REPRESENTATIVE FOR PETITIONER: Paul M. Jones Jr., Paul Jones Law, LLC

REPRESENTATIVES FOR RESPONDENT: Beth Henkel, Law Office of Beth Henkel, LLC
Stefan A. Kirk, Kirk Law Office, LLC

BEFORE THE
INDIANA BOARD OF TAX REVIEW

CVS 6475-02,	)	Petition:	20-012-12-1-4-00001
	)		20-012-13-1-4-00001
Petitioner,	)		20-029-14-1-4-10129-15
	)		20-012-15-1-4-01124-16
v.	)		
	)	Parcel:	20-06-17-276-014.000-012
Elkhart County Assessor,	)		
	)	County:	Elkhart
Respondent.	)		
	)	Assessment Years: 2012-2015	

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

May 25, 2018

FINAL DETERMINATION

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

INTRODUCTION

1. The parties offered competing valuation opinions from two appraisers—Sara Coers for the Petitioner ("CVS"), and J. David Hall for the Elkhart County Assessor. Both appraisals have significant problems that seriously detract from their reliability. We ultimately find Coers' cost approach without her adjustments for external obsolescence to be the most reliable evidence of the subject property's true tax value for the years at issue.

PROCEDURAL HISTORY

2. CVS timely filed notices for review with the Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") for the 2012-2015 assessment years. The PTABOA issued determinations valuing the property as follows:

Year	Land	Improvements	Total
2012	$88,200	$942,400	$1,030,600
2013	$88,200	$1,002,500	$1,090,700
2014	$88,200	$1,030,000	$1,118,200
2015	$88,200	$1,018,000	$1,106,200

3. CVS then timely filed Form 131 petitions with the Board.

4. On May 15-17, 2017, our designated Administrative Law Judge, Andrew Howell, held a hearing on CVS's petitions. Neither he nor the Board inspected the subject property.

5. Sara Coers, J. David Hall, Carla Higgins, and Gavin Fisher testified under oath.

6. The parties submitted the following exhibits:

Petitioner's Ex. A:	Appraisal report prepared by Sara Coers
Petitioner's Ex. B:	Summary of Comparable Assessments
Petitioner's Ex. C:	Table of Comparable Assessments
Petitioner's Ex. D:	Map of Comparable Assessments
Petitioner's Ex. E:	Information about Assessment Comparable A
Petitioner's Ex. F:	Information about Assessment Comparable B
Petitioner's Ex. G:	Information about Assessment Comparable C
Petitioner's Ex. H:	Information about Assessment Comparable D
Petitioner's Ex. I:	Information about Assessment Comparable E
Petitioner's Ex. J:	Information about Assessment Comparable F
Petitioner's Ex. K:	Information about Assessment Comparable G
Petitioner's Ex. L:	Information about Assessment Comparable H
Petitioner's Ex. M:	Information about Assessment Comparable I
Petitioner's Ex. N:	Information about Assessment Comparable J
Petitioner's Ex. O:	Information related to Parcel #20-02-31-427-031.000-027

Respondent's Ex. 1:	Integra Realty Resource Appraisal
Respondent's Ex. 2-1:	Excerpts from THE APPRAISAL OF REAL ESTATE, (14th ed.).
Respondent's Ex. 2-2:	Excerpts from THE APPRAISAL OF REAL ESTATE, (14th ed.).
Respondent's Ex. 3-1:	Information about available substitute properties
Respondent's Ex. 3-2:	Information about available substitute properties
Respondent's Ex. 3-3:	Information about available substitute properties
Respondent's Ex. 4-1:	Information from *Marshall Valuation Service*
Respondent's Ex. 4-2:	Information from *Marshall Valuation Service*
Respondent's Ex. 5:	Property Record Cards for Subject Property
Respondent's Ex. 6:	Property Record Card for Parcel #20-06-16-151-012.000-012
Respondent's Ex. 7:	Ground Lease of Subject Property (CONFIDENTIAL)
Respondent's Ex. 8:	Excerpts from THE APPRAISAL OF REAL ESTATE, (14th ed.) and *Marshall Valuation Service*
Respondent's Ex. 9:	Excerpts from THE DICTIONARY OF REAL ESTATE APPRAISAL, (6th ed.) and *CoStar.com*
Respondent's Ex. 10:	*CoStar* analytic survey and supporting photographs
Respondent's Ex. 12:	Map of comparable sales
Respondent's Ex. 13:	Demonstrative exhibit regarding Coers' land values
Respondent's Ex. 14:	Sales disclosure form for Parcel 49-12-12-111-028.000-930
Respondent's Ex. 15:	Photographs and information about Coers' comparables
Respondent's Ex. 16:	Demonstrative exhibit regarding Coers' sales comparison values
Respondent's Ex 17:	Photographs and information about Coers' comparables
Respondent's Ex. 19:	Excerpts from THE APPRAISAL OF REAL ESTATE, (14th ed.)
Respondent's Ex. 20:	Hypothetical valuation prepared by Hall
Respondent's Ex. 21:	Assessment comparison prepared by Gavin Fisher
Respondent's Ex. 22:	Photographs of 2075 S. Main St, Elkhart, IN.
Joint Ex. A:	Four Volume Hearing Transcript.[1]

7. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals, and (2) all orders and notices issued by the Board or our administrative law judge, and (3) a digital recording of the hearing.

[1] The parties submitted this transcript with the agreement that the audio recording would control to the extent there are discrepancies between it and the transcript. We assigned each volume a number based on chronological order. We cite to it as "*Tr. Vol. # at Pg. #.*" The transcript does not include approximately 10 minutes of testimony from the end of the hearing.

OBJECTIONS

8. The Assessor objected to Petitioner's Exs. E, H, and J because they contained information related to assessments that were the product of settlement agreements and thus improper for the Board to consider. CVS responded that the evidence was of "finally determined values" rather than evidence of settlement negotiations or actual settlements. We agree with CVS and find the evidence is admissible. Nevertheless, we recognize the issues with evidence related to settled appeals and give it the appropriate weight.

9. CVS objected to page 1 of Respondent's Ex. 15, a satellite photo, on the grounds that no foundation was laid that it "relates to anything in this report." Hall testified that the photo was of Coers' Sale 3 from her sales comparison approach. We find this testimony sufficient support for the exhibit's authenticity and overrule the objection.

