REPRESENTATIVE FOR PETITIONERS: Paul M. Jones Jr., Attorney

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Strat Delaware, LLC,	)	Petition:	53-011-11-1-4-00002
Beek Delaware, LLC,	)		53-011-12-1-4-00083
455 Equities Delaware, LLC,	)		53-011-13-1-4-00008
JSP Delaware, LLC,	)		
(CVS Corporation #6713-02),	)	Parcel:	53-04-13-300-040.001-011
	)		
Petitioners,	)	County:	Monroe
	)		
v.	)	Assessment Years: 2011, 2012, and 2013	
	)		
Monroe County Assessor,	)		
	)		
Respondent.	)		

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

March 28, 2016

FINAL DETERMINATION

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

INTRODUCTION

1. The parties offered competing valuation opinions from two appraisers—Sara Coers for the Petitioners (collectively, "CVS"),[1] and Wayne Johnson for the Monroe County Assessor. While both appraisals are generally probative, they also have problems that significantly detract from their reliability. In particular, Coers did not adequately tie her appraisal to the local market, while Johnson generally relied on data for properties with a marked lack of physical comparability to the subject property. We ultimately find Johnson's appraisal more persuasive and determine that the evidence as a whole supports the existing assessments.

PROCEDURAL HISTORY

2. CVS timely filed notices for review with the Monroe County Property Tax Assessment Board of Appeals ("PTABOA") for the 2011-2013 assessment years. The PTABOA issued determinations valuing the property as follows:

Year	Land	Improvements	Total
2011	$571,300	$828,600	$1,401,700
2012	$571,300	$818,500	$1,391,600
2013	$571,300	$828,200	$1,401,300

3. CVS then timely filed Form 131 petitions with the Board. We granted the parties' request to submit a stipulated record under 52 IAC 2-6-3 in lieu of oral testimony.

4. Marilyn Meighen represented the Assessor. Paul Jones represented CVS.

5. The following exhibits are part of the stipulated record:

Petitioners' Ex. A: Appraisal report prepared by Sara Coers,

[1] The record is unclear regarding the corporate identities of the property owners and the lessee. Specifically, it is not clear whether CVS Corporation #6713-02 is an alternate name for one of the owners or is instead the lessee. The Petitioners' certified tax representative and attorney have confused the matter with their descriptions of the parties in the Form 131 petitions and other filings. To avoid confusion, we refer to the owners collectively "CVS," (which for stylistic purposes will be treated as singular) and to the drugstores operated under the CVS brand name, including the store operated at the subject property, as "CVS brand stores."

Petitioners' Ex. B:	*Uniform Standards of Professional Appraisal Practice*, (2014-15 ed.), *USPAP Frequently Asked Questions* (2014-15 ed.), and *Index*,
Petitioners' Ex. C:	Property record cards for subject property,
Respondent's Ex. A:	Appraisal report prepared by Wayne Johnson,
Respondent's Ex. B:	Addendum to appraisal report prepared by Wayne Johnson,
Respondent's Ex. C:	Appraisal review prepared by Nick Tillema,
Respondent's Ex. D:	APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE, (14th ed.).

6. In accordance with the parties' stipulation, we also incorporate into the record the transcripts from two other hearings: *SCP 2007-C-26-002, LLC (CVS 3195) v. Monroe County Ass'r* pet. nos. 53-005-09-1-4-00009 etc. (IBTR Aug. 19, 2015) and *SCP 2002 E19 LLC 6697 (CVS 6697) v. Monroe County Ass'r, pet. nos. 53-005-07-1-4-00016 etc.* (IBTR Nov. 10, 2015).[2] The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals, and (2) all orders and notices issued by the Board or our Administrative Law Judge.

7. On the day briefs were due, CVS filed a motion to admit additional evidence in the form of a letter Coers intended to serve as an addendum to her appraisal. CVS argues that it should be allowed to submit the addendum in light of the subsequent enactment of 2015 Ind. Acts 249, relevant parts of which are codified in Ind. Code § 6-1.1-4-44. This section, which applies retroactively to all pending appeals, limits what comparable sales can be used to determine the true tax value of "commercial nonincome producing real property, including a sale-leaseback property" that "has improvements with an effective age of ten (10) years or less under the rules of the [Department of Local Government Finance ("DLGF"]…" I.C. § 6-1.1-4-44(a) and (d). The Assessor objects, citing the parties' previous agreement to the stipulated record and to the fact that CVS waited until the briefs were due to file its motion despite the Governor having signed the legislation approximately two months earlier.

[2] We refer to these as CVS 3195 Tr. and CVS 6697 Tr. respectively.

8. We agree with the Assessor and deny CVS's motion. The parties stipulated to the record and we will not set aside that agreement at this late hour. In any case, a central point of Coers' addendum is her claim that Ind. Code 6-1.1-4-44 does not apply to these appeals because of the building's effective age. The Assessor does not argue otherwise in her brief, saying instead that the stipulated evidence is not developed sufficiently to argue the statute's impact. *See Resp't Br. at 3 n.2.*

9. Regardless, we need not resort to CVS's additional evidence to conclude that Ind. Code 6-1.1-4-44 does not apply to these appeals. The store was built in 2001, approximately 10 years before the first assessment date under appeal (the precise date of completion is not in the record). The appraisers agree the building was in average condition. Thus, for the 2012 and 2013 assessment dates, the building had an effective age of at least 11 years under the DLGF's rules. 2011 REAL PROPERTY ASSESSMENT MANUAL, app. F (providing that a commercial building that is 10-12 years old in average condition has an effective age of 11 years). Given the lack of specificity about when construction was completed, there is some ambiguity regarding the building's effective age for the 2011 assessment. Absent any argument to the contrary, and given the Assessor's own claim that the record is insufficiently developed to determine how the appraisals would be affected by the statute's terms, we resolve that ambiguity against applying the statute.

