REPRESENTATIVE FOR PETITIONER: Paul M. Jones Jr., Attorney at Law

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

BEFORE THE
INDIANA BOARD OF TAX REVIEW

CVS CORPORATION #6618-02,	)	
	)	Petition Nos.: 48-022-10-1-4-01341-16
Petitioner,	)	48-022-11-1-4-01291-16
	)	48-022-12-1-4-01292-16
v.	)	48-022-13-1-4-01293-16
	)	48-022-14-1-4-01294-16
MADISON COUNTY ASSESSOR,	)	48-022-15-1-4-01295-16
	)	48-022-16-1-4-00652-17
Respondent.	)	
	)	Parcel No.: 48-06-18-300-165.000.022
	)	
	)	Assessment Years: 2010-2016
	)	

October 15, 2019

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. As is true with many assessment appeals, these appeals call on us to determine which of two competing valuation opinions we find most credible. Each side offered opinions from a highly qualified expert who valued the property for general retail use. While each expert's opinions had their own strengths and weaknesses, we find the opinions of the Madison County Assessor's expert more credible.

PROCEDURAL HISTORY

2. After exhausting the appeal procedures before the Madison County Property Tax Assessment Board of Appeals, CVS filed form 131 petitions with us contesting its 2010-2016 assessments. Those assessments are for the following amounts:

Assessment Date	Value
March 1, 2010	$1,075,100
March 1, 2011	$1,154,400
March 1, 2012	$972,000
March 1, 2013	$978,900
March 1, 2014	$978,900
March 1, 2015	$979,500
January 1, 2016	$979,500

3. Our designated administrative law judge, David Pardo ("ALJ"), held a three-day hearing on the petitions, which began on October 1, 2018. Neither the ALJ nor the Board inspected the property.

4. Brian Cusimano represented the Assessor at the hearing. Paul Jones represented CVS. The following people were sworn as witnesses: Laurence Allen, David Hall, and Madison County Assessor Larry Davis.

5. CVS offered the following exhibits:

Exhibit A	Appraisal report by Laurence Allen
Exhibit B	Property Record Card ("PRC") for the subject property
Exhibit C	CBRE listing for 128 W. 14th Street
Exhibit D	PRC for 1323 Jackson Street
Exhibit E	PRC for 3736 S. Scatterfield Road
Exhibit F	PRC for 318 S. Scatterfield Road
Exhibit G	Excerpts from Marshall Valuation Service
Exhibit H	CoStar and LoopNet reports for 620 W. Washington Center Rd. Ft. Wayne
Exhibit I	Esri Traffic Count Map Sale 1
Exhibit J	Esri Traffic Count Map Sale 2
Exhibit K	Esri Traffic Count Map Sale 3
Exhibit L	Esri Traffic Count Map Sale 4
Exhibit M	Esri Traffic Count Map Sale 5
Exhibit N	Esri Traffic Count Map Sale 6

6. The Assessor offered the following exhibits:

Exhibit 1	Appraisal report by David Hall and Michael Lady
Exhibit 2	Excerpt from Marshall Valuation Service
Exhibit 3	Aerial map with photograph of 17549 Gunther Blvd.
Exhibit 4	Aerial map and photographs of 508 S. 11th St.
Exhibit 5	Aerial map with photograph and PRC for Dollar General at 705 N. SR 9
Exhibit 6	Aerial map and photograph of 711 E. 38th St.
Exhibit 7	Aerial map and photographs of 5720 W. Washington St.
Exhibit 8	Aerial map with photograph, PRC, and additional photographs of 2600 E. Main St, and excepts from Pillar appraisal from Allen's workfile
Exhibit 9	Aerial map of 3540 Commercial Dr.
Exhibit 10	Marcus & Millichap listing and Beacon report for 2258 E. Markland Ave.
Exhibit 11	Aerial map for 2308 E. Stop 11 Rd.
Exhibit 12	Aerial map and photographs of 8625 Pendleton Pike
Exhibit 13	Aerial map and PRC for 1080 S. Peru St.
Exhibit 14	Aerial map of 830 E. Main St.
Exhibit 15	Documents from Allen's work file
Exhibit 16	Documents from Allen's work file
Exhibit 17	Page from PRC for 508 S. 11th St., Frankton, Marcus & Millichap listing for State Rd. 28 at Boomer Ave., Frankfort
Exhibit 18	Sales Disclosure Form for 620 W. Washington Center Rd.[1]

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

OBJECTIONS AND REQUEST FOR THE BOARD TO TAKE OFFICIAL NOTICE

A. Assessor's Objections

8. The ALJ admitted the bulk of the offered exhibits without objection. He ruled on various objections to questions posed by each party, and we adopt his rulings. He also took several objections under advisement. We address those now.

9. The Assessor objected to Exhibit H, listing reports for one of Hall's comparable sales. He also objected to Exhibits I-N—traffic-count maps for Hall's comparable sales—as well as

[1] The Assessor also offered four exhibits solely for demonstrative purposes: RD1 through RD4.

to testimony about those exhibits. The Assessor argued that CVS did not timely exchange copies of the exhibits. The agreed appeal management plan required the parties to exchange expert reports by September 12, 2018, and to exchange copies of exhibits by September 14, 2018. CVS did not provide the Assessor with copies of Exhibits I-N until September 29, and it did not provide a copy of Exhibit H until the last day of the hearing.

10. We overrule the Assessor's objections. Generally, "the purpose of the discovery rules is 'to allow a free exchange of fact information and to permit each party to prepare its case for trial without concerns about trial by surprise or ambush.'" *Evansville Courier Co. v. Vanderburgh Cty. Ass'r*, 78 N.E.3d 746, 752 (Ind. Tax Ct. 2017) (*quoting Brandenburg Indus. Serv. Co. v. Ind. Dep't of State Revenue*, 26 N.E.3d 147, 152 (Ind. Tax Ct. 2015). The Indiana Supreme Court has "unequivocally and 'consistently rejected a gaming view of the litigation process.'" *Id.* (*quoting Outback Steakhouse of Fla., Inc. v. Markley*, 856 N.E.2d 65, 75 (Ind. 2006)). In enforcing the pre-hearing exchange deadlines from our procedural rules or an appeal management plan, the touchstone is whether the witness or exhibit at issue was known and anticipated. *See Evansville Courier*, 78 N.E.3d at 752 (explaining that the failure to disclose a known and anticipated exhibit within the deadlines laid out by the Board's procedural rules constituted "precisely the type of 'gotcha' litigation that Indiana courts abhor."). That is true even where the evidence is offered for rebuttal. *See McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 179 (Ind. 1993) ("[T]he nondisclosure of a rebuttal witness is excused only when that witness was unknown and unanticipated. . . .").

11. Here, the parties chose a deadline for identifying and exchanging exhibits that fell only two days after they were required to provide their experts' reports. That left almost no time to identify and disclose evidence that might impeach or rebut the opposing expert's opinion before the exchange deadline. Indeed, the parties apparently recognized the likelihood that such evidence might not timely be exchanged, as shown by the following passage from their agreed plan: "[t]hough every effort will be made to identify and exchange all exhibits prior to hearing, the parties understand and agree that additional exhibits may be presented at hearing for rebuttal purposes." Under those circumstances, we find that CVS did not

violate the plan's disclosure and exchange requirements when it introduced previously undisclosed exhibits aimed at rebutting aspects of Hall's valuation opinion.[2]

B. Request to Take Official Notice

12. In his post-hearing brief, the Assessor asks us to take official notice of testimony and parts of an appraisal report offered in different appeals—*CVS 3195-02 v. Monroe Cnty. Ass'r*, pet. nos. 53-005-09-1-4-00009 etc.[3] According to the Assessor, CVS's appraiser in those appeals offered evidence that contradicts Allen's assumptions about the interior finish for one of the buildings he used in his sales-comparison analysis.

13. We decline the Assessor's invitation. Our procedural rules allow us to take official notice of, among other things, (1) any fact a court could judicially notice, and (2) the record of other proceedings before us, provided we give the parties an opportunity to contest or rebut the noticed facts. 52 IAC 2-7-4. But the decision is within our discretion. *CVS Corp. v. Monroe Cnty. Ass'r*, 83 N.E.3d 1281, 1284 (Ind. Tax Ct. 2017). A court could not take judicial notice of the facts the Assessor references—they are not generally known nor can they be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *See* Ind. Evidence Rule 201. And we will not exercise our discretion to take official notice of the record in a separate proceeding before us. The Assessor had the opportunity to litigate the facts in question but chose not to. We will not reopen the evidence to allow him to do so at this late stage.

FINDINGS OF FACT

A. The Subject Property

14. The property is located in Alexandria, a small community about ten miles north of Anderson, which is on the periphery of the Indianapolis metropolitan statistical area ("MSA"). The site is approximately 4.7 acres. Of that, roughly 2.7 acres are either

---

[2] CVS objected to Exhibit 18—a sales disclosure form for the property addressed by Exhibit H. But it stipulated that its objection would only apply if we were to sustain the Assessor's objection to Exhibit H. Our admission of Exhibit H moots CVS's objection.

[3] We issued a determination in those appeals on August 19, 2015.

wetland, in a floodplain, or otherwise unsuitable for development. The property is at a signalized intersection and is both visible and accessible from Park Ave. (State Rd. 9) and Washington St. Park is the busier of the two streets, with a traffic count of approximately 10,000 to 10,500 vehicles per day. *Ex. A at 21, 25-28; Ex. 1 at 30-31, 33; Tr. at 21-22, 26, 91, 246*.

15. The property contains an approximately 11,205-square-foot rectangular freestanding retail store. It was built in 2000 for CVS to lease and operate as a drugstore. It has an open sales floor as well as a small pharmacy area with a half-wall counter and a mini-drive-through window with an attached canopy. It also has a small stock area, limited employee/office areas, and a separate room for alcohol sales. While the interior photographs from the experts' appraisals do not clearly show it, we credit Hall's undisputed testimony that the building has built-in refrigerator coolers. The exterior is split-faced concrete block, although Allen erroneously referred to it as "precast tilt-up panels and EIFS." The entrance is at a corner of the building and faces Washington. There are windows spanning approximately 20 feet on either side of the entrance. The windows are not full-length, but they appear to extend to within a few feet of the ground. Most of the wall that faces Park Ave. has no windows. *Ex. A at 32-37; Ex. 1 at 42-63; Tr. at 28-29, 92-95, 259-60, 265-66*.

