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

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

SCP 2002 E19 LLC 6697 a/k/a CVS 6697-02, Petitioner, v. Monroe County Assessor, Respondent.	)	Petition: 53-005-07-1-4-00016 53-005-08-1-4-00002 53-005-09-1-4-00010 53-005-10-1-4-00056 53-005-11-1-4-00013 53-005-12-1-4-00172 53-005-13-1-4-00034 Parcel: 53-05-35-300-046.000-005 County: Monroe Township: Bloomington City Assessment Years: 2007-2013

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

November 10, 2015

FINAL DETERMINATION

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

ISSUE

1. The parties offered competing valuation opinions from two appraisers—Sara Coers for the Petitioner, SCP 2002 E19 LLC 6697, also known as CVS 6697-02 ("CVS"), and Wayne Johnson for the Monroe County Assessor. Both appraisers valued the property at less than

its assessment for the majority of the years under appeal, although Johnson's opinions were much closer to those assessments than were Coers' opinions. Johnson's appraisals had fundamental problems that significantly detract from the reliability of his opinions. While the Assessor and her review appraiser validly criticized some aspects of Coers' appraisal, Coers adequately supported her valuation opinions, which we find to be the most persuasive evidence of the property's true tax value.

PROCEDURAL HISTORY

2. CVS timely filed notices for review with the Monroe County Property Tax Assessment Board of Appeals ("PTABOA") for the 2007-2013 assessment years. The PTABOA issued determinations valuing the property as follows:

Year	Land	Improvements	Total
2007	$1,994,600	$1,048,500	$3,043,100
2008	$1,994,600	$1,043,100	$3,037,700
2009	$1,994,600	$1,064,500	$3,059,100
2010	$1,994,600	$1,000,500	$2,995,100
2011	$1,994,600	$1,012,700	$3,007,300
2012	$1,994,600	$1,027,700	$3,021,800
2013	$1,994,600	$983,700	$2,978,300

3. CVS then timely filed Form 131 petitions with the Board. On November 12-13, 2014, our designated administrative law judge, Andrew Howell ("ALJ"), held a hearing on the petitions. Neither he nor the Board inspected the property.

4. Marilyn Meighen represented the Assessor. Paul Jones represented CVS.[1] The following people were sworn as witnesses: Sara Coers, Nick Tillema, and Wayne Johnson.

5. CVS offered the following exhibits:[2]

Petitioner's Ex. A: Appraisal report prepared by Sara Coers,
Petitioner's Ex. B: *Uniform Standards of Professional Appraisal Practice*, (2014-15 ed.) with attachments,

[1] Christopher Engel and N. Davey Neal of Clark, Quinn, Moses, Scott & Grahn, LLP also appeared for CVS, submitted a supplemental brief, and then withdrew.
[2] Petitioner's Exs. D and E were offered for demonstrative purposes only.

Petitioner's Ex. C:	Transcript of hearing from *SCP 2007-C-26-002, LLC v. Monroe County Assessor,* pet. nos. 53-005-09-1-4-00009 etc. (IBTR August 19, 2015),
Petitioner's Ex. D:	Enlarged copy of photo from page 72 of Respondent's Ex. B,
Petitioner's Ex. E:	Enlarged copy of photo from page 100 of Respondent's Ex. B,

6. The Assessor offered the following exhibits:

Respondent's Ex. A:	Property record cards for subject property,
Respondent's Ex. B:	Appraisal report prepared by Wayne Johnson,
Respondent's Ex. C:	Addendum to appraisal report prepared by Wayne Johnson,
Respondent's Ex. D:	2002 Real Property Assessment Manual, pp. 2, 3, 10, and 12,
Respondent's Ex. E:	2011 Real Property Assessment Manual, pp. 2, and 6-8,
Respondent's Ex. F:	Appraisal review prepared by Nick Tillema,
Respondent's Ex. G:	APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE, (14th ed.)
Respondent's Ex. H:	Calculator Method Section 13 Page 20, May 2012 from Marshall Valuation Service,
Respondent's Ex. I:	Thomas R. Gould Jr. and C. Halbert Smith, *Entrepreneurial profit incentive and marketwide external obsolescence: are they mutually exclusive?* Appraisal Journal, January 1, 1995.

7. The record also includes the following: (1) all pleadings, briefs, and documents filed in the appeals, including the parties' post hearing briefs; (2) all orders and notices issued by the Board or our ALJ; (3) the digital recording of the hearing; and (4) the two-volume hearing transcript.

