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John C. Slatten, Counsel for the Marion County Assessor

STATE OF INDIANA
INDIANA BOARD OF TAX REVIEW

Meijer Stores LP,	)	Petition Nos.: 49-440-02-1-4-00573
	)	49-440-03-1-4-01150
Meijer,	)	49-400-06-1-4-00957
	)	49-400-07-1-4-01007
	)	49-400-08-1-4-00750
	)	49-400-09-1-4-00002
	)	49-400-10-1-4-00001
	)	49-400-11-1-4-10001
	)	49-400-12-1-4-00002
	)	
	)	State Parcel No.: 49-02-13-106-001.000-400
	)	County Parcel No.: 4037072
v.	)	
	)	County: Marion
Marion County Assessor,	)	
	)	Township: Lawrence
Respondent.	)	
	)	Assessment Dates: March 1, 2002,
	)	March 1, 2003, March 1, 2006, March 1, 2007,
	)	March 1, 2008, March 1, 2009, March 1, 2010,
	)	March 1, 2011 and March 1, 2012

Appeal from the Final Determination of the
Marion County Property Tax Assessment Board of Appeals

December 1, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (the "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

INTRODUCTION

1. The parties offered competing expert opinions about the subject property's value for nine different assessment years. We find the opinions of Meijer's expert, Laurence Allen, more persuasive than the opinions from the Assessor's expert, Shaun Wilson.

PROCEDURAL HISTORY

2. Meijer filed Form 130 petitions with the Marion County Assessor contesting the subject property's 2002-2003 and 2006-2012 assessments. The Marion County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations for the 2002-2003, and 2006-2008 assessments but did not act on the other petitions.

3. Meijer timely filed Form 131 petitions with the Board for all the assessment years.[1] Beginning on March 3, 2014, our designated administrative law judge, David Pardo ("ALJ"), held a five-day hearing on Meijer's petitions. Neither the Board nor the ALJ inspected the property.

4. The following people testified:

For Meijer:
Laurence G. Allen, MAI, Allen & Associates Appraisal Group, Inc.
Robert M. Vujea, Property Tax Manager, Meijer Stores LP
Kevin A. Reiter, Faegre Baker Daniels LLP

For the Assessor:
Shaun W. Wilson, MAI, Don R. Scheidt & Co., Inc.
Erick Landeen, MAI, Terzo & Bologna, Inc.
Gregory Dodds, Marion County Assessor's Office

[1] For 2009-2012, Meijer had the option of waiting for the PTABOA to act or filing petitions with the Board at any time. See Ind. Code § 6-1.1-15-1(o) (allowing taxpayer to appeal to the Board at any time after maximum time for PTABOA to hold hearing or issue a determination lapses).

Eve Beckman, Marion County Assessor's Office

5. Meijer submitted the following exhibits:

Petitioner's Exhibit 1:	Appraisal Report prepared by Allen & Associates Appraisal Group, Inc. for the 2002 assessment date
Petitioner's Exhibit 2:	Allen appraisal for the 2003 assessment date
Petitioner's Exhibit 3:	Allen appraisal for the 2006 assessment date
Petitioner's Exhibit 4:	Allen appraisal for the 2007 assessment date
Petitioner's Exhibit 5:	Allen appraisal for the 2008 assessment date
Petitioner's Exhibit 6:	Allen appraisal for the 2009 assessment date
Petitioner's Exhibit 7:	Allen appraisal for the 2010 assessment date
Petitioner's Exhibit 8:	Allen appraisal for the 2011 assessment date
Petitioner's Exhibit 9:	Allen appraisal for the 2012 assessment date
Petitioner's Exhibit 10:	U.S. Bureau of Labor Statistics, *BLS Spotlight on Statistics: The Recession of 2007-2009* (February 2012)
Petitioner's Exhibit 11:	Chart summarizing assessments and appraisals of the subject property
Petitioner's Exhibits 12 to 17:	Demonstrative exhibits regarding hearing testimony of Shaun Wilson
Petitioner's Exhibits 18 to 21:	Demonstrative exhibits regarding hearing testimony of Laurence Allen
Petitioner's Exhibit 25:	Demonstrative exhibit regarding differences in capitalization rates
Petitioner's Exhibit 26:	Demonstrative exhibit regarding hearing testimony of Erick Landeen
Petitioner's Exhibit 27:	Photograph of Kittle's store in Fishers
Petitioner's Exhibit 29:	Photograph of sign for Fry's store in Fishers
Petitioner's Exhibit 31:	Aerial photograph with 96th and 106th streets and Fry's and Kittle's stores labeled
Petitioner's Exhibit 32:	Property record card for Fry's store
Petitioner's Exhibits 33 to 34:	Street level and aerial photographs of K's Merchandise Mart in Fort Wayne
Petitioner's Exhibit 36:	Photograph of Fry's storefront
Petitioner's Exhibit 38:	Photograph of sign for Kittle's
Petitioner's Exhibits 39 to 43:	Demonstrative exhibits regarding hearing testimony of Eve Beckman[2]

6. The Assessor submitted the following exhibits:

Respondent's Exhibit 1A:	Summary Appraisal Report prepared by Shaun Wilson for the 2002 and 2006 assessment dates

[2] The Petitioner marked two additional photographs for identification at the hearing (Petitioner's Exhibits 35 and 37). Although it cross-examined Beckman on those exhibits, it did not offer them into evidence. The Petitioner also included a document entitled "The Recession of 2007-2009" in the exhibits it initially provided to the ALJ. Although it labeled the document as Petitioner's Exhibit 10, it did not offer the document as an exhibit.

Respondent's Exhibit 1B:	Shaun Wilson's appraisal report for the 2003 and 2007-2012 assessment dates
Respondent's Exhibit 2:	Appraisal Review prepared by Erick Landeen of Allen's appraisal for the 2010 assessment date
Respondent's Exhibit 2A:	Landeen's review of Allen's appraisal for 2002
Respondent's Exhibit 2B:	Landeen's review of Allen's appraisal for 2003
Respondent's Exhibit 2C:	Landeen's review of Allen's appraisal for 2006
Respondent's Exhibit 2D:	Landeen's review of Allen's appraisal for 2007
Respondent's Exhibit 2E:	Landeen's review of Allen's appraisal for 2008
Respondent's Exhibit 2F:	Landeen's review of Allen's appraisal for 2009
Respondent's Exhibit 2H:	Landeen's review of Allen's appraisal for 2011
Respondent's Exhibit 2I:	Landeen's review of Allen's appraisal for 2012
Respondent's Exhibit 3:	Wrecking/removal permit application and property record card for 5835 W. 10th Street in Indianapolis (Cub Foods in Indianapolis)
Respondent's Exhibit 4:	Property record card and sales disclosure forms for the Kittle's store in Fishers
Respondent's Exhibits 5A to 5F:	Photographs of areas around Fry's and Kittle's stores, of sign for Fry's and Kittle's, and of Fry's store
Respondent's Exhibit 6:	Photograph of the subject property and signs
Respondent's Exhibits 7A to 7C:	Photographs of subject property and signs
Respondent's Exhibit 8:	Photograph of area around former Lowe's store in Anderson
Respondent's Exhibits 8A to 8E:	Photographs of former Lowe's store in Anderson and surrounding area
Respondent's Exhibits 9A to 9C:	Photographs of area and buildings near K's Merchandise Mart in Fort Wayne
Respondent's Exhibit 10:	Property record card for former Walmart in Clarksville
Respondent's Exhibit 11:	*Frequently Asked Questions Regarding CPI*, Bureau of Labor Statistics
Respondent's Exhibit 12:	Excerpts from International Association of Assessing Officers ("IAAO"), *Property Assessment Valuation*,
Respondent's Exhibit 13:	Information from Legacy Property Display viewer and property record cards and Form 11 notice for the subject property, December 6, 2013 e-mails between John Slatten and Vickie Norman

7. The Board recognizes the following additional items as part of the record of proceedings: (1) Form 131 petitions and attachments; (2) all orders and notices issued by the Board or its ALJ; (3) the transcript of the hearing[3]; (4) the hearing sign-in sheet; (5) the Joint Stipulation of the parties; (6) the Joint Proposed Case Management Plan; (7) the parties'

[3] The transcript of the hearing is bound in five volumes, but the pages are consecutively numbered from 1 to 1451. Our citations are in the following format: *Tr. at (page number)*.

Agreed Motion for Hearing and Order; (8) the parties' post-hearing briefs and Meijer's Proposed Findings of Fact and Conclusions of Law; and all other motions or documents filed with the Board.

8. The PTABOA (or the county or township assessor in the years for which the PTABOA did not issue determinations) determined the following assessments:

Year	Assessment
2002	$15,336,700
2003	$18,303,500
2006	$18,343,600
2007	$19,891,200
2008	$19,891,200
2009	$19,891,800
2010	$19,543,000
2011	$19,614,500
2012	$19,731,200

9. Meijer requests the following values: [4]

Year	Assessment
2002	$10,215,000
2003	$10,330,000
2006	$9,155,000
2007	$10,530,000
2008	$10,480,000
2009	$9,470,000
2010	$8,670,000
2011	$8,020,000
2012	$7,170,000

FINDINGS OF FACT

A. The Subject Property

10. The subject property consists of a 237,178-square-foot big-box retail discount store with a 2,028-square-foot gas station/convenience store ("gas station") currently located on

[4] Meijer's Exhibit 11 shows slightly different requested values. On direct examination, Meijer's appraiser, Laurence Allen, adjusted his value conclusions. *Tr. at 624-27.*

approximately 27.01 acres of land.[5] The big-box retail store was built in 1996 and the gas station was built in 1997. Meijer owns and occupies the property. *Pet'r Ex. 9 at 2; Tr. at 474, 482; Pet'r Ex. 6 at 22.*

11. The property is on the northeast side of Indianapolis at 8375 East 96th Street. It is part of the 96th Street corridor, which runs between Marion and Hamilton counties. The two main roads in the area are East 96th Street and Interstate 69. The property sits approximately a quarter mile east of I-69, but it is not visible from that road. *Tr. at 100, 477-78; Pet'r Ex. 6 at 1.*

12. Because of neighbors' objections, the big-box store does not face 96th Street, but rather is perpendicular to it. Drivers heading west on 96th Street therefore cannot see the storefront except through their rearview mirrors. Primary access to the store is from Meijer Drive, a private road west of the building. Meijer Drive intersects 96th Street at a stoplight. The property can also be accessed via a curb cut on 96th Street and a service road on the south side. The traffic count for 96th Street in front of the subject property is approximately 42,000 to 43,000 vehicles per day. *See Tr. at 104, 478, 480-84; Pet'r Ex. 6 at 20, 22.*

B. Other Properties

13. The parties' appraisers looked at various other properties in preparing their valuation opinions. In some cases, the parties raised disputed factual questions about those properties. Two properties in particular—a Kittle's outlet and Fry's Electronics store—figure prominently in these appeals. Both appraisers used them in their sales-comparison analyses. Those two properties are located just to the west of the subject property near the interchange of 96th Street and I-69 in Fishers. Both stores are clearly visible from I-69, which has a daily traffic count of approximately 112,000 vehicles. Fry's has a storefront that is approximately 400 feet wide and faces the interstate. Neither store,

[5]Before January 27, 2010, the subject property consisted of approximately 30.09 acres of land; Meijer sold 1.08 acres of excess land on January 27, 2010, and another 2.00 acres of excess land on March 29, 2012. *Pet'r Ex. 6 at 22; Tr. at 488-89*

however, may be accessed directly from I-69 or 96th Street. Instead, the stores are north of 96th Street off North by Northeast Boulevard, which has a daily traffic count of approximately 11,000 vehicles. *Tr. at 477, 508, 1237-39, 780-82; see also Pet'r Exs. 27, 36-37.*

14. Kittle's bought its store in May 1999, although the parties dispute whether it already occupied the store at the time of the sale. The Assessor's appraiser, Shaun Wilson, indicated in his report that Kittle's occupied the property under a short-term lease with a purchase option. Meijer's appraiser, Laurence Allen, said otherwise. According to Allen, Kittle's owner or president, Jim Kittle, said there was no lease in place when Kittle's bought the property. Eve Beckman, an employee of the Assessor, testified that Kittle's owned the store when she bought an entertainment center there in 2007. *Tr. at 760, 986; Resp't Ex. 1A at 44.*

15. Although neither party offered compelling evidence on the point, we find that the store was not leased to Kittle's on the date of the sale. Wilson did not explain the specific source for his information, and as discussed below, much of Beckman's testimony was imprecise, unresponsive, or evasive. We therefore credit Jim Kittle's statement over Wilson's report and Beckman's testimony. While the statement is hearsay (which was not objected to), it is the type of hearsay that appraisers rely on in forming valuation opinions.