B. Expert Opinions

1. Allen's Appraisal

16. CVS hired Laurence Allen to appraise the market value-in-use of the fee simple interest in the property. He holds an MAI designation from the Appraisal Institute, as well as various other professional designations. He has appraised a wide range of commercial property types, including various retail properties. Allen certified that he performed his appraisal and prepared his report in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Ex. A at 2-4, Addendum; Tr. at 17-19.*

a. Market overview and highest-and-best-use analysis

17. Allen looked at various economic indicators for the Indianapolis metropolitan statistical area ("MSA"). He included indicators such as population and household growth, which for the MSA outpaced the state and nation from 2010 through 2017, but which for Madison County lagged the state, nation, and MSA at large. He also included median household income, which was again lower for Madison County. *Ex. A at 10-19; Tr. at 30-31*.

18. Allen further looked at the demographics of the subject property's primary trade area, which he defined as a five-mile ring around the property. According to Allen, the number of households and household income drive the basic demand for retail property. For both the primary trade area and Madison County as a whole (which he defined as the property's secondary trade area) households had declined slightly over the period covered by these appeals and were forecast to decline further going forward, although median household income was expected to grow. *Ex. A at 45-48; Tr. at 30-32*.

19. Allen also examined supply and demand, including historical vacancy rates for all retail property in the two trade areas from 2008 to 2017. He used data from CoStar for all retail properties rather than only single-tenant properties. In Allen's view, the broader data was relevant because the subject property competes in the overall market, and multi-tenant retail space influences supply and demand. The data generally showed a narrowing of the gap between supply and demand for 2010 forward, albeit with some exceptions. Based on that data and on his evaluation of the subject property as a functionally adequate retail store with good visibility and access along a primary thoroughfare, Allen projected the following vacancy rates:

Year	2010	2011	2012	2013	2014	2015	2016
Rate	10%	10%	7.5%	7.5%	7.5%	5%	5%

Ex. A at 49-50; Ex. 1 at 28-29; Tr. at 30-32, 188, 211.

20. Counsel advised Allen to value the property based on its current, rather than its highest-and-best, use. Allen explained that the property's current use was retail. He determined that its highest and best use would be the same because the improvements were not so specialized as to prevent the property from being used by another retailer, and it was of a type commonly exchanged in the market. *Ex. A at 51; Tr. at 40.*

b. Valuation approaches

21. With those things in mind, Allen turned to the three generally recognized valuation approaches—the cost, sales-comparison, and income approaches.

i. Sales-comparison approach

22. Allen began with the sales-comparison approach. He chose comparable sales based on their market-segmentation, which considered sale dates; building size, age, and condition; location; use; and related attributes. He looked for properties with single-user retail buildings of 8,000 to 16,000 square feet that sold in the Indianapolis MSA between 2009 and 2017. He tried as much as possible to locate sales of drugstore buildings. Several of the properties he chose were bought for use as "dollar stores," such as Dollar Tree and Family Dollar. Allen believed dollar stores were a big source of potential demand for drugstore properties. They were among the categories of retailers that saw the most growth between 2010 and 2017, and their operators look for stores of a similar size as the subject property. He did not consider sales of restaurants or automobile dealerships. He explained that restaurants cost substantially more to build and that restaurant operators would not be likely to buy the subject property. He similarly testified that automobile dealerships involve a significantly different property type. *Ex. A at 52; Ex. G; Tr. at 33-39, 219, 410, 419, 446-48.*

23. Allen used the following eight sales in his analysis:
    - **Sale 1**. This was a 16,716-square-foot building in Westfield. It originally was built to be an Ace Hardware store, but it eventually was converted to a collision-repair center at substantial expense. It sold for $74.78/sq. ft. The property is located

across the street from a Kroger-anchored retail center. It is behind an automotive development and has only indirect frontage.

- **Sale 2**. This was a 9,014-square-foot building in Frankton, a rural community southwest of Alexandria. It was an S-grade retail store, which has lower replacement cost than C-grade retail stores and significantly lower replacement costs than C-grade drugstores. It had approximately 13 years remaining on a build-to-suit lease to Dollar General when it sold for $76.26/sq. ft.
- **Sale 3**. This was a 9,216-square-foot building on the east side of Park Ave. in Alexandria. Like Sale 2, it was an S-grade retail store. It had a brand new build-to-suit lease to Dollar General. It sold for $97.66/sq. ft., although Allen did not have any information about its operating income and expenses or the capitalization rate indicated by the sale.
- **Sale 4**. This was a former Walgreens at 38th St. and College Ave. in Indianapolis that sold for $82.42/sq. ft. The 12,544-square-foot building is set back from 38th St., and another building partially obstructs its visibility to westbound traffic. At the time of sale, there were four years remaining on a five-year lease to Dollar Tree with rent of $7.50/sq. ft.
- **Sale 5**. This was a 12,740-square-foot former Walgreens store at Washington St. & Wildamere Dr. in Indianapolis. It sold for $62.79/sq. ft. The buyer acquired the property to lease to Dollar Tree.
- **Sale 6**. This former Goodwill store was located at E. Main St. & Smith in Plainfield. It was vacant for six months before it was bought for $85.71/sq. ft. and subsequently leased to Harbor Freight, a national retail chain that sells tools. The store was built in 1972, but it was renovated periodically. Allen computed the unit price based on the building having 13,300 square feet, which is what its property record card lists. He acknowledged that a page from an appraisal prepared by Pillar (and included in his own workfile) and Hall's appraisal both list the building as having only 11,200 square feet. He did not know for sure which number was accurate.

- **Sale 7**. This was a 12,500-square-foot former Walgreens store at Washington St. & Ritter Ave. in Indianapolis. It sold for $93.15/sq. ft. with about 7 ½ years remaining on a 10-year lease to Family Dollar with rent of $6.80/sq. ft.
- **Sale 8**. This was a 14,860-square-foot former grocery store near Lafayette Square Mall in Indianapolis. It had no corner attributes and sold to a community organization for $33.65/sq. ft.

Ex. A at 53-61; Ex. G; Exs. 2-3, 6, 8, 17; Tr. at 33-37, 104-108, 129-30, 135-38.

24. Allen acknowledged that Sales 2, 3, 4, and 7 involved leased-fee, rather than fee-simple, interests. But Sales 4 and 7 were former drugstore properties. He believed that fact was significant because the subject property is a drugstore, and drugstores are not designed for general-retail use—they do not have centralized entrances or storefront-type windows of the kind found in most retail properties. The other two leased-fee sales involved build-to-suit leases, which Allen explained typically have above-market rents and durational terms. According to Allen, sales of properties encumbered by those leases typically are based on the tenant's credit in addition to the contributory value of the real estate. Nonetheless, Allen still believed Sales 2 and 3 were helpful because they were from locations that were more comparable to Alexandria than were the sales from more urban communities. *Ex. 16; Tr. at 28, 33-39, 46-47.*

25. Next, Allen considered various grounds for adjusting the sale prices for his comparable properties. He ultimately adjusted the prices to account for differences in property rights transferred, market conditions, and building size, as well as arterial, demographic, and submarket attributes. He relied on his experience and his analysis of the sales to quantify all his adjustments. In some instances, he also pointed to specific methodologies, such as matched-pair analyses. In many others, he did not. *Ex. A at 53-61; see also, Tr. at 110, 159-60, 213.*

26. Allen adjusted the prices of the four leased-fee sales downward to account for the difference in property rights transferred. He adjusted two sales that were subject to second-

generation leases downward by 5%. He based that percentage on the cost of finding a tenant and leasing the space, which he believed a buyer of the subject property would incur in the posited fee-simple sale. *Ex. A at 62-79; Tr. at 41, 109-10, 129, 138-39, 213.*

27. By contrast, Allen adjusted the prices for the sales subject to build-to-suit leases downward by 30%. He used a matched-pair analysis to quantify the adjustment. In that analysis, Allen compared the sale prices for the leased properties to the prices for the fee simple sales, after adjusting for all factors other than property rights. He acknowledged that Sale 2, which was encumbered by a build-to-suit lease, sold for a lower unadjusted price than Sale 6, which was a fee-simple sale. He also acknowledged that if the building from Sale 6 was really 11,200 square feet rather than the 13,300 square feet he reported, its unit price would have been even higher (approximately$100/sq. ft. compared to $85.71/sq. ft.), which would have made a small difference in his adjustment. *Ex. A at 62-79; Tr. at 41, 109-10, 212-14, 216-17, 227-28.*

28. Turning to building size, Allen's data showed that larger buildings generally commanded a lower unit price than smaller buildings. His size adjustments ranged from negative 4%, for buildings with between 9,014 and 9,216 square feet to positive 11% for a building with 16,716 square feet. *Ex. A at 62-79; Tr. at 159-60.*

29. Next, Allen adjusted the sale prices to account for differences in market conditions between the sale dates and the valuation dates for his appraisal. To quantify that adjustment, he developed a real-estate index for the Indianapolis MSA. He relied on rental- and vacancy-rate trends for retail properties published by CoStar and on national capitalization-rate data for net-leased properties published by PwC. The local data was not filtered down to single-tenant properties, although Allen testified that net-leased properties are typically single-tenant. The annual percentage increase ranged from 1% (for Jan. 2016 to Dec. 2016) to 12% (for Jan. 2011 to Dec. 2011), with all years showing some increase. At the extremes, his index resulted in a positive 32.7% adjustment to an August 2010 sale for the January 1, 2016 valuation date and a negative 29.4% adjustment to a December 2017 sale for the March 1, 2010 valuation date. *Ex. O at 62-79; Tr. I at 42-44, 156-57, 188.*

30. For arterial, demographic, and submarket attributes, Allen rated the subject property and each comparable property on a scale of one to seven. For arterial attributes, he considered traffic volume; whether the property had corner attributes; whether it was on a primary corner; whether it was located at a signalized intersection; and the property's visibility and access. He rated the subject property as "above average (4)," explaining that while it did not have high traffic, its corner location gave it better access and visibility. His ratings for the other properties ranged from "fair (1)" to "very good (6)." He applied an adjustment of 5% for each level difference. Allen explained that traffic volume is very important to retailers in general. When isolated from other factors, large differences in traffic volume appear to have generally affected his ratings by either one or two levels. *Ex. A at 62-79; Ex. 7; Tr. at 45-47, 134-35, 187, 215-16, 429.*

31. For demographic attributes, Allen used the following information for a three-mile ring around each property: population, households, median household income, and purchasing power, the last of which was a function of households and median income. He rated the subject property as below average. He rated the comparable properties from fair to very good, again applying 5% for each level difference. *Ex. A at 62-79; Tr. at 47-48, 65.*