FINDINGS OF FACT

A. The Subject Property

8. The property contains a freestanding retail building in good repair. It is approximately 12,000 square feet including a mezzanine and sits on approximately 1.97 acres of land on the corner of East Third Street and South State Road 46 (bypass) in Bloomington. It is just northwest of College Mall. During the years at issue, it was operated as a CVS brand store. The building is one story with a partial mezzanine and a drive-through pharmacy. It also has a clinic area that was added in 2012. *Pet'r Ex. A at 6-8, 26-37; Resp't Ex. B at 6-10.*

9. Hooks SupeRx, Inc. bought the land for $4.4 million in June 2001. The purchase may have included some assemblage costs, as well as costs for demolishing a funeral home. Hooks SupeRx then built the improvements. It sold the property to CVS (the Petitioner, not the operator of CVS brand stores)[3] for almost $6.2 million as part of a sale-leaseback transaction. *See Resp't Ex. B at 20; Vol. I at 44-45, 284-85.*

B. Expert Opinions

1. Johnson's Appraisal

10. The Assessor engaged Wayne Johnson of First Appraisal Group, Inc. to appraise the true tax value of the fee simple interest in the property. He holds MAI, RM, and MRICS designations and is an Indiana licensed appraiser. He is also a member of the Indiana Real Estate Appraiser Certification Board, and he has appraised properties for the Indiana Department of Transportation, local courts, cities, towns, and law firms. He certified that he performed his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Vol. I at 19-35; Resp't Ex. B at 173, 177-78.*

a. Johnson's Research and Market Overview

11. Johnson identified the local market as Monroe County. He described it as unique, pointing to the presence of Indiana University, Lake Monroe, and various cultural and entertainment offerings. He listed various positive factors affecting the local market, such as low unemployment, increasing population, and the anticipated construction of I-69. He also explained that regional, national, and international investors included Bloomington in their market selections, particularly during the recession. He noted that zoning was difficult due to local government restrictions. He described the property's neighborhood as the area bordered by 10th Street, Moores Pike, Clarizz Drive, and State Road 46 (excepting the East

[3] Terminology in these appeals poses an issue. The owner of the real property, which we refer to as "CVS," is a separate entity from the business that operates a national drugstore chain under the brand name CVS. The record is unclear regarding the corporate ownership of the national chain, but it appears that Hooks SupeRx, Inc. operates at least some of the stores, including the one occupying the subject property. The parties use the term "CVS" alternately to refer to the subject property's owner and to the drugstore chain. To avoid confusion, we refer to the former as "CVS" and to businesses operated by the latter as "CVS brand stores."

Third Street area). He reported that the neighborhood was a solid retail area with very high demand. In his opinion, the property was very well suited for retail use and was in a superior location. *Resp't Ex. B at 11, 31-57; Pet'r Ex. C at 349-51; Vol. I at 39-59.*

b. Johnson Cost Approach

12. Johnson developed all three generally recognized valuation approaches, starting with the cost approach. He began by valuing the land using sales of six sites that were vacant or had improvements that the buyers demolished. The sales were from near the subject property. One site, which was developed into a retail strip center that includes a Starbucks coffee shop ("Starbucks site"), is immediately north of the subject property. It has direct access off State Road 46 and appears to be accessible from the subject property as well. Two others are on South Clarizz Boulevard, a smaller road southeast of the subject property and east of the College Mall. The remaining three are roughly four blocks south of the subject property and south of the mall. Two are on Auto Mall Road, and one is on East Buick Cadillac Boulevard. *Resp't Ex. B at 61-82; Vol. I at 59-65, 91-92.*

13. The sites had a variety of uses after sale, including retail, professional, and mixed office/residential. Although Johnson also examined sales of land to CVS brand stores, he did not purport to rely on them. *Resp't Ex. B at 61-82.*

14. Johnson adjusted each sale price upward by 30% to account for what he viewed as the subject property's comparatively superior location. In his report, he explained his location adjustment on grounds that all the comparable sites are "interior locations" and none is on a busy intersection like the subject property. At hearing, he elaborated by saying that the Starbucks site, although it has access and visibility from State Road 46, does not have access or even necessarily visibility from East Third Street. He also explained that his other sites are further from East Third Street, which he described as the primary corridor, and they were on secondary roads. Beyond that, Johnson did not explain how he quantified his location adjustment or why it was the same for every sale. *Resp't Ex. B at 74-81; Vol. I at 59-65, 141-42.*

15. The sites range from .40 acres to 1.62 acres. Johnson explained that larger sites typically sell for less per square foot. He did not specifically adjust the sale prices to account for differences in size between any of his comparable sites and the subject site, but indicated he would consider those differences in his final correlation. When explaining his correlation of site values, however, he did not expressly address the size differences. *Resp't Ex. B at 74-81; Vol. I at 59-65, 141-42*.

