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

REPRESENTATIVE FOR RESPONDENT: Marilyn S. Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

SCP 2007-C27-034 LLC, (CVS Corporation #6698-02),	)	Petition: 53-009-11-1-4-00018, 53-009-12-1-4-00487, 53-009-13-1-4-00034
Petitioner,	)	
	)	Parcel: 53-08-16-200-038.002-009
v.	)	
	)	County: Monroe
Monroe County Assessor,	)	
	)	Assessment Years: 2011, 2012, and 2013
Respondent.	)	

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

June 15, 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 appraisers—Sara Coers for the Petitioner ("CVS"),[1] and Wayne Johnson for the Monroe County Assessor.[2] While both appraisals are generally probative, they also have problems that significantly detract from

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[1] It appears that SCP 2007-C27-034 LLC owns the property and leases it to CVS Corporation #6698-02. To avoid confusion, we refer to the Petitioner as "CVS," (which for stylistic purposes will be treated as singular) and to the drugstores operated under the CVS brand name as "CVS brand stores."

[2] Ashley Johnson-Wilcoxon also signed the appraisal offered by the Assessor. Wayne Johnson appears to be the lead appraiser. For ease of reference, we will refer to the appraisal and the opinions contained therein as his.

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 Coers' site valuation coupled with Johnson's cost calculations minus entrepreneurial incentive to be the most reliable evidence of the subject property's true tax value for the years at issue.

PROCEDURAL HISTORY

2. CVS timely filed notices for review with the 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	$1,150,900	$1,325,300	$2,476,200
2012	$1,150,900	$1,203,800	$2,354,700
2013	$1,150,900	$1,224,000	$2,374,900

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 S. Meighen represented the Assessor. Paul M. Jones represented CVS.

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

Petitioner's Ex. A: Appraisal report prepared by Sara Coers,
Petitioner's Ex. B: Property record card for subject property,

Respondent's Ex. A: Appraisal report prepared by Wayne Johnson,[3]
Respondent's Ex. B: Addendum to appraisal report prepared by Wayne Johnson,
Respondent's Ex. C: APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE, (14th ed.).

[3] The Assessor asserts that the appraisal contains confidential information. She submitted a redacted version as well.

6. 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.[4]

FINDINGS OF FACT

A. The Subject Property

7. The property is roughly 2.79 acres and contains a freestanding[5] retail building of approximately 13,000 square feet that is in good repair. It is located at 2650 South Walnut Street at the south end of the "Walnut Street/Old SR 37 corridor" in Bloomington. During the years at issue, it was operated as a CVS brand store. *Pet'r Ex. A at 1-10, 20, 32-39; Resp't Ex. A at 19-24.*

8. Hook-SuperRx, Inc. bought the site for $1,318,000 (including the cost for fill and a retaining wall) in 2006. The improvements were built during 2007 and possibly into early 2008. SCP 2007-C27-034 LLC then bought the property and leased it back for operation as a CVS brand store. *Pet'r Ex. A at 18; Resp't Ex. A at 20.*

B. Expert Opinions

1. Coers' Appraisal

9. CVS engaged Sara Coers, Senior Vice President of the Pillar Valuation Group, Inc., to appraise the true tax value of the fee simple interest in the property. Coers certified that she appraised the property and prepared her appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Coers is a certified general appraiser, member of the Appraisal Institute ("MAI"), and a Level II assessor/appraiser. *Pet'r Ex. A at 1-3, 113-15.*

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[4] In its Brief, CVS asks the Board to take notice of the record from prior hearings involving CVS and Monroe County. As the parties did not include these records in their agreed stipulation of evidence, we deny this request.
[5] 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.

a. Coers' Research and Market Overview

10. As Coers explained, uses along the Walnut Street/Old 37 corridor include office, retail, and light industrial, surrounded by predominantly residential. Retail in the immediate area is located to the north of the subject property and ends immediately to its south, where development is primarily residential. Coers identified the relevant market area as primarily the one-mile radius around the subject property. She described conditions in the local market, including stable to increasing population and low to average unemployment as compared to the rest of the state, which she felt indicated "the area was affected by the recession but to a somewhat lesser degree than the rest of the state and country." She noted that there had been little to no new development since 2008-2009. She also cited to Marcus and Millichap, which describes various signs of economic recovery, including job growth, declining vacancy, and increased investment for 2011-2013. It also shows that retail in general, and particularly higher risk retail, was still suffering from uncertainty in the market. *Pet'r Ex A at 19-30.*

b. Coers' Valuation Approaches

11. Coers developed all three generally recognized approaches to value—the sales-comparison, income, and cost approaches—although she ultimately relied most heavily on her conclusions under the first two.

i. Coers' Sales-Comparison Approach

12. For her sales-comparison analysis, Coers focused on fee simple, rather than leased fee, sales. She believed the latter captured intangibles, such as tenant quality, rather than just the value of real estate. She defined the subject property's market as single-user properties of approximately 4,000–25,000 sq. ft., located in the Midwest, with a preference for central and southern Indiana. In selecting comparables, she mainly looked for fee simple sales of similarly sized properties for continued retail use. She also considered "construction, date of sale, and location." *Pet'r Ex. A at 62*.