FINDINGS OF FACT

A. The Subject Property

10. The property is roughly 3.58 acres and contains a freestanding,[3] retail building of approximately 11,000 square feet that is in good repair. It is located on West State Road 46 in the area commonly known as Ellettsville.[4] During the years at issue, it was operated as a CVS brand store. *Pet'rs Ex. A at 6, 11, 24-30; Resp't Ex. A at 6-8.*

[3] Although not explained, we take the appraisers' reference to a freestanding building to mean a building occupied by a single tenant and not physically connected to other buildings.
[4] The subject property has a Bloomington address.

11. The current owner bought the property in February 2008 for $3,829,905 as part of a leased fee transaction, meaning it was subject to a long-term above-market lease to the operator of a CVS brand store. *Pet'rs Ex. A at 11*. Neither appraiser relied on the sale or claimed that it reflected the property's true tax value.

B. Expert Opinions

1. Johnson's Appraisal

12. The Assessor hired Wayne Johnson of First Appraisal Group, Inc. to appraise the true tax value of the fee simple interest in the property. He holds MAI, RM, and MRICS designations and is an Indiana licensed appraiser. He is also a member of the Indiana Real Estate Appraiser Certification Board and has appraised properties for the Indiana Department of Transportation, local courts, cities, towns, and law firms. He certified that he performed his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *CVS 6697 Tr. at 19-35; Resp't Ex. A at 149-52.*

a. Johnson's Research and Market Overview

13. Johnson identified the local market as Monroe County, which he described as unique, pointing to the presence of Indiana University, Lake Monroe, and various cultural and entertainment offerings. He listed various positive factors affecting the local market, such as low unemployment, increasing population, and the anticipated construction of I-69. He also explained that regional, national, and international investors included Bloomington in their market selections, particularly during the recession. He identified the neighborhood as Ellettsville and the surrounding area, which he noted has been slower to develop and has lower land and property costs than Bloomington. In his opinion, the property has good visibility from State Road 46—Ellettsville's main transportation corridor. *Resp't Ex. A at 13, 38-68.*

b. Johnson Cost Approach

14. Johnson developed all three generally recognized valuation approaches, starting with the cost approach. He began by valuing the land using sales of five sites that were vacant or had improvements that the buyers demolished. All the sales were along West State Road 46. Most of the properties were developed post-sale—two as banks, one as a medical clinic, and another as a parking lot expansion for a McDonald's restaurant. Johnson also reported information for sites bought to build CVS brand stores. But he did so only for reference and did not rely on those sales. *Resp't Ex. A at 71-84.*

15. Johnson adjusted the sale prices to account for relevant differences from the subject site, including a 2% annual adjustment for market conditions. He based that adjustment on a paired-sales analysis and local economic data. He also adjusted for size differences, explaining: "Typically larger sales have a smaller price per acre." Finally, he adjusted two sale prices to account for differences in topography and one to account for post-sale demolition costs. *Resp't Ex. A at 38-60, 82-83.*

16. After applying these adjustments, Johnson arrived at a range of \$3.01/sq. ft. to \$6.51/sq. ft. He gave no weight to the two sales that required the largest percentage of adjustments, which included the sale marking the high end of his range. That left him with a correlated value of \$3.85/sq. ft. for the March 1, 2013 assessment date. He trended that value back to the 2012 and 2011 valuation dates using the 2% annual appreciation from his market-conditions adjustments and arrived at the following site values:

Site Value	
Year	**Value**
2011	\$575,000
2012	\$585,000
2013	\$600,000

Resp't Ex. A at 82-84.

17. Johnson estimated the cost new of the improvements using data for Class C drug stores from the Marshall Valuation Service published by Marshall & Swift. He used the base cost for a store of "good" construction quality. He chose "good" over "average" because the description for good included brick, a drive through, and good storefront and ornamentation. He used modifiers for sprinklers, canopy, and the open mezzanine. He applied multipliers for floor area, height, current cost, and local cost. He used 12% of total cost to account for entrepreneurial profit, which he derived from construction information for four medical office buildings as well as from general discussions with developers and builders. *Resp't Ex. A at 86-92.*

18. Johnson also looked at the actual 2011 construction costs for a new retail pharmacy in a small central Indiana town. The building's total cost was approximately $1 million, with an additional $454,000 in soft costs and $500,000 for site improvements. That translated to $147.75/sq. ft., excluding land. *See Resp't Ex. A at 87*.

19. Johnson calculated physical depreciation using market extraction and age-life methods. He extracted the building's anticipated economic life from three sales of office buildings. His conclusion of 50 years was a little higher than what Marshall & Swift indicated, but he believed it was within an acceptable range and that data abstracted from the local market was more reliable than published data. After adding his final cost figures to his estimated site value, Johnson arrived at the following values:

Year	**Value**
2011	$1,700,000
2012	$1,700,000
2013	$1,735,000

Resp't Ex. A at 88-91.

c. Johnson's Sales-Comparison Approach

20. Johnson also developed the sales-comparison approach. He selected sales from Monroe County. These included a former Ponderosa restaurant that was converted to a post office,

a vacant retail building, and three strip centers. The buildings ranged from 2,944 to 68,938 square feet. He once again referenced sales involving CVS brand stores but did not consider them in reaching his conclusions. *Resp't Ex. A at 93-117.*

21. Johnson adjusted the sale prices for location, market conditions/time, size, and effective age/condition. He adjusted the post office sale downward to account for its superior location in Bloomington. He then reconciled the adjusted sale prices, giving the most weight to those that required the least adjustment. He arrived at the following values:

