REPRESENTATIVES FOR PETITIONER:
Brent A. Auberry and Benjamin A. Blair, FAEGRE BAKER DANIELS LLP

REPRESENTATIVES FOR RESPONDENT:
Brian Cusimano, Attorney at Law
Heather A. Scheel, Attorney at Law

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Walgreen Co., as taxpayer and lessee of Independence Realty-Shelbyville LLC,	)	Petition Nos.: 73-002-09-1-4-81910, 73-002-11-1-4-00001, 73-002-12-1-4-00001, 73-002-13-1-4-00002
Petitioner,	)	
v.	)	Parcel No.: 73-11-04-100-154.000-002
Shelby County Assessor,	)	County: Shelby
Respondent.	)	Assessment Years: 2009, 2011, 2012, 2013

October 24, 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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

1. The parties offered competing valuation opinions from two appraisers—Sara Coers for the Petitioner, Walgreen Co., and Nick A. Tillema for the Respondent, Shelby County Assessor. Both appraisals have some probative value. But they also suffer from problems that detract from the reliability of the appraisers' overall valuation opinions. After weighing the evidence, we find Coers' valuation conclusions under the cost approach, absent her unsupported deduction for external obsolescence, to be the most persuasive evidence of the property's true tax value.

II. PROCEDURAL HISTORY

2. Walgreen contested its 2009, and 2011-2013 assessments.[1] The Shelby County Property Tax Assessment Board of Appeals ("PTABOA") issued a notice of its determination for the 2009 appeal, but failed to act on the others. Walgreen timely filed a Form 131 petition with us for each year.[2]

3. The PTABOA or the Assessor, as applicable, determined the following assessments:

YEAR	LAND	IMPROVEMENTS	TOTAL ASSESSMENT
2009	$494,200	$2,524,700	$3,018,900
2011	$494,200	$2,524,700	$3,018,900
2012	$494,200	$2,518,600	$3,012,800
2013	$494,200	$2,480,500	$2,974,700

[1] The 2010 assessment year is not before the Board.

[2] For its 2011-2013 petitions, Walgreen had the option of waiting for the PTABOA to act or, in the alternative, filing petitions with the Board. *See* Ind. Code § 6-1.1-15-1(o) (allowing a taxpayer to appeal to the Board at any time after the maximum time for the PTABOA to hold a hearing or issue a determination has elapsed).

4. Beginning on January 19, 2016, our designated administrative law judge, Jacob Robinson ("ALJ"), held a three-day hearing on Walgreen's petitions. Neither he nor the Board inspected the property.

5. Coers and Tillema were sworn and testified.[3]

6. Walgreen submitted the following exhibits:

Exhibit P-1:	Appraisal report prepared by Sara Coers
Exhibit P-2:	Property record card for Parcel No. 73-11-04-100-154.000-002 dated October 28, 2010
Exhibit P-3:	Property record card for Parcel No. 73-11-04-100-154.000-002 dated June 20, 2014
Exhibit P-4:	Aerial photograph of subject property
Exhibit P-5:	Photograph of eastern entrance to subject property
Exhibit P-6:	GIS information and aerial photograph of Parcel No. 73-11-04-100-131.000-002
Exhibit P-7:	IRED lease summary for 1015 E. S.R. 44
Exhibit P-8:	IRED lease summary for 1615 E. Michigan Rd.
Exhibit P-9:	IRED lease summary for 2546 E. S.R. 44
Exhibit P-10:	Demonstrative exhibit comparing Tillema, Coers, and Assessor's land valuations for subject property

7. The Assessor submitted the following exhibit:

Exhibit R-1:	Appraisal Report prepared by Nick A. Tillema

8. The record also includes the following: (1) all pleadings, briefs, and documents filed in the appeals, including the parties' pre- and post-hearing briefs and proposed findings of fact and conclusions of law; (2) all orders and notices issued by the Board or our ALJ; and (3) the three-volume hearing transcript.

[3] Gerald McNicholas, Walgreen's supervisor of real estate tax, attended the hearing but did not testify.

III. Findings of Fact

A. The Subject Property

9. The subject property is located at 1010 East State Road 44, Shelbyville. It contains an approximately 14,859-square-foot freestanding retail building, a parking lot, and other related improvements on an irregularly shaped 3.57-acre site. The site's topography is generally level and at street grade, but the rear of the site is sloping. And there is a guardrail along the northeast corner of the parking lot that acts as a barrier to a 30-to-40-foot drop-off to a below-grade area. A retaining wall supports this portion of the parking lot. The record is unclear whether some part of the area below the drop-off is used to collect or dissipate water run-off from the parking lot. Tillema referred alternately to a retention pond, a detention pond, and simply a depression. Coers' appraisal contains a sketch indicating that a retention pond was at least proposed at one time. But it does not appear to have been built. *Tr. at 31-32, 63-65, 435-41, 575-96, 745-46, 716-19, 749-51; Ex. P-1 at 5-13, 39, 41, 44-46, 51; Exs. P-2 – P-6; Ex. R-1 at 6, 30, 54-64.*

10. During the years under appeal, Independence Realty-Shelbyville, LLC owned the property and leased it to Walgreen. Independence Realty bought the property, subject to Walgreen's lease, from Amos Development, LLC for $4,750,000 in March 2007. Neither party relied on this sale or claimed it accurately reflected the true tax value for any year under appeal. *Ex. P-1 at 21, 111; Ex. P-2*.

B. Expert Opinions

1. Coers' Appraisal

11. Walgreen engaged Coers, senior vice president of Pillar Valuation Group, Inc., to appraise the property. She holds the MAI designation from the Appraisal Institute and is a certified general appraiser in both Indiana and Ohio. She certified that she appraised the property and prepared her appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Tr. at 18-20; Ex. P-1 at 1-2, 140-46*.

12. Coers developed all three generally recognized approaches to value (the cost, sales-comparison, and income approaches) because she concluded they all potentially applied. Because she was estimating the property's true tax value, which is based on the property's current use, she did not develop an opinion of its highest and best use. But she expected such an analysis would show its highest and best use was for retail. *Tr. at 71-74; Ex. P-1 at 49-50*.

a. Coers' Market Overview

13. In her market overview, Coers described the property as being located along the primary thoroughfare linking I-74 to downtown Shelbyville. It sits between the interstate and downtown in a transitional area near a vacant grocery store and a few other mostly vacant retail properties. According to Coers, the primary area for newer retail development along the corridor is close to the interstate, although some retail development is occurring in downtown Shelbyville as well. *Tr. at 41-45.*

14. Coers gave a detailed overview of the Shelbyville and the Shelby County markets, analyzing factors such as population, household income, and unemployment for the years under appeal. She found the area had a relatively stable population with only moderate growth. Shelby County's unemployment levels were generally in line with statewide levels, except at the peak of the recession when the county's unemployment was higher. Shelbyville's median household income was much lower than it was for Shelby County, the region, Indiana, and the nation as a whole. In Coers' opinion, that information affected the amount potential buyers or investors were willing to pay for a property in the Shelbyville market. *Tr. at 47-49; Ex. P-1 at 26-28.*

15. She determined the relevant market area as primarily the three-mile radius around the property. She analyzed the supply and demand for retail space within this area by researching trends in the availability, absorption, and historical deliveries of retail space. She considered those market conditions in making location adjustments under her sales-comparison analysis. They also affected her analysis under the income approach. For

example, Coers explained that higher availability represents an oversupply of space, which increases estimated vacancy and collection losses. It can also depress rental rates and raise capitalization rates due to the increased risk of investing in the area. *Tr. at 54-55; Ex. P-1 at 26-32.*