13. The sales she chose were from across Indiana in markets such as Greencastle, the greater Indianapolis area, Lafayette, and Bloomington. One sale was from Cincinnati. They included, among others, two former Blockbusters, a former Walgreens, and a jewelry store. Her only Bloomington sale involved a Blockbuster building on a ground lease that sold to the owner of the underlying land. She adjusted each sale price for market conditions. She quantified the adjustment using changes in retail capitalization rates, which she felt was both reliable and preferable to a paired-sales analysis given the available data. She also adjusted for location. She estimated those 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. In some cases, she adjusted for buyer expenditures. Finally, she adjusted for differences in condition based on each building's age. *Pet'r Ex. A at 64-85.*

14. Coers gave the greatest weight to the sales with the most similar locations and physical features. She reached the following value conclusions:

Year	**Value**
2011	$1,740,000
2012	$1,810,000
2013	$1,810,000

Pet'r Ex. A at 85.

ii. Coers' Income Approach

15. Coers began her analysis under the income approach by estimating market rent. She reviewed the property's existing lease, but determined that it did not reflect market rent and was based on a series of business decisions that had very little to do with the fee simple interest in the property. She instead used three other techniques to estimate market rent. First, she examined subleases and listings of former CVS brand and Walgreens stores, as well as other freestanding retail spaces. The subleases averaged

$9.35/sq. ft. She believed they were relevant because the buildings were physically similar to the subject building. She considered a lease of a liquor store from the east side of Bloomington to be the most comparable, though she noted the property was in a better location than the subject property and had a smaller building. It rented for $16.48/sq. ft. *Pet'r Ex. A at 86-89.*

16. Second, Coers estimated market rent as a function of return on cost. For her cost numbers, she used the conclusions from her cost approach without any adjustment for external obsolescence. She then calculated rent based on the return an investor would require on those costs. Based on market surveys and her own observations, she used three different rates of return to calculate rent for each year: 7%, 8%, and 9%. Those calculated rents ranged from $13.46/sq. ft. to $18.21/sq. ft. *Pet'r Ex. A at 89-91.*

17. 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. She believed the median data for the entire country was "highly applicable" to Indiana based on its demographics and cost of living. 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 $450/sq. ft. to $475/sq. ft., depending on the assessment year. She then computed percentage rent by applying the low, median, and high percentage rates reported by *Dollars & Cents* (1.85%, 2.75%, and 3.1%) to her market-level retail sales for each year. The lowest computation for any year was $8.33/sq. ft., while the highest was $14.73/sq. ft. *Pet'r Ex. A at 91-94.*

18. Coers reconciled the values from the CVS brand and Walgreens store subleases, cost-based rent, and percentage rent, settling on market rents ranging from $15.50/sq. ft. to $16.25/sq. ft. for the various years at issue. *Pet'r Ex. A at 74.*

19. From that potential gross income, Coers subtracted allowances for vacancy and collection loss ranging from 14.85%-15.95%. She based those allowances on surveys of retail properties in a one-mile radius around the subject property 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. 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 net operating income ("NOI") ranging from $12.30/sq. ft. to $13.32/sq. ft. for the various years at issue. *Pet'r Ex. A at 85-101.*

20. 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 *RealtyRates.com* and the *Real Estate Research Corporation* ("*RERC").* She also considered rates extracted from sales of drugstores in the Midwest, including CVS brand and Walgreens stores. No sales were from Monroe County. 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 noted, however, that the extracted rates were not traditional rates based on NOI but were instead based on gross income. *Pet'r Ex. A at 102-05.*

21. Coers settled on overall rates ranging from 8% to 8.5% for the years at issue. She then loaded those rates with a percentage reflecting the landlord's share of the property tax burden (taxes paid during vacancy). Finally, she divided those loaded rates into her estimate of the property's NOI for each year to arrive at the following values:

Year	**Value**
2011	$1,870,000
2012	$1,850,000
2013	$2,070,000

Pet'r Ex. A at 105-06.