16. The Kittle's store sold again in 2005 and 2013. The 2005 transaction was a sale-leaseback in which Kittles Greenwood, LP sold the store to Fairfield Builders Supply Corp. and then leased the property. It also appears that the buyer in the second transaction bought the property subject to the Kittle's lease, given that the store's sign was still on the building in March 2014. *See Resp't Exs. 4; Pet'r Ex. 27; Tr. at 252, 317.*

17. There are also factual issues surrounding two other stores that Allen used in his appraisal. The first is a former Cub Food in Indianapolis that sold to Walmart in November 2012. On February 1, 2013, Walmart applied for a permit to demolish the building, and the building was demolished in the spring of 2013. The second is a former Walmart anchor

store located in the middle of an unenclosed mall (or power center) in Clarksville, Indiana that sold to the mall owner in January 2004. Walmart leased the store until October 2004, when it moved to a new location. The store was torn down on August 1, 2006. *Tr. at 526-27, 961-63; Resp't Exs. 3, 10; Pet'r Ex. 6 at 52, 58.*

18. Finally, Allen and Wilson used different sales of the same former Walmart in Bloomington. Wilson used a 2006 sale, where the buyer bought the property intending to convert it to multi-tenant use. That sale price translated to $39.28/sq. ft. Because of the recession that began in 2008, the buyer was unable to complete its plans and ultimately re-sold the property in November 2012 for $18.65 sq. ft. Allen used that second sale. *Pet'r Ex. 6 at 56; Resp't Ex. 1B at 52; Tr. at 619, 700-01.*

C. Expert Opinions

19. The parties offered opinions from several expert witnesses. As already discussed, Allen appraised the property for Meijer, and Wilson appraised it for the Assessor. Both testified. The Assessor also offered reports and testimony from Eric Landeen, whom he hired to review Allen's appraisal report, and both opinion and factual testimony from Beckman.

1. Wilson's Valuation Opinions

20. Shaun Wilson has been a commercial appraiser since 1998. He has a bachelor's degree in finance and real estate, and he was designated as an MAI in June 2012. He has appraised a wide variety of retail properties. *Resp't Ex. 1A at Qualifications; Tr. at 15-16.*

21. Wilson prepared two summary appraisal reports—one for the 2002 and 2006 assessment dates, and another for 2003, and 2007-2012. He used the same valuation approaches and same underlying analyses for each year, although the data he used varied according to the different valuation dates at issue. *Resp't Exs 1A and 1B, passim; Tr. at 21.*

a. Market and highest and best use analyses

22. Wilson analyzed the retail-property market for the Indianapolis metropolitan statistical area ("MSA"). For 2008-2010, he explained how the general economic meltdown and accompanying tightening of investment capital, rising unemployment, and decline in consumer confidence significantly affected the retail market throughout the MSA. He did note that the northern part of the MSA, which experienced population growth and whose residents had higher income levels, fared better than did the MSA as a whole. While many of those pressures continued, he noted that there was a leveling off in 2011 and some improvement into 2012. *See Resp't Ex. 1A at 10-13; Resp't Ex. 1B at 11-16, 33*.

23. For 2002-2003 and 2006-2007, Wilson determined that the site's highest and best use, as though vacant, was for retail development and that the existing improvements were the highest and best use of the property as improved. *Resp't Ex. 1A at 39; Resp't Ex. 1B at 43.* Given the slowing of development that accompanied the economic downturn, he reached a different conclusion for 2008-2012. For those years, he found that the site's highest and best use, as though vacant, was "to hold for retail development when market conditions improve for build-to-suit development." *Resp't Ex. 1B at 43*. The highest and best use as improved was still the existing improvements. *Id.*

b. Sales-comparison approach

24. Wilson could not find any sales of the fee simple interest in properties that included both a big-box retail store and a gas station. He therefore analyzed those two portions of the subject property separately under the sales-comparison approach.

25. According to Wilson, big-box retail stores generally sell in one of two ways: (1) a leased store sells to an investor, which buys the income stream and makes its purchasing decision based on the terms of the lease and tenant's creditworthiness, or (2) a vacated store sells to a second-generation or alternative user. He explained that leased fee sales are inappropriate to use when valuing the fee simple interest in a property unless there is

support for a property-rights adjustment. *Resp't Ex. 1A at 41; Resp't Ex. 1B at 45; Tr. at 28-29.*

26. Wilson therefore examined only sales of vacant big-box stores. Buyers, however, often invest additional money to renovate the properties to suit their specific business models. He therefore considered adjustments for buyer expenditures, which he felt were necessary to reflect the subject property's value-in-use. Had he been appraising the subject property's market value, he would not have adjusted for those expenditures. *Tr. at 28-29, 150, 172; Resp't Ex. 1B at 45.*

27. Wilson originally searched the northeast portion of the Indianapolis MSA for sales of comparable properties. Because he found limited data, he expanded his search to the rest of Indiana and the Midwest. Despite that wide-ranging search, he found few fee simple sales of comparable size. He therefore used the best ones he could find. *Resp't Ex. 1A at 41-50; Resp't Ex. 1B at 45-57.*

28. He ultimately used 13 properties from Indiana and Illinois for the various assessment years. He did not use all 13 for each assessment year, relying instead on sales closest to each particular assessment date. The Illinois properties were all from Chicago suburbs. The Indiana properties were from various cities, including Indianapolis, Fishers, Lafayette, Portage, and Bloomington. He did not inspect any of the Chicago-area properties. *See Tr. at 93-94, 228; Resp't Ex. 1A at 41-52; Resp't Ex. 1B at 45-64*.

29. Wilson considered the following adjustments to each sale: property rights conveyed, financing and conditions of sale, market conditions, buyer expenditures, location, building size, age/condition, land to building ratio, site size, zoning, and utilities. He did not make any adjustments for the first two factors. There were no matched sales from which to precisely quantify a market-conditions adjustment. He therefore used changes in overall capitalization rates between the lease and valuation dates. *Resp't Ex. 1A at 53-54; Resp't Ex. 1B at 65-66.*

30. The buyers did not renovate two of the properties, so Wilson did not adjust those sale prices for buyer expenditures. For the remaining sales, he quantified his buyer-

expenditures adjustment in two ways. If he knew the actual costs for the renovations, he used those costs. For other properties, he estimated a cost-per-square-foot based on known renovation costs for a sample of retail properties. His adjustments based on those estimated costs ranged from $18/sq. ft. to $24/sq. ft. for the various assessment years. *Resp't Ex. 1A at 53; Resp't Ex. 1B at 65.*

31. The rest of Wilson's adjustments—location, size, age/condition, and land-to-building ratio—were qualitative. He rated each property as superior, similar, or inferior to the subject property. He indicated degrees of superiority or inferiority with minus or plus symbols. He gave all his factors equal weight and netted his adjustments. Thus, if there were two total pluses and one minus, he rated the property as overall inferior, and if there were equal numbers of pluses and minuses, he rated the property as similar. *Resp't Ex. 1A at 51-54; Resp't Ex. 1B at 58-66; Tr. at 31-33, 163-64.*

32. In adjusting for location, Wilson considered overall appeal, surrounding development activity, accessibility, and traffic levels. He acknowledged that visibility from I-69 is an advantage, although he did not know whether the subject property was visible from that road. He rated all of the Chicago-area stores as similar to the subject property and the nearby Fry's and Kittle's stores as inferior. *Resp't Ex. 1A at 51-54; Resp't Ex. 1B at 58-66; Tr. at 100-101.*

33. Wilson based his age/condition adjustment on the difference between the ages of his comparable buildings and the subject building on each assessment date. He admitted that his approach was wrong and that he should have instead compared the age of each comparable building on its sale date to the subject building's age on the assessment date. Similarly, while he acknowledged that the changes posited in his buyer-expenditures adjustment would generally lessen the effects of age, he did not account for that improvement when making his age/condition adjustment. *Resp't Ex. 1A at 51-54; Resp't Ex. 1B at 58-66; Tr. at 165-66.*

34. Wilson ultimately gave the most weight to sales that he rated as similar overall to the subject property. For the 2006, one of the two sales that he rated as similar was a former

K-Mart store in Chicago suburb of Broadview that Target bought. That was the only sale that Wilson rated as similar for 2007. For 2008-2012, the most similar sale was the building that Target vacated when it moved to the nearby former K-Mart. The buyer then leased the building to two tenants. *See Resp't Ex. 1A at 47, 54-55; Resp't Ex. 1B at 50, 53, 67; Tr. at 124-29.*

35. Wilson used a similar methodology for the gas station. He chose various sales that he believed were comparable, and made both quantitative and qualitative adjustments. He arrived at values as of the various assessment dates ranging from $610,000 to $690,000. *See Resp't Ex. 1A at 55-57; Resp't Ex. 1B at 68-72*.