16. Coers also analyzed market conditions for general retail space as well as how the national recession affected the retail market during the years at issue. She relied on a national retail report published by Marcus & Millichap for each year under appeal. The commercial real estate market crashed in October 2008. Following the crash, both national and local retail markets significantly declined in 2009. By 2011, the retail market had reached the bottom and buyers started to return. It continued to show modest improvement into 2012 and 2013, but people were not "buying in smaller markets like Shelbyville as much, unless they had a very risk-averse product. They were looking for leased-fee interest and high-quality tenants, or they were looking to avoid these types of markets entirely." *Tr. at 55-57; Ex. P-1 at 33-36.*

b. Coers' Land Valuation

17. Coers looked at sales of comparable sites to estimate the subject property's site value, which she explained is usually the most reliable method for valuing land. She further explained that while the subject property is 3.57 acres, only about 2 acres are usable because of the parcel's slope and irregular shape. She pointed out that the Assessor categorized 2 acres as primary land and 1.57 acres as undeveloped useable. She therefore analyzed the site in two ways—first valuing only the usable area, and second valuing the entire 3.57 acres as a check on the reasonableness of her conclusions. *Tr. at 108; Ex. P-1 at 51; Ex. P-2.*

18. She began by researching comparable land sales and "funneling [the data] down based on confirmation of those properties being arm's length sales, that they sold for retail use, [and] that they are going to compete in a similar market." She searched for comparable land sales in the immediate area and county, because in her experience, "location really

matters when you're talking about what people are going to pay for land." She felt there were enough comparable sales in Shelbyville that she did not need to expand her search to sales outside that market. She did not locate any sales to CVS or Walgreen stores that met her search parameters. In any case, she explained that those companies generally pay above-market prices based on business decisions unrelated to what other market participants are willing to pay for land. Thus, rather than using CVS or Walgreen sales, Coers selected "time-relevant sales for retail [use] that were similar in size [and] similar in location," verifying her data with "every source that [she] could get [her] hands on," including brokers, parties to the transactions, and public records. *Tr. at 75-78*.

19. Coers ultimately chose sales from the same retail corridor where the subject property is located. She then considered adjustments to the sale prices for market conditions, physical characteristics, and locational differences. *Tr. at 86-87; Ex. P-1 at 57-58*.

20. To adjust for market conditions, Coers looked at changes in capitalization rates for the best properties in the best locations. She viewed those changes as a barometer of risk to track movement in the market. She used survey data for first-tier retail properties published by Real Estate Research Corporation ("RERC") in *The Real Estate Report*.[4] She took the average rate as of each valuation date and compared it to the average rate as of each comparable property's sale date to determine a percentage difference. According to Coers, her methodology showed "movement in the market based on the actions and perceptions of market participants who own and develop retail." *Tr. at 89, 92; Ex P-1 at 57*.

21. To calculate her size adjustments, Coers used a paired-sales analysis of two sites that were extremely similar in every way except size. She took the difference in the price-per-square-foot for each sale and divided it by the difference in the sites' respective areas, which yielded a rate of change that she could apply across her comparable sales.

[4] RERC is an independent commercial valuation and consulting firm.

According to Coers, the appraisal community considers this "the best technique for adjusting for land size." *Tr. at 92-93*.

22. Coers calculated her location adjustments using three sets of paired sales. Her analysis indicated a 40% difference between the newest development on the south side of SR 44 and the subject property's location. It also indicated a 20% difference between the sales near I-74 or on the north side of SR 44 and the subject property's location. Because the paired sales were not otherwise identical, she then halved those numbers to avoid over-adjusting for location. Doing so, however, did not reflect a lack of confidence in her analysis. *Tr. at 97-98; Ex. P-1 at 58*.

23. Coers gave the greatest weight to the sales that were most similar to the subject property in size and location, and she applied the adjusted per-acre values to the two acres she identified as usable area. She checked her conclusions for reasonableness by using the same sales to value the entire 3.57-acre site. In that analysis, the size disparity between the subject site and the comparable sites was much greater, and the negative adjustments to the per-acre rate were correspondingly larger. Her conclusions when she considered only the two usable acres were within the range of the adjusted sale prices from her gross-acreage analysis. Ultimately, Coers estimated the following land values:

ASSESSMENT DATE	**VALUE**
March 1, 2009	$480,000
March 1, 2011	$480,000
March 1, 2012	$500,000
March 1, 2013	$540,000

Tr. at 108; Ex. P-1 at 67.

c. Coers' Cost Approach

24. Coers used data from Marshall Valuation Service to estimate the replacement cost new of the subject property's improvements. She selected the class C drugstore category because the example for a store of average construction was similar to Walgreen's prototype. The base cost for the category was $98.55/sq. ft., which she adjusted upward by $3.07 to account for sprinklers. She then used multipliers to further adjust the base cost for area perimeter and story height. She accounted for locational differences and applied current-cost and local-cost multipliers, yielding an adjusted base cost of $97.30/sq. ft. for the building improvements. She then trended the adjusted costs to the appropriate valuation date for each year. *Tr. at 112-17; Ex. P-1 at 68-72.*

25. Coers also used Marshall Valuation Service to determine costs for site improvements, such as paving, walks, curbs, dumpster enclosures, and the retaining wall. Finally, she added soft costs of 5% to account for items related to construction but not reflected in the Marshall Valuation Service base costs, such as appraisal fees, and excessive engineering and architectural costs. *Tr. at 117-8; Ex. P-1 at 73-74.*

26. Although Coers considered adding entrepreneurial incentive, she ultimately determined it was not appropriate. She gave several reasons for her choice: (1) developers often cannot realize that incentive in markets where there is external obsolescence; (2) they do not build entrepreneurial incentive into their costs when developing build-to-suit properties, choosing to realize profit through the lease instead; (3) such incentive is not necessarily appropriate for owner-occupied properties; and (4) Indiana's assessment manual and guidelines do not contemplate it. *Tr. at 119-21; Ex. P-1 at 74.*

27. Coers then analyzed depreciation, which she broke down into physical deterioration, functional obsolescence, and external obsolescence. She used the age-life method to estimate physical deterioration separately for the improvements' short-lived and long-lived components. She explained that she eliminated any obsolescence attributable to superadequacies conforming to Walgreen's business model by using replacement costs for a building with similar utility rather than the building's actual construction costs. So she did not adjust for functional obsolescence. *Tr. at 122-23; Ex. P-1 at 75*.

28. But she did adjust for external obsolescence. She found that the property suffered from market-wide external obsolescence due to the recession. She considered both of the generally accepted techniques for measuring external obsolescence: paired-sales analysis and capitalizing the difference between feasibility income and market income. She explained that paired-sales analyses are useless during periods of market-wide obsolescence because all sales are affected. She therefore used the second technique. However, she admitted, "its reliability is limited because the cost-based rent was one of the rental rate techniques used to determine a market rental rate." After applying that admittedly flawed technique, Coers estimated external obsolescence ranging from $265,817 to $446,822, depending on the year. *Tr. at 124-28; Ex. P-1 at 75-82.*

29. After adding the depreciated value of the site and building improvements to her land value, Coers reached the following conclusions under the cost approach:

ASSESSMENT DATE	**VALUE**
March 1, 2009	$1,470,000
March 1, 2011	$1,450,000
March 1, 2012	$1,300,000
March 1, 2013	$1,520,000

On direct examination, Coers testified that “a mystery $60,000 . . . got pulled into my subtotal” for 2009. That caused her to recalculate several other numbers. The recalculation led to a difference of $5,000 to $10,000 (depending on rounding) less than her original conclusions. The following table shows her conclusions with those recalculations:

IMPROVEMENTS	Size	Base Cost/SF	Totals
Drug stores	14,820	$88.45	$1,310,857
Subtotal			$1,310,857
Site Improvements			$113,000
TOTAL HARD COSTS			$1,423,857
Soft Costs	5%		$71,193
Subtotal			$1,495,050
Entrepreneurial Profit	0%		$0
TOTAL COSTS			$1,495,050
Less Depreciation			
Physical Curable		-	
Physical Incurable	9%	$123,654	
Functional Curable	0%	$0	
Functional Incurable	0%	$0	
External	28%	$377,309	
Total Depreciation			$500,963
Depreciated Value of Site & Bldg Imp			$994,087
Depreciated FF&E			$0
Plus Land Value			$480,000
VALUE INDICATED BY COST APPROACH			$1,474,087
Rounded			$1,470,000 or $1,475,000

Tr. at 126-8; Ex. P-1 at 78-81.

d. Coers' Sales-comparison Approach

30. Coers began her sales-comparison analysis with a market and buyer profile. She determined that the typical buyer for a property like the subject at the relevant price point is an investor/speculator or owner/user looking for single-user properties between 4,000 and 25,000 square feet in the Midwest, with a preference for central Indiana. She primarily looked for sales where the interest transferred was fee simple, the sale was for continued retail use, and the building was comparable in size to the subject building. She gave secondary consideration to finding sales of buildings that were comparable to the subject property in terms of construction and location and that occurred near the valuation dates at issue. *Tr. at 131-32, Ex. P-1 at 82*.