iii. Coers' Cost Approach

22. Coers began her analysis by using a sales-comparison technique to value the site as if vacant. She looked for sales involving sites of comparable size as the subject site. She chose seven sales, although she used only five of those sales for 2011 and six for 2012. The sites ranged from .98 to 3.33 acres and sold between March 2006, and August 2012. She included the 2006 sale of the subject site. But she did so with caution, explaining that companies like CVS brand stores and Walgreens have atypical motivations when buying land. She adjusted the sale prices to account for buyer expenditures and market conditions. She also adjusted for differences between the comparable sites and the subject site in terms of frontage and size, finding that the subject property had inferior frontage compared to some of the properties on corner sites and along the State Road 37. She did not adjust for location, because she felt the locations were sufficiently comparable. *Pet'r Ex. A at 44-50.*

23. Coers gave the most weight to those sales that were not in or around the State Road 37 corridor and reached the following site values:

Year	Value
2011	$1,030,000
2012	$1,090,000
2013	$1,170,000

Pet'r Ex. A at 50.

24. To estimate replacement costs for the improvements, Coers primarily relied on *Marshall Valuation Service*, a publication of Marshall & Swift. She used the base costs for a Class C drugstore of average construction quality, which she felt was very similar to the subject building. She made adjustments for number of stories, story height, perimeter, sprinklers, current costs, and local costs. She also trended the costs from the date of the report to each assessment date. She then added in an estimate of depreciated site improvements to arrive at a hard cost. Finally, she added soft costs, which she calculated at 5% of hard costs, to arrive at a total cost for improvements. *Pet'r Ex. A at 51-59*

25. Coers did not include entrepreneurial incentive. She pointed to three justifications for her decision: (1) entrepreneurial incentive is not always considered applicable for buildings constructed for owner users or built to suit for specific tenants; (2) the 2011 Real Property Manual and 2011 Real Property Guidelines do not contemplate it; and (3) considering the external obsolescence in the market, entrepreneurs would experience loss rather than profit. *Pet'r Ex. A at 56.*

26. She used the age-life method to calculate physical depreciation for the building improvements. 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. But she determined that external obsolescence was appropriate because of the disparity between the values indicated by her analyses under the sales-comparison and income approaches and the value indicated by the cost approach without any allowance for external obsolescence. She quantified external obsolescence by capitalizing the difference between what she determined was the property's market rent and the rent she estimated as a function of return on cost. *Pet'r Ex. A at 57-61.*

27. Based on that methodology, Coers applied external obsolescence ranging from $367,185 to $509,633, depending on the year at issue. She then subtracted those amounts from her cost calculations, added in the site value, and arrived at the following values under the cost approach:

Year	**Value**
2011	$2,100,000
2012	$2,020,000
2013	$2,240,000

Pet'r Ex. A at 57-61, 108.

c. Coers' Reconciliation

28. Coers believed that the income and sales-comparison approaches both had good quantity and quality of data and that they best reflected the motivations of market participants during the period covered by the appeals. She developed the cost approach because the building was only between three and six years old on the valuation dates. But she did not believe market participants would give it much consideration, particularly during a recession and recovery when the "sales and income approaches did not indicate values that would justify the cost of new construction." And she acknowledged that her technique for quantifying external obsolescence lacked independence and had limited reliability because she based her estimate of market rent, in part, on her cost-based rent. Thus, she gave the most weight to her conclusions under the sales-comparison and income approaches and arrived at the following reconciled values:

Year	Value
2011	$1,810,000
2012	$1,830,000
2013	$1,940,000

Pet'r Ex. A at 107-08.

2. Johnson's Appraisal

29. 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.[6] He is 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 USPAP. *Resp't Ex. A at 3-4; 134-43.*

[6] Member of the Appraisal Institute, Residential Member, and Member, Royal Institution of Chartered Surveyors, respectively.

a. Johnson's Research and Market Overview

30. Johnson identified the local market as Monroe County and the Bloomington area, which he described as above average when compared to neighboring counties. He pointed 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 identified the neighborhood as the South Walnut Street area, with the subject property located on the southern border. Most of the neighborhood is north of the intersection of S. Walnut St. and W. Country Club Dr./E. Winslow Rd. *See Resp't Ex. A at 28-66.*

b. Johnson's Valuation Approaches

31. Johnson also developed all three approaches to value. He noted that he used the best data available for his sales comparison approach, and that the cost approach "may be reliable due to the age of the structure." *Resp't Ex. A at 12.*

i. Johnson's Cost Approach

32. Like Coers, Johnson began his analysis by using a sales-comparison technique to estimate a site value. He reported information for sites bought to build CVS brand stores, including the subject site. But he did so only for reference and did not rely on those sales. He instead relied on six sales of sites that were either vacant or had improvements the buyers demolished. Two were from the west side of Bloomington, one was from the College Mall area, and three involved two parcels adjacent to the subject property. Johnson referred to the adjacent parcels as being connected with a former "creosote site" owned by CSX Transportation. The creosote site was contaminated with a variety of compounds, and contaminated material as well as gasoline and creosote tanks were removed from the site. According to Johnson, CSX bought the parcels adjacent to the subject property to control the creosote site, although he observed that the subject property "was not thought to be affected negatively," and that property in the area has frequently sold and leased. He did not explain whether the buyer's unusual motivation

affected the sale prices of the adjacent properties he used as comparables. *Resp't Ex. A at 23, 74-84*.