36. Finally, Wilson added his values for the gas station and big-box retail store to arrive at total value for the subject property. He recognized that the appropriate valuation date differed from the assessment date for several of the years at issue. For the 2002-2003 assessments, the valuation date was January 1, 1999, and for the 2006-2009 assessments, it was January 1 of the year preceding the assessment date. For those years, he trended his conclusions back to the appropriate valuation date using the same method that he employed in his market-conditions adjustment. *Resp't Ex. 1A at 57-58; Resp't Ex. 1B at 72-73*.

c. Income approach

37. Wilson began his analysis under the income approach by estimating market rent for the big-box store only. He did not include rent for the gas station because he could not confirm whether leases for comparable stores included personal property. He focused his search primarily on big-box retail stores with strong locations. He settled on 14 total properties, although he used no more than six for any given year. *Resp't Ex. 1A at 76, 79, Resp't Ex. 1B at 109, 113-20.*

38. Wilson considered adjusting the lease rates to account for the following factors: market conditions, lease conditions, location, building size, building age and condition, and land-to-building ratio. He decided against adjusting for lease conditions because most of the

properties were built to suit the specific needs of the tenant and therefore reflected the property's value-in-use to its user. *Resp't Ex. 1A at 80; Resp't Ex. 1B at 120.*

39. For his other adjustments, Wilson followed the same qualitative method that he used in his sales-comparison analysis. He made a similar error in applying his age/condition adjustment, comparing the age of the subject store on the date of valuation to the age of the comparable store on the date of valuation, rather than to the date on which the comparable store was leased. He ultimately settled on market rent ranging from $6/sq. ft. to $7/sq. ft. for the years in question. *Resp't Ex. at 1A at 76-81; Resp't Ex. 1B at 113-21*; *Tr. at 165-68.*

40. Wilson next reduced the property's potential income to account for vacancy loss. Although single-tenant properties will be either 100% leased or 100% vacant at any given time, he explained that an investor would consider some annual allowance for vacancy. He noted the property's strong location, where big-box retail stores had been occupied since their construction despite changes in the retail market and overall economy. He also assumed a nine-to-twelve-month lag between ten-year leases, which translates to a vacancy range of 7% to 9.1%. Based on those factors, he settled on 8% for each year. Wilson did not account for credit loss, although he acknowledged that appraisers often do so and that there was some risk of additional credit loss beyond vacancy. *Resp't Ex. 1A at 81; Resp't Ex. 1B at 121*; *Tr. at 23-24, 315.*

41. To estimate operating expenses, Wilson looked at figures from *Dollars and Cents of Shopping Centers/The Score*. Because he posited that the property would be leased on a net basis, he deducted for property taxes, insurance, maintenance, and utilities only during his estimated vacancy period. He similarly deducted only 1% for management fees, which he believed would be minimal for a single-tenant net-leased property. That translated to a range of $13,142 to $15,333 for the various years at issue. Although he explained that a reserve allowance is a prudent expense, the surveys and market sales he used in determining his capitalization rate did not reflect those deductions. He therefore did not deduct for reserves. *Resp't Ex. 1A at 82; Resp't Ex. 1B at 123; Tr. at 25.*

42. Wilson used three methods to determine his capitalization rate: he extracted rates from the market, he calculated a rate based on bands of investment, and he consulted rates reported in published investor surveys. For his market extraction, Wilson examined various sales of leased big-box retail stores from Indiana, Illinois, and Ohio. He included the 2005 sale of the Fishers Kittle's, but he did not know whether any of the other sales were part of sale-leaseback transactions. He did not investigate the creditworthiness of the tenants or the length of time left on the leases. He similarly did not investigate whether rent was going to increase in later years. Nonetheless, he acknowledged that all those factors affect capitalization rates. *Resp't Ex. 1A at 83; Resp't Ex. 1B at 124; Tr. at 317-19.*

43. Wilson consulted four investor surveys: two from *Korpacz*, which covered national net leases and national power centers, one from the *Real Estate Research Corporation* ("RERC"), which covered first-tier Midwest power centers, and one from *Realtyrates.com*, which covered freestanding retail properties. The net-lease survey covered various property types, including banks, office buildings, and other non-retail properties. Similarly, Wilson acknowledged that in power centers, risk is more spread out than in single-tenant properties. While several of the surveys were national, Wilson acknowledged that the surveyed rates for Midwest power centers were generally higher than for national centers. *Resp't Ex. 1A at 83; Resp't Ex. 1B at 123; Tr. at 320-23.*

44. After considering all three methods, Wilson settled on overall rates ranging from 8% to 9.25% depending on the assessment year. Those were all significantly higher than the average rates from *Realtyrates.com*. To account for property taxes, he loaded his overall rates with the landlord's share of the property's effective tax rate for each year.[6] *Resp't*

[6] Under a triple-net lease, the landlord would only pay property taxes while the property was vacant. Thus, where Wilson had estimated 8% vacancy and a net tax rate of 2.0713%, he added .168% to his overall rate. *Resp't Ex. 1B at 125.*

Ex. 1A at 84: Resp't Ex. B at 125; Tr. at 322-23.

45. He then added the gas station's value (which he had separately trended under his sales-comparison analysis) to the value he derived from capitalizing the big-box store's net income. Finally, he trended his conclusions to the appropriate valuation date for each year. *Resp't Ex. 1A at 84-86, Resp't Ex. 1B at 126-32.*

d. Cost approach

46. For his cost approach, Wilson valued the entire site by looking at comparable sales of vacant land used primarily to build big-box retail stores. He then estimated the replacement cost for the improvements. He included entrepreneurial profit equaling 10% of hard and soft costs for each year, including the years (2008-2012) for which he found that the highest and best use of the site as though vacant was to hold for future retail development. *Resp't Ex. 1A at 73-75; Resp't Ex. 1B at 100-108; Tr. at 34-36, 105-07.*

47. Wilson adjusted those costs for incurable physical depreciation, but he did not adjust for curable physical depreciation, functional obsolescence, or external obsolescence. He did not explain in his reports why he found it unnecessary to adjust for functional obsolescence. When asked on cross-examination whether it was possible to have functional obsolescence when, as he did, one uses replacement cost to calculate the cost new of improvements, he initially responded that it was not. He later admitted that was wrong. *Resp't Ex. 1A at 72-75; Resp't Ex. 1B at 100-08, Tr. at 36, 102-07, 325-32*.

48. As for external obsolescence, Wilson recognized the effects of the recent recession, concluding that the subject property's market "was impacted by external obsolescence primarily beginning in 2008." *Resp't Ex. 1B at 33*. He therefore applied adjustments to account for changing market conditions when analyzing comparable sales and leases. He ultimately decided against applying any external obsolescence in his cost analysis, pointing to the full occupancy of big-box retail stores in the 96th Street corridor. He also explained, "[c]onsideration of required NOI to support the estimated costs as of each valuation date, in comparison to estimated NOI from the Income Approach suggests that adjustments are not warranted for the subject." *Resp't Ex. 1B at 100-01*.

e. Reconciliation

49. Wilson gave equal consideration to his conclusions under all three approaches and arrived at the following values:

Assessment	Cost	Sales-comparison	Income	Final
2002	$15,120,000	$14,340,000	$15,440,000	$15,000,000
2003	$14,800,000	$14,500,000	$15,960,000	$15,000,000
2006	$15,890,000	$16,520,000	$17,100,000	$16,500,000
2007	$15,480,000	$17,390,000	$18,390,000	$17,100,000
2008	$15,700,000	$17,390,000	$18,390,000	$17,200,000
2009	$14,800,000	$17,430,000	$17,970,000	$16,700,000
2010	$13,390,000	$14,910,000	$15,110,000	$14,500,000
2011	$13,270,000	$15,540,000	$14,640,000	$14,500,000
2012	$13,440,000	$16,170,000	$16,070,000	$15,200,000

Resp't Ex. 1A at 87; Resp't Ex. 1B at 133.

2. Allen's Valuation Opinions

50. Allen is a certified general appraiser. He has been a Member of the Appraisal Institute ("MAI") for 35 years, is a chartered financial analyst, and has an MBA degree from the University of Michigan. He has appraised at least 50 big-box stores in the last decade. *Tr. at 459-62*.

51. Allen prepared an individual appraisal valuing the subject property for each assessment date. Each appraisal employs the same methodology that he used in his appraisal for 2009, about which he testified in the greatest detail. *Pet'r Exs. 1-9; Tr. at 598-608*.

a. Background descriptions and analyses and highest and best use

52. Allen believed that the big-box store, which he described as a mega-box warehouse retail building, was most conducive to a single owner or tenant. He based that belief on the store's layout and size, which was 50% to 100% larger than most large discount stores and was not conducive for conversion to multi-tenant use because of its depth. He also believed that the store had some functional inutility because it was perpendicular, rather than parallel, to 96th Street. In Allen's experience, retailers want their stores to be parallel to primary roads. *Pet'r Ex. 6 at 26-27; Tr. at 483, 586.*

53. Counsel for Meijer advised Allen to value the property for its current use regardless of its highest and best use. Nonetheless, Allen concluded that the property's current use for retail was its highest and best use—the improvements were not so specialized as to prevent them from being used by another retail store and were of a type that was commonly exchanged in the market. *Pet'r Exs. 1-9 at 45; Tr. at 494*.

54. Allen initially valued the big-box store without considering the gas station or the excess land, which he described as land that could be sold off without interfering with the main parcel's utility.[7] He used only the sales-comparison and income approaches; he did not believe the cost approach was reliable because of the building's age and considerable obsolescence, and because buyers do not rely on that approach when buying properties of the same type. *Tr. at 487-88, 496-97; Pet'r Ex. 6 at 46, 81, 99-100.*

b. Sales-comparison approach

55. For his sales-comparison analysis, Allen identified sales and offerings of comparable buildings available for retail use. He used only Indiana sales primarily for two reasons: (1) counsel for Meijer had advised him about the lack of acceptability of out-of-state sales and requested that he not use them, and (2) there were adequate Indiana sales. He also explained that using in-state sales matters most in changing economic times because economies differ between states during those times. When asked about other markets

[7] He determined that the excess land totaled 4.8 acres for all the assessment dates through 2009 and 3.72 acres thereafter.

from the Midwest, Allen testified that the Chicago market has the highest per-square-foot sale prices. *Pet'r Ex. 6 at 48, Tr. at 469, 501-02, 664-65.*

56. Allen was estimating the property's value for retail use. He therefore considered mostly big-box stores that were suitable for retail use when sold. He recognized that buyers of big-box stores typically modify the stores to suit their particular business models. Those modifications may include changes to the store's façade, flooring, lighting, and restroom placement. They make those changes based on their branding and the way they display and promote their merchandise. That is true both for comparable properties and for the subject property. *Tr. at 491-92, 643-47; see also, Pet'r Ex. 6 at 48.*

57. With one exception, which involved a short-term lease, Allen did not use any leased fee sales because the subject store was not leased and most of those sales involve above-market leases for properties that were built to suit the tenants' specific needs. He similarly refrained from using sale-leasebacks. According to Allen, those sales are financing transactions that do not represent market value-in-use. He also generally explained that things like the tenant's creditworthiness, the specific lease terms, and the remaining time on the lease affect the sale price for a leased store. He likewise probably would not use a sale where the buyer purchased the property intending to tear down the building. *Pet'r Ex. 6 at 48; Tr. at 503, 518, 704, 728-30.*

58. Allen ultimately chose the following eight sales:

- The Kittle's in Fishers. It sold in May 1999 for $52.64/sq. ft.
- A former Walmart in Lafayette. It sold in July 2001 for $29.31/sq. ft.
- The former Walmart in Clarksville. It sold in January 2004 for $44.31/sq. ft.
- The Fry's Electronics in Fishers. It sold in May 2004 for $41.94 sq. ft.
- A former Lowes in Anderson. It sold in June 2005 for $25.61/sq. ft.
- A K's Merchandise Mart in Fort Wayne. It sold in January 2007 for $28.33/sq. ft.
- The former Walmart in Bloomington. It sold in November 2012 for $18.65/sq. ft.
- The former Cub Foods in Indianapolis. It sold in November 2012 for $26.61/sq. ft.