FINDINGS OF FACT

A. The Subject Property

10. The property is roughly 1.26 acres and contains a freestanding retail building of 10,880 square feet that is in good repair. The building was constructed in 2004 and is located at the corner of Hively Avenue and Prairie St. approximately one mile south of downtown Elkhart. During the years at issue, it was operated as a CVS brand store. *Resp't Ex. 1 at 34-66; Tr. Vol 2. at 19-26.*

B. Expert Opinions

1. Hall Appraisal

11. The Assessor engaged J. David Hall, MAI, of Integra Realty Resources, to appraise the true tax value of the fee simple interest of the subject property for the 2012-2015 assessment years.[2] Hall has been appraising property since 2005, and was previously a

[2] Michael C. Lady, MAI, of Integra Realty Resources, also signed the appraisal.

city planner. He has appraised over a hundred retail properties and has several designations and certifications in addition to the MAI. *Resp't Ex. 1, Add. A at 2; Tr. Vol. 2 at 3-4.*

12. For his market research, Hall examined the Elkhart-Goshen Metropolitan Statistical Area ("MSA"). He noted that the MSA began to recover from the recession in 2010. During the years at issue, it also grew in population, employment, and gross domestic product ("GDP"). Hall also examined the area immediately surrounding the subject property. He found it had mixed commercial and residential use, with a well-established neighborhood. *Resp't Ex. 1 at 17-26; Tr. Vol. 2 at 10-13.*

13. Hall performed a market segmentation analysis in which he found that the subject was a "freestanding retail / drug store property" with the following features:

- Occupancy: 100% occupied, single user
- Size: 10,880 square feet
- Construction Quality: Good
- Customer Base: Local (e.g. Elkhart.)

Resp't Ex. 1 at 28.

14. He further distinguished the subject property from "broader general retail" based on its concrete block construction, drive through, pharmacy services, ornamental storefront entrances, and above average ceiling heights. Based on this analysis, he concluded that "the subject's primary competition is comprised of other freestanding drug stores." He then developed a list of substitute properties that was comprised of Walgreens/CVS stores in the Elkhart area.[3] Hall noted that they were all 100% occupied during the assessment dates at issue. He defined the subject property's current use as "freestanding retail / drug store property" with "100% actual and market occupancy." He noted that "within the competitive local market…we believe there's insufficient comparable data to analyze trends in rental rates, occupancy levels or sale prices for just the free-standing

[3] Hall also examined the assessments of these properties, noting that he believed they were low relative to their expected market value-in-use. *Resp't Ex. 1 at 70-72; Tr. Vol. 2 at 23-25.*

retail property type." In addition, he found that because the local market had increasing rental rates and decreasing vacancy, the subject property suffered from no external obsolescence. Finally, he developed a highest and best use analysis in which he concluded the subject's highest and best use as improved was the current use as "a freestanding retail/drug store property." *Resp't Ex. 1 at 26-34, 75; Tr. Vol. 2 at 13-26.*

15. Hall developed several approaches to appraise the subject property. These included a land valuation and cost approach, a sales comparison approach that contained two sub-analyses ("Drug Stores" and "Freestanding Retail"), and an income approach. *Resp't Ex 1 at 12-16; Tr. Vol. 2 at 8-10***.**

a. Hall's Land Valuation

16. Hall valued the subject land using the sales-comparison method. Hall looked for commercial land in Elkhart between 0.6 and 3 acres that sold between March 1, 2011 and December 31, 2015. He also looked for corner sites with prime retail locations at signalized intersections. Hall ultimately selected seven sales, including one sale from 2005 that he presented despite its age because it was a corner location that sold for development as a drug store. The properties sold for between $224,891 and $487,385 per acre. *Resp't Ex. 1 at 77-83, Tr. Vol. 2 at 26-28.*

17. Hall then adjusted the sale prices for market conditions, location, access/exposure and size. He developed different market conditions adjustments for each assessment year. After applying these adjustments, reconciling the sales, and rounding, he arrived at the following values for the subject land:

Year	Land Value/Acre	Total
2012	$325,000	$410,000
2013	$330,000	$420,000
2014	$335,000	$420,000
2015	$340,000	$430,000

Resp't Ex. 1 at 84-94; Tr. Vol. 2 at 28-30.

b. Hall's Cost Approach

18. In estimating replacement cost, Hall relied on cost tables from Marshall Valuation Service. He used the cost figures for a good quality "Drug Store" store with additions for canopies. In addition, he included costs for site improvements. He estimated indirect costs of 8%. He also included a 10% adjustment for entrepreneurial profit, which he based on his "experience with appraising, proposed construction, looking at development budgets for new properties, talking with owners, contractors, developers." *Resp't Ex. 1 96-99; Tr. Vol. 2 at 30-32.*

19. Hall estimated depreciation using the age-life method. He found the building had an economic life of 40 years and an effective age of 8 years as of 2012. He also calculated depreciation for the site improvements, which had a shorter economic life. After applying depreciation to his replacement costs and adding in his land values, he arrived at the following rounded conclusions under the cost approach:

Year	Cost Approach
2012	$1,700,000
2013	$1,710,000
2014	$1,710,000
2015	$1,700,000

Resp't Ex. 1 at 100-24; Tr. Vol. 2 at 32-35

c. Hall's Sales Comparison Approach

20. Hall developed two separate analyses for his sales-comparison approach. In the first, he used only sales of drug store properties. In the second, he used sales of "freestanding retail" properties. He then reconciled these analyses to form his conclusions under the sales comparison approach. *Resp't Ex. 1 at 125-26; Tr. Vol. 2 at 35-37.*

i. Hall's "Drug Store" Sales-Comparison Analysis

21. For his first sales-comparison approach, Hall looked at sales of drug store properties "because they are most similar to the subject in property type, physical characteristics, and utility." He ultimately selected these sales:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Development	CVS	CVS	Walgreens	CVS	Walgreens	Walgreens	CVS	CVS	CVS
Location	Elkhart, IN	Muncie, IN	Kendallville, IN	Portage, IN	Anderson, IN	Marion, IN	Danville, IN	Mooresville, IN	Richmond, IN
Sale Date		May-2016	Dec-2014	Feb-2014	Sep-2013	Oct-2012	Jun-2011	May-2011	May-2011
Building Area (SF)	10,880	10,650	14,749	13,800	9,612	15,071	10,125	10,014	10,752
Year Built	2004	1996	2008	1999	1998	2000	1998	1998	1998
Rights Conveyed		Leased Fee	Leased Fee	Leased Fee	Leased Fee	Leased Fee	Leased Fee	Leased Fee	Leased Fee
Sale Price/SF		$173.24	$258.60	$266.30	$298.12	$243.25	$187.65	$204.21	$181.83
Lease Rate/SF		$11.33	$21.56	$20.75	Unknown	$19.91	$18.78	$20.21	Unknown
Approximate Remaining Lease Term		9 years	75 years	5 years	>10 years	7 years	6.5 years	7 years	8 years
Additional notes			Listing information indicated buyer must assume mortgage.		Portfolio transaction.		Portfolio transaction. Buyer and tenant renegotiated lease after sale.	Portfolio transaction. Buyer and tenant renegotiated lease after sale.	Possible portfolio transaction. Buyer and tenant renegotiated lease after sale.