Year	Value
2011	$1,465,000
2012	$1,500,000
2013	$1,520,000

Resp't Ex. A at 93-117.

d. Johnson's Income Approach

22. Johnson also developed the income approach, relying on lease data for Monroe County properties. Except for a freestanding tire store, the leases were for multi-tenant commercial properties. The leased spaces ranged from 500 to 30,546 square feet, and rents ranged from $6/sq ft. to $30 /sq. ft. In his correlation, Johnson considered the size of the subject property and that it was "among the best leased space for retail and in a superior location." He ultimately chose rents of $13.50/sq. ft. to $14/sq. ft., depending on the assessment year. *Resp't Ex. A at 118-42.*

23. Based on his opinion of the local market, Johnson deducted 10% of potential gross income to account for vacancy and collection loss, 3% of effective gross income ("EGI") to account for management and administration expense, and 1.5% of EGI for reserves. He arrived at the following net operating income ("NOI") for each year: $125,965 (2011), $128,298 (2012), and $130,630 (2013). *Resp't Ex. A at 130-142.*

24. In developing capitalization rates, Johnson examined data from Price Waterhouse Coopers LLP, published CVS rates, and rates extracted from sales of local office and strip centers. He ultimately arrived at a rate of 8.5% for each year noting that there was little variance between the years at issue. He divided the rates into his estimated NOI to arrive at the following values:

Year	**Value**
2011	$1,480,000
2012	$1,500,000
2013	$1,535,000

Resp't Ex. A at 131-42.

e. Johnson's Reconciliation

25. In reconciling his conclusions under the three approaches, Johnson indicated that he "weighted" the amount and quality of data and the relevance of each technique, although he did not explain specifically how he did any of those things. Earlier in his report, Johnson pointed to the weakness of his sales data, explaining that there were no sales of national retail pharmacy properties where the properties were sold for continued use as the national brand but without consideration of the lease, intangibles, or personal property. He therefore felt that the dissimilarity of his sales data reduced the reliability of the sales-comparison approach and increased the importance of the other two approaches. He arrived at the following reconciled opinions of value, which he explained fell between his conclusions under the three approaches:

Year	**Final Opinion**
2011	$1,475,000
2012	$1,500,000
2013	$1,550,000

Resp't Ex. A at 13, 117, 143-44.

2. Coers' Appraisal

26. CVS engaged Sara Coers, the managing director of Mitchell Appraisals Inc., to appraise the true tax value of the fee simple interest in the property. Coers certified that she appraised the property and prepared her appraisal report in accordance with USPAP. *Pet'rs Ex. A at 2-3, 6.*

27. Coers is a certified general appraiser, MAI, and a Level II assessor/appraiser. She has been an appraiser for more than 10 years and has completed over 200 market-value-in-use appraisals. *CVS 6697 Tr. at 150-51.*

a. Coers' Research and Market Overview

28. Coers identified the property's macro location as Monroe County and its micro location as the Ellettsville area. She rated the property as "slightly inferior." She also described conditions in the national retail market, including job losses, increased vacancy, and effective rent growth. According to Coers, national data is relevant because the retail market is affected by more than just local factors and investors include regional and national buyers. She specifically cited to Marcus and Millichap National Retail Reports. For 2011-2013 Marcus and Millichap pointed to various signs of economic recovery, including job growth, declining vacancy, and increased investment. *Pet'rs Ex. A at 37-55.*

b. Coers' Valuation Approaches

29. Coers believed the income and sales-comparison approaches were better indicators of the property's true tax value than the cost approach. She explained (1) that external obsolescence cannot be reliably estimated without using the results from the sales-comparison and income approaches, and (2) that the cost approach did not represent the motivations of buyers of the fee simple interest in properties like the subject property during the years at issue. While she estimated a site value and depreciated cost of improvements, she did so only as part of a technique she used to estimate market rent in applying the income approach. *Pet'rs Ex. A at 11-20, 56.*

i. Coers' Income Approach

30. Coers began her analysis under the income approach by determining market rent. She reviewed the existing lease but determined that it did not reflect market rent because it was the product of a sale-leaseback transaction. She instead used three other techniques to estimate market rent. First, she examined subleases of former CVS brand and Walgreens stores from several locations throughout Indiana. The subleases averaged $7.43/sq. ft. She believed they were relevant because the buildings were physically similar to the subject building, and the leases showed what someone was willing to pay once a CVS brand store or a Walgreens vacated the building. *Pet'rs Ex. A at 67-69.*

31. Second, Coers estimated market rent as a function of return on cost. She started by valuing the site as if vacant. To do so, she looked for vacant land of similar size in Ellettsville that sold for retail use. *Pet'rs Ex. A at 56-57.*

32. She ultimately settled on four sales. The parcels ranged from .73 to 3.78 acres and sold between May 2003 and August 2009. Coers believed the subject site's atypical size and shape and sloping terrain reduced its utility. That led her to adjust the sale prices for properties without those problems downward. She did not adjust for location, as all of the comparables were located on State Road 46 in the Ellettsville area. She gave the greatest weight to what she believed were the most similar sales, particularly to the most recent one (sale #4). *Pet'rs Ex. A at 62-66.*

33. She also adjusted for market conditions. Coers explained that she ideally would have been able to analyze paired sales, but she found the data was too limited for such an analysis. Instead, she used an alternative method, basing her market-conditions adjustments on changes to capitalization rates for Midwestern Tier-1 retail properties. She got that data from *The Real Estate Report*, a publication of the Real Estate Research Corporation ("RERC"). By using rates for Tier-1 properties (the best quality and location), Coers believed she effectively isolated pure movements in the market as viewed by market participants. *Pet'rs Ex. A at 61-62.*