Pet'r Ex. 6 at 50-57. Allen inspected all the properties, generally in 2012 or 2013. *Tr. at 498, 704*.

59. With two exceptions, the buyer purchased the properties for single-occupant retail use. The buyer of the former Walmart in Lafayette converted the property to multi-tenant retail use. And the buyer of the former Lowe's in Anderson leased the store to a single tenant that did not use all of the space. *Pet'r Ex. 6 at 51; Tr. at 647-48*.

60. Allen considered adjusting each sale price for property rights, financing terms, market conditions, building size, building age/condition, and location. As he explained, however, market conditions and location were the two most important factors affecting sale prices for big-box stores. Age and condition were not as significant. *Pet'r Ex. 6 at 58; Tr. at 504-05, 517, 699-702*

61. Allen did not adjust for property rights transferred, although he acknowledged that Walmart usually includes restrictive covenants when selling its stores. When asked whether there were any restrictive covenants in the sale of the former Walmart in Bloomington, he testified that the restrictions could not have been significant because the buyer from the 2012 sale leased the store to Rural King, which sells most of the same things that Walmart previously sold at the store. *Pet'r Ex. 6 at 58; Tr. at 699-702.*

62. As explained above, that property had also sold in October 2006 for a much higher price. When Allen prepared his appraisal, he thought the earlier sale was probably a leased fee sale and therefore did not use it. He later confirmed that it was actually a fee simple sale. Allen did not admit that he erred by failing to include the 2006 sale. But he testified that had he included the sale, it would have increased his ultimate value conclusions for 2006 and 2007 by $667,000 and $267,000, respectively. *Tr. at 619-21, 700.*

63. Allen adjusted only one sale price—the one involving the former Walmart in Clarksville—based on the conditions of sale. As explained above, Walmart leased the store for 10 months after the sale, which gave the buyer income while it re-positioned the property. Also, the buyer paid a premium—the property was in the middle of the buyer's

mall, and the buyer therefore had an interest in controlling it. Allen did not know that the original building had been demolished in 2008, even though he testified that he had inspected the property in 2012 or 2013. *Pet'r Ex. 6 at 58, 66; Tr. at 526-27, 705, 708.*

64. To adjust for market conditions, Allen looked at various economic indicators. He ultimately based his adjustment factor on Indiana trends in retail rents and occupancy, national retail price trends, and changes in the consumer price index ("CPI"). He acknowledged making minor errors in his market-conditions adjustments for two sales in his 2002 appraisal and one in his 2003 appraisal, but he explained that correcting those errors would not have affected his value conclusions. *See Pet'r Ex. 6 at 58-74; see also Tr. at 609-11.*

65. In adjusting for differences in location, Allen considered median household income, population density, street location, highway proximity, immediacy to other retail users, visibility, frontage, and traffic counts. He also considered whether the buildings were parallel or perpendicular to main roads. Those considerations led him to adjust six of the eight sale prices upward to account for their inferior locations. Allen performed statistical analyses similar to a multiple regression analysis to quantify his location adjustments. But he acknowledged that he did not analyze each factor that contributed to the location adjustment separately in a "match pair" analysis, and that his location adjustment was more subjective than his market-conditions adjustment. *Pet'r Ex. 6 at 64-66; Tr. at 509-10, 690-92.*

66. He did not adjust the sale prices for the nearby Kittle's and Fry's stores. Although their lack of direct access off 96th Street is a disadvantage, he explained that they have exposure to I-69 traffic, pointing to what he described as Fry's excellent visibility from I-69. He also explained that the trade areas for the three properties were comparable. *Pet'r Ex. 6 at 64-66; Tr. at 509-10, 513.*

67. Allen acknowledged that Fry's and Kittle's are not visible to northbound drivers on I-69 until they have already passed 96th Street. Drivers wanting to visit the stores immediately after seeing them would therefore have to get off at the next exit. And Allen did not

attempt to equate traffic counts on I-69 in terms of retail purchases. But he explained that interstate exposure is important for a big-box retail store beyond immediate visits; the visibility alerts potential customers to the store's location for future purchases. *See Tr. at 676-80.*

68. In each appraisal, Allen ultimately gave greatest weight to the sales that were closest in time to the assessment date, but he also considered other characteristics that might be significant. In each year, the adjusted sale price for the former Walmart in Clarksville was higher than his concluded value. Excluding that sale from his analysis would not have increased any of his value opinions. *Tr. at 500, 533, 761-64; Pet'r Exs. 1-9 at 66.*

c. Income approach

69. To estimate market rent under the income approach, Allen first looked for comparable leased properties. He explained that there are two categories of big-box leases—those based on supply and demand in the market for existing buildings, and those where a property is leased before it is custom built for a specific tenant. He described the second category as build-to-suit leases. Properties subject to build-to-suit leases are not exposed to the market. They instead reflect a desired return on construction costs. Based on years of observation and analysis, Allen has concluded that build-to-suit leases for non-existent buildings are typically 40% to 50% higher than leases for existing buildings. *Tr. at 539-43.*

70. Allen identified and inspected 13 properties that were leased on a triple-net basis, only one of which involved a lease of a built-to-suit property. He did not include the lease from the 2005 sale-leaseback of the Kittle's store because his investigation showed that the lease was above market. He determined market rent after considering the following for each property: its size, features, user type, location, age/condition, and lease date. He offered few specifics about that analysis, however, and he did not include an adjustment grid. *See Pet'r Ex. 6 at 71-73; see also, Tr. at 543-54, 732-33.*

71. According to Allen, several of the leases likely included an allowance for tenant improvements, which reduces effective rent. Because he could not verify any of those

allowances, he did not account for them in determining market rent. Had he done so, he would have determined lower potential gross rent for the subject property. *Pet'r Ex. 6 at 71; Tr. at 543-48.*

72. From his potential gross rent, Allen deducted an amount to reflect a stabilized vacancy and collection loss. To estimate that loss, he consulted data from third-party providers and information gleaned from conversations with real estate brokers. He ultimately determined that the subject property had more risk than average retail properties because of its size and shape. He settled on vacancy- and credit-loss rates ranging from 9% to 14% of potential gross income for the various assessment dates. The higher rates for the later years reflected increased vacancy rates in the Indianapolis market. *Pet'r Exs. 1-9 at 73; Tr. at 554-56.*

73. Like Wilson, Allen deducted the landlord's share of reimbursable expenses. According to Allen, there are two ways to treat property taxes. First, like Wilson, one can load the overall capitalization rate with the owner's share of the applicable tax rate. Allen chose the second method, which he described as a trial-and-error approach in which one uses an "iteration" to place the taxes at a level reflecting the property's market value-in-use, as opposed to the taxes that were actually charged based on the property's assessment. *Tr. at 556-58; see also Pet'r Ex. 6 at 74.*

74. Unfortunately, Allen inadvertently used the owner's share of taxes based on the property's actual assessment, rather than what he believed to be its market value-in-use. His assistant had done the calculations, and Allen did not catch the error. According to Allen, had he deducted the owner's share of the correctly determined taxes, his overall value conclusion for each year would have increased by amounts ranging from $62,500 to $150,000. He did not say what the correct property tax expense was for any of the years, nor did he describe the trial-and-error method he used to determine that corrected expense. *Tr. at 609, 611-15.*

75. Allen also accounted for three non-reimbursable expenses: a management fee, replacement reserves, and a leasing commission. The management fee covers rent

collection and supervising the building's capital improvements. According to Allen, those fees typically range from 2% to 5% of effective gross income for properties like the subject property. Because he posited a long-term triple-net lease to a single tenant, he believed that 3% was most appropriate. That translated to fees ranging from $52,054 to $58,441 for the various assessment dates. *Pet'r Exs. 1-9 at 74-75; Tr. at 560.*

76. The subject property would also need periodic structural repairs or renovations to reposition it in the market. The *Korpacz Real Estate Investor Survey* (now published by PwC) for 2005-2007 indicates replacement reserves ranging from $.10 to $.50/sq. ft. across several different investor types. Allen settled on reserves ranging from $.13/sq. ft. to $.16/sq. ft. for the subject property. *Pet'r Ex. 6 at 74*.

77. Allen used the same three methods as Wilson to determine a capitalization rate. Although he considered mostly the same surveys as Wilson, he relied most heavily on *Realtyrates.com*, the only survey related to freestanding single-occupant retail stores. He also explained that capitalization rates in the Midwest are typically higher than the rates reported in national surveys. He arrived at capitalization rates ranging from 9.5% to 10% for the years under appeal. In all but one instance, that was less than *Realtyrates.com* average. *Pet'r Exs. 1-9 at 77-79; Tr. at 570-79.*

78. Although the property was occupied, Allen was valuing it as if it were vacant, which would be the case in a fee simple sale where the buyer has the right to immediate occupancy. Investors—the relevant buyers under the income approach—care about the income stream that a property will produce. Thus, there is a market-expected cost for leasing the property. Allen therefore estimated a leasing commission. Because the property likely would be leased to a single tenant for a long term, he treated the commission as a one-time expense at the end of his analysis instead of deducting it from his capitalized income stream. He estimated the expense as 6% of gross rent for the first five years of the lease term. *See Pet'r Ex. 6 at 74, 80; Tr. at 538, 580.*

d. Reconciliation

79. Allen then reconciled his conclusions under the sales-comparison and cost approaches. He relied primarily on the sales-comparison approach, explaining that single-occupant big-box stores are more often bought by owner-users than by investors. Although he considered the income approach to be an important indicator of value, his conclusions did not include deductions for tenant improvement allowances. He therefore gave that approach less weight. *Pet'r Ex. 6 at 99, Tr. at 497-98, 59-97.*

e. Gas station and excess land

80. Allen relied on eight Indiana land sales to determine the contribution of the gas station land and excess land. He used the cost approach to value the gas station improvements. He did not use the sales-comparison or income approaches for the gas station because the market data included business value and tangible personal property and it is difficult to meaningfully allocate the sale prices between those various components. Also, sales of, and rents from, gas station/convenience stores would not reflect the gas station's contribution to the subject property as a whole, but rather its value as a separate parcel. He did not include entrepreneurial profit for the same reason. *Pet'r Ex. 6 at 80-97; Tr. at 587-94*.