32. Turning to submarket attributes, Allen analyzed the asking rent per square foot and vacancy rates within a three-mile ring of each property to determine effective rent for the area. He acknowledged that asking rent fluctuates with demand, which in turn is generated by population and the number of households. Both of those were also factors in his separate demographics adjustment. He rated the effective rent for the subject property's submarket as fair, and he adjusted the sale prices for the comparable properties, which had submarket ratings ranging from fair to good, by 2.5% for each level of difference. *Ex. A at 62-79; Tr. at 49, 153-54.*

33. Finally, Allen adjusted each sale price at the rate of 1% per year to account for differences in effective age. He viewed the subject property's actual and effective age as the same. *Ex. A at 62-79; Tr. at 49-50, 54.*

34. Although Allen acknowledged that the two comparable stores that were built to suit for Dollar General (Sales 2 and 3) were primarily steel rather than block construction and had lower replacement costs than drugstores, he did not make any adjustments for differences in construction quality. He explained that the market for general retail does not pay a premium for drugstore construction, which includes among other things, special facades and refrigeration. *Tr. at 103-05, 212, 226.*

35. For 2010, Allen's adjusted sale prices ranged from $26/sq. ft. (Sale 8) to $66/sq. ft. (Sale 1). The range shifted upward and widened in later years, mostly because of Allen's adjustment for improving market conditions. In his report, Allen indicated that he gave the greatest weight to the fee-simple sales and sales of drugstore buildings, although he testified that he actually gave little or no weight to one of the fee-simple sales (Sale 8), because he considered it an outlier. He settled on the following values, which in each case was close to or at the median adjusted sale price:

Year	Unit Value	Rounded Value
2010	$55/sq. ft.	$620,000
2011	$58/sq. ft.	$650,000
2012	$64/sq. ft.	$720,000
2013	$67/sq. ft.	$750,000
2014	$69/sq. ft.	$770,000
2015	$70/sq. ft.	$780,000
2016	$70/sq. ft.	$780,000

Allen testified that even if he used incorrect building measurements for Sale 6 and consequently understated its unit price, that error would not have affected his conclusions because they were comfortably within the range of the fee-simple and drugstore sales. *Ex. A at 67-79; Tr. 51-53, 139, 145, 216-17.*

36. Finally, Allen reported information on what he believed was the most relevant market offering from Anderson—an open listing for a vacant 13,490-square-foot former Walgreens drugstore that was first posted in 2016. That property was offered for sale at

$65/sq. ft. or for lease at $7/sq. ft. Given that it was a freestanding drugstore building from Anderson, Allen believed it was very comparable to the subject property. *Ex. A, at 81; Ex. C; Tr. at 56-57.*

ii. Income approach

37. Allen began his analysis under the income approach by determining market rent. To do so, he examined leases for comparable properties, settling on the following eight leases:

- **Lease 1**. This was a triple-net lease of a 22,373-square-foot freestanding building along Markland Ave., a major commercial artery in Kokomo. The lease was to Goodwill for $7.99/sq. ft.
- **Lease 2**. This was a triple-net sublease of a 15,251-square-foot building to a grocery store. A CVS store previously occupied the space under a ground lease. The sublease was for $6.35/sq. ft. The building is effectively an endcap space in a retail center. Although the endcap is not on a corner, the retail center itself is on a primary corner at Stop 11 Rd. and Madison Ave., a major commercial artery in Indianapolis. There is a Taco Bell between the endcap and Stop 11 Rd.
- **Lease 3**. This was an absolute-net lease of a 7,912-square-foot freestanding building to a dollar store for $8.90/sq. ft. The property is located along Pendleton Pike, a major commercial artery in Indianapolis. Allen initially testified that, unlike the Dollar General stores from his sales-comparison analysis, the building had concrete block construction all the way around. But he acknowledged that it looked similar to his Sale 3, which was basically a class-S store of primarily steel construction.
- **Lease 4**. This is the same property as Allen's Sale 4. He reported it as an absolute-net lease to Dollar Tree for $7.50/sq. ft.
- **Lease 5**. This is the same property as Sale 7. Allen reported it as an absolute-net lease to Family Dollar for $6.80/sq. ft.
- **Lease 6**. This was a double-net lease of a 9,106-square-foot freestanding building to Dollar General for $8.59/sq. ft. The property is located on South Peru in Cicero.

It was renovated to accommodate the tenant. The building does not have storefront windows.

- **Lease 7**. Allen reported this as a triple-net lease to Harbor Freight for $9/sq. ft. The 12,000-square-foot space is located in an anchored retail center near the intersection of Scatterfield Rd., a major commercial artery, and I-69 in Anderson.
- **Lease 8**. This was a triple-net lease to Planet Fitness for $10.15/sq. ft. The lease is for the largest space (17,887 square feet) in a multi-tenant retail center on Main St., a major commercial artery in Brownsburg.

Ex. A at 86-93; Ex. 11; Tr. at 59-61, 164, 168-69, 174.

38. Having identified comparable leases, Allen considered whether he needed to adjust the lease rates to account for various ways in which his comparable leases and properties differed from the subject property and a typical lease. He began with the lease type. Four of the leases were triple-net, meaning the costs of common area maintenance ("CAM"), insurance, and property taxes were the tenant's responsibility either through reimbursement to the landlord or through direct payment. But the landlord was responsible for the roof and outer walls. Three of the leases were absolute net, meaning the tenant was responsible for all expenses (although the landlord was still responsible for administrative fees) and one was double net, meaning the tenant was responsible for insurance and taxes but the landlord was responsible for CAM. Because Allen determined that a property like the subject property would most likely rent on a triple-net basis, he adjusted the absolute- and double-net leases. *Ex. A at 94-108; Tr. at 61-62*.

39. For his market-conditions adjustment, Allen used CoStar asking-rent data for all retail properties in the Indianapolis MSA. He prepared an index, which ranged from negative 4.5% (Jan. 2008 to Dec. 2008) to positive 1.75% (Jan. 2013 to Dec. 2013). That differed from the index for his sales-comparison analysis, which took into account improving vacancy rates and declining capitalization rates in addition to asking rent. *Ex. A at 94-108; Tr. at 62-63, 183, 220*.

40. The methodology for Allen's other adjustments mirrored the methodology from his sales-comparison analysis. He again adjusted for size and age but not for differences in construction quality. And he ranked the properties' arterial, demographic, and submarket attributes using the same scale. *Ex. A. 94-108; Tr. at 62-66.*

41. Although some of the leases were for space in retail centers instead of freestanding buildings, Allen did not adjust for that factor. When asked whether freestanding buildings rent for more than space in retail centers, Allen responded that it depends on the location within the center. If the space is near an anchor, it might rent for a lot more, while other space might rent for less. Hall, by contrast, believed there were significant distinctions between single-tenant freestanding properties and space in multi-tenant retail centers, explaining that tenants in the former have exclusive use of all the parking spaces and points of access while tenants in the latter share those things. He also noted that there are often differences in expense structure, with retail-center tenants having to pay CAM. *Tr. at 174-75, 250-51.*

42. For 2010, Allen's adjusted base rents ranged from $4.90/sq. ft. to $10.71/sq. ft. He ended up with similarly wide ranges for other years. Although Allen acknowledged that the adjustment process often results in narrowing the range of unadjusted rents, the range for his adjusted rents actually widened. He gave the greatest weight to leases of drugstore buildings and freestanding buildings. He settled on market rent of $7/sq. ft. for each year, which he noted was also the asking rent for the former Walgreens in downtown Anderson that he discussed in his sales-comparison analysis. *Ex. A at 98-108; Tr. at 66-67, 186-87.*

43. To that base rent, Allen added reimbursements for CAM, insurance, and property taxes. When asked whether CAM reimbursements were appropriate, he acknowledged that the term is generally used in multi-tenant shopping centers rather than single-tenant buildings. But he explained that an appraiser must still account for expenses to maintain the parking lot and landscaping. Based on published data for Midwest shopping centers, Allen estimated CAM of $1/sq. ft. for 2010 and applied a 2% annual inflator for the later years. He estimated an insurance expense between $.20/sq. ft. and $.23/sq. ft. for the years at

issue, and he used an iterative process based on his concluded value under the income approach to determine an appropriate amount for property taxes. *Ex. A at 110-14; Tr. at 68-70, 74-75, 431.*

44. Allen then projected effective gross income ("EGI") by adjusting his potential income to account for vacancy and collection loss. He used the vacancy rates from his market overview and a collection loss of .5% for each year. Next, Allen subtracted operating expenses, including the reimbursable expenses, administrative (legal and accounting) expenses, and a management fee based on 3% of EGI. He also included a replacement allowance of $.20 to $.23. After subtracting operating expenses, Allen arrived at projected net operating income ("NOI") for each year. *Ex. A at 111-114; Tr. at 70-71.*

45. The next step was to capitalize the projected NOI. Allen used three methods to determine an appropriate rate. First, he derived a rate from data published by CoStar for single-tenant retail investment properties in Indiana between 5,000 and 20,000 square feet. The expense structures used in reporting those rates varied. Second, Allen developed a capitalization rate through the band-of-investment technique. Finally, he looked at survey data for various retail property types, including freestanding retail properties. Some of the data was national while some was targeted to Indianapolis. *Ex. A at 115-19; Tr. at 71-73, 207-08.*

46. Allen settled on the following capitalization rates:

Year	2010	2011	2012	2013	2014	2015	2016
Rate	8.5%	8.5%	8%	8%	8%	8%	7.5%

He then adjusted his values to account for normal tenant improvements and leasing commissions necessary to achieve stabilized occupancy. *Ex. A at 114-21; Tr. at 71-74.*

47. The following table shows Allen's conclusions under the income approach for 2010:

NOI	$59,867
Cap Rate	8.5%
Value	$704,320
Leasing Comm.	($14,118)
Tenant Improv.	($44,820)
Rounded Value	$650,000

Allen's projected NOI was slightly different for later years, as were his capitalization rates for several of those years. He reached the following conclusions, respectively:

Valuation Date	Value
March 1, 2011	$640,000
March 1, 2012	$720,000
March 1, 2013	$720,000
March 1, 2014	$710,000
March 1, 2015	$750,000
January 1, 2016	$800,000

Ex. A at 121.

iii. Cost approach

48. Under the cost approach, Allen first determined the primary land's market value. He used six sales and adjusted the prices for mostly the same factors he considered in his analysis of improved sales, purportedly using the same methodology. For his market-conditions adjustment, he again used what he described as an Indianapolis real estate index that, according to his report, he developed in the same way as he developed the index he used to adjust his improved sales. Yet the index for his land sales led to far lower annual adjustments. For example, he adjusted an August 2010 land sale by 17.4% for the January 1, 2016 valuation date while he adjusted an August 2010 improved sale by 32.7% for that same valuation date. He did not explain the reason for the difference. *Ex. A at 63-79, 123-45; Tr. at 77-81.*

49. His land value conclusions ranged from $280,000 to $350,000 for the various years under appeal. *Ex. A at 63-79.*

50. To determine the building's replacement cost, Allen used cost schedules from Marshall Valuation Service ("MVS"). He determined that the building was a class-C drugstore. He also believed that it best fit MVS's description of average, rather than good, construction quality. MVS offers the following descriptions for those two grades:

Type	Exterior Walls	Interior Finish	Lighting, Plumbing, Mechanical
Good	Brick, best block, stucco good storefront and ornamentation	Drywall, acoustic tile, vinyl-comp., includes typical mini drive-thru	Good lighting and outlets, standard fixtures and pharmacy
Average	Brick or block, some mansard, parapet ornamentation	Drywall, some vinyl, acoustic tile, vinyl composition tile	Adequate lighting and pharmacy, small employees restroom

Ex. A at 146; Ex. G; Tr. at 82.

