to Koon's inclusion of entrepreneurial profit.

issue of obsolescence. Koon found no obsolescence. Allen found substantial obsolescence and deducted nearly $6M.

109. The Board first looks to Allen's obsolescence deduction. Indiana defines obsolescence as:

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

2011 REAL PROPERTY MANUAL, Glossary at 11. Functional obsolescence is "obsolescence caused by factors inherent in the property itself," while economic or external obsolescence is "obsolescence caused by factors extraneous to the property." *Id*. at 8-9.

110. Allen did not identify any specific inadequacy that diminishes the Meijer Store's desirability or usefulness. He did not establish a "flaw in the structure, materials, or design," of the Meijer Store. THE APPRAISAL OF REAL ESTATE at 622. He did not establish that the design "exceeds market norms" or incorporates "special features . . . that would not appeal to the market in general." *Id*. Rather, based on his observations that vacant stores sell for substantially less than the costs of construction, Allen found the existence of generalized depreciation and obsolescence.[30]

111. Allen calculated obsolescence through a "capitalized rent loss" analysis in conformity with the THE APPRAISAL OF REAL ESTATE. It is a method to estimate "incurable functional obsolescence as well as external obsolescence." THE APPRAISAL OF REAL ESTATE at 616. This method, which estimates an equilibrium rent, is found under the section addressing external obsolescence. *Id*. at 632-38. By design, when obsolescence is deducted "the value indicated by the cost approach will be the same value indicated by the income capitalization approach." *Id*. at 637. Because Allen's calculation of

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[30] The closest Allen came to a specific flaw was his assertion that there is less demand in Indiana for larger big box buildings like the Meijer Store. He provided no support for this proposition, and the Board credits evidence in the record that large mega warehouse superstores with groceries were outperforming other big boxes. While he testified generally regarding the utility of big box lay-outs and facades in relation to other big box users, he did not describe any flaws related to the Meijer Store specifically.

obsolescence was largely derivative of his income approach, its reliability depends on the probative value of Allen's income approach.

112. The Board is not persuaded by Allen's income approach and finds it to be unreliable. Regardless of Allen's understanding of "fee simple" generally, the income approach, by definition, presumes a hypothetical lease of the subject property and a calculation of market rent.[31] Allen admitted that "if there's no tenant in place . . . , there's no capitalization rate." He also admitted there was no data source for his "fee simple" capitalization rate. Accordingly, the Board rejects his income approach as illogical and inconsistent with generally accepted appraisal theory.

113. Theoretical principles aside, Allen's lease comparables and estimates of market rent were also unreliable. Unlike his comparable sales, none of his leases involved a mega warehouse superstore. His four selections were all substantially smaller and older at the time of sale. His adjustments for age were inconsistent with his age adjustments under his sales comparison and cost approaches. Because of the disparity in age, and likely condition, the Board cannot rely on these leases without evidence of the actual condition of the buildings. Without more detail, Allen's selections and adjustments to his comparable leases were simply too speculative to value a mega warehouse superstore as new and large as the Meijer Store.[32] Without a good idea of what the Meijer Store might rent for, even in the secondary market, his feasibility analysis is unsupported.[33] Consequently, the Board rejects Allen's obsolescence adjustment to his cost approach, but finds the remainder of his cost approach to be credible.

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[31] The income approach "converts an estimate of income, or rent, the property is expected to produce into value through a mathematical process known as capitalization." 2011 REAL PROPERTY MANUAL, Glossary at 2.

[32] The Board entirely rejects Allen's decision to exclude build-to-suit big box leases because the buildings were "not yet in existence" at the time of the lease. As all big box buildings are build-to-suit, those are the *only* ones "in existence." While it is reasonable to question whether a value based on leased first generation build-to-suit properties reflect market value-in-use, it is untenable to suggest the timing of the deal is what matters. We agree with Korpacz that basic economic and market principles are not suspended when a national or regional big box retailer negotiates with a developer capable of constructing a $10M building.

[33] The Board also notes Allen's conclusion that the Meijer Store is a "not-for-profit" in his discussion of entrepreneurial profit, which reflects a loss of perspective and credibility.