81. At the hearing, Allen acknowledged that he had erred by failing to account for all of the gas station's paving. That error caused him to undervalue the gas station's contribution by amounts ranging from $27,900 to $66,700 for the various assessment years. *Tr. at 616-17*.

f. Trending to valuation dates

82. Finally, like Wilson, Allen trended his conclusions to the valuation dates for the 2002-2003 and 2006-2009 assessment years. He considered the property's physical condition and the economic conditions on the assessment date to conclude to market value-in-use as of that date, and then used changes in the CPI to reflect the value of that dollar amount on the relevant valuation date. *Pet'r Ex. 6 at 100*; *Tr. at 667-73.*

g. Final values

83. In his reports, Allen ultimately concluded to the following values for each assessment year (adjusted to the appropriate valuation date):

Year	Sales	Income	Reconciled	Gas Station	Excess Land	Total (trended)
2002	$9,720,000	$8,070,000	$9,310,000	$590,000 (settled)	$1,050,000	$10,080,000
2003	$9,960,000	$8,620,000	$9,630,000	$590,000	$1,050,000	$10,210,000
2006	$7,590,000	$9,140,000	$7,980,000	$580,000 (settled)[8]	$840,000	$9,040,000
2007	$9,250,000	$9,550,000	$9,330,000	$590,000	$840,000	$10,380,000
2008	$9,960,000	$8,570,000	$9,610,000	$500,000	$575,000	$10,320,000
2009	$8,780,000	$8,000,000	$8,590,000	$500,000	$575,000	$9,310,000
2010	$7,590,000	$7,530,000	$7,580,000	$480,000	$450,000	$8,510,000
2011	$6,880,000	$7,070,000	$6,930,000	$490,000	$450,000	$7,870,000
2012	$5,690,000	$7,200,000	$6,070,000	$470,000	$450,000	$6,990,000

Pet'r Exs. 1-9 at 100.

84. After correcting for his error in failing to properly account for the property tax expense under his income approach and for the erroneously excluded pavement in his gas station analysis, Allen offered the following revised values, with the total rounded to the nearest $10,000:

[8] For 2002 and 2006, the parties stipulated that the gas station's value was $625,000. *Agreed Motion for Hearing and Order at ¶ 7.* That value is not reflected in this table because Allen reached different conclusions in his appraisals.

Year	Original Value	Correction to Big Box	Correction to Gas Station	Total Corrected Value
2002	$10,080,000	$97,500	$35,000[9]	$10,215,000
2003	$10,210,000	$62,500	$35,000	$10,330,000
2006	$9,040,000	$72,500	$45,000	$9,155,000
2007	$10,380,000	$82,500	$66,700	$10,530,000
2008	$10,320,000	$102,500	$60,000	$10,480,000
2009	$9,310,000	$110,000	$53,800	$9,470,000
2010	$8,510,000	$115,000	$43,700	$8,670,000[10]
2011	$7,870,000	$115,000	$37,000	$8,020,000
2012	$6,990,000	$150,000	$27,900	$7,170,000

See Tr. at 611-17, *624-27; Proposed Findings of Fact and Conclusions of Law of Petitioner, Meijer Stores, LP at 35.*

h. Additional comments

85. Although Allen did not ultimately use the cost approach in valuing the big-box store, he discussed how obsolescence might apply. He testified that Meijer has not built a store bigger than 211,000 square feet since 2001. While Meijer did build a few 210,000-square-foot stores during that period, it has not built any store bigger than 200,000 square feet since 2008. He similarly described the store's perpendicular orientation to 96th Street as an example of functional obsolescence. He further testified that external obsolescence is indicated where (1) a site's highest and best use, as if vacant, is for future development, and (2) the existing improvements are consistent with what that future development would be. *Tr. at 583-86.*

[9] Allen did not correct the gas station totals for 2002 or 2006 because the parties stipulated to the gas station's contributory value for those years. The corrections in the table are $35,000 and $45,000, respectively, which represents the difference between the stipulated value for each year ($625,000) and the value Allen found in his appraisal. Those corrected values match what Meijer included in its proposed findings and conclusions. *See Proposed Findings of Fact and Conclusions of Law of Petitioner, Meijer Stores, LP, at 35*.

10 Allen testified that the total corrected value for 2010 was $8,607,000. *Tr. at 626*. It appears that he inadvertently transposed numbers.

86. Allen made a similar observation about entrepreneurial incentive. Indeed, he observed that there is normally entrepreneurial profit only for investment properties. *Tr. at 757-58*.

3. Landeen's Review

87. The Assessor hired Erick Landeen of Terzo & Bologna to review Allen's appraisal reports. Landeen has a bachelor's degree in economics and is an MAI. He has more than 20 years experience appraising various commercial properties, including retail properties. *Tr. at 815, 833-34*.

88. Landeen criticized Allen for using significant amounts of data from after the assessment dates covered in his appraisals. He pointed to Statement 3 of the Uniform Standards of Professional Appraisal Practice ("USPAP"), which addresses retrospective appraisals. Under that standard, data from after an appraisal's effective date may be considered as a confirmation of trends that would reasonably be considered by buyers or sellers as of the effective date, but the appraiser must establish a logical cut-off. It appeared to Landeen that Allen did not establish a logical cut-off. Landeen, however, acknowledged that he did not himself establish a cut-off because he did not appraise the property. He also agreed that sales from 2012 would better reflect market conditions in 2010 than would sales from 2007. *Resp't Ex. 2 at 5; Tr. at 777-79, 813-14, 861*.

89. Landeen believed that all of Allen's comparable sales were from inferior locations. He noted that the Lafayette, Clarksville, Anderson, and Bloomington sales were from areas with significantly lower median household incomes than the area surrounding the subject property. That was particularly true for Anderson, which had been hit hard by losses in the automobile industry. In some instances, Landeen indicated that Allen's comparables deserved a stronger upward adjustment or that a stronger upward adjustment was "warranted." *E.g., Resp't Ex. 2 at 6-7*. In other instances, Landeen indicated that higher adjustments "might be supportable." *Id*.

90. Landeen, however, acknowledged that his statements about higher adjustments being possible were not conclusions that Allen should have made different adjustments. Landeen similarly was not concluding to actual adjustments; to do so, would have needed to account for all of the factors that go into a location adjustment. He agreed that quantitative adjustments typically include subjective judgment, and that an appraiser can make reasonable adjustments without a matched pair analysis. *Tr. at 785-86, 887-88, 917*.

91. Landeen disagreed with Allen's conclusion that the Kittle's and Fry's stores were comparable to the subject property. He acknowledged that those stores have greater exposure to potential customers through traffic on I-69. But he characterized that as a significantly different type of traffic than 96th Street traffic, explaining that a store captures a lower percentage of interstate traffic than the percentage it captures of traffic on its main access road because customers need to know where to go to access the store when they get off the interstate. *Tr. at 779-80, 880*.

92. Also, Kittle's and Fry's are farther removed from 96th Street in what Landeen described as a "destination location" rather than a "primary commercial" location. *Tr. at 780*. He explained that property values decline as one goes further north on North by Northeast. Primary development, like convenience stores, is closest to 96th Street. Hotels, which have slightly lower land values, are north of that primary development. Kittle's and Fry's are even further north. The subject property sells groceries and sits across from a strip retail development. Portions of the property were even developed into outlots. The area around Kittle's and Fry's does not have sufficient traffic for that type of development. Landeen therefore felt that Kittle's and Fry's were in substantially worse locations than the subject property. *Id. at 780-82, 788*.

93. He similarly criticized several aspects of Allen's analysis under the income approach. The appraisal's lack of more detailed information about rent comparables or of a grid addressing adjustments to those leases troubled Landeen. Had Allen included that information, it would have been easier to assess whether he concluded to an appropriate market rent. *See Resp't Ex. 2 at 8; Tr. at 798-99.*

94. Landeen also criticized specific elements of Allen's analysis. He believed that Allen's deductions for vacancy and credit loss were high given that larger properties tend to have longer leases. Based on survey information from *Korpacz* (PwC), Landeen believed that a rate between 1% and 5% was more appropriate. Although he would not have applied reserves, he acknowledged that the key is to understand whether reserves have separately been accounted for when choosing a capitalization rate. If they have, a slightly lower capitalization rate is appropriate. *Resp't Ex. 2 at 9-10; Tr. at 800-06, 885-86.*

95. Landeen similarly took issue with Allen's management-fee expense, which for 2009 equaled roughly $56,000. The property would likely be leased for a long term. And the fee mostly reflects efforts to collect rent and make capital improvements. Given those facts, Landeen felt that Allen should have used a much lower fee. He also believed that Allen's capitalization rates were too high. Allen's rates were higher than the rates indicated by the *Korpacz* (PwC) survey for net-lease properties and power-centers and by *RERC* for first- and second-tier power centers. *Resp't Exs. 2 -2I; Tr. at 803-04, 808-10.*

96. Because the property was occupied, Landeen also disagreed with Allen's choice to deduct a leasing commission. But he acknowledged that Allen was valuing the fee simple interest in the subject property, which means that the property is vacant on the sale date. He further acknowledged that investors account for the cost of finding a tenant if they do not already have one. *Resp't Ex. 2 at 10; Tr. at 824-26.*

97. More generally, Landeen was unsure about the definition of true tax value that Allen applied. Landeen believes that true tax value requires an appraiser to value a property's utility either to the owner, or alternatively, to a similar user. In any case, he agreed that where a property's existing use is the same as its highest and best use, the market value of the fee simple interest is the same as its market value-in-use. He also agreed that the subject property was fit for retail use as it existed. *Tr. at 833, 846-48, 869-71.*

98. Finally, Landeen testified that it would be improper for an appraiser simply to offset qualitative plus and minus adjustments without knowing the percentage of difference or dollar amount the adjustments represent. As he explained, the fact that a property is

better than the subject property in one respect and worse in another does not mean that those two differences automatically offset each other. *Tr. at 843*.

4. Eve Beckman

99. Beckman offered her opinion on various topics. She is a level III certified assessor-appraiser. Before going to the Assessor's office, she worked for Simon Property Group. She is not an appraiser; although she was an appraiser trainee for six months, she let her license lapse. *Tr. at 976-78*.

100. Beckman initially claimed that the subject property's assessments were correct. When pressed, however, she acknowledged that she did not know how the assessments were set. She instead based her opinion largely on the fact that the Department of Local Government Finance ("DLGF") had certified the assessments. After much hedging, she finally came close to admitting that the mere fact an assessment is certified does not necessarily mean it accurately reflects the property's market value-in-use. *Tr. at 1112-18, 1147-52*.

101. Beckman also pointed to her experience in Marion County, past experience with net leases, and a comparison of the subject property's assessment to the assessments for two other Meijer stores in Hamilton County. She, however, did little to support her analysis beyond reciting the per-square-foot assessments for one of the Hamilton County stores. She did not consider or compare household income levels or population around the stores, nor did she investigate or analyze any of the land values. *Tr. at 980-84, 1119, 1301*.