51. Allen pointed to what he described as the building's dark, utilitarian commercial-grade carpeting and acoustical-tile drop ceiling, which he indicated were not good-quality interior finishes. Although the description of excellent-quality interior finish refers to carpet, Allen pointed to a different section of MVS titled "Quality of Construction Indicators." There, it describes average flooring as including standard carpet, as opposed to good flooring, which includes good-quality hardwood, terrazzo, or above-average carpet. All of those are superior to what the subject building has. He also pointed to a photograph of an average class-C drugstore with a grand entry tower, canopies, and various types of décor on the front. He did not believe the subject building was as elaborate as the pictured building. *Ex. G; Tr. at 406-10.*

52. Allen also determined replacement costs for the site improvements. MVS does not include indirect costs for a developer to market a property or the developer's costs or losses in achieving stabilization, and Allen did not add them. According to Allen, including those costs would represent the property at stabilized occupancy, whereas an investor buying a fee-simple interest would incur marketing, financing, and carrying costs to find a tenant and achieve stabilized occupancy. *Ex. A at 146-67; Tr. at 413-14.*

53. Next, Allen estimated depreciation for the building and site improvements. He relied on the age-life method to estimate incurable physical depreciation. He believed the property suffered from two additional forms of obsolescence—functional obsolescence from the building's custom construction for a specific user, and external obsolescence from generally weak economic conditions during several of the years at issue. *Ex. A at 148-167; Tr. at 83-85*.

54. Focusing on functional obsolescence, Allen explained that the design and layout of a CVS store, or drugstores generally, differs from what one normally sees for retail properties. Replacement costs for an average drugstore are approximately 20% higher than replacement costs for general retail stores. Allen explained that buyers would not pay for custom drugstore features like drive-throughs. In fact, he testified that drugstore layout and design could be a liability. Although he acknowledged that it would be relatively cheap to remove the half-wall pharmacy service desk, the building would need to be reconfigured if it were to accommodate multiple users. He also explained that buildings with large concrete-block storefronts and entries at the side of a building with limited windows are less appealing for general retail use. *Ex. A at 148; Tr. at 83-85, 91-92, 94-95, 410-11*.

55. Allen quantified total obsolescence by capitalizing deficient income. To calculate the income deficiency, he subtracted his projected NOI under the income approach from the NOI necessary to support the development's depreciated cost and capitalized the difference. He ended up with obsolescence ranging from a high of $535,281 for 2010 down to $298,602 for 2016. He explained that the decrease stemmed mostly from improving market conditions and that the obsolescence in 2016 was approximately 23% of replacement cost, or roughly the excess cost of building a drugstore compared to a general retail store. *Ex. A at 148-67; Tr. at 85-87, 198, 223-25, 410-13*.

c. Reconciled values

56. In reconciling his conclusions under the three approaches, Allen explained that the income and sales-comparison approaches were reliable. He gave only limited consideration to the cost approach because buyers and sellers typically do not rely on it for this type of property and because it was necessary to look to other approaches to calculate obsolescence. He settled on the following reconciled values:

Valuation Date	Cost	Sales	Income	Reconciled
March 1, 2010	$700,000	$620,000	$650,000	$630,000
March 1, 2011	$700,000	$650,000	$640,000	$650,000
March 1, 2012	$780,000	$720,000	$720,000	$720,000
March 1, 2013	$770,000	$750,000	$720,000	$740,000
March 1, 2014	$770,000	$770,000	$710,000	$750,000
March 1, 2015	$810,000	$780,000	$750,000	$770,000
January 1, 2016	$860,000	$780,000	$800,000	$790,000

Ex. A at 171-72.

2. Hall's Appraisal

57. The Assessor hired David Hall and Michael Lady, MAI appraisers for Integra Realty Resources, to appraise the property. They prepared a comprehensive retrospective appraisal report. Only Hall testified. For ease of reference, we will refer to Hall as the appraiser and to the valuation opinions as his. *Ex. 1 at Addendum A.*

58. Like Allen, Hall estimated the market-value-in-use of the fee-simple interest in the property and certified that he performed his appraisal and prepared his report in conformity with USPAP. Unlike Allen, Hall did not separately analyze each year under the three generally recognized valuation approaches. Instead, he applied those approaches to estimate a value for March 1, 2015, and then used the Consumer Price Index for all urban consumers ("CPI-U") to trend that estimate to values as of the remaining valuation dates. *Ex. 1, passim.*

a. Economic, demographic, market-segmentation and highest-and-best-use analyses

59. Hall concluded that relevant demographic and economic trends and indicators for Madison County were mixed—gradual population loss but relatively stable employment. He similarly found mixed indicators for the surrounding area. He projected that population and household levels would stabilize over the next few years. *Ex. 1 at 12-20.*

60. In his market-segmentation analysis, Hall explained that the property's greatest utility and appeal was for use as a drugstore but that it was capable of supporting various other freestanding retail uses with minimal modifications. Among the things he considered important in analyzing the property were the following: its construction as a freestanding single-tenant building; its size; its cost of construction, which Hall explained relates to value because properties that are more expensive to build sell for higher prices; and its corner orientation at a signalized intersection. *Ex. 1 at 22-29; Tr. at 248-55, 267-268*

61. Hall also analyzed national trends in capitalization rates for net-leased properties as well as a CoStar analytic survey of 438 properties from Madison County. The survey showed that asking rates for single-tenant retail properties were increasing from 2010 through 2016 while vacancy rates were declining, albeit within a narrow range between roughly 4% and 2%. Considering the mix of positive and negative influences, Hall concluded that typical investors would have anticipated stable demand for real estate for the period spanning March 1, 2010, to January 1, 2016. *Ex. 1 at 22-29; Tr. at 248-55, 268, 272, 332, 455.*

62. Like Allen, Hall believed it was helpful, although not required, to analyze the property's highest-and-best use. Also like Allen, Hall determined that the property's current use was its highest-and-best use as improved. Although he occasionally referred to the property's use as a drugstore, he valued it for freestanding retail use. *Ex. 1 at 68-71; Tr. at 248.*

b. Valuation approaches

63. With those preliminary analyses in mind, Hall turned to the three generally recognized valuation approaches.

i. Cost approach

64. Hall began with the cost approach. As for the land value, Hall believed that two acres of the site consisted of primary land necessary to support the existing improvements and yield a land-to-building ratio consistent with market norms. He viewed the rest as surplus land with physical characteristics that would likely make it incapable of supporting a distinct and separate use. Unlike Allen, however, Hall believed the surplus land had some minor independent value. *Ex. 1 at 35, 74-88; Tr. at 256-58*.

65. As for the primary land, Hall identified four sales of vacant sites. He adjusted the sale prices to account for differences between those sites and the subject property in terms of location, access/exposure, and size. He settled on a value of $330,000 for the two acres of primary land. After looking at sales of floodplain land in Madison and surrounding counties, Hall valued the surplus land at $6,200. *Ex. 1 at 74-88; Tr. at 272-76*.

66. Like Allen, Hall used MVS cost schedules for a class-C drugstore to calculate the building's replacement cost. Unlike Allen, Hall felt that the store more closely reflected the description of "good" instead of "average" construction quality. Hall pointed to the building's storefront and ornamentation, its load-bearing split-concrete block, which is more textured and decorative than plain concrete block and which he believed was consistent with MVS's reference to "best block," and to the stucco added on top for ornamentation. The interior has a mini drive-through window and what Hall believed was good lighting. It also has a pharmacy. According to Hall, all of those characteristics are consistent with MVS's description of good construction, but MVS does not mention them under its description of average construction. Hall also described what he considered good commercial carpet, noting that MVS lists carpet only in the description of "excellent"

construction quality. The same is true for "convenience foods," which Hall interpreted as being consistent with the store's built-in refrigerators. *Ex. 1 at 90; Ex. 2; Tr. at 260-65*.

67. Hall disagreed with Allen's reliance on the "Quality of Construction Indicators" section of MVS. Hall understood that section as having been designed to assist appraisers where a unique property does not fit a single specific category. Because the subject building is strongly consistent with drugstore construction, Hall believed the drugstore pages were a more reliable indicator of costs. *Ex. G; Tr. at 353-54, 385-87*.

68. Because MVS does not include all indirect costs, Hall added a 10% allowance for taxes and carrying costs on land during construction, legal and accounting fees, and marketing and finance costs before stabilization. Allen criticized that choice on grounds that MVS includes all direct and indirect costs. Moreover, costs incurred leading up to stabilization do not reflect the fee-simple interest. Hall also explained that some reward would be necessary for an entrepreneur to assume the risks associated with development, construction, and leasing, particularly for income-producing properties. But he did not include anything for entrepreneurial profit because he did not have sufficient data to document or quantify an appropriate amount. *Ex. 1 at 91; Tr. at 279-81, 413-14.*

69. Like Allen, Hall viewed the subject building's actual and effective age as the same. He used the age-life method to estimate $666,645 in physical depreciation for the building and site improvements. *Ex. 1 at 93-96; Tr. at 283-84*.

70. Unlike Allen, Hall did not believe the improvements suffered from any functional or external obsolescence beyond what estimating physical depreciation measures. In Hall's view, the building had physical characteristics consistent with market norms. It had an open floor plan, good utility, and flexibility for various freestanding retail uses. The pharmacy had only minor build-outs that Hall believed could easily be demolished. Hall disagreed that masonry construction was super-adequate for general retail use. To the contrary, he found abundant, comparable concrete-block buildings that were used for

various retail purposes, so it was not atypical for the market. *Ex. 1 at 48, 71-72, 94-95; Tr. at 266-67, 283-84, 342*.