Resp't Ex. 1 at 127-31. Tr. Vol. 2 at 36-38.

22. Hall determined adjustments were necessary for location, age/condition, and size. He also made adjustments of -10% to -40% for "economic characteristics." He based this adjustment primarily on remaining lease term, but he also factored in assemblage and redevelopment for two of the comparables. He determined no adjustment was necessary for property rights because "our analysis of the leased fee sales indicates that all were leased at rental rates that fall within the market range."[4] He also made distinct market conditions adjustments depending on the assessment year. After adjustment, the sale

[4] In contrast, he testified that two of the leases were above market, but that it was accounted for in his economic characteristics adjustment. *Tr. Vol. 2 at 68.*

prices ranged from $176.19/sq. ft to $222.67/sq. ft. He reconciled these to $190.00/sq. ft. for each year, which yielded a rounded value of $2,070,000 for every year under appeal. *Resp't Ex. 1 at 132-38; Tr. Vol. 2 at 40-443.*

ii. Hall's "Freestanding Retail" Sales-Comparison Approach

23. For his second sales-comparison approach, Hall looked at sales of freestanding retail properties because "the sales reflect alternative uses for the subject that might be considered by similar users." He ultimately selected these sales:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6
Development	CVS	Advance Auto Parts	Advance Auto Parts	AutoZone	Former Restaurant	Former Restaurant	Former Blockbuster Video
Location	Elkhart, IN	Lafayette, IN	Anderson, IN	Elkhart, IN	Fort Wayne, IN	Fort Wayne, IN	Greenwood, IN
Sale Date		Oct-2014	Oct-2013	Nov-2011	Oct-2014	Sep-2013	Jun-2011
Building Area (SF)	10,880	7,000	6,696	7,360	6,518	6,559	6,500
Year Built	2004	1999	1998	2008	2004	2002	1996
Rights Conveyed		Leased Fee	Leased Fee	Leased Fee	Fee Simple	Fee Simple	Fee Simple
Sale Price/SF		$170.00	$140.38	$171.88	$122.74	$205.82	$184.62
Lease Rate/SF		Unknown	$12.29	$12.77			
Approximate Remaining Lease Term		5 years	Unknown	12 years			
Additional notes			Buyer and tenant renegotiated lease after sale.		Buyer was adjoining owner		Renovated after purchase.

24. To adjust these sales, Hall used a qualitative analysis in which he adjusted for location, physical characteristics, and age/condition. He determined no adjustments were necessary for property rights, financing terms, conditions of sale, or market conditions. He also made a similar adjustment for economic characteristics as he did for his drug stores sales, adjusting Sale 1 and Sale 2 down for remaining lease term. He determined Sale 3 did not need this adjustment because "the rental rate indicated for this property is low, relative to other properties of similar type and age…" After adjustment, he noted that the average of Sales 3, 4, 5, and 6 was $171.26/sq. ft. and the unadjusted average of fee simple sales was $171.06. He reconciled to $170.00/sq. ft. for every year at issue.

This yielded a value of $1,850,000 for all assessment years under appeal. *Resp't Ex. 1 at 143-58; Tr. Vol. 2 at 42-44.*

iii. Hall's Sales-Comparison Reconciliation

25. Hall reconciled his two sales-comparison analyses with "greater weight given to the sales that do not require significant adjustments for economic characteristics." That yielded the following values under the sales comparison approach:

Year	Drug Store Sales	Freestanding Retail sales	Reconciliation
2012	$2,070,000	$1,850,000	$1,900,000
2013	$2,070,000	$1,850,000	$1,900,000
2014	$2,070,000	$1,850,000	$1,900,000
2015	$2,070,000	$1,850,000	$1,900,000

Resp't Ex. 1 at 146-56. Tr. Vol 2 at 43-44.

d. Hall's Income Approach

26. Hall also developed an income capitalization approach. He gave no consideration to the subject property's current lease, instead developing an estimate of market rent. Based on his market segmentation analysis, Hall looked for leases of "free-standing retail and/or drug store properties" that were "100% occupied by a single tenant" that were between "6,000 and 15,000 square feet." He also testified that he "looked for leases that were renegotiated, or extensions, or renewals, in which both the landlord and the tenant had an opportunity to renegotiate that lease…." *Resp't Ex. 1 at 159-60; Tr. Vol. 2 at 44-45.*

27. He ultimately selected 10 comparable rentals from Indiana. The properties ranged from 7,000 sq. ft. to 17,183 sq. ft., with rents ranging from $13.00/sq. ft. to $17.00/sq. ft. The majority were Triple Net leases though he also includes some Absolute Net. The majority of the leases were the product of renegotiations or renewals. *Resp't Ex. 1 at 160-65; Tr. Vol. 2 at 45-46.*

28. Hall analyzed the leases by considering factors such as location, age/condition, conditions of lease, and physical characteristics. He found that the average rent was $15.76/sq. ft. and the median was $15.59/sq. ft. He gave the greatest weight to these measurements concluding to the following market rents:

Year	**Market Rent/sq. ft.**
2012	$15.25
2013	$15.50
2014	$15.75
2015	$16.00

Resp't Ex. 1 at 166-67; Tr. Vol. 1 at 46-47.