33. One of the two adjacent parcels sold twice—once in 2007 for $300,000 and again in 2010 for $375,000. Johnson relied on both sales in his analysis. In each case, he reported the parcel as being 43,560 sq. ft, or one acre, and he used that size in calculating the price per square foot, which was $6.89/sq. ft. for the 2007 sale and $8.61/sq. ft. for the 2010 sale. However, the sales disclosure form and property record card Johnson included in connection with the 2010 sale[7] both show the site as being 1.78 acres, or approximately 77,537 sq. ft. Johnson also relied on both sales in a paired-sales analysis he used to determine his market-conditions adjustment. In that section of the report, he described the parcel as being 1.78 acres. Thus, it appears Johnson used the wrong site size when calculating the unit price for the two sales. *Resp't Ex. A at 52, 74-87; Resp't Ex. B at 15-20.*

34. Johnson adjusted his sale prices to account for demolition costs and market conditions. He used 2% per year for his market-conditions adjustment, which he based on his paired-sales analysis and local economic data. He also adjusted for size differences, explaining: "Typically smaller site have a higher price per square foot." Finally, he adjusted some of the sales for what he viewed as superior locations. *Resp't Ex. A at 88.*

35. The adjusted sale prices ranged from $8.57/sq. ft. to $11.01/sq. ft. Johnson weighed all the sales equally and arrived at correlated values of $9.70/sq. ft. to $10.10/sq. ft., depending on the assessment year. That translated to the following values for the subject site:

[7] Johnson did not include any documentation for the 2007 sale.

Year	Value
2011	$1,180,000
2012	$1,205,000
2013	$1,230,000

Resp't Ex. A at 88-89.

36. Like Coers, Johnson used data for average Class C drug stores from *Marshall Valuation Service* to estimate the improvements' replacement cost new. He used modifiers for sprinklers and canopy and applied multipliers for floor area, height, current cost, and local cost. He also separately calculated the mezzanine. Finally, he used 12% of total costs to account for entrepreneurial profit, which he calculated at $154,106 (2011), $158,571 (2012), and $154,106 (2013). He did not explain why he thought entrepreneurial profit was justified or how he determined 12% was appropriate. *Resp't Ex. A at 89-98.*

37. As another way of justifying his costs, 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 91*.

38. Johnson calculated physical depreciation using the age-life method. After adding his final cost figures to his estimated site value, Johnson arrived at the following values for total depreciated costs, including entrepreneurial profit and site improvements:

Year	Value
2011	$1,456,401
2012	$1,430,320
2013	$1,326,899

He then added in his site value, and arrived at the following values under the cost approach:

Year	Value
2011	$2,635,000
2012	$2,635,000
2013	$2,555,000

Resp't Ex. A at 91-98.

ii. Johnson's Sales-Comparison Approach

39. For his sales-comparison analysis, Johnson selected sales from Bloomington, which included four leased strip centers and a dental office. The buildings ranged from 3,250 to 36,380 square feet. *Resp't Ex. A at 99-119.*

40. Johnson adjusted the sale prices for market conditions/time, size, and effective age/condition. He also adjusted for location, noting that the subject property's location was inferior to all of the comparable locations. 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	$2,625,000
2012	$2,625,000
2013	$2,690,000

Resp't Ex. A at 106-10.

iii. Johnson's Income Approach

41. Turning to the income approach, Johnson relied on lease data for Bloomington-area properties to estimate market rent. The leases included three strip centers, three banks, and a freestanding thrift store. He also relied on lease data from sales he used in his

sales-comparison analysis. The leased spaces ranged from 250 to 12,376 square feet, and rents ranged from $0/sq. ft. to $56.59 /sq. ft.[8] The freestanding thrift store was comparable in size to the subject building, and Johnson described it as being a similarly desirable location. That store rented for $14.75/sq. ft. beginning in January 2016. Johnson ultimately chose rents of $16.50/sq. ft. to $17/sq. ft., depending on the assessment year. *Resp't Ex. A at 111-26.*