102. Like Landeen, Beckman believed that Allen's comparable properties were all inferior to the subject property. She testified at length about why she believed that the location of the Kittle's and Fry's stores was inferior, claiming that there was little signage off North by Northeast to direct customers to the stores and that the stores were not very visible from I-69. Although she drove northbound on I-69 daily, she claimed not to have noticed the Fry's store before she began to prepare for this appeal. She took a photograph of that property from a selective angle, which did not show the approximately 400-foot wide

storefront that faces I-69. She offered similar testimony about the visibility of the Fort Wayne K's Merchandise Mart. Once again, she took photographs from highly selective angles, none of which depicted the storefront's clear visibility from the main, heavily travelled road. *Tr. 1013-17, 1256-60; see also, Resp't Exs. 5F, 9A-9C; Pet'r Exs. 27, 33-34, 36.*

103. As to the former Lowe's in Anderson, Beckman echoed Landeen's points about that city's economic decline. She also testified that the photograph from Allen's appraisal does not accurately depict how far back the store is from the main road. She similarly testified that the former Walmart in Clarksville was not visible from the main road. Finally, although she acknowledged that the former Walmart from Lafayette was in a high-value retail corridor, she believed that its traffic count made it less desirable than the subject property. *Tr. at 1041-48; 1057, 1068; see also, Resp't Exs. 8A-8C.*

104. Beckman criticized several other aspects of Allen's sales-comparison analysis. She noted that Walmart typically seeks to limit competition by including restrictive covenants when it sells its stores. She, however, did not say what, if any effect the covenants had on the sale prices for Allen's comparable properties. Beckman criticized the one instance where Allen did make a property-rights adjustment—the sale of the Clarksville Walmart to the developer that owned the surrounding mall. She acknowledged that the developer might have been atypically motivated. But she believed that the developer would have had a purchase option or a right of first refusal, or that there might have been covenants or other factors making the developer unlikely to pay more than the property's market value. *Tr. at 1053-54, 1282.*

105. In any case, Beckman did not think that Allen should have used the sale of the Clarksville Walmart because the buyer ultimately demolished the property. She, however, admitted that she did not know what the buyer intended to do with the property at the time of the sale. She similarly criticized Allen's use of sales where the buyers converted the properties to multi-tenant use, including the former Lowes in Anderson where the occupant sought to lease unused space. By contrast, Beckman argued that Allen should have used the 2006 sale of the former Walmart in Bloomington, even though the buyer

purchased the property intending to convert it to a multi-tenant use. *Tr. at 1054-56, 1069, 1283, 1306-07.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Objections

106. The parties made various objections, all of which the ALJ ruled on. Many went to the form of questions, such as whether a question assumed facts not in evidence. We need not revisit those objections here. Others went to more substantive issues, such as whether exhibits should be admitted or whether witnesses should be excluded from testifying. We therefore turn to those objections.

1. Meijer's Objections

107. Meijer made a hearsay objection to Respondent's Exhibit 4, a property record card and sales disclosure forms for the Kittle's store in Fishers. *Tr. 994-95.* Our procedural rules allow us to admit hearsay with the caveat that we cannot base our determination solely on hearsay that does not fall within a recognized exception to the hearsay rule. 52 IAC 2-7-3. The Assessor did not dispute that the documents were hearsay, but instead argued that they were admissible as public records. *Tr. 994-95*.

108. We adopt the ALJ's decision to admit the exhibit. The question of whether it falls under the public records exception is moot because we do not rely on the exhibit in reaching our determination. The exhibit is largely cumulative—most of the information entered the record through other sources. The Assessor offered the exhibit mainly to argue that Allen should have relied on the 2013 sale of the Kittle's store. Allen, however, explained why he did not rely on leased fee sales.

109. Meijer also objected to Respondent's Exhibit 5A—a photograph that Beckman took looking north from the 96th Street overpass on I-69. Meijer objected on relevance grounds because Beckman could not say, even approximately, how far away she was from the Kittle's store. *Tr. 998-1000.* We adopt the ALJ's decision overruling the

objection. The record contains other evidence about where the Kittle's is located in relation to 96th Street and I-69. Beckman's curious inability to approximate the distance, however, goes to the exhibit's weight as well as to her credibility in general.

110. Next, Meijer objected to Respondent's Exhibit 12—excerpts from an IAAO publication on property valuation. Meijer claimed that the Respondent should have offered the entire document. *Tr. at 1088-96.* To the extent Meijer believed that admitting only excerpts was misleading, it could have offered the entire document. It chose not to do so, opting instead to cross-examine Beckman on specific points from the excerpts. We therefore adopt the ALJ's decision to overrule Meijer's objection.

111. Meijer also objected to Beckman's testimony that the various assessments were correct. Meijer offered the following grounds to support its objection: the Assessor did not previously identify Beckman as an expert, despite the Appeal Management Plan's requirements for exchanging expert reports; he should have called Beckman during his case-in-chief, at least to the extent that she offered a valuation opinion; and her testimony about the assessments of other Meijer stores was irrelevant. *Tr. at 979-82.* The ALJ overruled the objection.

112. We adopt that ruling. As explained below, evidence about the assessments of comparable properties may be offered to prove the market value-in-use of a property under appeal, provided the comparison is made according to generally accepted appraisal or assessment practices. Whether some of Beckman's testimony should more appropriately have been offered in the Assessor's case-in-chief matters little; Meijer had full opportunity to cross-examine her and otherwise respond to her testimony.

113. We are more troubled by the Assessor's failure to alert Meijer that it was going to rely on Beckman's opinion about the property's value. The spirit of the Appeal Management Plan was to give each side an opportunity to review the basis underlying valuation opinions of the other side's witnesses. The Assessor did not give Meijer that opportunity with Beckman's opinion that the assessments were correct. As we discuss below,

however, we give no weight to Beckman's valuation opinion, so allowing her testimony was harmless. Nonetheless, what the Assessor did in this case was unfair to Meijer and unnecessarily prolonged the hearing. We caution the Assessor to adhere more faithfully to the spirit of appeal management plans in the future.

114. Finally, Meijer objected to the testimony of Gregory Dodds, an employee of the Assessor. The Assessor called Dodds to rebut Allen's testimony about the sale of one of his comparable properties—the former Cub Foods in Indianapolis. The Assessor had not identified Dodds by name on its witness list, but instead listed as a potential rebuttal witness "George Spenos . . . or other representative of the Marion County Assessor's office." *Tr. at 960*. Meijer did not object to the substance of Dodds' testimony but rather to the fact that he had not been specifically identified. The ALJ overruled Meijer's objection. *Tr. at 958-61.*

115. We adopt the ALJ's ruling. While we do not condone the Assessor's approach to identifying his anticipated witnesses, Meijer did not show any particular prejudice. Meijer did not object to the Assessor's lack of specificity or seek to limit the pool of rebuttal witnesses to specifically identified employees of the Assessor before the hearing. It did not depose Spenos, nor did it claim that it would have deposed Dodds had it known his identity. Ultimately, Dodds' testimony had little effect on the hearing. He testified about the demolition of the former Cub Foods store. But Respondent's Exhibit 3, to which Meijer did not object, separately demonstrates those facts.

2. The Assessor's Objections

116. The Assessor objected to Kevin Reiter's testimony as well as to the admission of Petitioner's Exhibits 27 and 29—two photographs that Reiter took. The Assessor grounded his objection on the fact that one of the law firms representing Meijer employed Reiter, although not as an attorney. According to the Assessor, Rule 3.7 of the Indiana Rules of Professional Conduct would have prohibited any of Meijer's lawyers from testifying. He argued that the prohibition necessarily extends to other employees at the law firm. *Tr. at 1418-25.* The ALJ overruled the objection.

117. We adopt the ALJ's ruling. Rule 3.7 generally prohibits a lawyer from acting as an advocate at a trial where he is likely to be a necessary witness. Prof. Cond. R. 3.7. It, however, does not prohibit a lawyer from acting as an advocate in a trial in which another lawyer in the same firm is likely to be called as a witness, unless the lawyer is precluded from doing so by the general rules governing conflicts of interest (Rules 1.7 and 1.9). *Id.*

118. Although the Board has previously cautioned lawyers about acting as both a witness and advocate, it is not clear whether the rule applies to administrative proceedings and whether the appropriate remedy is to exclude testimony rather than to disqualify the attorney. Those questions aside, Rule 3.7 does not apply to the situation at hand. The rule guards against confusion to the tribunal or unfairness to the opposing party stemming from a lawyer acting in dual roles. *See id.* at Cmts. 1-3, 5. Reiter's testimony does not implicate those concerns. Indeed, the rule allows a lawyer to accept representation even if another lawyer in the same law firm will likely be a witness. The Assessor's real complaint seems to be that Reiter may be biased. But that is a separate question. And it goes to the weight, not the admissibility, of Reiter's testimony.

B. Burden of Proof

119. The parties stipulate that, pursuant to Ind. Code § 6-1.1-15-17.2, as amended,[11] the Assessor has the burden of proof for the appeal of the property's 2002 assessment and that Meijer has the burden of proof for all other assessment dates at issue. *See Joint Stipulation at ¶ 7*. We accept their stipulation. We also note that in a case like this, where the parties offer detailed valuation opinions from experienced appraisers who largely apply generally accepted appraisal principles, determining who has the burden of proof takes a backseat to weighing the experts' opinions. We therefore turn to those opinions.

[11] The parties stipulated as to the burden of proof under Ind. Code § 6-1.1-15-17.2 "as in effect as of the date of this stipulation." *Joint Stip. at ¶ 7*. The amendments to the statute became effective with the Governor's signature on March 25, 2014.

C. The Experts' Opinions

1. Beckman

120. We begin by dismissing Beckman's opinion. Despite her confusing attempts to support the property's assessments by pointing to the fact that the DLGF certified the values, she ultimately conceded that she neither prepared those assessments nor knew what was done in preparing them. In any case, simply applying the DLGF's assessment guidelines[12] generally does little to show a property's true tax value in an assessment appeal. *See Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that strict application of the Guidelines is not enough to show a property's market value-in-use and thereby rebut an assessment's presumptive correctness).

121. Beckman also attempted to support the disputed assessments by comparing them to assessments for two Hamilton County Meijer stores. Such a comparison, if made according to generally accepted appraisal or assessment practices, may be offered to show a property's market value-in-use. *See* I.C. § 6-1.1-15-18. Beckman, however, did little to compare the properties; she instead mostly pointed to her general experience.

122. We give little or no weight to Beckman's testimony on that point or to her testimony generally. She was frequently unresponsive or evasive when questioned on cross-examination. Her prolonged resistance to admitting an obvious point—that certification of an assessment does not automatically mean that the assessment accurately reflects the assessed property's market value-in-use—is just one illustration. In other instances, she was simply not credible. Despite evidence showing that the Fry's store was clearly visible from I-69, Beckman testified that she had not previously noticed the store on her daily commute on I-69. And she took her photographs of the Fry's store and K's Merchandise Mart from selective angles that did not fairly portray the stores' visibility from main roads.

[12] The DLGF promulgated two different sets of assessment guidelines that apply to the different assessment years at issue in these appeals—the Real Property Assessment Guidelines for 2002 – Version A, and the 2011 Real Property Assessment Guidelines.

2. Fundamental Differences Between Allen's and Wilson's Appraisals

123. That leaves us with Allen's and Wilson's valuation opinions. They differed on many points. We will address most of those points when we discuss each expert's opinions and the criticisms leveled against them. Before we launch into that detailed analysis, however, we pause to address three of their more broad philosophical differences.

124. The first two—how they treated the gas station and their differing views on trending—matter little to our decision. Each appraiser justified his approach to valuing the gas station, although we believe that Allen's approach more accurately reflects the property's current use as a single economic unit with different portions contributing to the value of the whole. In any case, the difference in their respective conclusions about the gas station is minor in comparison to the property's overall value. We reach a similar conclusion about their differing approaches to trending. Absent more specific statutory or regulatory guidance, we have been expansive in recognizing methods for trending values from an assessment date to an earlier valuation date. The methods chosen by each side generally suffice. Given the other, more significant differences between the appraisers' opinions, we need not delve into which of the two approaches is preferable.