29. Hall then estimated expenses. He determined no reimbursements were necessary because he was assuming a triple net lease. He found that market vacancy for retail in Elkhart ranged from 4-5%. He used this to determine vacancy and collection loss of 5%. He applied a management fee of 3% and reserves of $0.25/sq. ft. After applying these expenses, he arrived at stabilized net operating incomes ranging from approximately $151,000 to $158,000. *Resp't Ex. 1 at 169-70; Tr. Vol. 2 at 47-48.*

30. To develop his capitalization rate, Hall relied on a leased sales analysis, investor surveys, and a band of investment technique. The leased sales analysis used the same sales from his Drug Store sales analysis. The average of all 10 of the sales was 7.87% with a high of 8.81%. Hall also examined national investor surveys that ranged from 6.75%-10.70%. He also noted data specific to Elkhart retail that indicated a trailing 5-year average of 8.40%. Finally, he performed a band-of-investment technique, from which he derived rates ranging from 8.37% to 8.65%. He reconciled all this data to determine a capitalization rate of 8.50% for every year at issue. *Resp't Ex. 1 at 171-76; Tr. Vol. 1 at 48-49.*

31. After applying this rate to his net operating income, he arrived at the following rounded value conclusions under the direct capitalization approach:

Year	Income Approach
2012	$1,770,000
2013	$1,800,000
2014	$1,830,000
2015	$1,860,000

Resp't Ex. 1 at 177-78; Tr. Vol. 2 at 49.

e. Hall's reconciliation

32. In his reconciliation, Hall gave similar weight to each methodology, concluding to the following reconciled conclusions:

Year	Conclusion
2012	$1,790,000
2013	$1,800,000
2014	$1,810,000
2015	$1,820,000

Resp't Ex. 1 at 179-80; Tr. Vol. 2 at 49-50.

1. Coers' Appraisal

33. CVS engaged Sara Coers, Senior Vice President of the Pillar Valuation Group, Inc., to appraise the true tax value of the fee simple interest in the property. Coers certified that she appraised the property and prepared her appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Coers is a certified general appraiser, member of the Appraisal Institute ("MAI"), and a Level II assessor/appraiser. *Pet'r Ex. A at 1-3, 138, 142-44; Tr. Vol. 2 at 4.*

a. Coers' Research and Market Overview

34. Coers described the property as a "typical small box." She considered the market area to be within a one-mile radius of the subject property. She noted that the local economy was highly dependent on the RV industry and that the median household income was below the state average. She also testified that there was little demand for new construction. *Pet'r Ex. A at 21-32; Tr. Vol. 1 at 4-6.*

35. She developed a market segmentation analysis in which she determined that the subject's market segment is "investors/speculators and owner-users." She also noted the subject property was a single-tenant freestanding retail building of average quality with a customer base of "moderate-income suburban population." She found substitute properties would be between 4,000 and 25,000 square feet located in the "Midwest, particularly Central and Northern Indiana, in neighborhood retail locations." *Pet'r Ex. A at 33; Tr. Vol. 1 at 6-7.*

36. Coers developed all three generally recognized approaches to value, although she ultimately relied most heavily on her conclusions under sales-comparison and income approaches. *Pet'r Ex. A at 47; Tr. Vol 1. At 7.*

b. Coers' Land Valuation

37. For her land valuation, Coers performed a sales-comparison analysis. She selected nine land sales, all from Elkhart County. The properties sold between May 2010 and January 2015, although Coers did not use every sale for every assessment year. They ranged between 0.33 and 2.29 acres and sold for between $134,152 and $487,385 per acre.

38. Coers made adjustments for demolition costs[5], market conditions, access, and frontage/visibility. She also considered a number of other adjustments including location and economic factors, but determined they were unnecessary. She reconciled these sales

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[5] Coers' report states that her sale prices reflected an adjustment for demolition costs. The report does not include the actual demolition costs she adjusted for, or the original sale prices.

to arrive at per acre values of $260,000 to $275,000, which yielded the following total values for the subject land:

Year	**Land Value/Acre**	**Total**
2012	$260,000	$330,000
2013	$270,000	$340,000
2014	$275,000	$350,000
2015	$275,000	$350,000

Pet'r Ex. A at 50-57; Tr. Vol. 1 at 7-8.

c. Coers' Cost Approach

39. To estimate replacement costs for the improvements, Coers primarily relied on *Marshall Valuation Service*, a publication of Marshall & Swift. She used the base costs for a Class C drugstore of average construction quality, which she testified was very similar to the subject building. She made adjustments for number of stories, story height, perimeter, current costs, and local costs. She also trended the costs to the appropriate assessment dates. She then added in an estimate of depreciated site improvements to arrive at a hard cost. Finally, she added soft costs, which she calculated at 5% of hard costs, to arrive at a total cost for improvements. *Pet'r Ex. A at 58-65; Tr. Vol. 1 at 8.*

40. Coers did not include entrepreneurial incentive, arguing that (1) entrepreneurial incentive is not always considered applicable for buildings constructed for owner users or built to suit for specific tenants; and (2) considering the external obsolescence in the market, entrepreneurs would experience loss rather than profit. *Pet'r Ex. A at 65*; *Tr. Vol. 1 at 8.*

41. She estimated physical depreciation for the building improvements. She did not estimate any functional obsolescence, because she felt the CVS prototype was very similar to the example of an average drugstore from Marshall & Swift. *Pet'r Ex. A at 66-69; Tr. Vol. 1 at 8-9.*

42. Coers determined that external obsolescence was appropriate because the lower "median household income…" and "stagnant population growth" for the area would cause "…a

lower demand overall for retail." She also noted that the market's high availability rate caused her to find the local market has "classic external obsolescence." She estimated this deduction by capitalizing the difference between what she determined was the property's market rent and the rent she estimated as a function of return on cost. Based on that methodology, Coers applied external obsolescence ranging from $233,594 to $418,346 depending on the year at issue.[6] She then subtracted those amounts from her cost calculations, added in the site value, and arrived at the following values under the cost approach:

Year	**Cost Approach**
2012	$800,000
2013	$890,000
2014	$920,000
2015	$980,000

Pet'r Ex. A at 69-78; Tr. Vol. 1 at 9-10; 16.

c. Coers' Sales Comparison Approach

43. For her sales-comparison analysis, Coers focused on the Midwest, with a "preference for Central and Northern Indiana, primarily in demographically similar areas." She looked for sales of single-user properties from 4,000 to 25,000 square feet. Her primary considerations were "interest transferred, continued retail use" and "size." She did not give primary consideration to leased fee sales of CVS or Walgreens properties because they are "credit rated tenants." She also testified that those sales could include other intangible contract value over and above the fee simple value of the property. *Pet'r Ex. A at 79; Tr. Vol. 1 at 10.*

[6] Coers appraisal shows figures for "Net Rent Loss" and "Rate of Return on Investment" for each assessment year. She testified that she capitalized the Net Rent Loss using those same rates of return to arrive at her estimates for external obsolescence. But, there is a discrepancy between what that calculation should have yielded and her reported external obsolescence. She offered no explanation of the discrepancy.