16. Johnson's comparable sites sold on January 11, 2000; June 30, 2000; May 15, 2003; January 28, 2004; June 21, 2006; and September 17, 2007. He used every sale for all the assessment dates under appeal, up to and including March 1, 2013. Thus, in some instances, he used sales roughly 13 years removed from the assessment date. *Resp't Ex. B at 62-67*.

17. To adjust the sale prices for differences in market conditions between the sale dates and the various valuation dates for which he appraised the subject property, Johnson applied a 2% annual adjustment. He claimed his adjustment was supported by two groups of paired sales—one group involving several sales and re-sales of vacant land, and another involving sales and re-sales of improved properties. Of his four sets of paired land sales, one site (which sold three times thereby yielding two different sets of paired sales) was eventually improved with a medical office and another was bought with the intention of building a medical office, but was never improved. He offered no details on the last property. The paired sales for his improved properties consisted of six offices and a restaurant. *Resp't Ex. B at 71-82; Vol. I at 62-65*; *Pet'r Ex. C at 482-85.*

18. The paired land sales spanned periods as long as 11 years and as short as six months. The earliest land sale was from 2002, while the paired sales of the improved properties went as far back as 1992. The latest land sale was from February 2012 and the latest improved sale was from August 2011. The paired land sales showed annual appreciation ranging from 1.76% to 66.4%. The annual appreciation from the paired improved sales ranged from .47% to 14.22%. *Resp't Ex. B at 73-74*.

19. Finally, Johnson adjusted three of his land sales to account for the costs of demolishing existing buildings. After applying all his adjustments, Johnson arrived at correlated site values ranging from $20/sq. ft. to $23/sq. ft. That translated to site values for the subject property between $1.7 million to $1.95 million, depending on the year at issue. *Resp't Ex. B at 61-82.*

20. Johnson estimated the cost new of the improvements using data for Class C drug stores from the Marshall Valuation Service published by Marshall & Swift. He used the base cost for a store of "good" construction quality. He chose "good" over "average" because the description for good included brick, a drive through, and good storefront and ornamentation. He also applied multipliers for floor area, current cost, and local cost. He used 12% of total cost to account for entrepreneurial profit, which he got from construction information for four medical office buildings and from general discussions with developers and builders. When questioned on cross-examination about why he did not use data for retail properties to justify his entrepreneurial profit, he responded: "The explanation is these are the ones I had that give cost on sale prices." *Resp't Ex. B at 84-86; Vol. I at 65-68, 118, 145-46.*

21. Johnson also looked at the actual construction costs from 2011 for a new retail pharmacy building in a small central Indiana town. The building's total cost was approximately $1 million, with an additional $454,000 in soft costs and $500,000 for site improvements. Although the soft costs and site improvements were significantly more than what Johnson estimated for the subject property, the building cost was almost $300,000 less than the cost new that he estimated for the subject building using Marshall & Swift. *See Resp't Ex. B at 85-90.*

22. Johnson calculated physical depreciation using the age-life method. He extracted the building's anticipated economic life from three sales of office buildings. He explained that his conclusion of 50 years was a little higher than what Marshall and Swift indicated, but he believed it was within an acceptable range and that data abstracted from the local market

was more reliable than published data. After adding his final cost figures to his estimated site value, Johnson's cost approach arrived at the following values for each year:

Year	Value
2007	$3,500,000
2008	$3,500,000
2009	$3,500,000
2010	$3,500,000
2011	$3,500,000
2012	$3,500,000
2013	$3,500,000

Resp't Ex. B at 86-89; Vol. I at 68-69.

c. Johnson's Sales-Comparison Approach

23. Johnson also developed the sales-comparison approach, but he did not give it significant weight because of the lack of sufficiently comparable sales in the local market. *Resp't Ex. B at 170-71; Vol. I at 85.*

24. All of Johnson's sales were from Bloomington. Five were strip centers, including the center built on the Starbucks site he used in his analysis of vacant land sales. They also included a former Ponderosa restaurant that was converted to a Post Office and a Bedroom One that was converted to an international market. He gave certain sales less weight because he could not completely verify them. He also provided a "secondary" set of sales involving larger big-box stores. While he believed the secondary sales supported his first analysis, he did not feel that "big box stores are fair comparisons to what we have." He reported sales involving CVS brand stores, but he excluded them from his analysis because he thought they were leased fee transactions. *Resp't Ex. B at 91-127; Vol. I at 70-79.*