34. To estimate replacement costs for the improvements, Coers used Marshall & Swift's base costs for a Class C drugstore of average construction quality. She made adjustments for number of stories, story height, "floor area-perimeter," current costs, and local costs. She also trended the costs from the date of the report to each assessment date. She did not estimate any functional obsolescence apparently because she felt the CVS prototype was very similar to the example of an average drugstore from Marshall & Swift. Although she believed the property suffered from external obsolescence due to what she described as the "ongoing effects of the nationwide recession and ensuing recovery and their effects on fundamentals in the subject's market," she did not include such obsolescence in her analysis. Finally, she applied depreciation and added in the site value to arrive at the following total costs: $1,450,000 (2011), $1,430,000 (2012), and $1,450,000 (2013). *Pet'rs Ex. A at 29-30, 70-71, 128-137; see also, CVS 6697 Tr. at 165.*

35. Coers then calculated rent based on the return an investor would require on those costs. Based on market surveys and her own observations, she calculated rent for each year based on three different rates of return: 7%, 8%, and 9%. Those rents ranged from $9.20/sq. ft. to $11.99/sq. ft. *Pet'rs Ex. A at 30, 69-71, 133.*

36. Finally, Coers calculated rent as a percentage of gross sales. To do so, she primarily relied on two sources. The first, *Dollars & Cents of Shopping Centers/The Score*, published data for all drugstore/pharmacy users as well as for those over 10,000 square feet. The most recent data from *Dollars & Cents* was for 2006-2007. To adjust the data to the years at issue, Coers turned to her second source—census data for pharmacy and drugstore sales. She then adjusted for location, settling on estimated market-level retail sales ranging from $365/sq. ft. to $390/sq. ft., depending on the assessment year. *Pet'rs Ex. A at 71-73.*

37. Coers then computed percentage rent by applying the low, median, and high percentage rates reported by *Dollars & Cents* (1.85%, 2.75%, 3.1%) to her market-level retail sales for each year. The lowest of those computations for any year was $6.75/sq. ft., while the highest was $12.09/sq. ft. *Pet'rs Ex. A at 73-74.*

38. She reconciled the values from the CVS brand and Walgreens store subleases, cost-based rent, and percentage rent, settling on market rents ranging from $10/sq. ft. to $10.50/sq. ft. for the various years at issue. *Pet'rs Ex. A at 74.*

39. From that potential gross income, Coers subtracted allowances for vacancy and collection loss ranging from 3.4% to 4.7%. She based her estimates on surveys of retail properties along the State Road 46 corridor from CoStar, a commercial database of Indiana transactions. She then deducted expenses based on published regional data for neighborhood/community retail shopping centers and data from three Indiana drugstores. Although she included an insurance expense of $.20/sq. ft., she also reflected that expense as income in the form of a reimbursement to the landlord. She estimated a management fee equaling 4.5% of EGI. Because she determined that investors would not have required reserves for any year except 2012, she included them as an expense only for that year. After applying expenses, she arrived at pro forma NOI ranging from $8.94/sq. ft. to $9.54/sq. ft. for the various years at issue. *Pet'rs Ex. A at 74-79, 87.*

40. Coers capitalized her pro forma NOI to reach a value conclusion for each year. She drew her capitalization rates from national market surveys and regional data published by RERC. She also considered rates extracted from sales of drugstores, including CVS brand and Walgreens stores. Those stores were leased at the time of sale, but she reasoned that the sale prices were less likely to reflect tenant creditworthiness because she focused on sales where the existing lease had fewer than 10 years remaining, the tenant had subleased the property, or the tenant had vacated. She did not think the band-of-investment technique, which relies on mortgage parameters like interest rates and loan-to-value requirements, was appropriate. According to Coers, the Federal Reserve was artificially suppressing mortgage rates during the years at issue, which meant they did not reflect actual risk in the market. *Pet'rs Ex. A at 79-82.*

41. Coers settled on overall rates ranging from 9% to 9.5% for the years at issue. She then loaded those rates with a percentage reflecting the landlord's share of the property tax

burden (taxes paid during vacancy). Finally, she divided those loaded rates into her estimate of the property's NOI for each year to arrive at the following values:

Year	**Value**
2011	$1,030,000
2012	$1,050,000
2013	$1,140,000

Pet'rs Ex. A at 81-82.

ii. Coers' Sales-Comparison Approach

42. For her sales-comparison analysis, Coers focused on fee simple, rather than leased fee, sales because the latter capture intangibles, such as tenant quality, rather than just the value of real estate. In selecting comparable sales, she primarily considered "interests transferred, continued retail use, and size," giving "secondary consideration" to "construction, date of sale, and location." *Pet'rs Ex. A at 87*.

43. She included sales of two former Blockbusters, two former Walgreens, and a former Goodwill, among other retail buildings. The properties were located across Indiana in markets such as Greencastle, Indianapolis, Lafayette, Bloomington, and New Albany. One sale was from Cincinnati. She adjusted each sale price for market conditions, again deriving her adjustments from changes in retail capitalization rates. She estimated location adjustments "based on a combination of traffic exposure, proximity to major retail nodes, or major travel corridors, access, population and household income, and surrounding development." Each facet she considered "resulted in a range of adjustments for each property," and she selected what she believed was a reasonable adjustment within that range. Finally, she adjusted for differences in condition based on each building's age. *Pet'rs Ex. A at 86-117*.