42. Based on his opinion of the local market, Johnson deducted 5% of potential gross income to account for vacancy and collection loss, which he based on retail vacancy in the Bloomington area. He also deducted management and administrative expenses and an amount for reserves, arriving at the following NOI for each year: $191,596 (2011), $194,499 (2012), and $197,402 (2013). *Resp't Ex. A at 125-26.*

43. Johnson examined various sources in determining a capitalization rate. He looked at survey data from Price Waterhouse Coopers LLP. He used that survey data only as a benchmark because it was based on "investor institutional grade properties in the best of markets." He also looked at "net market leases" for CVS brand stores as well as data for Walgreens and Rite Aid. In addition, he extracted from sales of local buildings, including some of the properties from his sales-comparison analysis. Finally, he developed a rate based on a band-of-investment analysis, assuming, among other things, a 75% loan-to-value ratio, an interest rate of 4.5%, and a desired equity yield of 10%. He settled on an overall rate of 7.75% for each year. He then divided that into his estimated NOI to arrive at the following values:

Year	**Value**
2011	$2,470,000
2012	$2,510,000
2013	$2,550,000

Resp't Ex. A at 120-26.

[8] The leases for $0 were from spaces within strip centers. Johnson did not explain why the landlords did not charge rent for those spaces or why it was appropriate to use those rates in estimating market rent for the subject property. Nevertheless, he apparently included this data in his analysis, and presumably, his reconciliation.

c. Johnson's Reconciliation

44. 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. He apparently chose the lowest number for each year, arriving at the following reconciled opinions of value:

Year	Final Opinion
2011	$2,470,000
2012	$2,510,000
2013	$2,550,000

Resp't Ex. A at 128.

Conclusions of Law and Analysis

A. Burden of Proof

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

46. The property record card indicates that the assessment did not increase by more than 5% between 2010 and 2011, and CVS makes no argument that the burden should shift. Thus, CVS has the burden of proof for the 2011 tax year. For subsequent years, assigning the burden turns on our decision for 2011. However, 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. The Assessor's argument and Indiana's True Tax Value Standard

47. Before weighing the merits of the Johnson and Coers appraisals, we will address the Assessor's brief. She contests our holdings in two prior appeals involving different properties from Monroe County that were operated as CVS brand stores as well as the Tax Court precedent on which we based those holdings. In particular, the Assessor takes issue with the proposition that, "when a property's current use is its highest and best use and there are regular exchanges within its market, then value-in-use and market value are the same." *Resp't Br. at 12-13.* This concept is not novel; it has informed the Indiana Tax Court's interpretation of true tax value for over six years. *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"); *Millenium Real Estate Investment, LLC v. Benton County Ass'r*, 979 N.E.2d 192 (Ind. Tax Ct. 2012) ("[W]hile Indiana assesses real property on the basis of its market value-in-use, this does not mean that a subject property's assessed value and its market value will never coincide."); *Shelby County Ass'r v. CVS Pharmacy, Inc. #6637-02*, 994 N.E.2d 350, 354 n.5 (Ind. Tax Ct. 2013) (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*, 46 N.E.3d 1 (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.”).

48. The Assessor apparently wants us to ignore this precedent: “With the utmost respect to the Tax Court, there is disagreement with its trilogy of Meijer I, Trimas and Millenium.” Despite the Assessor’s “disagreement,” we are bound by the Tax Court’s precedent. We will not address this issue further except to highlight a few key points.

49. First, the Assessor argues briefly that the legislature’s passage of I.C. § 6-1.1-4-43 and -44 (2015) indicated that it found recent Board decisions “repugnant.” *Resp’t Br. at 10.* While we disagree that those statutes show such a specific legislative intent, they have since been repealed by 2016 Ind. Acts 204, § 11.[9] That same Act amended Ind. Code § 6-1.1-31-6, which now provides that a valuation of improved property does not reflect its true tax value if “the purportedly comparable sale properties supporting the valuation have a different market or submarket than the current use of the improved property, based on a market segmentation analysis,” that is “conducted in conformity with generally accepted appraisal principles.” I.C. § 6-1.1-31-6(d); 2016 Ind. Acts 204, § 13. The amended statute also provides that “[t]rue tax value does not mean the value of the property to the user.” I.C. § 6-1.1-31-6(e); 2016 Ind. Acts 204, § 13.

50. We note that each appraiser similarly analyzed the subject property’s market. Both appraisers relied on sales data from properties used for general retail. Consequently, there is no evidence that either appraiser considered sales of properties from the wrong market. In any case, we do not find either appraiser’s sales-comparison analysis very persuasive, and we do not rely on those analyses in reaching our final determination.