114. Turning to Koon's cost approaches, he applied a 10% adjustment for entrepreneurial profit. The Board finds that Koon's estimate of entrepreneurial profit was not supported. While it may be appropriate, he failed to provide the Board with sufficient explanation as to how he arrived at 10%. The Board accordingly rejects his adjustments for entrepreneurial profit. The Board also finds Koon's Actual Cost valuation to be unreliable. While recognizing the late disclosure of the actual costs may have prevented Koon from conducting a more thorough analysis, the Board finds that the appropriate use of the actual costs would have been to correct his conclusions under the market-based Marshall data, if warranted. Because Koon failed to incorporate market data in his Actual Costs valuation, the Board must reject Koon's Actual Costs valuation under the cost approach. However, the Board finds that Koon's Marshall cost approach was reliably based on market data and probative of market value-in-use.

115. In weighing the testimony, the Board finds that Koon's Marshall cost approach was more credible than Allen's cost approach. Koon also came across as the least partisan of the experts before the Board. The Board does not fault Koon for his reluctance to wander into academic and theoretical debates, which he clearly considered outside the scope of his assignment.[34] The Board adopts Koon's Marshall cost approach (not including entrepreneurial profit) in the amount of $10,290,000, less depreciation of $581,400,[35] plus the land value of $3,090,000, for a total of $12,798,600.

116. The remaining question is whether Koon's valuation under the cost approach inherently acknowledges obsolescence for the features that are unique to the Meijer Store and of value to no other retailer. Allen posited that the cost of modifying features for a new big box tenant might range from $15-$53 per s/f plus 25%-50% for architectural and

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[34] Koon was at times evasive and lobbed remarks directly at counsel rather than straight-forwardly answering questions. The Board must also note the sarcasm and remarks from Taxpayer's counsel which were intended to provoke such responses. Only the witness can present testimony, no matter how brilliant counsel's rebuttals may be. In regard to Koon's Marshall cost approach, the Taxpayer failed to impeach his opinion of value.

[35] Koon's calculation of depreciation included 5% of the developer's profit. The Board declines to recalculate Koon's depreciation in light of the exclusion of entrepreneurial profit.

engineering fees.[36] The Board credits Korpacz's testimony that the modifications expected when a new tenant takes over in regard to signage and façade treatments "may be minimal and easily removed or changed." As Allen noted, these big box stores are architecturally big open warehouses. In reviewing the photographs of Allen's comparable sales, the Board finds that these buildings are not particularly distinctive. As indicated in the chart below, Koon's Marshall valuation reflects a [redacted]

	Marshall Val. Serv.	Actual Costs
Building Improvements	$ 8,654,869	$ [redacted]
Site Improvements	$ 1,639,146	$ [redacted]
Total (rounded)	$ 10,290,000	$ [redacted]
Mgmt./Design/Reimburseables	$ -	$ [redacted]
Total Cost	$ 10,290,000	$ [redacted]
Trended Value (rounded)	$ -	$ [redacted]
Developer's Profit	$ -	$ [redacted]
Total	$ 10,290,000	$ [redacted]
Building Depreciation	$ (581,400)	$ [redacted]
Total	$ 9,708,600	$ [redacted]
Obsolescence (Actual v. Marshall)	$ [redacted]	
Obsolescence as a Percentage	[redacted]	

In addition to depreciation, this valuation roughly reflects [redacted]. In light of this, the Board finds as trier of fact that Koon's Marshall cost approach, as adjusted, reflects [redacted] for features unique to the Meijer Store.

117. Turning to the other approaches, the Board finds that Allen's presumptions regarding market conditions were refuted by Laposa's testimony that the market in 2016 was improving through steady new supply, rising absorption, and steeply declining vacancy

[36] *See Ex.P-1* at 102. For the Meijer Store at 194,380 s/f, this estimates a range of $2,915,700 to $10,302,140, and if increased by 50%, as high as $15,453,210 for conversion costs. This range, based on a pre-Recession conversation with an architect in 2008, is far too speculative to be considered probative. Rather than bolstering his conclusions, it casts doubt on Allen's entire premise of obsolescence. While other decisions of the Board or Tax Court may have accepted the "paradigm" that the obsolescence reflected in the cost of converting a big box to the new user's brand justifies Allen's vacant sales comparison approach, the Board must weigh the evidence in the record before it.

rates, and that single-tenant properties were outperforming all retail.[37] This calls into question all of Allen's market adjustments in both his sales and income approaches, and especially his selection of capitalization rates.[38] The Board also agrees with Laposa that most retailers would consider a larger 5-10 mile radius for a mega warehouse store in selecting a property, and a small radius only in determining land value.[39] The Board finds that Allen should have considered the impact of the nearby interstate in his adjustments for traffic.[40] The Board agrees with Korpacz that Allen's inclusion of sales subject to covenants and restrictions was completely contrary to Allen's uncompromising interpretation of "fee simple." Allen identified differences in sale prices of restricted and unrestricted properties in both his own comparable sales (10%) and the Harrington Study (9%), and it was unreasonable to make no adjustments whatsoever. From all of this, and the previous conclusions regarding Allen's income approach, the Board finds that Allen's sales comparison and income approaches were not reliable.[41]