44. Coers gave the greatest weight to the most similar and most recent sales, reaching the following value conclusions:

Year	Value
2011	$1,080,000
2012	$1,090,000
2013	$1,120,000

Pet'rs Ex. A at 118.

c. Coers' Reconciliation

45. Coers believed the income and sales-comparison approaches both had good quantity and quality of data and they best reflected the motivations of market participants during the period covered by the appeals. She arrived at the following reconciled values:

Year	Value
2011	$1,060,000
2012	$1,070,000
2013	$1,130,000

Pet'rs Ex. A at 119-120.

3. Tillema's Review of Coers' Appraisal

46. The Assessor hired Nick Tillema of Access Group, LLC to review Coers' appraisal. He has been designated as an MAI since 1992. He also holds various other professional designations, including the AI-GRS, which is a new designation for review appraisers. He has appraised a wide variety of properties using various standards, including market value-in-use. *Resp't Ex. C at 1-3.*

47. Tillema identified several technical errors in Coers' appraisal. He did not argue that they were significant enough to make the appraisal unreliable. Instead, he focused the bulk of his criticism on Coers' methodology, which he found led her to estimate the property's market value rather than its true tax value. According to Tillema, "True tax value is not

market value; is not fair market value; and is generally[5] market-value-in-use – which is generally calculated with market value techniques – but not always." He also believed Coers should have done a thorough highest and best use analysis. He asserted that the property's highest and best use as improved was as "a pharmacy similar to the current use." *Resp't Ex. C at 1-32.*

48. Concerning Coers' market overview, Tillema believed she erred by focusing on the "local retail" market rather than on the "national pharmacy" market. He offered a chart showing the strength of CVS Corporation's stock during the years at issue, which he believed illustrated the growth in the national pharmacy market. *Resp't Ex. C at 9-13.*

49. Turning to Coers' land valuation, Tillema criticized Coers because "Comparable Sale #1, which sold in May of 2003, was given the same weight in the final analysis as Comparable Sale #4 – which sold in August of 2009."[6] He also criticized her lack of location adjustments and her method for calculating her market conditions adjustments. He further indicated, "There is no reconciliation, therefore, the appraiser has failed to demonstrate how the concluded values…were supported."[7] In addition, he asserted that national pharmacies are willing to pay "whatever is necessary" to get the right land. He then argued that the price they pay for land reflects its true tax value, but not its market value. *Resp't Ex. C at 19-20.*

50. Tillema felt Coers should have either included entrepreneurial incentive or at least explained why she excluded it. According to Tillema, there would be no incentive to build the property without profit; it was a developer-constructed project with entrepreneurial profit built into the cost because that profit could easily be recovered in the financing lease. *Resp't Ex. C at 21.*

---

[5] Emphasis in original.
[6] Contrary to Tillema's assertion, the Coers' appraisal states, "The most weight was placed on the most similar sales, particularly sale 4, which is very similar to the subject."
[7] As referenced above, Coers explained her reconciliation, albeit briefly.

51. Moving on to Coers' analysis under the income approach, Tillema took issue with how she estimated market rent. He believed her cost-based technique was filled with assumptions. More importantly in his estimation, Coers used the technique without fully applying the cost approach. As to her other techniques for determining market rent, Tillema found that the subleased CVS brand and Walgreens stores were not comparable because they were from larger cities. He similarly disagreed with the viability of calculating rent as a percentage of gross retail sales without using sales from the subject store. He also thought Coers' vacancy rates were "overstated." *Resp't Ex. C at 23-24.*[8]

52. Tillema next took issue with Coers' capitalization rates, which appeared high to him. He supported his belief with a chart of capitalization rates derived from leased fee sales of ongoing CVS brand and Walgreens stores. But he acknowledged that those rates might have also reflected personal property, inventory, and business value, and he explained that they were "more likely to reflect the parent company's credit rating than the location or physical characteristics of the subject property." *Resp't Ex. C at 22-26.*

53. As for Coers' sales-comparison analysis, Tillema argued that there are no fee simple sales of ongoing national pharmacy operations, such as CVS brand, Walgreens, or Rite-Aid stores from which to draw a value. He therefore argued that the sales Coers chose had "no connection, comparability or likeness to the subject property—an on-going, successful, national pharmacy facility." *Resp't Ex. C at 26-28.*

54. He further criticized her choice of sales for reasons such as their distance from the subject property, the fact that they were vacant, and their overall lack of comparability. And he took issue with her lack of adjustments for sale conditions, frontage, and property rights, among other things. In some cases, these criticisms are unsupported by the record. For instance, he claims that she made no adjustments for physical condition, but it is readily apparent from her appraisal report that she did. *Resp't Ex. C at 26-28; Pet'rs Ex. A 115-17.*

[8] Johnson's rate for vacancy and collection loss (10% for each year) was actually higher than Coers' rates were (between 3.4% and 4.7%). *See Resp't Ex. A at 131, 140-42; Pet'rs Ex A at 75, 83-85.*

55. Tillema concluded by reviewing Coers' final reconciliations. While she relied on the sales-comparison and income approaches, Tillema did not believe there were sufficient sales or market leases to credibly develop those approaches if one appropriately considers the property as an ongoing pharmacy operation. Thus, he felt the cost approach, which Coers did not fully develop, was the best method by which to estimate the property's true tax value. *Resp't Ex. C at 29-31.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

56. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence.

57. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates an exception to that rule where (1) the assessment currently under appeal represents an increase of more than 5% over the previous year's assessment for the same property, or (2) a successful appeal reduced the previous year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id*. If she fails to do so, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

58. The subject property's assessment increased by more than 5% between 2010 and 2011. Thus, the Assessor has the burden of proof for 2011—the first year at issue in this appeal. The burden for each succeeding year turns on our decision for the preceding year. For example, if we order a reduction for 2011 that lowers that assessment below the 2012 level, the Assessor will have the burden in the 2012 appeal as well. In a case like this, where both sides offer appraisals from qualified experts, the question of who has the burden is

largely theoretical. We must weigh the evidence to determine what most persuasively shows the true tax value for each year under appeal.