71. As for external obsolescence, Hall did not find any locational issues. While there were mixed economic and market indicators affecting Madison County's retail sector, he concluded that a typical market investor would have anticipated stable demand trends and values. He also explained that nationally, capitalization rates for single-tenant retail properties were declining slightly and consumer spending was steadily increasing between 2010 and 2016. *Ex. 1 at 48, 71-72, 94-95; Tr. at 271-72*.

72. After adding the depreciated replacement cost to his land values, Hall arrived at an estimate of $1,410,000 under the cost approach. *Ex. 1 at 96*.

ii. Sales-comparison approach

73. Turning to the sales-comparison approach, Hall looked for fee-simple sales from Indiana involving freestanding retail stores between 6,500 and 12,000 square feet. To avoid giving undue influence to any one type of user, he also wanted to select properties representing a spectrum of retail uses. Because he did not find enough recent sales from Anderson or Madison County, he expanded his search to other Indiana markets a prospective investor would consider. He tried to stay out of big cities and focused on markets that were similar to the subject property's market. He ultimately located the following six sales:
    - **Sale 1**. This was a 7,464-square-foot former CVS store in Evansville that O'Reilly Auto Parts bought for $84.41/sq. ft. It was similar to the subject store in terms of construction quality, although it did not have as many storefront windows. O'Reilly relocated the entrance, installed new storefront windows, and painted the exterior.
    - **Sale 2**. This was a 10,040-square-foot building on Highway 36 in Avon that sold to Crown Liquors for $112.05/sq. ft. It was in fair condition. The buyer remodeled the exterior and extensively renovated the interior. The buyer later leased a small part of the store to other tenants.

- **Sale 3**. This was the same as Allen's Sale 6. As already explained, the two experts reported different measurements for the building area, which led them to calculate different unit prices. Allen calculated $85.71/sq. ft., while Hall calculated $101.79/sq. ft.
- **Sale 4**. This was a 6,518-square-foot former restaurant on the fringe of Fort Wayne that sold for $122.74/sq. ft. It was vacant when Texas Roadhouse, an adjoining property owner, bought it, and Hall was unsure of the buyer's plans for the property. He believed the price was consistent with the market range. A Loopnet listing referred to the property as fully equipped, including a three-way permit for alcohol sales, but the sales disclosure form indicates that no personal property was transferred.
- **Sale 5**. This was a 10,480-square-foot showroom building from Evansville that sold for $124.05/sq. ft. (before adjustment for buyer expenditures). An automobile dealership had occupied it. It mostly consisted of retail space, although it also had a small mezzanine. The buyer extensively modified the building by constructing a new façade, resurfacing the parking lot, and demolishing a canopy.
- **Sale 6**. This was a 6,500-square-foot former Blockbuster Video store in Greenwood that sold for $184.62/sq. ft. (before adjustment for buyer expenditures). The buyer intended to use it as an Autozone store and renovated the interior and exterior, replaced the roof, and resurfaced the parking lot.

Ex. 19 at 91-94; Ex. H; Ex. 18; Tr. I at 136, 285-92, 315-16, 346, 361, 389.

74. All of the comparable buildings were built with load-bearing concrete block. Sale 1 had relatively few windows, and Sale 3 only had windows along one side. Sales 2 and 4 had windows along the full front façade and one side. *Tr. 351-52*.

75. Hall defended his use of the former restaurant (Sale 4), explaining it was a freestanding building that was very similar to the subject building in terms of construction quality and materials. It also sat near the middle of the lot with frontage on a major thoroughfare and had adequate parking. Similarly, Hall believed that the former automobile showroom (Sale

5) was of comparable construction as the subject building and sat on a comparable site. It was essentially a rectangular building that Hall believed could be used for various retail purposes. *Tr.at 285-92.*

76. Like Allen, Hall adjusted his sale prices to account for various differences between the comparable sales and the subject property. First, he considered adjustments for expenditures anticipated by a buyer at the time of sale. He limited his consideration to expenditures for major structural components that any user would need to make in order for the property to have utility. He concluded that Sales 5 and 6 required those adjustments. *Ex. 1 at 101-06; Tr. 292-97; 365-66, 389-93.*

77. Hall could not confirm the expenditures actually anticipated or incurred for Sales 5 and 6, so he used mostly the low end of MVS's cost ranges for exterior wall finishes, roof replacement, and parking lot resurfacing. Based on those costs, he adjusted the two sale prices upward by $150,000 each. Because Hall considered the two properties in their improved condition following the expenditures, he viewed their effective ages as less than their physical ages. If Hall had not adjusted for buyer expenditures, he would have considered the sale prices for the properties as is, and might have viewed their effective ages as more like their physical ages. That, in turn, would have led him to make a different adjustment for age/condition. The difference probably would have been a wash. *Ex. 1 at 102-06; Tr. at 306-07, 309, 394, 420, 469-72*.

78. Because of the mixed positive and negative influences affecting the retail real estate market from 2010 to 2016, Hall did not believe he needed to adjust for differences in market conditions between the various sale dates and his March 1, 2015 valuation. *Ex. 1 at 29, 107; Tr. at 297-98.*

79. Hall did adjust several sale prices to account for differences in land/location. He believed that demand for a property like this, whose potential users include operators of drugstores, dollar stores, and auto-parts stores, is more strongly correlated with population density than with median household income. According to Hall, insurance often subsidizes

pharmaceutical purchases, and operators of dollar and auto-parts stores cater to middle- and lower-income customers. He therefore gave the greatest weight to population density and surrounding land influences in considering the location component of his adjustment. *Ex. 1 at 107, 111; Tr. at 298-300.*

80. Based on those factors, he determined that Sales 1 through 5 were in slightly superior locations and adjusted their prices downward by 10%. He determined that Sale 6— which was near high-density multi-family complexes, multiple big box stores, retail outlots, restaurants, and shopping centers—was in a far superior location and adjusted its price downward by a substantially greater degree. As for the land component, Hall noted that Sale 1 had significantly less land area, which hurt its parking capacity, as well as its expansion and redevelopment potential. He therefore adjusted it upward by 20%. That led to a net location/land adjustment of positive 10%. Although Sale 6 also had a smaller site, its superior location more than offset that issue, and its net land/location adjustment was negative 30%. *Ex. 1 at 107, 111.*

81. Turning to access and exposure, Hall considered the property's corner location at a signalized intersection with frontage along two roads as well as its visibility from, and traffic count on, those roads. He rated Sales 1 and 4 as inferior and adjusted their price upward by 5%. He considered the rest as superior and applied a negative 5% adjustment. Sales 2 through 6 all had higher traffic counts along the busiest nearby roads. For Sales 2, 5, and 6, those traffic counts were all more than 30,000 vehicles per day, although the count for Sale 5 was along a divided expressway that ran parallel to the roads from which the property could be accessed. So while Sale 5 had more exposure to traffic, Hall considered its access inferior to the subject property's access. Similarly, while Sale 4 was close to I-69, it was not visible from the interstate. In fact, the overpass and retaining walls for the interstate impeded the property's visibility from the road that did provide direct access. *Ex. 1 at 108, Exs. I-M; Tr. at 301-05, 427-29, 473-76.*

82. According to Hall, traffic volume can be a strong predictor of demand for certain types of retail properties, such as gas stations or convenience stores, which depend heavily on drive-

by traffic. But it is only one data point, and he believes it is less significant for stores where customer traffic is not as likely to be an impulsive decision. Hall further explained that an appraiser should consider vehicular traffic in the context of the market area. For example, he should consider the amount of competition along the road on which a property sits. While the subject property is located along a comparatively lightly traveled road, it is in a small market with limited competition. *Ex. 1 at 108; Tr. at 301-05, 475.*

83. Like Allen, Hall found some correlation between building size and unit price and therefore adjusted the sale prices for the properties with the three smallest buildings (Sales 1, 4, and 6) downward. He similarly adjusted each sale by 1.5% per year difference in effective age. *Ex. 1 at 108-10.*

84. It is unclear exactly how Hall quantified his adjustments. He explained that he was able to minimize the influence of certain variables, such as size and age, and that he therefore could perform paired-sales analyses or other sensitivity tests. But he did not indicate which specific adjustments he based on those tests. *See Tr. at 308.*

85. Next, Hall reconciled his adjusted sale prices. They ranged from $101.26/sq. ft. to $128.86/sq. ft., with an average of $112.33/sq. ft. He settled on a value of $115/sq. ft. or $1,288,575, to which he added his surplus land value of $6,200, for a total rounded value of $1,290,000. *Ex. 1 at 111, 117; Tr. at 317.*

86. Solely as a test of reasonableness, Hall looked at the 2013 sale of a freestanding retail building in Anderson. It was located about 10 miles south of the subject property along the same road. It was leased to Advance Auto Parts for $9.60/sq. ft. under a renegotiated build-to-suit lease, and it sold for $140.38/sq. ft. Hall rated it as similar to the subject property in most respects, but slightly superior in location and slightly inferior in construction quality. Like the subject property, it has windows around the entrance, although they appear to extend all the way to the ground. *Ex. 1 at 112-15.*

87. Because of the difference in property rights transferred (leased fee vs. fee simple), Hall looked at the range of average asking rents between 2010 and 2015 as reported in an analytic survey of 310 single-tenant retail properties from Anderson. He concluded that the contract rent was reasonable and that no adjustment for property rights was needed. Because nine years remained on the lease term, Hall felt that an adjustment for superior economic conditions would be appropriate. Given the relatively minor adjustments, he felt the sale confirmed the reasonableness of his value estimate for the subject property. *Ex. 1 at 112-15; Tr. 310-13.*

iii. Income approach

88. Like Allen, Hall began his analysis under the income approach by estimating market rent for the subject property. He identified seven leases of comparable single-tenant freestanding retail properties:

- **Lease 1**. This was a triple-net lease of a 6,510-square-foot building on Mann Rd. in Indianapolis to O'Reilly Auto Parts for $11/sq. ft. It was shadow anchored by a Marsh supermarket.
- **Lease 2**. This was a triple-net lease of an 11,250-square-foot building on North Michigan Rd. in Indianapolis to Goodwill for $14/sq. ft.
- **Lease 3**. This was a triple-net lease of a 7,844-square-foot former video store on East Main St. in Plainfield to O'Reilly Auto Parts for $10/sq. ft.
- **Lease 4**. This was a triple-net lease of a 10,650-square-foot building on the corner of East Memorial Dr. and Madison St. in Muncie to CVS Corp. for $11.33/sq. ft. It was a renegotiation and extension of a build-to-suit lease.
- **Lease 5**. This was an absolute-net lease of a 10,125-square-foot building on State Rd. 67 in Mooresville to CVS Caremark Corp. for $16.25/sq. ft. It was a renegotiation of a build-to-suit lease for $20.21/sq. ft.
- **Lease 6**. This was an absolute-net lease of a 10,125-square-foot building on East Main St. in Danville to CVS Caremark Corp for $16.53/sq. ft. It was a renegotiation of a build-to-suit lease for $18.78/sq. ft.