51. The Assessor limited her argument largely to disagreeing with the Tax Court’s interpretation of true tax value as applied in our decisions. In doing so, she neglected to analyze the relative strengths and weaknesses of the two appraisals in any detail, arguing

[9] Both parties made several additional arguments about this statute, however as it has been repealed, we need not address them.

instead that the appeals "are theory driven." *Resp't Br. at 2.* Our determination turns on the facts. Coers and Johnson used much the same methodology. Our decision rests largely on the relative strength of their appraisals and the persuasiveness of the parties' arguments. In a case like this, with appraisals from two experienced MAI appraisers, a party is ill advised to forgo a probing analysis of the appraisals. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that a party has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself). We turn now to those appraisals.

1. Johnson's Opinions

52. Johnson considered all three approaches to value in his final correlation. His appraisal has significant problems. Although we base our determination partly on his analysis under the cost approach, we do not find his overall valuation opinions especially persuasive.

b. Johnson's Cost Approach

53. CVS criticizes Johnson's analysis under the cost approach primarily because he failed to make any adjustment for external obsolescence. By neglecting to do so, CVS argues that he failed to adequately account for the impact of the national recession. *Pet'r Br. at 20-21.* While Johnson did not clearly explain the basis for his decision, the record generally supports it. Although there had been an historic recession, both Johnson and Coers offered evidence that the economy was in recovery during the years at issue in these appeals (2011-2013). Coers chose to include external obsolescence based largely on the difference between the values reflected in her cost approach (without accounting for external obsolescence) and the values indicated by her sales-comparison and income approaches. As discussed below, we do not find her analyses under those last two approaches particularly persuasive, and we are largely unconvinced that the subject property was significantly affected by external obsolescence during the years at issue.

54. CVS does not otherwise seriously criticize Johnson's cost approach analysis. Nevertheless, we must point out some additional problems that are readily apparent. First, we are troubled that Johnson included 12% entrepreneurial profit without explaining why it was justified or how he quantified it.

55. Beyond that, it appears Johnson used the wrong acreage in calculating the price per acre for two of his comparable sales involving the same parcel. Using the correct site size would have resulted in significantly lower unit prices. The 2007 sale would have been only $3.87/sq. ft. and the 2010 sale would have been only $4.84 sq. ft. The values he used were 78% higher than if he had used the correct parcel size. Third, it appears that the buyer in two of Johnson's sales (the second sale of the parcel discussed above and the sale of an adjacent parcel) may have had an atypical motivation—the desire to control property immediately around an environmentally contaminated site. Johnson neither adjusted for that motivation nor explained why such an adjustment was unnecessary.

56. Thus, Johnson failed to adequately explain his methods in some instances. And using the wrong parcel size in computing the unit prices for two of his comparable sales was careless. We do note that Coers' site valuations were relatively close to Johnson's, indicating that his site valuations may have been reasonably accurate despite those problems.

a. Johnson's Sales-Comparison Approach

57. CVS criticizes Johnson's sales-comparison analysis in two significant respects. First, it claims he violated USPAP by using a sale from 2014, which was after the valuation dates at issue. Johnson, however, pointed to a response to frequently asked questions under USPAP indicating, "[d]ata subsequent to the effective date may be considered in developing a retrospective value as a confirmation of trends that would be reasonably considered by a buyer or seller as of that date." *Resp't Ex. A at 12*. In any case, the Tax Court recently affirmed the use of post-valuation date evidence, provided it is properly related to the valuation date. *See Marion County Ass'r v. Simon DeBartolo Grp., LP*, 2016 Ind. Tax LEXIS 9 at *11 (Ind. Tax Ct. 2016). Thus, we give little weight to this

criticism. However, we do note that we find this data more persuasive for 2013 than for the earlier years from which it is further removed.

58. Second, CVS argues Johnson used sales of properties that were not comparable to the subject property. It points mainly to size differences between the buildings. Specifically, CVS criticizes Johnson's use of two approximately 30,000 sq. ft. strip centers and a 3,250 sq. ft dental office. CVS also claims that Johnson should have only used sales of freestanding buildings that were used for retail both pre- and post-sale.

59. We agree with much of this criticism. We are troubled by the absence of any sales of freestanding buildings of a similar size as the subject building. While strip centers and significantly smaller buildings may offer useful data, Johnson did not adequately explain how the data relates to a freestanding building such as the subject property. Given the lack of physical comparability in Johnson's sales data, we ultimately give little weight to his conclusions under the sales-comparison approach.[10]

c. Johnson's Income Approach

60. CVS also criticizes several aspects of Johnson's analysis under the income approach. First, it takes issue with his expense estimates and capitalization rates. We find little problem with his expense estimates, which are similar to Coers' estimates. As to capitalization rates, CVS specifically criticizes Johnson's use of local data from dissimilar properties to extract rates. That criticism has some merit, but it is offset by the fact that Johnson also developed a rate using a band-of-investment analysis and checked his conclusions against survey data similar to what Coers used in developing her capitalization rates. Under those circumstances, we find Johnson's capitalization rate generally reliable.