31. Coers started with properties from Shelbyville and Shelby County but did not find enough data from those markets. She therefore broadened her search, eventually identifying 10 generally comparable properties across Indiana, including properties from Carmel, Westfield, Fishers, Indianapolis, Lafayette, Greencastle, and one from Shelbyville. She also chose a sale from Cincinnati, Ohio. All were freestanding buildings bought for continued retail use, including two that previously had been leased for use as Walgreen stores. After interviewing the brokers involved in the Walgreen sales, Coers decided that their sales prices reflected fee simple value, because the buyers were motivated by the utility of the properties for lease on the open market rather than by the remaining payments on the existing leases. *Tr. at 133-40, 285*; *Ex. P-1 at 84-102*.

32. Next, Coers adjusted the sales prices to account for differences between the comparable sales and the subject property in terms of market conditions, location, size, age, condition, and various physical characteristics. She used the same technique to quantify her market-conditions adjustments as she used in her analysis of land sales. In making her location adjustments, she considered the surrounding development, population, and median household income for each comparable property as well as its traffic exposure and visibility. Each factor indicated an amount, or at least a direction, for the adjustment.

She then reconciled those indications to determine what she believed was a reasonable overall location adjustment for each sale. *Tr. at 135-62, 352-53; Ex. P-1 at 109-10*.

33. After making her adjustments, Coers gave the greatest weight to the sales she believed were most relevant and came to the following conclusions under the sales-comparison approach:

ASSESSMENT DATE	**VALUE**
March 1, 2009	$1,240,000
March 1, 2011	$1,290,000
March 1, 2012	$1,290,000
March 1, 2013	$1,330,000

Tr. at 153, 156-57, 160, 162; Ex. P-1 at 110.

e. Coers' Income Approach

34. Coers began her analysis under the income approach by determining market rent for the subject property. She reviewed Walgreen's existing lease, but determined it was part of a build-to-suit lease transaction that was not exposed to the market. She therefore concluded that it did not reflect market rent. Because she had limited data, she explored all available techniques for estimating market rent, using each as a "check and balance" against the others. *Tr. at 167-68; Ex. P-1 at 111*.

35. She first looked at eight existing leases and listings for comparable properties, while avoiding build-to-suit leases and sale-leasebacks. All the comparable properties were freestanding retail buildings from Indiana. More than half were former Walgreen or CVS stores. The average rent was $9.60/sq. ft. However, Coers acknowledged that the lease dates did not coincide with the relevant valuation dates for these appeals, and most of the data came from listings rather than from consummated leases. These weaknesses led her to consider two other techniques. *Tr. at 168-73; Ex. P-1 at 114*.

36. For the first, she calculated rent as a function of return on cost, often called feasibility rent because it determines whether construction can be justified. Under that approach, rent is "calculated by applying an appropriate rate of return to the depreciated building costs (to account for the age/condition of the building) prior to the deduction of external obsolescence." Based on a review of market surveys and her experience appraising properties in Indiana, she selected three potential rates of return: 7%, 8%, and 9%. She then multiplied the values from her cost approach (excluding any deduction for external obsolescence) by those required returns to arrive at rents ranging from $8.27/sq. ft. to $11.60/sq. ft. *Tr. at 174-76; Ex. P-1 at 114-16*.

37. For the second alternative technique, Coers calculated rent based on a percentage of gross sales. Because using Walgreen's actual sales volume from the property would risk valuing its business enterprise rather than just the real estate, she instead estimated a typical user's gross sales. Coers primarily relied on *Dollar & Cents/The SCORE*, which "indicates a typical range of sales and percentage rents for drug stores in neighborhood/community retail." She adjusted that data upward to reflect the annual growth in the retail and drug store markets, but she selected values at the lower end of the range because Shelbyville has a substantially lower median household income than the state or national averages. She then took the projected market-level sales and multiplied them by the range of percentage rents indicated by *Dollar & Cents/The SCORE* to determine yearly rent. Finally, she divided the yearly rents by the subject property's total area to compute a range of $5.92/sq. ft. to $11.32/sq. ft. *Tr. at 176-81; Ex. P-1 at 116-19*.

38. Coers reconciled her conclusions under the three techniques and settled on market rents ranging from $9.50/sq. ft. to $9.75/sq. ft. for the years under appeal. Combined, the three techniques gave her "great confidence" in her reconciled estimates. In addition to market rent, she also accounted for amounts attributable to fixed expenses, other than taxes, for which a tenant would reimburse the owner under a triple-net lease. For the property type at issue, that was limited to insurance. *Tr. at 181-82*; *Ex. P-1 at 120*.

39. From that potential income, Coers subtracted an allowance for vacancy and collection loss ranging from 13.7% to 17.9%, which she based on a CoStar survey of retail properties within a three-mile radius of the subject property. She then deducted market-level expenses, which she estimated using data from three comparable drugstores from Indiana and published information from the Institute for Real Estate Management's *Income/Expense Analysis: Shopping Centers.* The only two expenses were insurance, which the tenant would reimburse, and a management fee, which she estimated at 4.5% of effective gross income. Because she determined investors would not have required reserves for any year except 2012, she included them as an expense only in 2012. Her analysis yielded pro forma net operating income ("NOI") ranging from \$6.89/sq. ft. to \$7.99/sq. ft. for the various years under appeal. *Tr. at 184-93; Ex. P-1 at 120-29*.

40. Coers then capitalized her pro forma NOI to reach a value conclusion for each year. She drew capitalization rates from national market surveys and regional data. She also surveyed leased fee sales of drugstores in or near Indiana that were already vacant and of a similar risk class, or that had ten years or less remaining on the existing lease. Coers settled on overall rates ranging from 7.75% to 8.50% for the years under appeal. She then loaded those rates with a percentage reflecting the landlord's share of the property tax burden (taxes incurred during periods of vacancy). Finally, she divided her pro forma NOI for each year by the relevant loaded capitalization rate, resulting in the following conclusions under the income approach:

ASSESSMENT DATE	**VALUE**
March 1, 2009	\$1,280,000
March 1, 2011	\$1,370,000
March 1, 2012	\$1,210,000
March 1, 2013	\$1,460,000

Tr. at 195-200; Ex. P-1 at 130-35.

f. Coers' Reconciliation

41. Coers placed the most weight on her conclusions under the sales-comparison and income approaches. She believed market participants would not seriously consider the cost approach because the cost of new construction would not be justified during a recession. She also believed that approach was less reliable because her technique for quantifying external obsolescence required her to use data from her income approach. *Tr. at 201-02; Ex. P-1 at 137.*

42. Finally, Coers used changes in the Consumer Price Index ("CPI") and capitalization rates to trend her conclusion for March 1, 2009, back to the January 1, 2008 valuation date for that assessment year. She ultimately settled on the following values:

ASSESSMENT DATE	VALUE
March 1, 2009 (trended to January 1, 2008)	$1,310,000
March 1, 2011	$1,330,000
March 1, 2012	$1,250,000
March 1, 2013	$1,400,000

Tr. at 204-06; Ex. P-1 at 137-39.