44. Considering the above factors, Coers chose the following sales:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8	Sale 9
Development	CVS	Former Blockbuster	Former Blockbuster	Former Aldi	Former Goodwil l	Former Goodwil l	Advance Auto Parts	Former Walgreens	Former Goodwill	Former Walgreens
Location	Elkhart, IN	Portage, IN	Valparaiso, IN	Mishawaka , IN	Lafayett e, IN	Elkhart, IN	Elkhart, IN	Indianapolis, IN	Indianapolis, IN	Elkhart, IN
Sale Date		Jun-2011	Oct-2010	Aug-2011	Oct-2011	Nov-2012	Dec-2012	Jul-2014	Dec-2014	Jan-2015
Building Area (SF)	10,880	6,000	6,000	13,442	11,250	10,773	7,000	12,740	11,200	13,000
Year Built	2004	1992	1992	1991	1996	1988	1999	1993	1972	1993
Sale Price/SF		$112.50	$87.50	$48.36	$88.89	$51.05	$98.68	$62.79	$101.79	$64.42
Assessment years applied to		2012	2012	2012-2014	2012-2014	2013-2015	2013-2015	2015	2015	2015
Additional notes		Intended for use as a O'Reilly Automotive store	Intended for use as a Family Video.	Purchased by adjacent Goodwill for expansion, which already owned parking lot.	Intended for use as a fitness center.	Intended for use as a compute r store.	Leased fee sale that was purchased by tenant.	Leased to Dollar Tree after purchase.	Renovated since construction. Intended for use as a use as Harbor Freight.	Leased to Dollar Tree after purchase.

Pet'r Ex. A at 81-98; Tr. Vol. 1 at 10-11.

45. She adjusted the sales for factors such as market conditions, location, and age/condition. This resulted in adjusted sale prices ranging from $62.07/sq. ft. to $107.65/sq. ft depending on the year at issue. In her reconciliation, she gave the most weight to sales "most similar in location and physical features" with "a lot of weight on the sales in Elkhart." Coers ultimately came to the following rounded values under the sales comparison approach:

Year	**Value/sq. ft.**	**Total**
2012	$80.00	$870,000
2013	$80.00	$870,000
2014	$80.00	$870,000
2015	$82.00	$890,000

Pet'r Ex. A at 99-107; Tr. Vol. 1 at 11.

d. Coers' Income Approach

46. Coers used the direct capitalization method for her income approach. She began her analysis by estimating market rent. She reviewed the property's existing lease, but determined that it did not reflect market rent primarily because it was a "build-to suit lease" and was "not exposed to the market." Instead, she examined existing leases and also developed a rent based on cost. *Pet'r Ex. A at 108-10; Tr. Vol. 1 at 11-12.*

47. Coers reported that "[m]ost available data for physically similar properties located in the subject's market reflected build-to-suit leases that are not considered applicable." Instead, she selected subleases, listings, and leases of existing buildings from across central and northern Indiana. They ranged from $6.00/sq. ft. to $10.00/sq. ft. She adjusted the leases for market conditions, visibility/frontage and location. This resulted in adjusted rents ranging from $7.63/sq. ft. to $9.15/sq. ft. *Pet'r Ex. A at 110-14; Tr. Vol. 1 at 12.*

48. Coers then estimated market rent as a function of return on cost. For her cost numbers, she used the conclusions from her cost approach without any adjustment for external obsolescence. She then calculated rent based on the return an investor would require on those costs. Based on market surveys and her own observations, she used three different rates of return to calculate rent for each year: 7%, 8%, and 9%. She noted that 8% was most typical. Those calculated rents ranged from $7.78/sq. ft. to $10.34/sq. ft. depending on the year at issue. *Pet'r Ex. A at 116-18; Tr. Vol. 1 at 12-13.*

49. Based on those analyses she concluded to market rents ranging from $8.50/sq. ft. to $9.00/sq. ft., depending on the year at issue. To estimate vacancy, she examined a survey of availability for "competing retail within a one-mile radius of the subject." That survey shows availability between 17% and 21% for the years at issue. It also showed that between 2016 and 2017 availability fell to 2%. Based on this, she concluded to a stabilized vacancy of 18% for the years at issue. She also included .5% collection loss. *Pet'r Ex. A at 120; Tr. Vol. 1 at 13.*

50. She examined historical expenses for the subject property, but found they had little relevance. Instead, she estimated expenses based on published regional data for neighborhood/community retail shopping centers and data from three Indiana drugstores. Because she determined that investors would not have required reserves for any year except 2012, she included them as an expense only for that year. She also included a management fee of 4.5%. After applying expenses, she arrived at net operating income ("NOI") ranging from $6.07/sq. ft. to $6.96/sq. ft. for the various years at issue. *Pet'r Ex. A at 121-27; Tr. Vol. 2 at 13-143.*

51. To develop her capitalization rate, Coers looked at stores with less than 10 years remaining on the leases because she felt they were closest to fee simple. These sales showed rates ranging from 6.90% to 14.03% with an average of 9.24%. She also looked at national market surveys and regional data published by *RealtyRates.com* and the *Real Estate Research Corporation* ("*RERC")*. Coers settled on overall rates ranging from 8% to 8.5% for the years at issue. She then loaded those rates with a percentage reflecting the landlord's share of the property tax burden (taxes paid during vacancy). Finally, she divided those loaded rates into her estimate of the property's NOI for each year to arrive at the following rounded values:

Year	**Income Approach**
2012	$730,000
2013	$810,000
2014	$830,000
2015	$880,000

Pet'r Ex. A at 129-134; Tr. Vol. 1 at 14.

e. Coers' Reconciliation

52. In her reconciliation, Coers did not rely heavily on the cost approach because of the subject's age and the "external obsolescence in this local market due to an oversupply of retail and weaker demographics." She felt both her sales-comparison and income

approaches included good quantity and quality of data and would reflect how market participants would make a buying decision. She concluded to the following values:

Year	**Conclusion**
2012	$800,000
2013	$840,000
2014	$850,000
2015	$890,000

Pet'r Ex. A at 136-37; Tr. Vol. 1 at 14.