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[10] We are mindful that appraisers are often confronted with assignments where there are few or no sales of physically comparable properties. We have every reason to believe that Johnson presented the best data available, based on his reasonable decision to focus on the local market.

61. Second, and more significantly, CVS points to Johnson's use of leases from incomparable properties. He primarily used leases from retail strip centers and small banks. If anything, Johnson's most comparable lease—a 12,376 sq. ft retail building that rented for $14.75 per square foot—actually supports Coers' rent conclusions more than his own. As with Johnson's sales-comparison analysis, the lack of physical similarity between his lease comparables and the subject property detracts seriously from the reliability of his conclusions.

d. Johnson's Valuation Opinions

62. Thus, Johnson's appraisal has several problems, with the central theme being the relative lack of physical similarity between his comparable properties and the subject property. While we find aspects of his appraisal credible, his overall valuation opinions are not very persuasive.

2. Coers' Opinions

63. As explained above, the Assessor largely failed to offer any detailed criticism of the Coers appraisal. Nonetheless, several problems are readily apparent. We discuss those problems in evaluating the credibility of her opinions.

a. Coers' Sales-Comparison Approach

64. Coers' sales comparison analysis, while based on data from more physically similar properties than Johnson's analysis, is problematic because she did not explain her adjustments. Coers used sales from across Indiana as well as one sale from Ohio. Her lone sale from Bloomington was a building that sold to the owner of the underlying land. Coers neither adjusted for the buyer's apparent atypical motivation nor explained why such an adjustment was unnecessary. She made significant location adjustments to most of her other sales while offering only generic explanations for those adjustments.

65. We must weigh the opinions of two experienced, MAI appraisers who reached markedly different conclusions of value. Under those circumstances, it is imperative that the

appraisers thoroughly explain how they arrived at their conclusions, particularly for something as important as location adjustments. Coers' failure to do so detracts significantly from the reliability of her conclusions under the sales-comparison approach.[11]

b. Coers' Income Approach

66. With the exception of describing one store as being in a superior location, Coers did not adjust any of her market-extracted lease rates. She may have 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. She likewise used national or Midwest rather than local data to estimate a required rate of return without tying that data to the local market. We have similar misgivings about her estimate of rent as a percentage of sales.

67. We are even less convinced by Coers' vacancy estimates. She used survey data for vacancies from a one-mile radius around the subject property. That radius includes wooded areas as well as areas with primarily residential and office or light industrial development. Retail properties in those locations would not be as comparable to the subject property's location as the areas to the north, which Johnson included in his description of the subject property's neighborhood. Even in light of Johnson's physically dissimilar properties, we find Coers' radius particularly troubling given that she estimated vacancy rates roughly three times higher than what Johnson estimated.

68. As she did with her rent estimates, Coers relied significantly on national and regional survey data to determine capitalization rates. Although she also extracted rates from sales of other national retail drugstore properties, she acknowledged those rates were based on gross rents rather than NOI. And unlike Johnson, she did not use the band-of-

[11] We do not find Coers' decision to look outside the local market unreasonable. A lack of physically comparable sales near the subject property might necessitate a broader scope; either by looking at less physically comparable properties, or as Coers did, by looking outside the local area.

investment technique to develop an overall rate. We find Johnson's capitalization rate more reliable for each year because of the additional support he provided.

69. Thus, while Coers' conclusions under the income approach are at least some evidence of the property's true tax value, they are far from compelling.

c. Coers' Cost Approach

70. Coers applied a large adjustment for external obsolescence for each year under appeal. To justify the adjustment, she pointed to the difference between the property's value under the cost approach, taking into account all forms of depreciation other than external obsolescence, and her conclusions under the income and sales-comparison approaches. We are not persuaded. As discussed above, we are not convinced there was significant external obsolescence in light of the data from both appraisals suggesting the economy was in recovery during the years at issue. And given the problems with Coers' analyses under the sales-comparison and income approaches, the disparity in values does not necessarily point to the existence of significant external obsolescence.

71. Her method of quantifying obsolescence is similarly unconvincing. Not only did she admit her conclusions lacked independence and had limited reliability, she also failed to explain several key elements of her calculations. For instance, Coers did not specify what rate she used to capitalize the difference between her estimate of market rent and her estimate of rent as a function of return on cost. And because she used three different rates of return, she came up with three different conclusions of cost-based rent for each year. Yet she did not specify which of those numbers she used in her obsolescence calculations. It is not readily apparent that any of them would have resulted in obsolescence as great as Coers claims.