125. The third difference—the appraisers' conflicting treatment of anticipated expenditures to convert vacant big-boxes to fit the buyer's specific business model—is much more significant. Their views on that point relate directly to differences in the way they view Indiana's standard of true tax value.

126. The legislature has directed that real property must be assessed based on its true tax value, which in most instances "does not mean fair market value," but rather "the value determined under the rules of the [DLGF]." I.C. § 6-1.1-31-6(c). Thus, the legislature left it to the DLGF to create a constitutionally acceptable standard for true tax value. It did so in the 2002 Manual, defining 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 2 (incorporated by reference at 50 IAC 2.3-1-2); *see also*, 2011 MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2).[13]

127. According to the Assessor and Wilson, it was necessary to adjust for buyer expenditures because those expenditures were necessary to give the comparable properties utility to their buyers, while the subject property already fit Meijer's business model. They interpret the Manual's true tax value standard very narrowly to mean essentially the value of the property's use by Meijer as a Meijer store or by an entity with virtually the same business model as Meijer.

128. Allen and Meijer interpret that standard more broadly. More importantly, so does the Tax Court. Three cases illustrate that point: *Meijer Stores Ltd. P'ship v. Smith,* 926 N.E.2d 1134 (Ind. Tax Ct. 2010); *Stinson v. Trimas Fasteners*, 923 N.E.2d 496, 497 (Ind. Tax Ct. 2010); and *Millenium Real Estate Investment, LLC v. Benton County Assessor*, 979 N.E.2d 192 (Ind. Tax Ct. 2012).

129. In the first case, the Board had rejected the sales-comparison approach of Meijer's appraiser because he relied on sales of vacant big-box stores owned by Walmart and Lowes to "secondary" users of the stores such as Big Lots or Hobby Lobby. *Meijer Stores,* 926 N.E.2d at 1137. The Tax Court disagreed. It initially quoted from the portion of the 2002 Manual explaining that the sales-comparison approach may be used to determine a property's market value-in-use "[w]hen others could feasibly use the property for the same *general* commercial or industrial purpose e.g. [,] light manufacturing [or] general retail.[.]" *Id*. at 1136 (*quoting* 2002 Manual at 4) (emphasis added). The Court went on to explain:

> The Indiana Board essentially rejected Meijer's sales comparison analysis because Meijer did not establish what another Meijer, or comparable retailer such as Wal-Mart or Lowe's, would have paid for the subject property. This rejection was improper. Indeed, in formulating an estimate of value under the sales comparison approach, an appraiser need only 'locate [ ] sales of comparable [ ] *properties* and adjust [ ] the selling prices to reflect the

[13] The definition in the 2011 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).

> subject property's total value.' Manual at 13 (emphasis added). Here, Meijer's appraisal utilized five big-box properties in Indiana that were used for retail purposes both pre- and post-sale. . . . Accordingly, it was improper to discount the appraisal's sales comparison approach because 'secondary users' purchased vacated big-box properties instead of entities like Wal-Mart.

926 N.E.2d at 1137 (emphasis added).

130. In *Trimas Fasteners*, an assessor appealed from the Board's determination involving a 200,000-square-foot manufacturing facility occupied by the taxpayer. 923 N.E.2d at 497. The parties had offered competing appraisals (two from the assessor and one from the taxpayer). The Board found the taxpayer's appraisal, which used sales of manufacturing facilities without leases in place, more persuasive than the other appraisals, which relied on sale-leasebacks. *Id*. at 498-99.

131. On judicial review, the assessor contended that use of vacant facilities by the taxpayer's appraiser did not reflect the market value-in-use of the property under appeal, which was "in use." The Court rejected that argument. Among other things, it found that the assessor misunderstood "the concept of market value-in-use on its most basic level." *Id*. As the Court explained, "[g]enerally speaking, market value-in-use, as determined by objectively verifiable market data, is the value of a property *for* its use, not the value *of* its use." *Id*. (*citing* 2002 MANUAL at 2-3) (emphasis in original). For support, the Court pointed to the 2002 Manual's statement that, "in markets where property types are frequently exchanged and used by both buyer and seller for the same *general purpose*, a sale will be representative of utility and market value-in-use will equal value-in-exchange." *Id* at n.10 (*citing* 2002 MANUAL at 2-3) (emphasis added). The Court recognized that the Manual provided an exception to that rule and that sales will generally not represent utility for special purpose properties. *Id*. The appraisers, however, agreed that the property at issue was not special purpose. *Id*.

132. Finally, in *Millenium Real Estate*, a taxpayer claimed that because Indiana's assessment system is based on market value-in-use, the Board had erred in relying on an appraisal that estimated a property's market value. 979 N.E.2d at 195-96. The Court disagreed,

explaining, "[w]hile Indiana assesses real property on the basis of its market value-in-use, this does not mean that a property's assessed value and its market value will never coincide." *Id*. at 196. Thus, "when a property's current use is consistent with its highest and best use, and there are regular exchanges within its market so that ask and offer prices converge, a subject property's market value-in-use will equal its market value because the sales price fully captures the property's utility." *Id*. (*citing* 2002 MANUAL at 2). By contrast, when a property's current and highest and best uses are inconsistent with each other, "market value-in-use will not equal market value because the sale price will not reflect the property's utility." *Id*.

133. Taken together, *Meijer Stores*, *Trimas Fasteners*, and *Millenium Real Estate* mean 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. None of the appraisers characterized the subject property as special purpose or special use. Allen and Wilson agreed that the property's current general use—for retail—was its highest and best use and that properties of its type exchanged regularly enough to use the sales-comparison approach. Under those circumstances, the property's true tax value is the same as its market value.

134. Wilson admitted that he would not have adjusted for buyer expenditures if he were appraising the subject property's market value. Indeed, doing so would make the comparable properties less, not more, like the subject property, which would also be modified to fit a buyer's specific business model if it sold. Wilson's decision to adjust his comparable properties' sale prices by millions of dollars for buyer expenditures therefore detracts significantly from the reliability of his opinions.

3. Specific Criticisms of Wilson's Opinions

135. Having addressed the appraisers' broader philosophical differences, we now turn to the nuts and bolts of their opinions. We start with Wilson's opinions. He is an experienced appraiser who has appraised various retail properties, although few of them were big boxes. He considered and applied the three generally recognized appraisal approaches and explained most of the significant judgments underlying his opinions. That being

said, Meijer criticized several aspects of Wilson's appraisals. We find many of those criticisms persuasive.

136. We start with Wilson's sales-comparison analysis. His selection of comparable sales gives us at least some pause. Half of those sales, and in many cases the ones upon which he placed the greatest weight, came from the Chicago suburbs, the area in the Midwest with the highest per-square-foot sale prices. Yet he did not adjust those sale prices to account for differences between those locations and the subject property's location in Indianapolis. On the other hand, Meijer offered little concrete evidence to show how much better the Chicago-area locations were. Ultimately, we find that Wilson's reliance on the unadjusted (for location) Chicago-area sales detract somewhat from the reliability of his valuation opinions.

137. Wilson admitted that he erred in making his age/condition adjustments by calculating each comparable building's age as of the assessment date rather than as of its sale date. He compounded that error by failing to account for what he acknowledged as the likely improvement in each property's relative age/condition stemming from his posited buyer expenditures. Those might seem like relatively minor points. After all, Allen credibly explained that age/condition was not as significant as other items of comparison. Wilson's methodology for making qualitative adjustments, however, magnified the errors.

138. Wilson made his qualitative adjustments by netting a series of pluses and minuses without determining a dollar amount or percentage for each one. When asked hypothetically whether such an approach was appropriate, Landeen said it was not. We hesitate to say that Wilson needed to assign percentages or dollar amounts to his adjustments. Had he done so, he would have been making quantitative adjustments, something he felt the he lacked sufficiently reliable data to do. Nonetheless, we find the fact that he assigned the same importance to every item of comparison troubling. For example, he treated differences in age as having the same effect on value as differences in location without offering any support for that notion.

139. We find similar problems with Wilson's analysis under the income approach. He relied at least partly on a combination of build-to-suit leases and sale-leaseback transactions to determine market rent. As Allen explained, sale-leasebacks are often financing transactions where rental rates are set based on considerations other than supply and demand. The Tax Court has therefore approved of appraisers' decisions to approach sale-leasebacks with caution. *E.g., Grant County Assessor v. Kerasotes Showplace Theatres, LLC*, 955 N.E.2d 876, 881-82 (Ind. Tax Ct. 2011). Other courts and commentators have offered similar warnings about build-to-suit leases. *See In re Equalization Appeal of Prieb Properties, LLC*, 47 Kan. App. 2d 122, 275 P.3d 56, 63-65 (2012) and authorities cited therein (describing build to suit leases as essentially financing agreements with rental rates based on an amortization of the cost of construction plus profit over lease term); *but see Meijer Stores LP v. Franklin County Bd. of Revision*, 122 Ohio St. 3d. 227, 912 N.E.2d 560, 565-66 (2009). Allen echoed those concerns. Wilson's undiscerning use of built-to-suit leases and sale-leasebacks therefore detracts from his conclusions about market rent. He also failed to account for various factors that affect the property's value to investors, such as credit loss.

140. Turning to the cost approach, Meijer persuasively criticized Wilson's decision to include entrepreneurial profit for each year. It might be proper to include entrepreneurial profit if it is expected in the marketplace. But Wilson acknowledged that developers typically do not build big-box retail properties intending to re-sell them at a profit. In any case, for the later years in his appraisals, he found that the property's highest and best use as though vacant was to hold for future retail development. We agree with Allen that such a finding tends to show a lack of entrepreneurial profit.

141. Similarly, Wilson's decision not to apply any external obsolescence in later years is confusing, at best. He agreed that external obsolescence affected the subject property's market beginning in 2008. His conclusion about the property's highest and best use as though vacant likewise indicates external obsolescence. In light of those facts, Wilson's justifications for not applying obsolescence—that big-box stores in the 96th Street corridor remained occupied, and that his estimated net operating income from the income approach was sufficient to support estimated development costs—do little to persuade us.

Indeed, it is difficult to reconcile the second point with Wilson's highest and best use findings.

142. Also, Wilson did not explain why he felt that it was unnecessary to adjust for functional obsolescence. It may have been because he erroneously believed that using replacement costs made such an adjustment inappropriate. In any case, Allen credibly explained that the building's perpendicular orientation to 96th Street and large size created functional obsolescence.

4. Specific Criticisms of Allen's Opinions

143. Allen is a highly qualified appraiser with significant experience in appraising big-box retail stores. Like Wilson, he considered all three valuation approaches, although he ultimately found that the cost approach would not offer a reliable conclusion for the big-box portion of the property. Also like Wilson, he explained most of the significant judgments underlying his opinions. We find his opinions to be generally probative of the property's true tax value for the years in question.

144. The Assessor and his witnesses, however, criticized several aspects of Allen's opinions. We begin with Landeen's over-arching criticism that Allen used data from well after the assessment date in several of his appraisals. The USPAP statement that Landeen referenced calls for an appraiser to establish a reasonable cut-off date for when data no longer reflects conditions or confirms market trends that would have been apparent as of an appraisal's effective date. In each appraisal, Allen effectively established such a reasonable cut-off, relying most heavily on sales and income data that was closest in time to the assessment date covered by that appraisal. His inclusion of additional data does not detract from the overall reliability of his value conclusions.