2. Tillema's Appraisal

43. The Assessor offered an appraisal report from Tillema. He is an Indiana Certified General Appraiser with Access Valuation, LLC, and he has the following designations: MAI, SRA, AI-GRS, AI-RRS, CCIM. With assistance from Jayne C. Flatt, an appraiser trainee, he appraised the true tax value of the fee simple interest of the subject property. Like Coers, he certified that he appraised the property and prepared his report in conformity with USPAP. *Tr. at 369-70, 410-11; Ex. R-1 at 112, 117, 122.*

a. Tillema's Market Overview

44. In his market-area analysis, Tillema discussed the national, regional, local, and retail-pharmacy markets for the years under appeal. He also discussed the national net-lease market. He focused on external factors affecting the subject property's value, such as area demographic shifts, local infrastructure, and economic trends and growth cycles within the area. *Ex. R-1 at 21-53.*

45. Tillema believes the national market provides insight into what is going on in the mind of typical market participants at any given time. In 2009, the U.S. economy was in a recession. At the beginning of 2011, there were fears it was heading for a double-dip recession, but those fears had abated by year's end. Nevertheless, the economy was still in recession throughout 2012. Although unemployment levels were still rising, they showed some signs of stabilizing. By 2013, unemployment levels were stabilizing and a moderate economic recovery was underway. *Tr. at 424-26; Ex. R-1 at 24, 27, 30, 33.*

46. For his regional-market survey, Tillema described the subject property's location as within the southeast portion of the Indianapolis Carmel Metropolitan Statistical Area ("Indianapolis MSA"). During 2009, the Indianapolis MSA "had suffered from the highest bankruptcy filings and foreclosure rates in the country, resulting in depressed consumer spending." While this trend continued into 2011, there were positive signs indicating a slow-to-moderate recovery in 2012. By 2013, the regional economy had picked up, although not quite to its pre-recession levels. *Tr. at 436-30; Ex. R-1 at 34, 39, 41.*

47. In his local-market survey, Tillema described the property as being located in a commercial corridor containing mostly retail uses. It has easy access to major and secondary roadways linking it to downtown Shelbyville and Interstate 74. It is also close to shopping, restaurants, educational facilities, worship, and recreational opportunities. Tillema testified that many of the retail stores and some entire strip centers in the area

between downtown Shelbyville and the interstate have closed, while the Walmart near the interstate is doing fairly well. *Tr. at 430-31; Ex. R-1 at 45.*

48. To give a better perspective, Tillema provided an analysis of the retail-pharmacy market. Although Independence Realty's interest in the property is subject to Walgreen's existing lease, it is still interested in the state of the pharmacy industry in general. Tillema found that the population of people over 50 years old living in Shelbyville continues to increase. Thus, he concluded it is a growth market for retail pharmacy and one in which a typical owner of a national pharmacy would want a presence. He also discussed the national net-lease market because he believed that fee simple owners of pharmacy properties would be interested in what was going on in that market. *Tr. at 432-35; Ex. R-1 at 49-53.*

49. Tillema emphasized that Indiana bases a property's true tax value on its current use rather than its highest and best use. Nevertheless, he analyzed the subject property's highest and best use. He concluded that its highest and best use as if vacant was for commercial use and as improved was for a national pharmacy. Thus, he believed the use during the years at issue was its highest and best use. *Tr. at 48-49, 451; Ex. R-1 at 65-69.*

b. Tillema's Land Valuation

50. Tillema agreed that part of the property "cannot be used because of its topography." But he thought the whole 3.57-acre site was necessary for the property's use because an area below the drop-off contained what he alternately referred to as a retention pond, a detention pond, or a depression that he believed was used to collect and dissipate water run-off from the parking lot. In his view, without something to control the run-off, the houses bordering the north side of the property would be endangered. *Tr. at 435-41, 575-96; Ex. R-1 at 6, 30, 54-64.*

51. The parcel sold for $700,000 in 2005, but significant work was needed to make it a suitable retail site. An existing house and outbuildings had to be demolished. The site required shoring up to ensure it could withstand commercial use and would drain

properly. Additional work was also needed to create access from the stoplight and another access point. Tillema could not find cost estimates for this site work. *Tr. at 456-57.*

52. Like Coers, Tillema used the sales-comparison method to value the land. Because its highest and best use as if vacant was commercial, he looked for sales of vacant land zoned for commercial use. He determined that sales from Shelbyville were higher than the rest of the county because it is the largest market. The Shelbyville sales averaged $225,300/acre, with a median of $130,522/acre. *Tr. at 454; Ex. R-1 at 71-72.*

53. But, Tillema chose not to use the Shelbyville sales. He testified, "when we're looking at value-in-use, we're asking what can this property be used as? If the demographics work, then we can put it to the use of a national pharmacy." This led him to investigate what owners of properties used for national pharmacies looked for when buying property, but he did not discuss any specific requirements. He identified eleven land sales he felt were indicative of what CVS or Walgreen paid for land in Indiana, but he did not verify all of them. He used only one of those sales—4949 N. S.R. 135 in Bargersville—in his analysis, and then only for 2011-13. *Tr. at 453-54, 457-58; Ex. R-1 at 73-85.*

54. For 2009, Tillema disregarded the eleven land sales he previously identified. Instead, he selected three sites from Bargersville, Avon, and Bloomington that sold between August 2005 and March 2008 for development as CVS stores. According to Tillema, the sites: (1) were vacant when sold and were later developed for their highest and best use; (2) were located within the immediate area; (3) were equally as attractive as the subject property to the typical buyer; and (4) were approximately the same size as the subject property. *Ex. R-1 at 74-76.*

55. Tillema adjusted the sale prices for site size, visibility, and access. He quantified each adjustment as 5% of the sale price. In his appraisal report, he stated that all three comparables had corner locations with visibility from two roadways and that he applied a

negative adjustment to reflect their superior visibility. By contrast, he testified at the hearing that Comparable #2's visibility was "generally similar" to the subject property and that he ultimately did not adjust its sale price based on visibility. Tillema also asserted in his appraisal report that Comparable #2 had access issues similar to the subject property and required no adjustment. He confirmed that assertion by testifying that the two properties had "generally similar" access. Yet he later testified that Comparable #2 had inferior access and that he adjusted its sale price upward to account for that difference. Similarly, in one part of his appraisal report, Tillema rated Comparables #1 and #3 as having superior access and said he made the appropriate adjustments, but his adjustment grid reflects no adjustments to Comparable #3 and lists it as having similar access. And he alternately described Comparable #3's location as Avon and Danville. *Tr. at 459-64; Ex. R-1 at 74-75.*

56. Tillema's analysis for 2011 included one sale from his 2009 grid—5020 N. SR 135, Bargersville. He made the same adjustments to its sale price as he did for 2009. He also included two new vacant land sales—another property from Bargersville (Comparable #2) and one from DeMotte (Comparable #3)—both of which were bought between June and August 2008 for development of Walgreen stores. He adjusted each sale price downward by 5% to account for the site's superior size and visibility. He also adjusted Comparable #3's sale price to account for its superior access. He made his adjustments and calculated a final land value using the same process he used for 2009. *Tr. at 465-66; Ex. R-1 at 78-79.*

57. For 2012 and 2013, Tillema relied on the same three comparable sales as he did for 2011, and made the same adjustments to their sale prices. He further adjusted all three sales prices upward by 2% per year to account for appreciation attributable to the improved economic conditions between the sale and valuation dates. In the part of his report explaining his adjustments, Tillema indicated that he had adjusted the sale price for "Comparable sale #4," although no such property appeared on his adjustment grid. He

testified that the reference to Comparable # 4 was a misprint. *Ex. R-1 at 80-85; Tr. at 466, 515*.