- **Lease 7**. This was the renegotiated lease for the Advance Auto Parts store from Hall's sales-comparison approach: a 6,696-square-foot building leased for $9.60/sq. ft.

Ex. 1 at 118-23; Tr. I at 318-20.

89. Unlike Allen, Hall did not use leases from multi-tenant retail centers. Hall testified that single-tenant freestanding buildings differ from space in multi-tenant retail centers, explaining that tenants in the former have exclusive use of all the parking spaces and points of access while tenants in the latter share those things. He also noted that there are often differences in expense structure, with retail-center tenants having to pay CAM. *Tr. I at 250-51.*

90. Four of Hall's leases were the product of renegotiations with the original tenant, and three were operated as CVS stores.[4] Hall presumed they included a corporate guarantee from CVS. Because the parties to the negotiation did not have any shared ownership interest, he did not believe they were related. Nor, in his opinion, were they atypically motivated because both were in a position to walk away. Unlike an original build-to-suit lease, which is really a financing vehicle, Hall could not conceive of a reason why CVS or any other tenant renegotiating a lease would agree to pay above-market rent. That differs from Allen, who testified that lease renegotiations involve related parties who are atypically motivated. According to Allen, moving from an established business location may cost the tenant significant business. In his experience, national retailers do not look at the market when renegotiating leases; instead, they will extend the lease if they can reduce the rent by a targeted amount, such as 20%. *Ex. 1 at 118-20*; *Tr. at 374-75, 380, 429-30, 479-84.*

91. Hall compared the leases to the posited lease for the subject property in terms of expense structure, lease conditions, and market conditions, and he compared the properties in terms of location, access/exposure, physical characteristics, age/condition, and economic

[4] The original CVS store leases (Leases 4-6) were build-to-suit. The other lease (Lease 7) may have been as well. The original lease to Advance Auto Parts commenced the same year as the building was constructed. *See Ex. 1 at 113-14*.

characteristics. Rather than quantify adjustments, Hall qualitatively analyzed the leases, explaining that they fell within a narrow enough range to sort out where the subject property's rent should fall. But he did not expressly address all the elements of comparison for each property. For example, he only addressed access/exposure characteristics for one property. He noted that the leased properties bracketed the subject property in terms of age (at the time of the lease) and size and that the four renegotiated leases were for buildings that were physically similar to the subject building. The leases to second-generation tenants were all for buildings of inferior construction quality. *Ex. 1 at 125; Tr. at 320-27.*

92. Hall settled on $11/sq. ft., which he explained was between the midpoint ($13.07/sq. ft.) and low end ($9.60/sq. ft.) of the range. Even if he were to exclude the three renegotiated CVS leases, the average rent would be $11.15/sq. ft.[5] He supported his conclusion by pointing out that it fell in the middle of the range of average asking rates for 2010 to 2015 identified in the CoStar survey of 438 Madison County properties referenced earlier in his report. Nonetheless, except for a spike between 2012 and 2014, the average was generally between $6/sq. ft. and $8/sq. ft. *Ex. 1 at 125-28; Tr. at 321-26, 347-50, 378-80.*

93. Hall did not include reimbursements for CAM, and he criticized Allen for doing so. According to Hall, CAM only exists as an expense in multi-tenant properties, such as shopping centers, where tenants share the use of certain areas they do not individually lease. He has not seen CAM as a line-item expense for single-tenant net-leased properties. *Ex. 1 at 129; Tr. at 327-28.*

94. Hall similarly did not include reimbursements or corresponding expenses for insurance and property taxes. He explained that tenants often pay those expenses directly under triple-net and absolute-net leases. In any case, he has found that buyers, sellers, and brokers typically report capitalization rates using triple-net expense structures, where they account for management fees and reserves and have expense ratios of 3% to 5% of total income, or under absolute-net structures, where they have expense ratios of zero. Because *The*

---

[5] If all four renegotiated leases were excluded, the average rent would be $11.67/sq. ft., the midpoint would be $12/sq. ft., and the median would be $11/sq. ft.

Appraisal of Real Estate instructs appraisers to apply capitalization rates in the same manner they were derived, Hall felt he needed to make his projected expense structure for the subject property reflect the structures for the sales from which he extracted the capitalization rates. *Tr. at 327-31.*

95. When asked how he accounted for the fact that the subject property's owner would bear the costs of insurance and property taxes during periods of vacancy, Hall explained that market-derived capitalization rates implicitly reflect those risks. In any case, even if he had included Allen's calculation of insurance expenses and property taxes, it would have only affected his valuation opinion by roughly $14,000. *Tr. at 380-83.*

96. Thus, Hall estimated potential gross rent of $123,255, which reflected the base rent of $11/sq. ft. with no reimbursements. He then adjusted that rent by 5% to account for vacancy and collection loss. He based his adjustment on data from CoStar, which showed market vacancy for single-tenant retail properties in Madison County trending below 3% as of March 1, 2015, as well as on survey data for the national net-lease market showing vacancy and collection loss ranging from 0% to 5% for the first quarter of 2015. For expenses, Hall included a management fee and replacement reserves, both of which he explained were typical for triple-net leases. He used a management fee of 2.5% and reserves of $.20/sq. ft. Those deductions resulted in NOI of $111,924. *Ex. 1 at 120-31; Tr. at 331.*

97. To determine an appropriate capitalization rate, Hall looked at market sales and investor surveys. He also built a rate through the band-of-investment technique. He verified that most of the sales reflected triple-net expense structures. According to Hall, the surveyed rates were based on either triple-net or absolute-net expense structures. But the band-of-investment technique is not predicated on a given expense structure. Hall reconciled his data to arrive at a rate of 8.50% for the subject property. *Ex. 1 at 132-34; Tr. at 334-39, 477-78.*

98. After capitalizing his projected NOI and adding the surplus land value, Hall arrived at the following conclusion under the income approach:

NOI	$111,924
Cap Rate	8.5%
Value	$1,316,752
Surplus Land	$6,200
Rounded Value	$1,320,000

Ex. 1 at 135; Tr. at 368.

c. Reconciled value

99. Hall gave significant weight to his conclusions under both the sales-comparison and income approaches. He believed his data under the cost approach was market-supported and reliable. He also noted that the cost approach provides an opinion of value for the fee-simple interest and that buyers and sellers for this property type are conversant with construction costs. But he gave it the least weight because his analysis excluded entrepreneurial profit, which typically would be expected for an income-producing property.[6] In any event, Hall reconciled his conclusions as follows:

Valuation Date	Cost	Sales-Comparison	Income	Reconciled Value
March 1, 2015	$1,410,000	$1,290,000	$1,320,000	$1,350,000

Ex. 1 at 136.

d. Trended values

100. Finally, Hall trended his reconciled value for 2015 to the other valuation dates at issue. Based on our decisions in previous appeals, he believed we had been receptive to using changes in the CPI-U index as a means to do so. His adjustments were relatively small, with the largest being negative 7.83% for the 2010 assessment date. Had the CPI-U index shown a significant difference between the earlier dates and 2015, he would have

[6] In his report, Hall indicated that excluding entrepreneurial profit might explain why his conclusions under the cost approach were lower than his conclusions under the other two approaches. But his conclusions under the cost approach were actually higher.

questioned his conclusions. Instead, the index was consistent with other indicators in his report, such as the changes in rental rates. Based on the results of his trending analysis, Hall arrived at the following values for the remaining years:

Valuation Date	**Value**
March 1, 2010	$1,244,296
March 1, 2011	$1,277,663
March 1, 2012	$1,311,539
March 1, 2013	$1,330,869
March 1, 2014	$1,350,995
January 1, 2016	$1,354,557

Ex. 1 at 137-38; Tr. at 340, 456-57.

101. Allen disagreed with Hall's approach. He explained that using changes in the CPI is not the same as adjusting for market conditions and is inappropriate for appraisal purposes. The CPI is based on the cost of goods for the average consumer, which differs from changes in the real-estate market. According to Allen, the real estate market was in substantial flux following the financial meltdown in 2008-2009. Also, using the CPI to trend a value for one year to reflect values for other years would not measure the fact that the comparable properties' ages at time of sale remained fixed, while the subject property's age changed according to the valuation date. *Tr. at 57, 402-04*.

C. Assessments of Walgreens Properties

102. Three current or former Walgreens stores from Madison County were assessed for less per square foot than the subject property in 2015. They were also assessed for significantly less per square foot than Hall's valuation opinions for the subject property. *See Exs. B-F; see also Tr. at 233-38.*

Conclusions of Law and Analysis

A. CVS has not Made a Case for an Adjustment Based on the Lack of Uniformity and Equality in Assessment.

103. CVS claims that the subject property's assessment violates the uniformity-and-equality requirements from Article 1, Section 10 of the Indiana Constitution as well as the equal-protection clause of the 14th Amendment to the United States Constitution. Because CVS does not develop its equal-protection argument, we address only its state law argument.

104. CVS bases its claim on the fact that three Walgreens stores were assessed for far less per square foot than the unit values the Assessor and Hall determined for the subject property. Leaving aside the question of whether comparing the subject property to only three other properties may suffice to show an actionable lack of uniformity and equality, CVS fundamentally misreads the requirements of the Indiana Constitution and the Tax Court's holding in *Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r.* In *Westfield Golf*, the Court explained that under Indiana's current assessment system, the focus is no longer on how regulations are applied, but rather on whether assessments reflect the external benchmark of market value-in-use. *Westfield Golf Practice Ctr., LLC v. Washington Twp. Ass'r,* 859 N.E.2d 396, 398 (Ind. Tax Ct. 2007). The taxpayer lost its uniformity-and-equality challenge because it focused solely on the base rate used to assess its driving range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id*. at 399.

105. CVS did not offer any evidence to show the market values-in-use of the Walgreens stores. Instead, it argues that they were presumptively assessed at 100% of their market values-in-use. *Pet'r Brief at 32* (*citing* 2011 REAL PROPERTY ASSESSMENT MANUAL at 3). But the taxpayer in *Westfield Golf* also offered information about the assessments of other driving ranges, and the Tax Court found it had failed to show their market values-in-use. In any case, under CVS's own theory, our determination of its valuation claim will necessarily put the subject property on equal footing with the Walgreens stores—all will be assessed at 100% of their market values-in-use. That is true regardless of which valuation opinion we

accept or whether we decide some other value. The only basis for relief would be if the Walgreens stores were assessed for less than their market values-in-use.