C. Review Appraisals

1. Coers' Review of Hall's Appraisal

53. Coers performed a review appraisal of Hall's appraisal and presented an oral report. She made a number of criticisms of Hall's appraisal, the most significant of which we recount here. *Tr. Vol. 4 at 2.*

54. Coers examined Hall's market segmentation analysis, noting that she would expect all of Hall's comparables for his sales-comparison and income approaches to fall within those parameters. She also noted none of Hall's distinguishing characteristics of corner orientation, drive-through, ornamentation, and above average ceiling heights would prevent a non-drug store user from using the property. *Tr. Vol. 4 at 3.*

55. Turning to Hall's land sales, Coers testified that Sale 7 had a retail building that was demolished, and that it was redeveloped as an office building. She did not consider this appropriate under the market value-in-use standard. She also expressed concern with Hall's use of comparables that sold approximately three years after the relevant assessment dates. She did not find that this met the USPAP requirement of a reasonable cutoff. She also testified that Hall's Land Sale 5, which he made a positive adjustment for not being a corner location, actually was a corner location. She referred to a satellite

photograph in support of this contention.[7] Coers also took issue with Hall's Land Sale 8 because she believed it was a superior location to the subject and Hall made no adjustment for that fact. Finally, she testified that she found some of Hall's size adjustments unsupported by his own data. *Pet'r Ex. O; Tr. Vol. 4 at 4-8.*

56. Regarding Hall's cost estimates, Coers primarily testified about why she chose average quality construction costs as opposed to Hall's choice of good. She also testified that she believed market participants would have put little reliance on the cost approach. *Tr. Vol. 4 at 8.*

57. Looking at Hall's sales comparison approach, Coers reiterated her concerns about selecting a reasonable cutoff given that Hall used sales that were several years after the relevant assessments dates. She also noted that there were few sales from prior to the 2012 assessment date. In addition, Coers highlighted discrepancies as to several of his adjustments, both between different sales and between his two sales comparison analyses. Although she testified it was "absolutely fine to use leased fee sales" to value the fee simple interest, she believed it was necessary to do the work to determine whether the leases were at market (including rent, tenant quality, and lease term). She found that Hall's appraisal did not include enough analysis to support his use of leased fee sales. Finally, she noted that Hall used two restaurant properties, which she did not consider comparable.

58. In Hall's income approach, he used a number of lease comparables that were the product of renewals or renegotiations. Coers disagreed with Hall's premise that a lease was sufficiently exposed to the market if it was renewed or renegotiated. She testified that these leases may not reflect the market because of a number of factors including the landlord's and tenant's prior relationship or the tenant's cost of moving. She also noted that Hall did not adjust the comparables for location, and data from Elkhart was limited.

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[7] *Pet'r Ex. O* contains information on a corner location developed as a Dollar General. It has a different parcel number than Hall lists in his appraisal for his Land Sale 5(which appears to be an adjacent property), but has the same sale date and sale price.

In addition, Coers criticized Hall for not taking into account the landlord's share of expenses incurred during vacancy.

2. Hall's Review of Coers' Appraisal

59. Hall performed a review appraisal of Coers' appraisal and presented an oral report. He made a number of criticisms of Coers' appraisal, the most significant of which we recount here. *Tr. Vol. 4 at 24.*

60. Using Coers' market segmentation parameters of freestanding retail between 4,000 to 25,000 square feet within a one-mile radius of the subject property, Hall searched CoStar, and discovered 16 properties that met those criteria. Of those 16 properties, he found only two with reported data. Those were (1) a steel framed building with metal siding and a truck door, and (2) a multi-tenant retail space. This led Hall to conclude that using these criteria yielded insufficient information to develop a vacancy rate as Coers did. *Resp't Ex. 10; Tr. Vol. 4 at 25-27.*

61. Hall noted that even after adjustment, Coers' land values represented a broad range. He testified that this broad of range would cause him to not have a high degree of confidence in the value conclusion. He noted in particular that Coers described the subject access as "Good" with frontage/visibility of "Corner/Good." He found that only one of Coers' comparables (Sale 4) mirrored the subject in this aspect. He also noted that this comparable required the fewest adjustments, and yielded a value of $311,111/acre. Given these considerations he felt that Coers should have given that comparable more weight in her analysis. He also hypothesized that if Sale 9 was excluded (which he felt was appropriate based on its zoning) that the remaining sales would have indicated a value very similar to Sale 4. *Resp't Ex. 2-1, 2-2; 12, 13; Tr. Vol. 4 at 34.*

62. Hall found it inconsistent when Coers defined the subject property as a freestanding retail building, but used cost figures specific to drug stores. He also took issue with her finding of external obsolescence. In particular, he noted that he did not believe the data supported Coers' finding of "stagnant" population. He acknowledged the low median

household income, but noted that it was sufficient to support the subject property as it had been continuously occupied since construction. He also noted that there were several other occupied retail properties near the subject, including a Sears that remained open despite the brand's national difficulties. Hall also found Coers' positive market conditions adjustments to her sales was inconsistent with a finding of external obsolescence. Finally, he criticized her quantification of external obsolescence. *Tr. Vol. 4 at 35-39.*

63. Regarding Coers' sales-comparison approach, Hall found that Coers did not give appropriate weight to the difference between the land to building ratios of the comparables and the subject property. He also found she should have made adjustments for corner location and exposure to a signalized intersection. In particular, he criticized Coers' choice of Sale 3 because it was purchased by an adjoining owner that already owned the parking lot. He also made several other specific criticisms about Coers adjustments or lack thereof. Finally, Hall levied the same criticism at Coers' sales-comparison approach as he did at her land valuation, namely that the range of her adjusted values was too broad to draw reliable conclusions. *Resp't Ex. 14, 15, 16; Tr. Vol. 4 at 40-47.*

64. Turning to her income approach, Hall noted that Coers did not present the lease terms for her rent comparables, which he considered relevant. He also pointed out that none of the comparables was leased to a drug store. Hall also found Coers reported an incorrect construction year for one of her comparables, and another was not a freestanding retail building. *Resp't Ex. 17; Tr. Vol. 4 at 48-50.*

65. Hall also took issue with Coers using availability rate to estimate vacancy. He noted that available space included more than just vacant space, because it was defined as any space available regardless of whether it was vacant, occupied, or available for sublease. He found this to be distinct from a vacancy rate, which is defined as "the relationship between the amount of vacant space and total space…expressed as a percentage." He further testified that availability and vacancy were clearly not synonymous and that to use

availability as a substitute or proxy for vacancy was not credible. *Resp't Ex. 9; Tr. Vol. 4 at 27-29.*

66. As part of developing her capitalization rate, Coers extracted rates from leased fee sales by comparing their gross rents to their sale prices. She then used her concluded capitalization rate to estimate a value based on net operating income. Hall testified that this was improper because the Appraisal of Real Estate requires appraisers to only use derived capitalization rates in a manner consistent with their derivation. Thus, if a rate is derived from gross rent, it should only be applied to gross operating income, and vice versa. *Resp't Ex. 19; Tr. Vol. 4 at 53-54.*

67. Finally, Hall presented "Hypothetical Valuations" that he developed by adjusting for certain errors he found in Coers' cost and income approaches. For her cost approach, he adjusted for base costs, soft costs, external obsolescence, and land values. For her income approach, he adjusted for gross income and vacancy and collection loss. These hypotheticals yielded values for the 2015 assessment year of $1,400,249 and $1,836,228 respectively. *Resp't Ex. 20; Tr. Vol. 4 at 54-56.*

D. Other Testimony

1. Higgins Testimony

68. CVS called Carla Higgins, the tax representative for CVS[8], to testify about comparable assessments with a focus on Walgreens properties. She compared the assessments of those properties to the values from the Hall and Coers appraisals. She noted that the average assessments ranged from $75/sq. ft. to $81/sq. ft., Coers' values ranged from $77/sq. ft. to $82/sq. ft., and Hall's appraisal indicated a values of $165/sq. ft. to $167/sq. ft. She also noted that no assessments were in the range of $165/sq. ft. *Pet'r Exs. B-N; Tr. Vol. 3 at 2-8.*

[8] Ms. Higgins testified that she worked on a contingency fee.