72. Though not as significant, we also have some reservations about Coers' decision to exclude entrepreneurial incentive from her calculation of replacement cost. Given our concerns about her findings on external obsolescence, we give little weight to her claim that external obsolescence in the market meant there was no entrepreneurial incentive.

By contrast, her claim that entrepreneurial incentive is not always considered applicable for built-to-suit construction finds some support in *The Appraisal of Real Estate*. According to that treatise, some appraisers observe that entrepreneurial profit often represents a "theoretical" profit in build-to-suit owner-occupied properties where, although an owner may consider additional operating profit due to a property's efficient design to be an incentive, the profit might only be realized years after the structure is built when it sells to a similar owner-occupant at a premium. *Resp't Ex. C at 574-75*. Of course, that seems at least partly inconsistent with Coers' treatment of the property as general retail throughout most of her appraisal. In any case, her explanation, though relatively weak, is still more convincing than Johnson's unexplained decision to apply entrepreneurial profit equaling 12% of replacement costs.

73. Thus, despite our less than enthusiastic endorsement of her conclusions regarding entrepreneurial incentive, we find Coers' calculation of replacement costs generally probative. The same is true for her site valuation.

d. Coers' Reconciliations

74. Apart from her legal arguments about the nature of true tax value, the Assessor's lone criticism of Coers' appraisal was that she should have afforded greater emphasis to the cost approach. Given the relative lack of data related to the local market and the building's recent construction, we agree. That does not mean we find Coers' overall conclusions under the cost approach reliable; to the contrary, her large adjustment for external obsolescence precludes such a finding. But neither of her other approaches is very persuasive either.

C. Conclusions

75. Both appraisers' valuation opinions are probative, but neither is especially persuasive. Both relied at least partly, and in Coers' case, almost exclusively, on the sales-comparison and income approaches. And their analyses under those approaches suffer from, among other things, a lack of data related to the local market for physically

comparable properties. Johnson recognized as much, and explained that the cost approach is a reliable method for valuing the property it that situation. We agree. Given the relative weakness of each appraiser's sales-comparison and income approaches, and in light of the building's recent construction, we believe the cost approach is the most reliable approach for valuing the subject property.

76. Each appraiser's analysis under the cost approach raises concerns. Coers did not support her finding of significant external obsolescence. Although we are not wholly convinced that the property was free from any external obsolescence, Coers' quantification of it was so unreliable that we are unable to apply it. Similarly, Johnson made serious errors in valuing the site, and he did not explain why entrepreneurial profit was justified or how he quantified it at 12% of replacement costs.

77. A finding that a portion of an appraisal is flawed does not necessarily mean that a party has failed to make a prima facie case. *Marion Cnty. Assessor v. Gateway Arthur, Inc.*, 43 N.E.3d 279, 285 (Ind. Tax Ct. 2015). Rather, if the Board determines "that parts of an appraisal are not probative, it should not then accept those parts of the appraisal to value the property." *Marion County Assessor v. Wash. Square Mall, LLC*, 46 N.E.3d 1, 14 (Ind. Tax Ct. 2015). *Washington Square Mall* and *Gateway Arthur* make clear that the Board is not compelled to accept or reject in whole an appraiser's final opinion of value. The Board may base a valuation on probative portions of an appraisal. *See Wash. Square Mall*, 46 N.E.3d at 14 (remanding to the Board to value the property based solely on the appraiser's direct capitalization method). Furthermore, the Board may consider the opposing party's arguments and evidence in evaluating an appraisal. *Gateway Arthur, Inc.*, 43 N.E.3d at 285 (affirming the Board's use of an appraisal after omitted property tax reimbursements were included).

78. We start by using Johnson's cost calculations, excluding only his line item for entrepreneurial profit. We recognize that his calculations differ slightly from Coers' calculations. For example, Coers used slightly higher base costs while Johnson used lower soft costs. The record does not allow a principled resolution of those minor

disputes. We side with Johnson, if only because he correctly recognized the importance of the cost approach in valuing the property for the years at issue. We use his physical depreciation estimate as well. We also recognize that because Johnson included entrepreneurial profit in the costs he depreciated, those numbers are slightly distorted. The discrepancy is small, and it is reasonably offset by the possibility that some external obsolescence is present.

79. Instead of using Johnson's problematic site valuation, we use Coers', which we find generally probative. That yields the following values, which we find are the best estimates of the property's true tax value for the years under appeal:

Year	**Value**
2011	$2,332,295
2012	$2,361,749
2013	$2,342,793

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

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