58. Tillema then apparently took either the average, or weighted-average price per acre for each year and multiplied it by the subject property's 3.57 acres to reach the following land values:

ASSESSMENT DATE	VALUE
March 1, 2009	$1,460,000
March 1, 2011	$1,750,000
March 1, 2012	$1,820,000
March 1, 2013	$1,890,000

Tr. at 459-69; Ex. R-1 at 76-85.

c. Tillema's Cost Approach

59. Tillema used a similar process as Coers to estimate the replacement cost new for the building improvements. Unlike Coers, however, Tillema's report indicates that he used the base costs associated with a "Class C Retail Store," rather than a class C drugstore. But he testified that he used the cost tables for a pharmacy, explaining "[i]n the Marshall & Swift it is industrial, residential, apartments, and so on. And so retail is one of those classifications. Within that classification, there are a number of photos of different kinds of retail spots. So this represents the pharmacy, national pharmacy cost in Marshall & Swift." *Tr. at 474, 624; Ex. R-1 at 86-88.*

60. He used the age/life method to estimate depreciation. He did not identify any functional obsolescence. In his appraisal, Tillema indicated that the property suffered from "permanent economic (or external)" obsolescence due to issues with access from State Road 44. At the hearing, however, he testified that the source of the obsolescence was because "visibility in this property is not very good." In any case, he made a 10% adjustment to account for that obsolescence. Tillema did not think the state of the local

economy created any external obsolescence because he “felt like this property was a good solid operation, a good solid pharmacy” and “pharmacies traditionally do better in downturned kind of markets.” *Tr. at 479; Ex. R-1 at 86-88*.

61. Tillema testified that, “generally, you don’t put entrepreneurial profits into selling occupied properties,” and that, at least when appraising market value, entrepreneurial profit is not included for properties that are built to specifications. Nonetheless, he explained he believed that “national pharmacies are a little bit different than most of the other general retail kinds of property, in that sales of properties that have already been encumbered with a lease are not unusual in these kinds of situations.” He therefore included an amount for entrepreneurial profit, which he estimated at 15% of depreciated replacement costs. He chose that percentage based on his ongoing survey of property managers, real estate investors, commercial real estate brokers, and developers, although he admitted that the survey is only by word of mouth and that it would be difficult to maintain with accuracy. The survey indicated entrepreneurial profits ranging from 12.5% to 25% of a developer’s costs. *Tr. at 480-87; 635-39; Ex. R-1 at 88.*

62. Tillema then added in the depreciated value of the site improvements and his estimated land values to arrive at the following total values under the cost approach:

ASSESSMENT DATE	**VALUE**
March 1, 2009 (effective date of January 1, 2008)	$2,800,000
March 1, 2011	$3,010,000
March 1, 2012	$3,050,000
March 1, 2013	$3,070,000

Tr. at 485-88; Ex. R-1 at 89-92.

d. Tillema's Sales-comparison Approach

63. Tillema did not perform a sales-comparison analysis because he could find "no sales of the fee simple interest in an on-going national pharmacy operation." This led him to complete a leased fee analysis by reviewing sales of CVS and Walgreen stores of a similar size as the subject store sold with leases in place. In those sales, buyers are "not buying the bricks and sticks, they are buying the stream of income." He admitted that the prices investors are willing to pay for a property encumbered by a lease fluctuates depending on the creditworthiness of the tenant, the length of the lease, and the rent generated by the lease. Based on his leased fee sales, Tillema estimated a leasehold value of $4,100,000. *Tr. at 488-95, 645-46; Ex. R-1 at 93-98.*

e. Tillema's Income Approach

64. Tillema began his analysis under the income approach by estimating market rent, which he defined as "the rent that could be charged in the current market for a similar property." He initially researched 15 leases of purportedly comparable properties formerly used by national pharmacies. However, he did not rely on this data because the subject property is an ongoing operation, not a vacant property. *Tr. at 498-99*; *Ex. R-1 at 100.*

65. Instead, Tillema identified eight properties—six of which were leased and two of which were available for lease—within the Shelbyville market. All but one had buildings that were more than seven years older than the subject building. They were also all considerably smaller than the subject building: half were less than 2,000 square feet and only one was more than 10,000 square feet. But Tillema saw no reason to adjust their lease rates. He also conceded that he did not review any of the actual leases. Although he listed three of the properties as single tenant in his report, they were all multi-tenant properties. The average rent was $14.71/sq. ft. After considering the comparable rental data and purportedly taking into account the subject property's location, age, size, and use, Tillema arrived at market rents of $16.00/sq. ft. (2009), $17.00/sq. ft. (2011), $17.25/sq. ft. (2012), and $17.50/sq. ft. (2013). *Tr. at 502, 665; Ex. R-1 at 101-02.*

66. Tillema estimated vacancy and collection loss at 5% by "[g]enerally looking at the market itself." Like Coers, he found triple-net leases to be typical in the subject property's market. Thus, the only owner expense is generally a management fee, which he estimated at 3%. *Tr. at 504-06; Ex. R-1 at 102.*

67. Although Tillema considers sale and listing information for national pharmacies to be "unique" and believes the capitalization rates from those sales "are more likely to reflect the parent company's credit rating than the location or physical characteristics of the subject property," he included rates extracted from various sales of CVS and Walgreen stores in his report. He also reviewed capitalization rates from various commercial property sales throughout Indiana for each year under appeal. Based on this data, and after considering the subject property's physical condition, age, location, and configuration as well as the economic conditions as of each valuation date, he arrived at the following rates: 7.25% (2009), 8.0% (2011), 8.0% (2012), and 7.75% (2013). He did not load his capitalization rates. While he acknowledged that it is a good idea to load capitalization rates with the owner's share of property taxes in market value states, he did not think that was particularly true when the standard is market value-in-use. He explained that Indiana's assessment manual does not say capitalization rates need to be loaded, and that it is "extraordinarily important about what the State says to do." *Tr. at 509, 676-77; Ex. R-1 at 103-104.*

68. Tillema then capitalized his estimated NOI for each year by the applicable capitalization rate to reach the following conclusions:

ASSESSMENT DATE	**VALUE**
March 1, 2009 (effective date of January 1, 2008)	$3,020,000
March 1, 2011	$2,910,000
March 1, 2012	$2,950,000
March 1, 2013	$3,090,000

Tr. at 513-14; Ex. R-1 at 105-108.

f. Tillema's Reconciliation

69. Tillema concluded that the cost approach provided the best indication of value. He did not find enough market information available to develop true tax values from the sales-comparison approach. While he did develop a leasehold value as an alternative under the sales-comparison approach, he admitted it included value attributable to more than just the land and improvements. He similarly believed that his conclusions under the income approach had limited credibility because there were not enough pharmacies rented in arm's-length transactions. He therefore reached the following valuation opinions, which matched his conclusions under the cost approach:

ASSESSMENT DATE	VALUE
March 1, 2009 (trended to January 1, 2008)	$2,800,000
March 1, 2011	$3,010,000
March 1, 2012	$3,050,000
March 1, 2013	$3,070,000

Tr. at 514-17; Ex. R-1 at 98, 109-11.

IV. ANALYSIS AND CONCLUSIONS OF LAW

A. BURDEN OF PROOF

70. 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.

71. 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 under appeal represents an increase of more than 5% over the prior 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).

72. Walgreen stipulated that it bears the burden of proof for 2009 and 2011. The burden of proof for each subsequent year depends on our determination for the prior year. However, as discussed below, the parties both offered probative evidence for each assessment year. Our final determination therefore depends on the weight of the evidence, not on which party has the burden of proof.

B. Objections

73. The Assessor objected to the admission of Exhibit P4—an aerial photograph of the subject property—as hearsay. While it is not clear that a photograph is an out-of-court statement, Walgreen responded that we may admit hearsay, with the caveat that if the hearsay is properly objected to and does not fall within a generally recognized exception, we may not base our final determination solely on that evidence. 52 IAC 2-7-3. The ALJ overruled the objection and admitted the exhibit. We adopt the ALJ's ruling.

74. Both parties also made several objections either to questions posed to witnesses or to their testimony in response. Some of those objections were grounded on relevance or claims that the questions called for speculation. Others dealt with the form of questions. Still others argued that certain questions went beyond the scope of direct examination (or cross-examination when the questions were on re-direct). We need not revisit those objections, and we adopt the ALJ's rulings.

C. TRUE TAX VALUE

75. Indiana assesses property based on its "true tax value," which is determined under the rules of the department of local government finance ("DLGF").[5] I.C. § 6-1.1-31-6(f); 2016 Ind. Acts 204, § 13.[6] "True tax value" does not mean either "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), 6(e); 2016 Ind. Acts 204, § 13. In accordance with these statutory directives, the DLGF defines "true tax value" as:

> The market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.