2. Fisher Testimony

69. The Assessor called Gavin Fisher, a Level III certified assessor-appraiser to respond to Higgins' testimony. Fisher testified that a number of the properties Higgins used in her assessment comparison were not actually comparable. He then developed a number of assessment comparisons including (1) all properties deemed reasonably comparable, (2) the most comparable property (3) properties that offered similar utility and require no adjustment, and (4) properties deemed comparable and located in the same taxing district. He found that all of these comparisons showed the subject property's assessment of $98/sq. ft. is in line or within the range of the other assessments and that it is "assessed equitably within its marketplace." *Resp't Ex. 21-22; Tr. Vol. 3 at 8-22.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

70. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

71. The parties agreed that the Assessor had the burden of proof. CVS argued that the Assessor has admitted the current assessments are incorrect because she has requested different (higher) values. The Indiana Tax Court rejected this argument in *CVS Corp. v. Monroe Cty. Assessor*, 83 N.E.3d 1286, (Ind. Tax Ct. 2017) where it found that when the burden has shifted the reversion applies if "the burden to prove the property's correct

assessed value has not been met by either party." *Id.* at 1290. Thus, we must weigh the evidence to determine if either party met the burden of proof before applying the reversion.

B. Assessment Comparisons

72. We do not find either party's assessment comparison to be persuasive evidence of the true tax value of the property when compared to the expert analysis and breadth of data provided by Coers and Hall. But CVS also claims that this evidence shows that its assessments are in violation of the Constitutions of both Indiana and the United States of America. We address only the claimed violation of the Indiana Constitution because CVS did not develop its argument regarding the U.S. Constitution.

73. Specifically, CVS argues that the assessment comparison evidence shows that it is being assessed inequitably as compared to properties owned by Walgreens. Assuming for the purposes of this argument that this claim can be successful regardless of whether Walgreens' assessments are the products of settlements, CVS still failed to prove its case. According to the Tax Court, "when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). While CVS did provide objectively verifiable market data for the subject property, it did not provide any such data for the Walgreens properties it claims are receiving disproportionate assessments. For that reason, CVS's constitutional claim fails.

C. Expert Opinions

1. Hall's Appraisal

74. Hall considered all three approaches to value. Although we agree with some of Hall's judgments, we find his sales-comparison and income approaches both have serious weaknesses that detract from their reliability. We turn first to his cost approach.

a. Hall's Land Valuation and Cost Approach

75. The primary differences between Hall's and Coers' cost approaches are in their conclusions regarding land valuation, classification of the improvements, external obsolescence, and entrepreneurial profit. We address each in turn.

76. Coers criticized Hall for his choice of land sales, particular for their lack of proximity to the assessment date as well as for certain adjustments. We find these criticisms have some merit. In particular we note that Hall's size adjustments are not well supported, despite their significant impact on the value.

77. Hall used the Marshall Valuation Service "good" quality cost figures for a drug store while Coers used the "average" quality. Both appraisers made solid arguments in support of their positions. Nevertheless, we find Coers is more persuasive based on her testimony that the example Marshall Valuation Service uses for an average quality drug store is very similar to the subject property. Thus, while we do not entirely discount Hall's opinion on this issue, we find Coers better supported her selection of average quality.

78. Hall chose not to include any external obsolescence, and he criticized Coers for doing so. Coers' supported her contention by pointing to stagnant population growth and low median household income. In contrast, Hall argued that external obsolescence was not appropriate because rents and GDP were increasing while vacancy and unemployment were decreasing. We agree with Hall and find Coers inclusion of external obsolescence unsupported.

79. Hall chose to include 10% entrepreneurial profit based on his experience with the market and discussions with developers. Coers did not, primarily basing this decision on the fact that (1) entrepreneurial profit is not always appropriate for build-to-suit buildings like the subject property, and (2) on her finding of external obsolescence. As just discussed, we are not convinced by Coers decision to include external obsolescence. We also find Coers treatment of the subject as a build-to-suit building for the purposes of entrepreneurial profit to be somewhat inconsistent with her decision to value the subject

as a general retail building throughout most of her appraisal. Nonetheless, we find Hall did very little to support his quantification.

b. Hall's Sales-Comparison Approach

80. Hall performed two sales-comparison analyses. In his drug-store analysis, Hall used leased-fee sales of drug stores. Hall did adjust these sales for lease term, an adjustment we find well-supported. But he did not adjust them for other factors such as rent or tenant quality. Hall found that leased fee sales must be at market rent in order to represent the fee simple value of the property, but he did very little to support his contention that the sales were leased at market rent. None of the sales were from Elkhart, and Hall did not provide any serious analysis of market rent for the markets that the sales came from. We agree with Coers that Hall did not provide the amount of analysis required to rely on these sales. In addition, at least three of his sales were part of portfolio transactions, and he did not provide any reliable analysis of whether the reported allocations were reliable. Taken together, we find his drug store sales analysis to be largely unreliable.

81. Three of Hall's six freestanding sales were leased fee. We find similar problems with these sales in that Hall did not provide a reliable analysis of whether they were leased at market rent. Of the remaining three sales, two were restaurants. We agree with Coers that restaurant sales are not reliable indicators of value for the subject property. The one remaining sale, a former Blockbuster that was renovated after purchase, insufficient to support his conclusions.

c. Hall's Income Approach

82. CVS criticized Hall's income approach primarily for his use of lease renewals and renegotiations. Hall posited that a renewal or renegotiation allows both parties to come back to the table and gives the leases sufficient exposure to the market. Coers disagreed, testifying that in these situations the parties would consider non-market factors. First, we disagree with Hall's contention that a lease renewal always means both parties come back

to the table. A renewal can require both parties to agree, or it can be an option guaranteed to the tenant. In the latter case, the lease rate might only reflect the expectations of the parties when the lease was originally signed, rather than the current market. For lease renegotiations, we agree that they can be a reflection of the market. But in situations where the prior lease is still binding, the terms of that lease become extremely relevant. Depending on those terms, the prior lease could have a much larger effect on the terms of the new lease than the local market conditions. Hall did not provide sufficient analysis of the lease renewals and renegotiations for us to determine whether they were reflective of the local market. We also find Hall's analysis of this point undercuts his credibility.