B. Tillema's Review and Indiana's True Tax Value Standard

59. Before weighing the merits of Johnson's and Coers' appraisals, we briefly address Tillema's overriding methodological criticism of Coers' appraisal—that, by treating the property as a "general retail building" rather than as an "ongoing national retail pharmacy," she effectively appraised the property's market value rather than its true tax value. We analyzed this issue in detail in *CVS 3195 and CVS 6697*.[9] We come to the same conclusions here.

60. Tillema asks us to limit the scope of comparable data to "national retail pharmacies." As in our earlier determinations, we note that the Assessor's own appraiser, Johnson, joined Coers in valuing the property as a general retail building. Under Tillema's view of true tax value, Johnson's appraisal would be even more problematic than Coers' appraisal, because Johnson went beyond retail to look at office data for a number of his calculations, including in his cost approach.

61. More importantly, the Indiana Tax Court has squarely rejected Tillema's arguments. *See Meijer Stores Ltd. P'ship v. Smith,* 926 N.E.2d 1134 (Ind. Tax Ct. 2010) (holding that the Board must consider sales of former "big box" stores to secondary users and finding a two year old Meijer was entitled to 65% obsolescence adjustment); *Stinson v. Trimas Fasteners*, 923 N.E.2d 496, 497 (Ind. Tax Ct. 2010) (rejecting assessor's "theory that vacant properties are not comparable to occupied properties"); *Grant County Assessor v. Kerasotes Showplace Theatres,* LLC, 955 N.E.2d 876, 881 n. 10 (Ind. Tax Ct. 2011) (rejecting claim that the Board adopted "a value more representative of a market value for a second generation user, not a value-in-use") (internal quotations omitted); *Shelby County Ass'r v. CVS Pharmacy, Inc*. #6637-02, 994 N.E.2d 350, 354 n.5 (Ind. Tax Ct. 2013)

[9] These findings can be found at http://www.in.gov/ibtr/files/CVS_3195-02__53-005-09-1-4-00009_etc.pdf and http://www.in.gov/ibtr/files/SCP_2002_E19_LLC_6697_aka_CVS_6697-02.pdf .

(rejecting assessor's argument that the Tax Court "is impermissibly attempting to convert Indiana's market value-in-use system into a fair market value system"); and *Marion County Ass'r v. Washington Square Mall*, 2015 Ind. Tax LEXIS 81 *22 (Ind. Tax Ct. Dec. 30, 2015) ("[T]he Court has repeatedly rejected the contention that the Assessor makes in this case: that a property's market value-in-use can only be measured in relation to other identical users and not in relation to participants within the commercial/retail market generally.").[10]

62. Tillema and the Assessor nonetheless offered their own interpretation of true tax value. And neither attempted to distinguish the Tax Court's decisions. Once again, we cannot accept their apparent invitation to ignore those holdings.

63. Having dismissed Tillema's main criticisms, we must still weigh Johnson's and Coers' appraisals. There are legitimate criticisms to both. We will address those criticisms, as well as each appraisal's strengths, in turn.

1. Johnson's Opinions

64. Johnson considered all three approaches to value in his final correlation. While there are problems with his analysis under each approach, we ultimately find his opinions sufficiently reliable to support the assessments.

b. Johnson's Cost Approach

65. CVS criticizes Johnson's analysis under the cost approach primarily in two respects: (1) he used "land comps for medical office, multifamily, and mixed use properties," and (2) he failed to adequately account for the impact of the national recession. *Pet'rs Br. at 18*

66. While the first criticism has some merit, it does not rob Johnson's analysis of probative value. Although some of his comparable sites were not used for retail purposes post sale,

[10] The Tax Court decided *Washington Square Mall* after the parties filed their briefs in these appeals.

others were. More importantly, CVS does not argue that any of the sites were unsuitable for a freestanding retail building, such as a pharmacy.

67. We find little merit in CVS's second criticism. In previous appeals, we questioned Johnson's 2% annual market conditions adjustment for the Bloomington area. The current appeals, however, present different circumstances. Johnson and Coers both offered evidence that the economy was in recovery during the years at issue in these appeals (2011-2013). And Johnson's 2% annual adjustments were similar to some of Coers' own adjustments. For the 2011 assessment, Coers adjusted a Bloomington sale from December 2009 by a positive 3.41%, or approximately 2.7% per year. For the 2012 assessment, she adjusted the same property upwards by approximately 3.1% per year. Though we do not necessarily find them more persuasive, if Coers' adjustments show anything, it is that Johnson was conservative in his adjustments, to CVS's benefit. We also note that the assessment dates and Johnson's land sales happened after the economy began its recovery, meaning that one major difference in opinion between Johnson and Coers (the state of the Bloomington economy during the recession) is largely irrelevant to this analysis. *Pet'rs Ex. A at 112*

68. Because of the improving state of the economy, we are also unconvinced by Coers' assertion that market participants would have given the cost approach little consideration. We find Johnson's use of the cost approach appropriate, and thus find his analysis and conclusions generally probative.

a. Johnson's Sales-Comparison Approach

69. CVS criticizes Johnson's sales-comparison analysis in three significant respects. First, it argues that his comparable properties were not physically similar to the subject property. CVS points mainly to what it claims are size differences between the buildings, writing in its brief, "For example, in the Johnson Report, he uses a 23,000 square foot building used as a fun center and planned for medical office use (comparable improved sale #2)…and an 87,000 square foot retail shopping strip center (comparable improved sale #5)." *Pet'rs Br. at 15*. CVS, however, misstates the evidence. Those two sales involved buildings of 4,520

and 20,195 square feet, respectively. CVS apparently mistook the site sizes for the building sizes.[11] While the actual size differences do detract from the reliability of Johnson's sales data, they are not nearly as large as CVS claims.