2002 REAL PROPERTY ASSESSMENT MANUAL at 2; *see also*, 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.[7]

76. The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. 2002 MANUAL at 3; 2011 MANUAL at 2. Parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. 2011 MANUAL at 3; *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a USPAP-compliant market-value-in-use appraisal is the most effective method for rebutting the presumption that an assessment is correct).

77. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For March 1, 2009 assessments, the valuation date was January 1, 2008. *See* 50 IAC 21-3-3 (2006). For the

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[5] The legislature has specifically defined true tax value for various property types, including certain rental properties (I.C. § 6-1.1-4-39), riverboat casinos (I.C. § 6-1.1-4-39.5), low-income rental properties (I.C. § 6-1.1-4-41), and golf courses (I.C. § 6-1.1-4-42).

[6] The DLGF must "[a]dopt rules concerning the assessment of tangible property," and those rules "are the basis for determining the true tax value of tangible property." I.C. § 6-1.1-31-1(a); I.C. § 6-1.1-31-5(a).

[7] The definition in the 2011 Real Property Assessment Manual is identical except for one word: "The market value-in-use of a property for its current use, as reflected by the utility received by the owner or *by* a similar user, from the property." 2011 MANUAL at 2 (emphasis added).

other years under appeal, the valuation date was March 1 of the assessment year. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

D. EXPERT OPINIONS

78. Both parties offered USPAP-compliant appraisals prepared by highly qualified appraisers. Both appraisals are at least generally probative of the property's true tax value. But, "[t]he valuation of property is the formulation of an opinion; it is not an exact science. When there are competing opinions as to how a property should be valued, the Indiana Board must determine which opinion is more probative." *Stinson v. Trimas Fasteners, Inc.*, 923 N.E.2d 496, 502 (Ind. Tax Ct. 2010). We must therefore weigh the evidence to determine which party presented the most credible and reliable opinion of the subject property's true tax value for each year.

1. Coers' Appraisal

79. Coers analyzed the subject property's value under all three generally accepted approaches and testified that she followed generally accepted appraisal principles in applying those approaches. Although we do not find her valuation opinions under the sales-comparison or income approaches convincing, we find her conclusions under the cost approach, less her external obsolescence adjustment, to be the most persuasive evidence of the property's true tax value.

a. Coers' Market Overview

80. The Assessor primarily criticizes Coers' appraisal on grounds she failed to properly identify the market in which the subject property competes. In the Assessor's view, Coers did not provide the depth of analysis required to comply with a newly adopted statute that prohibits valuing an improved property by using sales from a different market or submarket than the property's current use:

> (d) With respect to the assessment of an improved property, a valuation does not reflect the true tax value of the improved property 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. Any market segmentation analysis must be conducted in conformity with generally accepted appraisal principles and is not limited to the categories of markets and submarkets enumerated in the rules or guidance materials adopted by the department of local government finance.

Ind. Code § 6-1.1-31-6(d); 2016 Ind. Acts 204, § 13.

81. The Assessor argues that the market-segmentation statute requires us to view the subject property as competing only within the "national retail pharmacy" segment described by Tillema. We disagree. Assuming without deciding that the statute applies to this appeal,[8] the Assessor herself acknowledges, "[a]ppraisers are empowered to use generally accepted appraisal practices to conduct their own market segmentation analysis." *Resp't Br. at 5.* Again, "[t]he valuation of property is the formulation of an opinion; it is not an exact science." *Trimas,* 923 N.E.2d at 502. Rather than dictate a certain market category, the statute requires us to determine whether an appraiser has reliably segmented the market or submarket in which the property competes and whether the purportedly comparable sales the appraiser uses compete in the same segment.

82. According to the Assessor, Coers' market analysis consists of excerpts from Marcus and Millichap reports that merely provide context for the larger market. But the Assessor overlooks Coers' attempt to delineate the subject property's market segment within her sales-comparison approach. She developed a market and buyer profile that identified the market participants potentially interested in acquiring a fee simple interest in an asset similar to the subject property. Coers described the type of buyer as an investor/speculator or owner/user looking for property within the Midwest, with a preference for central Indiana. She also explained that the potential buyers were looking for a single-user building from 4,000 to 25,000 square feet and would be willing to consider all tenant qualities.

[8] The Governor signed house bill HEA 1290 (P.L. 204-2016) into law on March 24, 2016. It amended Ind. Code § 6-1.1-31-6 effective January 1, 2016. *See* 2016 Ind. Acts 204, § 13. We assume for the sake of this appeal that the amended statute applies, but note that it has little bearing on our final determination.

83. Neither the market analysis nor sales-comparison section of her appraisal specifically explains why she views the subject property's current use as "general retail." But she testified that the property does not have a unique physical design compared to the broader retail market, and that its layout does not restrict its utility to its current use. Even the store's pharmacy counter is largely comprised of removable fixtures. She also described the property's construction materials as being of average quality and characterized the property as a "standard retail box." *Tr. at 71*.

84. The Assessor further criticizes Coers' decision to forego a highest and best use analysis. However, Coers testified that she expected the subject property's highest and best use as improved would be for continued retail use. Even if "general retail" is too broad a category to accurately describe the current use, the Assessor did little to employ this criticism for purposes of attacking Coers' purportedly comparable sales. In any case, we do not rely on Coers' sales-comparison analysis in reaching our final determination.

b. Coers' Land Valuation

85. Several aspects of Coers' land sales analysis trouble the Assessor, but none more than her opinion that the property had two acres of usable land. We give that criticism little weight. Coers persuasively testified that the parcel's irregular shape and sloping topography made a portion of the land unusable.

86. Although the Assessor contends that Coers' calculation is inaccurate because she did not measure or confirm the acreage, the Assessor herself assessed the property as having only two acres of primary land. The Assessor classified the rest of the parcel as "undeveloped usable" and argues that Coers should have categorized it as surplus and assigned it a value. But Coers explained that a potential buyer would pay only for the usable area. The parties vigorously debate whether the below-grade portion of the property is a retention pond, a detention area, or instead simply provides drainage. Neither side offered compelling evidence on the question. Much of what they did offer was in the

form of the appraisers' observations and opinions. Coers was simply a more credible witness than Tillema.

87. Regardless of how the below-grade area is labeled, we are persuaded that it contributes only modestly to the property's overall value. Coers' analysis of the entire 3.57 acres bolsters her conclusion.

88. That point does not mean her land valuation is perfect. For example, we have some sympathy for the Assessor's criticism of Coers' size adjustments. We do not doubt Coers' undisputed testimony that the appraisal profession views paired sales as the best way to determine size adjustments. But she used only one set of sales, which limits the reliability of her adjustments to some extent. Nonetheless, it does not greatly shake our confidence in her conclusions, particularly where her analysis of the two usable acres is concerned. The Assessor focuses her complaints on Coers' adjustments to Comparables #1 and #2. Coers, however, gave the most weight to other sales.

89. The limited data behind her size adjustment is a little more troubling under her analysis of the subject site as if all 3.57 acres were usable. Because the size disparities were greater, her size adjustments were much more significant. Nonetheless, that analysis still offers at least some support for her conclusions.

90. The Assessor admits Coers consistently applied her market-conditions adjustments, but faults her for not using an adjustment that better reflects local market conditions. Coers readily admitted that a paired-sales analysis is the preferred method for calculating these adjustments, but she believed the available data was too limited to provide reliable conclusions. She instead decided to use changes in first-tier capitalization rates for Midwest retail. Although this technique may not capture changes in conditions within a specific local market, she explained that it does isolate movement in market conditions attributable to market participants within the retail market. We find it gave her a sufficiently reliable method to adjust for market conditions in the absence of local paired-

sales data. In any case, her adjustments were relatively small and had little impact on her overall value estimates.