145. Moving to the Assessor's criticisms of Allen's sales-comparison analysis, we are a little troubled by counsel's request that Allen use only Indiana sales. An appraiser's credibility flows partly from his independence. Had Allen limited himself to Indiana sales solely because of counsel's request, we might be more hesitant to rely on his opinions. Instead,

Allen testified that he followed counsel's request because the Indiana sales data was sufficient for him to form reliable conclusions.

146. The Assessor next criticized Allen for using the 1999 sale of the Fishers Kittle's on grounds that it was a leased fee, rather than a fee simple, sale. He based that criticism on the notion that Kittle's was already leasing the property at the time of the sale. As explained above, we find that the property was not leased to Kittle's at that time. In any case, Wilson used the same sale in one of his appraisal reports, so the supposed lease can hardly be a differentiating factor between Wilson's and Allen's valuation opinions.

147. The Assessor and Beckman also criticized Allen for including properties that buyers converted to multi-tenant retail use. They base their criticisms at least partly on their narrow views about the property's current use for purposes of Indiana's true tax value standard. Suffice it to say, the Tax Court's interpretation of true tax value argues for less, not more, parsing of how to characterize a property's use. The criticism also rings hollow given that the Assessor's own appraiser included several sales where the buyer intended to convert the property to a multi-tenant use. Indeed, Beckman criticized Allen for not using one of those sales—the 2006 sale of the former Walmart in Bloomington.

148. Relying on sales where buyers intend to demolish the improvements, rather than simply convert them to a slightly different form of the same use, is more problematic. Allen conceded that he would not rely on such sales. As the Assessor demonstrated, however, two of Allen's sales included improvements that were later demolished: the former Walmart in Clarksville and the former Cub Food in Indianapolis.

149. In neither case did the Assessor's witnesses know anything about the buyer's intent at the time of the sale. There is little circumstantial evidence from which to infer that the buyer of the Clarksville property intended to demolish the improvements. Those improvements were not torn down until more than 2 ½ years after the sale and almost two years after Walmart vacated the property upon expiration of its short-term lease.

150. The former Cub Foods is a different story—the buyer applied for a demolition permit within three months of the sale. We therefore infer that the buyer intended to demolish

the improvements when it bought the property. Ultimately, Allen's use of that sale does not detract too greatly from his valuation opinions. The sale most prominently affected Allen's valuation opinions for 2012 and 2013. Even for those years, Allen's ultimate value conclusions likely would not have been affected had he simply excluded the sale. Although that sale had the lowest adjusted price for each year, it was only $1/sq. ft. less than the other 2012 sale.

151. Most of the criticisms from the Assessor and his witnesses stem from their belief that Allen used only sales of properties from inferior locations. While six of Allen's eight sales were admittedly from inferior locations, he adjusted for that inferiority. And he explained in detail the various factors that he considered in making those adjustments. We are not particularly bothered by the fact that his adjustments contained a subjective element; Landeen acknowledged that appraisers may use subjective judgment in quantifying adjustments. The Assessor ultimately offered little to concretely dispute Allen's location adjustments.

152. The controversy over Allen's other two sales—the Kittle's and Fry's stores from Fishers—centered not on the size of Allen's location adjustment but on his failure to make any location adjustment at all. Allen rated those properties as having locations similar to the subject property. Wilson, by contrast, rated them as having significantly inferior locations. Perhaps because both appraisers used the properties in their analyses, the parties spent an inordinate amount of time addressing the relative strengths of the two properties' locations as compared to the subject property.

153. The differences in the experts' opinions largely stem from their views about the relative significance of I-69 exposure. Allen believes that such exposure is invaluable for big-box retail properties. Wilson and Landeen acknowledge that such exposure matters but believe it is much less important than exposure and access off 96th Street. All three appraisers gave logical explanations for their views, but none of them offered much objective data to support those views. Ultimately, their differences address only two aspects of location, albeit important ones. We find that the Kittle's and Fry's locations

may be similar, or slightly inferior, to the subject property's location. Either way, it does not significantly affect the reliability of Allen's valuation opinions.

154. The Assessor's witnesses also criticized Allen's decisions about whether to adjust for the property rights conveyed in his comparable sales. Allen persuasively explained why he adjusted the sale price for the former Walmart in Clarksville—among other things, the buyer had an atypical motivation to control the property in its mall. Beckman disagreed, referencing covenants or rights of refusal that she presumed existed, and that she believed would make a mall owner unlikely to pay a premium. Without some objective support to show whether those covenants existed or what they contained, we credit Allen's opinion over Beckman's.

155. Beckman, however, also testified that Walmart typically includes restrictive covenants when it sells its properties. Allen agreed. Despite that fact, he did not adjust the sale prices for any of his former Walmart stores to account for those covenants. He defended his decision by pointing to one sale where the subsequent occupant sold many of the same items as Walmart. That somewhat cavalier justification does not completely allay the concerns that Beckman highlighted. On the other hand, neither Beckman nor any of the Assessor's other witnesses showed what the restrictive covenants in any of the Walmart sales were, much less that they significantly affected the sale prices.

156. Turning to Allen's analysis under the income approach, the Assessor and his witnesses criticized several adjustments that Allen made to his estimated net operating income. While they all believed that Allen should have deducted less than he did for vacancy and credit loss, they offered differing opinions about what those deductions should have been. Allen, however, credibly explained why his estimate exceeded national estimates for other types of retail properties: the subject property's size and the orientation of its building created a higher vacancy risk.

157. As for management fees, the witnesses agreed that there would be limited management duties for a property of the subject property's size leased on a long-term triple-net basis. Allen's estimate of more than $50,000 for each assessment year appears high. On the

other hand, Wilson's estimates of less than $15,500 for each year seem low. Neither appraiser offered much support for his chosen expense. The answer likely lies somewhere in between, but we will not hazard a guess as to where.

158. Landeen also criticized Allen's capitalization rates, which were between .25% and 1.5% higher than Wilson's overall rates for the various years. We disagree with Landeen's criticism. Allen considered a variety of sources and persuasively explained his judgments. In fact, we find Allen's choice of rates more persuasive than Wilson's. Wilson relied on averages from several surveys, only one of which, *Realtyrates.com*, addressed freestanding retail properties. And he concluded to rates that were significantly lower than what *Realtyrates.com* indicated. Indeed, Wilson concluded to rates that were lower than, or very close to, the average of all the survey rates for each year, even though the surveys were national and he acknowledged that capitalization rates were typically higher in the Midwest.

159. In his post-hearing brief, the Assessor argued that including leasing commissions would value the property as of some point in the future rather than as of the valuation dates at issue. But the income approach necessarily looks to the future—it reduces a projected future income stream to present value. *See Lacy Diversified Industries, Ltd v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1224 (Ind. Tax Ct. 2003) (explaining that income capitalization converts expected net income to present value).

160. The Assessor and his experts offered an additional reason for their belief that deducting a leasing commission is improper—the subject property was occupied on all of the assessment dates at issue. As Allen explained, the sale of a fee simple interest presupposes that the buyer has the immediate right to occupy a property. Under the income approach, that buyer is an investor who would not occupy the property itself, but would instead seek to lease the property in order to generate an income stream. Thus, an investor would account for the cost of leasing the property just as it would account for other costs that are required for the property to generate an income stream. Landeen, the Assessor's own review appraiser, admitted as much. Unfortunately, neither the parties nor their experts pointed to anything specific in the appraisal literature to support whether

leasing commissions should be accounted for under the income approach, and if so, how. In that vacuum, we find Allen's views logical and persuasive.

161. Allen did commit one undeniable error in his analysis under the income approach. For reasons he did not explain, he chose a trial-and-error method for determining the appropriate level of property taxes to deduct as an expense instead of simply loading the landlord's share of the effective tax rate into his overall capitalization rate. In any event, he mistakenly used the landlord's share of the actual taxes, which were based on the property's admittedly inflated assessments. To his credit, Allen corrected his mistake and testified about the extent to which that correction increased his overall valuation opinion for each assessment date. But he did not explain how he arrived at his corrected values. That lack of explanation detracts a little from the reliability of his ultimate value opinions.

D. Weighing the Experts' Opinions

162. Ultimately, we are more persuaded by Allen's opinions. He has significant experience in appraising big-box properties like the subject property. And his methodology was more in keeping with the Tax Court's interpretation of Indiana's true tax value standard than was Wilson's methodology. That is particularly true regarding how the two appraisers treated anticipated buyer expenditures. Wilson's interpretation led him to erroneously adjust his comparable sales by millions of dollars, which fundamentally affected his ultimate value conclusions. Wilson's indiscriminate use of leases for built-to-suit properties and from sale-leaseback transactions to determine market rent also likely contributed to inflated value conclusions. Indeed, the numerous problems with Wilson's methodology, such as his erroneous method for determining age/condition adjustments and his refusal to recognize obsolescence, all drove his value opinions higher.

163. While Allen's opinions also had problems, they had less effect on the reliability of his ultimate value conclusions. That is particularly true for the issues with his income approach, which he gave less weight in forming his ultimate value conclusion.

164. In addition, while Allen did not offer as much explanation about his corrections as one might hope, he did correct many of the errors in his appraisals. And the errors he failed to correct mostly went to aspects of his appraisals that had a limited effect on his ultimate value conclusions. Some of our other concerns, like Allen's fairly cavalier disregard for potential deed restrictions in several of his comparable sales, tend to detract somewhat from the overall reliability of his value opinions. But those concerns pale in comparison to the more concrete and significant problems with Wilson's appraisals.

165. Thus, despite some weaknesses, we find Allen's corrected value opinions to be the most probative evidence of the subject property's true tax value for each year. We include Allen's corrections based on the 2006 sale of the former Walmart in Bloomington. Allen did not directly admit that he erred in excluding that sale. Nonetheless, he used a later sale of the same property, and he offered no reason why the 2006 sale would not also have been indicative of the subject property's true tax value.

166. We therefore find that the subject property's overall assessments (including the big-box store, gas station, and excess land) must be reduced to the following values:

Year	**Value**
2002	$10,215,000
2003	$10,330,000
2006	$9,822,000[14]
2007	$10,797,000[15]
2008	$10,480,000
2009	$9,470,000
2010	$8,670,000
2011	$8,020,000
2012	$7,170,000

[14] $9,155,000 (Allen's opinion as corrected for property taxes and omitted pavement) plus $667,000 (the amount that Allen testified his opinion would have increased had he used the 2006 sale of the Bloomington Walmart).
[15] $10,530,000 (Allen's opinion as corrected for property taxes and omitted pavement) plus $267,000 (the amount that Allen testified his opinion would have increased had he used the 2006 sale of the Bloomington Walmart).

CONCLUSION

167. After weighing the appraisals and testimony of the parties' experts, we are most persuaded by the corrected valuation opinions of Meijer's appraiser, Laurence Allen. We therefore find that each year's assessment must be reduced to the values specified 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>.