B. Burden of Proof and Valuation Standard

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

107. The parties agree CVS has the burden for its appeal of the 2010 tax year. The burden for later years necessarily depends how we resolve 2010. In any case, the question is largely moot. Assigning the burden typically matters only where the parties fail to offer probative evidence from which to determine the appealed property's true tax value. Here, we have sufficient evidence to make that determination.

108. In Indiana, real property is assessed based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e); I.C. § 6-1.1-31-5(a). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property. 2011 REAL PROPERTY ASSESSMENT MANUAL 2; *see also*, 2002 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r,* 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

109. A valuation of an improved property does not reflect true tax value if the purportedly comparable sales "have a different market or submarket than the current use" of the property under appeal based on "a market segmentation analysis." I.C. § 6-1.1-31-6(d). Market segmentation analyses "must be conducted in conformity with generally accepted appraisal principles" and are not limited to the categories of markets and submarkets laid out in the DLGF's rules or guidance materials. *Id*.

C. Hall's Valuation Opinions Are More Reliable than Allen's Opinions

110. We begin by noting that the experts agree on some basic questions. They both estimated the market value-in-use of the fee-simple interest in the property. They also came to similar conclusions on land value and an appropriate capitalization rate. And they agreed that population density is a primary driver of demand for retail properties.

111. More significantly, they both believed that the property's highest-and-best use and current use were the same. They both valued the property for general retail use. We disagree with CVS's argument that Hall based his analyses on sales and leases from a different market or submarket because he occasionally referred to the property's use as a drugstore and included some data relating to drugstore uses. None of Hall's comparable sales was for drugstore use. Neither were most of his comparable leases.

112. That said, the experts disagreed about several other issues. Some of those disagreements did little to affect their respective valuation opinions or our determination. Those include differences over how to rate the store's construction quality for purposes of MVS's cost schedules, whether CAM reimbursements apply to freestanding single-tenant properties, how to account for the landlord's expense for insurance and property taxes during periods of vacancy, and whether the site had surplus land. Other differences had more profound affects. We will discuss those differences in our comparative analysis of the experts' opinions, to which we now turn.

1. Valuation approaches

a. Sales-comparison approach

113. With one exception, the experts chose different comparable sales. Hall focused on identifying stores that were similar to the subject store's size and that had masonry construction. He expanded his search beyond Anderson and Madison County to include similar market areas. And he looked for properties that were bought for a spectrum of retail uses in order to avoid giving undue influence to any one type of user. While he agreed that leased-fee sales could be valid indicators of market value-in-use if the properties were leased at market rates, he stayed away from such sales other than the Advance Auto Parts store from Anderson that he used to test the reasonableness of his conclusions.

114. Allen, by contrast, focused solely on the Indianapolis MSA. Where possible, he looked to sales of drugstore buildings. That led him to choose three different sales involving stores built to one particular business model's specifications (Walgreens) and four (including two former Walgreens) involving properties that were bought for use by a narrow category of retailers (dollar stores). He also used leased-fee sales after adjusting the sale prices to account for the difference in property rights transferred.

115. A couple of fundamental disagreements drove the experts' differing selection criteria. Those disagreements also appear in their conflicting views about whether, and how much, the property suffered from functional obsolescence. Hall believed that the building's masonry construction was desired in the marketplace. He similarly believed that its layout and design were easily adaptable to various retail uses at minimal cost, and that there were no significant super-adequacies. Allen, by contrast, did not believe that operators of general retail stores would pay for various drugstore-related design features. To the contrary, he believed that some of those features—such as an entrance that does not face the main source of traffic exposure, a relative lack of windows, a pharmacy area that would need to be reconfigured to convert to a sales floor, and a layout that would be difficult to convert for use by multiple retailers—actually detracted from the property's value.

116. It may be true, as Allen claims, that many general-retail users prefer buildings with showroom-type exposure and centered entrances. Hall's Sale 1, a former CVS store where the buyer installed storefront windows and relocated the entrance illustrates those points. But we do not view them as major factors influencing the subject property's value. Indeed, the Advance Auto Parts store from Anderson that Hall used to test the reasonableness of his conclusions appears to have a similar entrance and windows as the subject property, although its windows are full-length while the subject building's windows are not quite full length. And that store was built-to-suit for Advance, meaning at least one other class of retailers—auto-parts stores—may find the subject property's exterior design appealing.

117. We similarly give little weight to Allen's concerns about the difficulty in reconfiguring the building for multiple users. Both experts viewed it as a single-user property in their market segmentation analyses, although Hall did include one sale where the buyer later leased a small portion to a second user. While converting the pharmacy to a sales floor may require re-doing flooring and lighting, nobody offered any data to show how significant that expense might be.

118. Beyond those more general observations, we have specific concerns about Allen's choice of Sale 8. An unidentified community organization bought that property, and there is no indication that the organization used it for retail purposes. Even Allen acknowledged that its sale price was an outlier. While he testified that he gave the sale little or no weight in his reconciliation, he did not say so in his report. We do not have any concerns about Allen's choice of Sale 6, the former Goodwill store sold to an investor and later leased to Harbor Freight. Hall also used that sale. But we have doubts about whether Allen properly calculated the unit price from the sale, given that he viewed the store as being 2,100 square feet larger than both Hall and another appraiser did, and Allen could not verify which measurement was more accurate.

119. That said, we have concerns about some of Hall's choices as well. Leaving aside the conflicting evidence about whether Sale 4, the restaurant from Fort Wayne, included non-

realty items such as equipment and an alcohol permit, Hall did not even know what the buyer intended to use the property for. We similarly have concerns about the comparability of Sale 5—the automobile showroom.

120. Despite our concerns with those last two sales, we find Hall's consideration of a wider spectrum of buildings and users, all of which were still within the subject property's market segment, more persuasive than Allen's focus on former Walgreens buildings and dollar stores. Allen attributes the significantly lower sale prices for his former drugstores to obsolescence from drugstore construction in general. But they may say more about the market appeal of buildings designed to meet Walgreens' specific business model and branding or about the business plans of a narrow sector of retail users. Five of Allen's eight sales were purchased for use as dollar stores. Because the property is suitable for general retail use, Allen relied too much on data from sales to dollar stores to the exclusion of other potential users.

121. That leads us to Allen's and Hall's adjustments. They largely adjusted for similar factors, such as differences in building size, age and condition, and location. The most prominent disputes involved Hall's buyer-expenditures adjustment, Hall's decision not to adjust for differences in market conditions and Allen's quantification of his market-conditions adjustments, Allen's failure to adjust for differences in construction quality, and Allen's property-rights adjustments to his leased-fee sales.

122. We give some weight to the first point. Hall's analysis of buyer expenditures was largely conclusory. But he also adjusted the sale prices downward to account for the fact that the expenditures funded renovations that reduced effective ages of the buildings. Hall credibly testified that had he simply used the actual sale prices without adjustment for buyer expenditures, he would have viewed the buildings as they existed before being renovated. That likely would have led him to adjust at least one of the sale prices (Sale 5) upward to account for its inferior effective age as compared to the subject property. CVS did not really dispute his testimony on that point. While the alternative approaches may not have been exactly a wash, the difference is relatively insignificant.

123. The experts' dispute over whether to adjust for differences between the market conditions on the valuation date (or dates in Allen's appraisal) and the sale dates for the comparable properties is a little more significant. Hall believed that the markets in Alexandria and Madison County were mostly stable and therefore did not adjust his comparable sales or rents for market conditions. Yet he trended his March 1, 2015 opinion to reflect different values as of the other valuation dates. Allen, by contrast, found that values had increased substantially between August 2010—the earliest of his comparable improved sales—and the later valuation dates.

124. Although we find Allen's view on the need for market-conditions adjustments more logically consistent, we harbor serious doubts about the accuracy of his adjustments. As Allen acknowledged, his data showing declining vacancy rates was one of the driving factors behind the substantial changes reflected in his real estate index. But those vacancy rates included all retail properties. When filtered to just single-tenant freestanding retail properties in Madison County, vacancy rates were historically much lower and the decline was a little less precipitous. We understand, as Allen testified, that the subject property competes in the broader retail market, but we are persuaded by Hall's view that it competes most directly with other freestanding single-tenant properties.

125. More importantly, Allen failed to explain the striking inconsistency between the market-conditions adjustments to his land sales and those he applied to his improved sales, even though he purported to base both on the same underlying data. That is an important concern because Allen's market-conditions adjustments, which were as large as 32.7%, profoundly affected his valuation opinions under the sales-comparison approach.

126. We are also concerned by Allen's failure to adjust for differences in construction quality. While construction quality may not be the primary driver of value for retail properties, we agree with Hall and the Assessor that the difference in quality between the subject building and the class-S retail buildings from Allen's Sales 2 and 3 merited some adjustment.

127. We are still more troubled by Allen's property-rights adjustment to his leased-fee sales. Hall and Allen agreed that appraisers may use leased-fee sales in a fee-simple appraisal if (1) the properties are leased at market rates, or (2) they make appropriate adjustments to account for the non-market leases. Our main concern does not lie with Allen's treatment of the two sales involving second-generation leases. He apparently assumed those leases were at market rates and therefore did not adjust them on that ground. Although he did not explicitly support his assumption, he used those same leases in his market-rent analysis under the income approach. He presumably researched those leases to assure they bore the indicia of market-rent transactions. Nonetheless, using data from the same properties makes his conclusions under the two approaches a little less independent of each other.

128. Unlike the sales involving second-generation leases, Allen recognized that the build-to-suit leases from Sales 2 and 3 were not at market rent. He adjusted those sale prices downward by 30% to account for that. But he offered little support for how he quantified that adjustment. He testified that he based it on a matched-pair analysis using the fee-simple and leased-fee sales from his report. That is sparse data upon which to base such a large adjustment. Worse, Allen could not even be sure that the unit price for one of his fee-simple sales—the Harbor Freight sale (Sale 6)—was accurate. Another fee simple sale (Sale 8) was an outlier. While Allen testified that he did not give that sale any weight in his reconciliation, he did not say he excluded it from his matched-pair analysis. In addition, Allen knew little about the terms of the lease from one of the leased-fee sales (Sale 3).

129. The rest of the experts' adjustments addressed similar factors, including building size and age/condition. Although they both addressed location and access/exposure characteristics, they did so in slightly different ways. And they differed on which locational and exposure factors really drive value. They agreed that population is a primary driver. But they disagreed on how much household income matters for freestanding general retail properties. While both offered reasonable explanations for their position, neither supported it with data to help us choose between them.