91. The Assessor also criticizes the size of Coers' location adjustments. Coers testified that she quantified those adjustments using paired sales, and that she halved the indicated amounts because the paired sales were not identical in all respects other than location. Her explanation does not give us much confidence in those quantifications. Regardless, Coers placed the most weight on Comparable #3 for 2009, and Comparables #4 and #5 for 2011-2013. She did not adjust Comparables #3 and #4 for location, and she adjusted Comparable #5 by only 10%, despite its superior location near the I-74 interchange. If anything, her location adjustment for Comparable #5 tended to drive her value estimate for the subject property higher than it might otherwise have been.

92. Finally, the Assessor criticizes Coers for failing to adjust Comparable #3's sale price, despite having described that site's visibility as only fair as compared to the subject site's average visibility. Indeed, Coers did not adjust for visibility differences in any of her comparable sales, although in most cases she described the comparable sites as having good visibility, and any adjustments presumably would have been downward. In her adjustment grids, she treated frontage and visibility together and described those combined attributes as similar to the subject site for each sale. Thus, she appears to have concluded that the market did not react to those slight variations in visibility.

93. In sum, Coers followed generally accepted appraisal principles both in selecting comparable sales and in adjusting the sale prices. While the Assessor made some valid criticisms, we find Coers' conclusions about the subject land's value credible.

c. Coers' Cost Approach

94. The Assessor criticizes Coers' decision to place comparatively less weight on her conclusions under the cost approach than she placed on her conclusions under the other two approaches. Coers discounted the cost approach because, in her view, market

participants would have given it little consideration during a recession. We disagree with Coers' assertion and find that her analysis under the cost approach has considerable probative value. But, with the exception of 2009, we are unconvinced that external obsolescence significantly affected the subject property.

95. To claim obsolescence, one must both identify its cause and demonstrate an actual loss of value to the improvements. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005) (stating that a taxpayer must provide probative evidence that identifies specific factors causing obsolescence and how those factors are causing an actual loss of value). Coers identified the national recession as the cause, claiming that it "trickled down to the local market" and affected all properties. While there seems to be little disagreement that the economy was in recession throughout 2009, her data is not as convincing for 2011-2013, when the economy was recovering. Even for her 2009 valuation, she did nothing to connect the recession to an actual loss of value for the subject property's improvements.

96. More importantly, her technique for quantifying economic obsolescence was not credible. Although she said she capitalized the difference between feasibility income and market-level income, she did not walk us through any of her calculations. She also readily admitted her conclusions had limited reliability because they were circular: she used feasibility income as one of the methods for determining market income. Given those problems, we find Coers failed to substantiate her external obsolescence adjustments.

97. We also have concerns about Coers' decision to exclude entrepreneurial incentive or profit.[9] While she apparently views external obsolescence and entrepreneurial incentive as mutually exclusive, she provided little to support this proposition. There is some

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[9] According to The Appraisal Institute, "entrepreneurial profit" is "the difference between total cost of development and marketing and the market value of a property after completion and achievement of stabilized occupancy and/or income," while "[e]ntrepreneurial incentive" is "the amount an entrepreneur expects to receive as compensation for providing coordination and expertise in assuming the risks associated with the development of a project." *BASF Corp. v. Belvidere Town*, 23 N.J. Tax 551, 570 (N.J. Tax Ct. 2007) (quoting APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 360-61 (12th ed.2001)). For purposes of this discussion, we use the terms interchangeably.

support for her hesitance to include entrepreneurial incentive for build-to-suit properties; Tillema himself agreed with that general proposition. But her explanation—that developers of built-to-suit properties can realize their expected return through the lease rate—is not very persuasive. Nonetheless, neither appraiser was very convincing on the issue, and we do not find that Coers' decision to exclude entrepreneurial incentive significantly detracts from the credibility of her valuation opinion.

98. Coers adequately supported her land values, replacement cost new, soft costs, and physical depreciation calculations. Nevertheless, as discussed above, we find her external obsolescence adjustments to be unsupported. Despite this weakness, we find her cost approach, less her unproven external obsolescence adjustments, to be the most reliable indication of the subject property's true tax value.[10]

d. Coers' Sales-comparison Approach

99. The Assessor challenges almost every aspect of Coers' sales-comparison analysis. In particular, she claims that none of the properties from Coers' analysis compare to the subject property in terms of market area, physical characteristics, property type, or age. She also questions Coers' use of two leased fee sales, one of which was vacant. The Assessor further criticizes many of Coers' accompanying adjustments and her generic explanations for making those adjustments, especially the ones related to location. Many of those criticisms are valid, and they significantly detract from the reliability of Coers' sales-comparison analysis.

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[10] The Assessor grossly mischaracterizes our determination in *Kohl's v. Howard County Ass'r,* pet. nos. 34-002-10-1-4-00350 etc. (IBTR Dec. 31, 2014), saying we found "in essence that a property must be considered 'special purpose' in order for the cost approach to be applicable or the most reliable method." *Assessor's Post-Hearing Brief* at 8. We said nothing of the sort. In that appeal, the Howard County Assessor argued that sales of vacant big-box stores could not be used in the sales-comparison approach to determine the true tax value of an operating big-box store. We examined the Tax Court's relevant decisions and found that "where a non-special-purpose property is put to its highest and best use and is of a type that regularly exchanges for the same general use, the property's true tax value will equal its market value." *Kohl's* at ¶ 124. We also explained the Tax Court had recognized an exception to that general rule for special purpose properties. *Id*. But we did not limit use of the cost approach to special purpose properties. Indeed, we did not reject the opinion of the assessor's appraiser simply because he based it mainly on the cost approach. Instead, we found his opinion less persuasive because his misunderstanding of Indiana's true tax value, as interpreted by the Tax Court, and his unpersuasive characterization of the property as special purpose, led him to conclude the property did not suffer from any external obsolescence. *Id.* at ¶¶ 156-58.

100. Coers provided some general data for each of her comparable properties, but she offered few details comparing their specific features and amenities to the subject property. That is particularly true with how Coers dealt with location. With one exception, she relied on sales from a broad geographic area, including a sale from Cincinnati, Ohio. She consistently stated that she considered demographic data such as population, median household income, traffic counts, and visibility, and then quantified the differences. But she did not provide any actual demographic data for these far-flung locations, nor did she offer any type of meaningful comparison between their individual market characteristics. Consequently, we find her conclusions under the sales-comparison approach largely unpersuasive.

e. Coers' Income Approach

101. Turning to Coers' analysis under the income approach, the Assessor criticizes both how Coers estimated market rent and her choice of capitalization rates. Some of those concerns are valid. They detract from the reliability of Coers' conclusions.

102. Coers acknowledged that her market rental data was limited. In fact, she only found one actual lease; the other seven sources were listings. And she neither adjusted any of the lease rates for location nor explained why the locations were sufficiently similar to make such an adjustment unnecessary.

103. Those concerns are mitigated by the fact that Coers acknowledged those weaknesses and relied more heavily on her other two techniques for estimating market rent: determining rent as a function of return on costs and as a percentage of retail sales. We agree with the Assessor that the former appears incompatible with Coers' belief that market participants did not consider the cost approach during the years in question. Coers' use of Midwest data to determine her range of required rates of return for her cost-based rent, without tying that data to the local market, also troubles us. We have similar reservations about the data underlying her estimate of rent as a percentage of sales.

104. The Assessor additionally faults Coers for estimating rent as a percentage of gross sales without using the subject store's actual sales. 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 other issues with her gross-sales calculations are relatively minor.

105. Thus, while we find that Coers' value conclusions under the income capitalization approach carry some probative weight, they are far from being the most persuasive evidence of the subject property's true tax value.