83. Excluding those leases leaves Hall's rent analysis with four comparables, all of which are not freestanding retail. We find these to be insufficient to support Hall's rent conclusions, and thus, his entire income approach.

d. Hall's Valuation Opinions

84. Coers criticized Hall for the emphasis he gave to the cost approach. While we agree with Coers that the sales-comparison and income approaches can provide more reliable indications of value, that is dependent on the quality of data and analysis in those approaches. The cost approach is a useful tool when there are significant flaws with the other two approaches. In this case we find Hall's sales-comparison and income approaches too problematic to be reliable. We find his cost approach to be somewhat persuasive, albeit still with some problems such as his choice of construction quality and his quantification of entrepreneurial profit. Overall, we do not find Hall's reconciliation particularly persuasive.

2. Coers' Appraisal

85. Coers gave primary consideration to the sales-comparison and income approaches. We find both of those approaches have significant issues that undercut their reliability and persuasiveness. Her cost approach was mostly reliable, with the exception of her inclusion and quantification of external obsolescence which we find entirely unsupported.

a. Coers' Land Valuation and Cost Approach

86. Hall criticized Coers' land valuation, particularly because of the broad range indicated by her adjusted values and her failure to give more weight to Land Sale 4, which he found to be the most comparable. These criticisms have some merit, but we do not find that they seriously detract from the reliability of Coers' land valuation.

87. Many of our concerns with Coers' cost approach are discussed above, and we will not go into great detail here. In summary, we find Coers to be more persuasive than Hall on the issues of construction quality and entrepreneurial profit (based primarily on Hall's failure to support his quantification). And we find Hall more persuasive than Coers on the issue of external obsolescence. In particular, we note that even if we were to accept Coers' conclusion that external obsolescence is appropriate, her quantification of it is entirely dependent on the reliability of her net operating income, which we find is unreliable.

b. Coers' Sales-Comparison Approach

88. The Assessor criticizes Coers for using primarily older properties in her sales-comparison approach. Indeed, Coers' comparables were between 13 and 42[9] years old as of their sales dates, with a median of age of 20 years. In contrast, the subject property was between 8 and 11 years old as of the assessment dates. Although Coers did adjust for age/condition, her failure to bracket the subject property in this aspect is troubling.

89. Hall took issue with Coers' Sale 3, a former Aldi that was purchased by the owner of the adjoining building and the shared parking lot. We agree with Hall that under these circumstances this sale should be given little, if any, weight. Coers used this sale for three of the four assessment dates.

90. Although we do not find her sales-comparison approach to be entirely unreliable, we find these issues severely undercut its persuasiveness.

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[9] The oldest property was renovated at some point but there is no detailed information about this renovation in Coers' appraisal.

c. Coers' Income Approach

91. Hall criticized Coers choice of rent comparables, as well as how she developed and used her capitalization rates. These criticisms have merit, but we find Coers' choice of vacancy rate much more concerning.

92. Coers based her choice of vacancy rate (18%) almost entirely on data for availability within a one-mile radius of the subject property. Hall criticized this for two reasons (1) there was not enough reliable data from which to draw conclusions and (2) availability should not be used as proxy for vacancy. We agree with both of those criticisms.

93. Hall testified that using the criteria Coers purported to use, he was only able to find two properties that were reporting data. In addition, those properties were not very comparable to the subject. CVS provided no testimony or evidence to rebut this point. We agree with Hall that information from these two properties is insufficient support for a vacancy rate.

94. Hall also explained that availability is distinct from vacancy, and that a property could be available (i.e. available for sublease or for lease in the future) without being vacant. We agree that trends in availability could be useful data for an appraiser to use to develop a vacancy rate, but it should not be used as a substitute. By doing so, we find Coers significantly overstated the subject property's vacancy. This decision impacts both the reliability of Coers' income approach as well as her credibility.

d. Coers' Reconciliations

95. Coers gave primary consideration to the sales-comparison and income approaches. We find her income approach unreliable, primarily due to her estimates of vacancy. The issues with her sales-comparison approach are not quite as serious, but we find her use of comparables that were all older than the subject, and in some cases much older, to be troubling. Coers' cost approach was largely reliable, with the significant exception of her

quantification of external obsolescence. Given these issues, we do not find Coers' reconciliation to be reliable evidence.

C. Conclusions

96. Both appraisers presented all three approaches to value. All of these approaches had flaws. But some of the flaws were more significant than others. Hall's sales-comparison and income approaches both had such significant issues that we find them unreliable. Coers' income approach was likewise unreliable. While Coers' sales-comparison approach was not entirely devoid of value, we do not find it very persuasive.

97. Turning to the cost approaches, we find both appraisers presented credible land valuations. We also find both appraisers made cogent arguments in support of their choices on construction quality and entrepreneurial profit. But as discussed above, we find Coers more persuasive on these issues.

98. For that reason, we rely on Coers' cost approach (with adjustments) to reach our conclusions. We cannot rely on her conclusions under the cost approach because we find both her justification and quantification of external obsolescence entirely unsupported. By removing the adjustment for external obsolescence, we come to the following values, which we find are both reliable indications of value and the most persuasive evidence before us:[10]

Year	Value
2012	$1,222,805
2013	$1,226,743
2014	$1,246,096
2015	$1,211,040

[10] To arrive at these conclusions, we start with Coers' total costs (Hard Costs + Soft Costs), subtract her values for physical depreciation(but not her external obsolescence), then add her land values. These calculations are: 2012: $1,157,005(Total Costs) – $264,200(Physical Depreciation) + $330,000(Land value) = $1,222,805; 2013: $1,192,343(Total Costs) – $305,600(Physical Depreciation) + $340,000(Land Value) = $1,226,743; 2014: $1,225,496(Total Costs) – $349,400(Physical Depreciation) + $370,000(Land Value) = $1,246,096; 2015: $1,255,740(Total Costs) – $394,700(Physical Depreciation) + $350,000(Land Value) = $1,211,040.

The Assessments are changed accordingly. This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

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