130. Hall and Allen similarly disagreed over the significance of traffic volume. Hall downplayed its significance outside of specific types of retail uses. He therefore did not directly adjust for differences in traffic volume, even though several of his comparable sales had significantly higher volumes than the subject property. For some of his sales, Hall credibly explained why access and visibility issues offset the higher traffic volume. That was not true for others.

131. Although neither expert offered data to support his view on the significance of traffic volume, we are persuaded that it likely affects the value of retail properties beyond the narrow class of properties Hall identified. Regardless, traffic volume is only one aspect of a store's locational appeal, and even Allen did not give it particularly great weight in his adjustments.

132. Despite our concerns about aspects of Hall's sales-comparison analysis, we find it far more reliable and persuasive than Allen's analysis. As explained above, we are more confident in Hall's choice of comparable sales. And we have significant concerns with Allen's adjustments, particularly his 30% property-rights adjustment to two of his leased-fee sales and his market-conditions adjustment. Although Allen believed that the 2016 listing for a Walgreens from Anderson lent support to his conclusions, he did not fully analyze or adjust that asking price. So it lends only minimal support to his conclusions, at best. In any case, as Hall persuasively explained, that store's prolonged vacancy may reflect the lack of market demand for its location as compared to the subject property's intersection.

b. Income approach

133. Allen and Hall disagreed on several points in their respective analyses under the income approach. As explained above, their differing views on whether to include CAM and how to account for insurance and property taxes during vacancy did little to affect their valuation opinions. Hall stressed the need to use the same expense structure in projecting the subject property's NOI as the structure on which his market-derived capitalization rates were based. According to Hall, market surveys are based on expense structures that do not

include CAM, property taxes, or insurance. The Assessor therefore argues that including those expenses led Allen to reach inaccurate conclusions. We find that any potential inaccuracy was mitigated by the fact that Allen did not rely exclusively on market surveys to determine his capitalization rate—he also relied on the band-of-investment method, which Hall acknowledged does not depend on any particular expense structure.

134. The effect was relatively minor. Even if Allen should not have included CAM, insurance, and taxes, the capitalized value of the landlord's share of those expenses for 2010 was only $40,327.[7] It was even less in later years, where Allen projected lower vacancy rates (although lower capitalization rates as well).

135. Instead, the experts' opposing estimates of market rent explain the lion's share of the difference in their value conclusions under the income approach. We therefore examine the relative persuasiveness of those estimates, starting with Hall's decision to use renegotiated leases, a choice Allen and CVS sharply criticized. Allen believes that tenants seeking to renegotiate existing build-to-suit leases are not typically motivated because they want to avoid losing customers and incurring other costs associated with relocating. While the tenants want to reduce rent, those relocation costs, rather than the amount for which they can rent comparable space, determine the level of reduction they will accept. Hall, by contrast, testified that he could not conceive of any reason why a tenant would agree to pay above-market rent. Unfortunately, neither expert offered any data to support his position.

136. We do not view the question in absolute terms—that it is either always acceptable or never acceptable to use renegotiated leases in estimating market rent. Instead, we believe appraisers should use them with caution. The parties may have atypical motivations. *See Archway Mktg. Servs. v. County of Hennepin*, 882 N.W.2d 890, 897 (Minn. 2016) (*quoting* THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 466 (14th ed.) ("'[L]ease renewals or extensions negotiated with existing tenants should be used with caution' because existing tenants may be willing to pay higher rents to avoid relocating or may be

[7] Allen's CAM, taxes, and insurance expenses totaled $32,646. Based on his 10.5% vacancy and collection loss, the landlord's share was $3,428. Capitalized at his 8.5% rate, that equals $40,327.

offered lower rents to avoid vacancies[.]”). More importantly, the leased space may not have been exposed to the market. As shown by his testimony, Hall does not appear to have exercised any caution in using the four renegotiated leases.

137. That said, Hall reconciled to rent ($11/sq. ft.) that was near the low end of the range ($10/sq. ft. to $14/sq. ft.) indicated by the three remaining leases. We find that those properties were sufficiently comparable to the subject property for their leases to tell us something about the subject property’s market rent.[8]

138. While Allen did not use renegotiated leases, one of his comparable leases was for a building that was approximately 40% larger than the top end of the range from his market segmentation analysis. Two other leases were for inline space in retail centers, and a third was for an endcap to a retail center. Allen testified that space in retail centers might rent for more or less than freestanding buildings, depending on its location within the center. Yet he did not expressly analyze any of the leases based on the location of the space within the retail centers, focusing instead on the arterial attributes of the centers themselves.

139. Of the remaining four leases, all were to dollar stores, two of which were former Walgreens buildings that Allen used in his sales-comparison analysis. Thus, Allen’s lease data suffers from the same potential distortions as his sales-comparison data. Indeed, as we have already pointed out, his inclusion of the same data in both approaches tends to make them less independent of each other.

140. As for adjustments, Allen considered mostly the same factors as, and used methodology that was similar to, the factors and methodology he applied under the sales-comparison approach. He did not need to adjust for any differences in property rights, which was one of the primary weaknesses in his sales-comparison analysis. He made much smaller

[8] Both sides point to the graph plotting Co-Star’s survey of average asking rates for single-tenant retail properties in Madison County to support their expert’s lease rate. Hall and the Assessor pointed to the range while CVS pointed to the trend line. As Hall explained, however, the average at any point in time says little about the subject property’s market rent, because only a limited number of properties were being marketed, and we know nothing about how they compared to the subject property. We fail to see how using the range over multiple years or the trend line does much to cure that problem.

market-conditions adjustments because his real-estate index considered only changes in asking rental rates, which remained mostly stable for the Indianapolis MSA. But he again failed to adjust for differences in construction quality, even though one of the buildings (Lease 3) had no masonry other than its façade. Similarly, the building in Lease 6 had no storefront windows and was therefore inferior to the subject building by Allen's own standards. Yet he did not adjust the lease rate for that difference.

141. Unlike Allen, Hall did not quantify any adjustments, choosing to analyze the leases qualitatively instead. He did not explain why he chose to adjust his comparable sales quantitatively but to analyze his comparable leases qualitatively. In any case, his qualitative analysis was not as thorough. While he indicated that access/exposure was an important element of comparison, he explicitly addressed that element for only one property. And the comparable properties did not bracket the subject property in terms of location appeal—the seven properties for which he expressly rated location were all similar or superior to the subject property. All three properties with non-renegotiated leases were in superior locations, although they all had inferior construction quality.

142. Finally, although Allen and Hall used similar vacancy rates for 2015, Allen used rates that were considerably higher in some of the earlier years. We agree with the Assessor that Allen's decision to rely heavily on data for all retail property types, not just single-tenant freestanding buildings likely skewed those rates. The gap between the two was significant. While the broader data may be relevant, Hall persuasively testified about the difference between the property types and explained why the subject property competes more directly with other single-tenant freestanding buildings.

143. We agree with the experts that the income approach is generally a reliable way to value a property like the subject property. But we have significant concerns with Allen's choice of comparable leases as well as with some of his adjustments. We find Hall's non-renegotiated leases more persuasive, although the lack of explanation concerning his qualitative analysis detracts somewhat from the reliability of his conclusions.

c. Cost approach

144. Hall and Allen estimated different land values. And they spent considerable time disputing which MVS quality grade the subject store's construction most closely resembled—average or good. Both views are plausible. The two descriptions substantially overlap, and the store has elements that match each.

145. But in terms of explaining the gulf between the experts' conclusions under the cost approach, all other issues pale in comparison to their disagreement about whether the property suffered from obsolescence. We agree with Allen that the market may not pay for some aspects of drugstore construction, such as drive-throughs and refrigeration. And some characteristics, such as the subject store's relative lack of windows, might detract marginally from its utility for general retail use, although we have seen no evidence that they do so nearly to the extent Allen posits. Likewise, while there might have been some external obsolescence in the years immediately after the recession, we are not persuaded that it was anywhere near the level Allen claims.

146. In any case, we have serious misgivings about Allen's obsolescence quantification. As Allen himself acknowledged, that quantification depended heavily on his estimate of market rent under the income approach. And we have laid out our concerns with that estimate.

147. Ultimately, Allen gave his conclusions under the cost approach little weight. In light of our concerns about his obsolescence quantification, we do too. Hall's failure to include any obsolescence, on the other hand, weakens his cost-approach analysis as well. But he did not completely disregard his conclusions under that approach, and they are fairly close to the range indicated by his conclusions under the other two approaches.

d. Trending

148. Finally, the experts disagreed about how best to address the multiple valuation dates at issue in these appeals. Allen offered a separate analysis for each year using the same

underlying data but making different market-conditions and age adjustments, while Hall valued the property as of March 1, 2015, and used the CPI-U to trend that value to the other valuation dates. Although we find Allen's approach conceptually sounder, it was not that much better in practice. He did not really appraise each year separately. Instead, he used the same comparable sales and leases for all the years at issue. That meant he used data from as many as five-to-seven years after the valuation date in some instances. Market participants could hardly have anticipated or relied on that data. In a sense, Allen's market-conditions adjustments performed a similar function as Hall's trending analysis, albeit in a more nuanced way. In any case, we have outlined our serious doubts about the accuracy of those adjustments in his sales-comparison analysis.

149. Nonetheless, we recognize the weaknesses in Hall's approach. We agree with Allen and CVS that the CPI-U, which is based on changes in the price of consumer goods rather than real estate, is not a particularly effective method to trend property values from one date to another. But Hall testified that the changes in that index generally corresponded with the indicators he examined for the local real-estate market. Thus, while using the index is less than ideal, we find it is sufficient to support Hall's trended values.

2. Overall Credibility

150. Despite their flaws, both experts' valuation opinions carry some probative weight. Taken as a whole, we find Hall's judgments, including his choice of comparable sales and leases, more persuasive than Allen's judgments. We therefore find that Hall's valuation opinions are the most reliable evidence of the subject property's true tax value.

C. Conclusions

151. Because we find Hall's valuation opinions more credible, we order the assessments changed to the following amounts, which reflect Hall's conclusions rounded to the nearest $100:

Valuation Date	Value
March 1, 2010	$1,244,300
March 1, 2011	$1,277,700
March 1, 2012	$1,311,500
March 1, 2013	$1,330,900
March 1, 2014	$1,351,000
March 1, 2015	$1,350,000
January 1, 2016	$1,354,600

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

____

Chairman, Indiana Board of Tax Review

____

Commissioner, Indiana Board of Tax Review

____

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

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