118. The Board must likewise conclude that Koon's sales comparison and income approaches were not reliable. Too often Koon showed a lack of familiarity with the data underlying his comparable sales and leases. His appraisal report required numerous corrections

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[37] The Board finds that Laposa's analysis of the comparability of Allen's sales was unpersuasive. While a statistical analysis is helpful, only an appraiser has the training and expertise to determine which economic or demographic factors are most relevant in selecting and adjusting comparable sales.

[38] Allen's market adjustments were inconsistent with the Harrington Study which showed, nationally, that average fee-simple big box sale prices started at below $25 per s/f in 2011 and ended above $30 per s/f in 2016, suggesting a more than 20% change in market conditions during those 5 years. The Board also notes that the 23 sales from 2015 through June of 2016 in the Harrington Study indicated a $31.26 average price per s/f, and only 43% of the properties sold for less than $30 per s/f. Accordingly, Allen's reliance on the 5-year average of $27.73 per s/f and the conclusion that "61% of the sales sold for less than $30/SF," failed to reflect improving market conditions.

[39] Allen also failed to address the neighborhood's lifecycle. What a vacant big box sells for in a neighborhood in the "Decline" stage may not be the same in a neighborhood in the "Growth" stage.

[40] The Board notes that Allen's adjustment for visibility is likewise unsupported. As established by the history of the Meijer Store and Allen's Sale 2, the Taxpayer's business model involves selling off frontage for the development of outlots. It defies logic to believe the Taxpayer would develop outlots if that negatively impacted visibility or access.

[41] In light of this conclusion, the Board declines to determine whether Korpacz's testimony would have impeached Allen's sales comparison approach as a market segmentation analysis pursuant to I.C. §6-1.1-31-6(d). *See Boone Co. Assessor's Post Hearing Br.* at 48-49. However, market segmentation was not really in dispute. Allen, Korpacz, and Koon all concluded that vacant and occupied big box stores should be segmented into different markets. The dispute was over which market was appropriate to determine the market value-in-use of the Meijer Store.

before and at trial, and some errors were acknowledged and never corrected. Additionally, he failed to offer supporting data for many of his adjustments other than his experience and knowledge, and based on the evidence in this case we find those adjustments too speculative to be reliable. Koon also made no effort to ascertain whether his leased sales were at market rent, or explain why such a determination was not possible or necessary.[42] In contrast, Koon's Marshall cost approach was not substantially impeached, and, except in regard to his obsolescence conclusions, was substantially supported by Allen's work as well.

119. The parties stipulated to a formula for trending the values for the other years on appeal, rounded to the closest $100. For 2014, the amount is based on the Board's conclusion of 2016, less $3,045,000, times .97, times .75, plus $2,953,650; while for 2015 and 2017 the amounts are the Board's conclusion for 2016 times .965 and 1.035 respectively. Accordingly, for 2014, $12,798,600 - $3,045,000 = $9,753,600 x .97 x.75 = $7,095,744 + $2,953,650 = $10,049,394. For 2015, $12,798,600 x .965 = $12,350,649. For 2017, $12,798,600 x 1.035 = $13,246,551. The Board concludes to the following rounded values:

2014	$10,049,400
2015	$12,350,600
2016	$12,798,600
2017	$13,246,600

D. Conclusion

120. The assessed values for the subject property for years 2014-2017 are, respectively, changed to $10,049,400, $12,350,600, $12,798,600, and $13,246,600.

[42] Appraisal theory generally requires a determination of whether a leased comparable sale is at a market rent: "[i]f the sale of a leased property is to be used as a comparable sale in the valuation of the fee simple estate of another property, the comparable sale can only be used if reasonable and supportable market adjustments for the differences in rights can be made." APPRAISAL OF REAL ESTATE at 406. But that is not always possible: "[a]lthough it is usually not recommended that the sale of a leasehold interest be compared to a fee simple estate, the limited availability of sales of directly comparable interests sometimes makes this necessary." *Id*. at 405-6.

ISSUED: ________________________________

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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>.

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