2. Tillema's Appraisal

106. Tillema developed two widely accepted valuation approaches and testified that he followed generally accepted appraisal principles in applying them. He believed that his conclusions under the income approach were not as reliable as his conclusions under the cost approach, on which he primarily relied. We do not find his conclusions under either approach very persuasive.

a. Tillema's Market Overview

107. Walgreen principally criticizes Tillema's appraisal on grounds that he viewed the property as a "national retail pharmacy" rather than as a general retail property. Among other things, that view led Tillema to value the land using only sales to CVS or Walgreen, despite acknowledging that those two entities routinely pay above-market prices. We agree Tillema failed to provide the type of analysis necessary to show that the subject property's market should be defined so narrowly. We are also concerned that by classifying the property in that way, he may have estimated "the value of the property to the user," as prohibited by I.C. § 6-1.1-31-6(e); 2016 Ind. Acts 204, § 13. Thus, we are not inclined to view the market so narrowly absent a more thorough analysis explaining (1) the specific characteristics distinguishing the subject site from other physically and

locationally similar sites used for retail purposes, and (2) how doing so avoids valuing Walgreen's business.

b. Tillema's Land Valuation

108. Even if Tillema had been able to dispel our concerns regarding above-market pricing, we would still find his land valuation unreliable. He identified 11 sales he thought were indicative of what CVS or Walgreen paid for land in Indiana. But only one—4949 N. State Road 135 in Bargersville—appears in any of his adjustment grids, and then only for the 2011-2013 valuations. And he failed to show how any of his comparable sites compared to the subject site in terms of location and local market characteristics.

109. Additionally, as we describe in our findings of fact, there are multiple inconsistencies in Tillema's 2009 adjustment grid, including differing descriptions of Comparable #2's relative visibility and access and of the city where Comparable #3 was located. These examples illustrate the general carelessness displayed throughout the land valuation section of Tillema's appraisal report.

110. Further, Tillema multiplied his adjusted value per acre by the subject property's 3.57 gross acres to get a land value. As discussed above, we are persuaded by Coers' opinion that the subject property only has two usable acres. On cross-examination, Tillema even agreed that a "part of it cannot be used because of the topography," although he did not bother to determine how much. While the additional 1.57 acres likely has some value, we find that Tillema's decision to apply his adjusted value per acre to the entire 3.57 acres led him to severely overvalue the parcel.

c. Tillema's Cost Approach

111. As the preceding section explains, Tillema's land valuation lacks credibility. Because that valuation makes up such a large part of his total value estimate under the cost approach, his overall conclusions under that approach are largely unreliable. Nevertheless, we will briefly address some additional concerns with his analysis.

112. There is some confusion about the source of Tillema's base costs. Despite Tillema's insistence on treating the property as a national retail pharmacy, his appraisal report refers to a class C *retail store*, rather than the class C *drugstore* Coers used for her cost data. He appeared to correct that difference at the hearing, testifying that Marshall & Swift has "photos" of pharmacies and that he used costs for those buildings. Based on his testimony, we assume Tillema used costs tailored to a drugstore building. But the confusion is just another example of the inconsistencies and carelessness found throughout his appraisal.

113. We doubt Tillema's determination that the subject property did not suffer from any external obsolescence due to the recession. He "felt like this property was a good solid operation, a good solid pharmacy" and "pharmacies traditionally do better in downturned kind of markets." Tillema appears to conflate the performance of the tenant's business with the expected value of the real property. While Coers failed to support her external obsolescence adjustments with probative evidence, Tillema simply assumed Walgreen's *business* had performed well during the economic recession and concluded the property suffered from no external obsolescence.

114. Also, despite testifying that appraisers do not typically add entrepreneurial profit to built-to-suit or occupied properties, Tillema added 15% of the total replacement cost as profit. We hesitate to make any finding on whether entrepreneurial profit should be included under these circumstances because neither appraiser was very convincing in addressing that question. Even if we assume entrepreneurial profit should be included, however,

Tillema did little to support his adjustment. He based his estimate on what he described as an "ongoing survey of property managers, real estate investors, commercial real estate brokers, and developers." But, on cross-examination, he admitted "it would be hard to maintain that survey with accuracy."

d. Tillema's Sales-comparison Approach

115. Tillema did not use the sales-comparison approach to value the fee simple interest in the property. Instead, he completed a leased fee analysis that we find largely irrelevant. Indeed, Tillema acknowledged that investors who buy encumbered properties are concerned with the future income stream from the lease rather than with the sticks and bricks, and that the price varies based, among other things, on the tenant's creditworthiness. Accordingly, we find Tillema's leased fee analysis is not a reliable indicator of the subject property's true tax value.

e. Tillema's Income Approach

116. Tillema developed a market rental rate using lease data from eight Shelbyville properties. Although he defined market rent as "the rent that could be charged in the current market for a *similar property*," he did little to convince us that the eight properties he relied on were in any way comparable to the subject property. In fact, all but one was more than 7 years older than the subject property, with the oldest being approximately 31 years older. And half the buildings were less than 2,000 square feet, while the subject property is more than 14,000 square feet. This raises serious concerns given the inverse relationship between size and rent/square foot. He also incorrectly identified three of the properties as being single tenant when all eight were actually multi-tenant properties.

117. Although Tillema claimed to take age, size, and use into account and even reported many differences between the subject property and the rent comparables in his own chart, he still did not see a reason to make an adjustment. Because the remaining steps in

developing a value rely on his market rental rate, these problems alone undermine the reliability of his conclusions under the income approach.

118. Additionally, Tillema used capitalization rates from sales of operating pharmacies despite recognizing they are "more likely to reflect the parent company's credit rating than the location or physical characteristics of the subject property." He also considered capitalization rates from various sales around Indiana, but he gave no details about the underlying properties or leases.

119. Tillema did not load his capitalization rates to reflect the owner's share of property taxes during periods of vacancy, though he agreed that it is "a good idea" to do so. His explanations for not doing so—that the Manual does not say anything about loading capitalization rates and that it is inappropriate to do so when estimating market value-in-use (as opposed to market value)—strain credulity. Tillema did not explain why loading a capitalization rate might have anything to do with the difference between market value and value-in-use. Appraisers load a property's effective tax rate into a capitalization rate because subtracting property taxes as an expense distorts results when the assignment is to value the property for purposes of ad valorem taxation. *See Millennium Real Estate Investment, LLC v. Benton County Ass'r*, 979 N.E.2d 192, 196-97 (Ind. Tax Ct. 2012); *see also*, *New Brunswick v. State Div. of Tax Appeal* 39 N.J. 537, 189 A.2d 702, (N.J. 1963).[11]

120. Tillema rightly did not subtract the owner's share of property taxes as an expense. But by failing to load his capitalization rates, he ignored that expense, which drove his valuation opinion higher. Given Tillema's low estimate of the property's vacancy rate, the ultimate affect on his valuation opinion was small. Nonetheless, there are various, and in some instances serious, problems with his analysis. This leads us to give little weight to his conclusions under the income approach.

[11] "When the issue is the valuation of the property for taxation, the amount of the taxes, depending as they do upon the very answer which is sought, cannot be accorded a role in reaching it." *New Brunswick*, 189 A. 2d at 707. Thus, a capitalization rate, "including a factor for taxes," must be applied to the income before taxes. *Id.*

E. WEIGHING THE EVIDENCE

121. We have two appraisals, both of which are flawed, but neither of which is completely devoid of probative value. Ultimately, we are most persuaded by Coers' estimate under the cost approach, minus her adjustment for external obsolescence. While Coers herself did not give that approach much weight in forming her valuation opinion, we think it is more persuasive than her conclusions under the other two approaches. It is also more persuasive than any of Tillema's conclusions. Although both appraisers used less than ideal data and sometimes made either unexplained or unsupported judgments, Coers' judgments, particularly regarding her land valuation, were more reliable than Tillema's. The overall carelessness pervading Tillema's appraisal and testimony made it difficult to rely on his judgments.

V. CONCLUSION

122. Each appraisal has its strengths and weaknesses. But after weighing the evidence, we find Coers' conclusions under the cost approach, less her deduction for external obsolescence, to be the most credible evidence of the true tax value for each year. We therefore order the assessments changed as follows:

YEAR	TOTAL ASSESSMENT
2009	$1,927,132[12]
2011	$1,750,871
2012	$1,750,364
2013	$1,782,806

[12] The indicated value from Coers' cost approach for 2009 (less external obsolescence) is $1,851,396. Adopting and applying Coers' Trending Factor of 0.9607 results in a Total Assessment of $1,927,132 as of January 1, 2008.

This Final Determination of the above-captioned matter is issued by the Board on the date first 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>.