70. Second, CVS claims that Johnson should have only used sales of freestanding buildings that were used for retail both pre- and post-sale. We agree that Johnson should have used comparable retail properties that sold for retail use. Several of Johnson's comparables meet that description. CVS, however, points to no authority for a bright-line rule that a freestanding building may only be compared to other freestanding buildings, and we decline to create one today. It is one factor, albeit an important one, among many that should be considered in determining comparability of retail properties.

71. Third, CVS claims that Johnson violated USPAP by using a sale that occurred in January 2014, approximately nine months after the 2013 valuation date and well after the valuation dates for the 2011 and 2012 appeals. We have never imposed a strict bar on using sales from after a valuation date, provided the expert or party relying on those sales relates them to the valuation date, which Johnson did. Leaving that aside, USPAP does not categorically prohibit an appraiser from using sales from after the valuation date, but instead permits their use for "confirmation of trends." *Pet'rs Ex. B at U-75*. It does require an appraiser to select a logical cut-off date. *Id*. Perhaps the sale in question is beyond any logical cut-off date, at least for the earlier years under appeal. CVS does little to flesh-out that argument, and we will not make CVS's case for it. In any event, the sale in question is only one of five that Johnson considered, and he gave the greatest weight to two other sales.

72. While CVS raises significant issues with Johnson's sales-comparison analysis, particularly concerning the lack of physical comparability in the sales he used (strip centers as opposed to freestanding retail), Johnson acknowledged those shortcomings, and they are not fatal. His conclusions have some probative weight.

[11] We believe the error was inadvertent. But counsel should pay closer attention to detail.

c. Johnson's Income Approach

73. CVS also criticizes several aspects of Johnson's analysis under the income approach. It first argues that he used leases from incomparable properties. The argument has some merit. Johnson primarily used leases from retail strip centers, although he included one freestanding building. He justified his decision by pointing to the absence of leases for freestanding pharmacies in the Ellettsville/West Bloomington area that reflected the fee simple interest. While we agree that local data is preferable, data for more physically comparable properties from other areas may also be probative when properly adjusted for location.

74. We also note that the average rent from Ellettsville-area leases was well below Johnson's conclusions of $13.50 to $14.00 per sq. ft. His justification for the discrepancy—the subject property's physical and locational superiority—is not very convincing. Nonetheless, his rent conclusions fall within the range of all Ellettsville leases.

75. CVS also criticizes Johnson's expense estimates and capitalization rates. He and Coers relied on similar data in addressing those components. Though their conclusions differed slightly, they both adequately supported their choices. We need not parse their judgments on those points any further, because differences on other issues are far more important to their final opinions.

76. Thus, as with Johnson's sales-comparison analysis, the lack of physical similarity between his lease comparables and the subject property detracts from the reliability of his conclusions. But those conclusions still carry some probative weight.

d. Johnson's Valuation Opinions

77. As explained above, there are several problems with Johnson's valuations, with the central theme being the relative lack of physical similarity between his comparable properties and the subject property. Few, if any, appraisals are immune from criticism when subjected to

the adversarial process. Johnson's appraisal generally complies with USPAP, and he adequately supported several key judgments. His appraisal therefore carries at least some probative weight. We now turn to whether Coers' appraisal is more persuasive.

2. Coers' Opinions

a. Coers' Income Approach

78. The Assessor argues that by looking at the subleases for CVS brand and Walgreens stores, Coers unnecessarily relied on national data for one specific use, and a former use at that, to the exclusion of abundant local data for general retail use. According to the Assessor, that decision runs afoul of our decision in *Kohls Indiana, LP v. Howard County Ass'r*, pet nos. 4-002-10-1-4-00350 etc. (IBTR Dec. 31, 2014).

79. We disagree. Coers did not limit her data to properties either currently or previously occupied by national retail pharmacies. She instead looked at those subleases as one of three techniques for estimating market rent, because the stores were physically similar to the subject store. And they were all used for retail, both before and after the subleases. In any case, nothing in *Kohls* purports to prohibit an appraiser from looking at data for properties put to an identical use as the property being appraised. Instead, that decision stands for the proposition that true tax value does not limit an appraiser to such data. As we explained in a recent decision involving another property occupied by a CVS brand store:

> We do not mean to imply that the degree of similarity between the subject property's use and the uses of comparable properties is irrelevant. All else being equal, sales or leases of drugstores, as opposed to more general types of retail operations, might be the best indicators of the subject property's true tax value. But that does not mean sales and leases of other retail properties are irrelevant or that an appraiser's reliance on them necessarily means she is appraising something other than the property's true tax value.

SCP 2007-C-26-002, LLC v. Monroe County Ass'r, pet. nos. 53-005-09-1-4-00009 etc. (IBTR August 19, 2015).

80. That being said, Coers did not adjust any of the lease rates to account for differences in location. Perhaps she believed the locations were comparable. We cannot tell, because she did not discuss how the markets in which the subleased drugstores competed compared to the market in which the subject property competed. That detracts from the reliability of the subleases as an indicator of market rent.

81. The Assessor also takes issue with Coers' technique of estimating market rent as a function of return on cost, arguing it lacks independence from the cost approach and runs counter to Coers' own claim that market participants do not consider that approach. The Assessor additionally finds fault with how Coers applied the technique, criticizing her use of national or Midwest data, rather than local data, to develop a rate of return.

82. We agree that Coers' use of cost-based rent appears somewhat incompatible with her belief that market participants did not consider the cost approach. We also agree that she did not specifically tie her rate-of-return calculations to the local market. Despite those problems, we find that her cost-based rent analysis offers at least some indication of market rent.

83. Turning to Coers' third technique, both the Assessor and Tillema fault her for estimating rent as a percentage of gross sales without using the subject store's actual retail sales. Coers' argues that doing so would have risked valuing the operator's business enterprise instead of just the real property. Solely relying on the store's actual sales might risk valuing the business, but such data can be relevant, particularly as a part of one of three techniques used to estimate market rent. The Assessor also criticizes Coers' reliance on retail-sales data from 2006 and 2007. Although Coers adjusted that data, we agree with the Assessor that she offered largely conclusory explanations for her adjustments. Even after adjustment, the data pushes the limits of reliability. But absent evidence showing the adjustments were inappropriate, her conclusions carry some probative weight.

b. Coers' Sales Comparison Approach

84. The Assessor criticizes Coers' choice of comparable sales for various reasons, including the age and physical characteristics of the properties and the dissimilarity of the neighborhoods or markets in which they were situated. She also criticizes the lack of adjustments for sale conditions or for differences in frontage and use.

85. In particular, the Assessor criticizes Coers' Bloomington sales. The first, a former Blockbuster (improvements only), was sold to the owner of the underlying land. The Assessor claims that this sale was "not an arms length transaction yet Coers makes no adjustment." *Resp't Br. at 24.* The Assessor has raised a valid concern, however without a specific explanation of why an adjustment was necessary and what adjustment would have been appropriate, we will not fully discount the reliability of that sale.

86. The second Bloomington sale has a host of issues. The building is over 30 years older than the subject store and approximately a third the size. Though Coers adjusted the sale price to account for those factors, the size of the adjustments seriously detracts from the sale's reliability as an indicator of the subject property's value.

87. Given the lack of reliable local sales, the Assessor's criticism of Coers' location adjustments becomes even more convincing. Because she found a lack of reliable sales from the Ellettsville market, Coers relied on sales from other markets throughout Indiana. Although we have no qualms with that decision, it magnifies the importance of location adjustments. Yet Coers only supported these adjustments with a general explanation about how she considered traffic counts, population, income, etc. She did not explain how any of the locations of the comparable sales related to the Ellettsville market or the subject property. We are called on to weigh the opinions of two experienced, MAI appraisers. While nothing in the record suggests that Coers' adjustments were necessarily unreasonable, the degree to which appraisers convincingly explain their adjustments plays a significant role in weighing the persuasiveness of their valuation opinions.

c. Coers' Reconciliation and Decision not to Fully Develop the Cost Approach

88. The Assessor and Tillema criticize Coers for not developing the cost approach fully. Coers justified her decision by explaining (1) that the cost approach fails to capture external obsolescence in periods of national recession, and (2) that market participants would have given the approach little consideration. We are not entirely convinced. The evidence (including parts of Coers' appraisal report) paints a picture of an economy in recovery in 2011, and growing through 2013. In any case, her limited analysis under the cost approach has probative value. Her site valuation is more closely tied to the local market than are any of her other analyses. And her conclusions as to total depreciated cost, including land value, are actually slightly more than the assessment for each year. They are also within $100,000 of Johnson's reconciled valuation opinions. According to Coers, the only thing missing from her analysis is an explicit accounting for external obsolescence. But given the improving state of the economy during the years at issue, such obsolescence is not necessarily warranted. For this reason, we are not convinced that market participants would not have considered the cost approach during the years at issue.

89. Thus, like Johnson's appraisal, Coers' appraisal has significant shortcomings. But it still tells us something about the subject property's true tax value. The question, then, is which appraisal tells us more about that value?

C. Conclusions

90. Johnson's appraisal does. Coers used national and regional survey data as well as comparable properties from around the state (and one in Ohio) because she believed location was less important than other factors. But she largely failed to meaningfully relate her data to the local market. While her testimony about regional and national investment in the area mitigates that concern to some degree, we do not assume that all markets receiving regional and national investment are identical. Local conditions are still important, and Coers' lack of attention to the local market detracts from the persuasiveness of her valuation opinions. In the limited instances where she did adjust to the local market, she

did little to explain her adjustments. A conclusory paragraph asserting that she considered different factors and came to reasonable conclusions is not very convincing.

91. By contrast, Johnson looked first to the local market, reducing the need for such adjustments. Nonetheless, his appraisal also has significant shortcomings, the most important of which may be characterized as a lack of physical comparability between much of his data and the subject property. In particular, we find his abundant use of strip centers, without any specific relation to freestanding retail, troubling. Location and physical comparability are both significant factors, and one is not necessarily always more important than the other. Like most valuation questions, it is fact sensitive. And on these facts, we find that Coers' lack of accounting for the local market detracts more from the reliability of her opinions than Johnson's problems with physical comparability do from his.

92. We recognize that evidence here is similar to that presented in the *CVS 3195* and *CVS 6697* appeals. However, it was not identical. Parties should always keep in mind that each case stands on its own.

93. In this case, while both appraisals tell us something about the subject property's true tax value, neither is flawless. We find that Johnson's appraisal, which comes in slightly higher than the assessment for each year under appeal, more persuasive, but we do not entirely discount Coers' appraisal. We therefore decline the Assessor's invitation to raise the assessments. Taken as a whole, the evidence better supports the current assessments than it does the values from Johnson's appraisal. We accordingly order no change to the assessments.

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>.