25. Johnson adjusted the sale prices for location, market conditions/time, size, and effective age/condition. Based on those adjusted sale prices, he settled on values for the subject property ranging from $2.1 million to $2.5 million for the years at issue. *Resp't Ex. B at 91-127; Vol. I at 70-79.*

d. Johnson's Income Approach

26. Johnson began his analysis under the income approach by examining the subject property's lease as well as leases of other CVS brand stores. He did not ultimately rely on those leases because they did not represent the fee simple interest in the property. *Resp't Ex. B at 130-69; Vol. II at 128-69.*

27. He instead turned to leases for other Bloomington-area properties. They were primarily strip center units, but also freestanding retail and an office building as well. The leases were for spaces between 2,000 and 30,546 square feet, and rent ranged from $6/sq ft. to $28.25 /sq. ft., with an average $14.57/sq. ft. Three exceeded $19/sq. ft. and ranged from 2,000 to 2,447 square feet, and two of those were for office space. As with his sales-comparison analysis, he also used a second set of leases, which were from prior to 2007 and primarily involved larger spaces. After he adjusted the leases to 2013 using the same 2% annual appreciation rate from his land sale analysis, the rents ranged from $10.38/sq. ft. to $21.32/sq ft., with an average of $14.29/sq. ft. He ultimately chose rents of $19/sq. ft. to $22/sq. ft. for the subject property, depending on the assessment year. The spaces most similar to the subject building's size rented for between $9/sq. ft. and $14/sq. ft. *Resp't Ex. B at 130-69; Vol. I at 79-82, 127-29.*

28. Based on his opinion of the local market, Johnson deducted 2.5% of potential gross income to account for vacancy and collection loss, 3% of effective gross income ("EGI") to account for management and administration expense, and 1.5% of EGI for reserves. *Resp't Ex. B at 152-54; Vol. II at 82-84.*

29. In developing his capitalization rate, Johnson examined leases of CVS brand stores, but once again did not rely on them because he was valuing the fee simple, rather than the leased fee, interest in the property. He also examined national survey data from PwC[4] and

[4] Price Waterhouse Coopers LLP publishes a quarterly national survey of expected investment rates.

Boulder Group[5] but largely discounted that data for the same reason. Instead, he used a band-of-investment technique to develop an overall rate based on mortgage rates and desired equity yields. In addition, Johnson extracted overall rates from the market by examining sales from his appraisal files. Those sales were primarily office buildings, but also included some mixed use and retail buildings. On cross-examination, he admitted that some of the properties were not exposed to the market before being sold. *Resp't Ex. B at 154-65; Vol. I at 83-85, 131-33.*

30. After reconciling his conclusions under those three techniques, Johnson arrived at capitalization rates of 7.25% to 7.35%, depending on the assessment year. He then divided that rate into his estimated net operating income ("NOI") to arrive at the following values:

Year	**Value**
2007	$2,600,000
2008	$2,700,000
2009	$2,750,000
2010	$2,800,000
2011	$2,900,000
2012	$3,000,000
2013	$3,100,000

Resp't Ex. B at 154-69.

e. Johnson's Reconciliation

31. In reconciling his conclusions under the three approaches, Johnson gave little weight to the sales-comparison approach, which he described as the "least reliable." He relied on the cost and income approaches. His final opinions of value fell between his conclusions under those two approaches:

Year	**Final Opinion**
2007	$2,900,000
2008	$2,900,000

[5] Boulder Group publishes data about leased national pharmacy capitalization rates.

2009	$3,000,000
2010	$3,000,000
2011	$3,000,000
2012	$3,100,000
2013	$3,100,000

Resp't Ex. B at 170-72; Vol. I at 85.

2. Coers' Appraisal

32. CVS engaged Coers, the managing director of Valbridge Property Advisors, Mitchell Appraisals Inc., to appraise the fee simple interest in the property. Coers certified that she appraised the property and prepared her appraisal report in accordance with USPAP. *Pet'r Ex. A at 2-3.*

33. Coers is a certified general appraiser, MAI, and a Level II assessor/appraiser. She has been an appraiser for more than ten years and has completed over 200 market-value-in-use appraisals. *Vol. I at 150-51.*

a. Coers' Research and Market Overview

34. Coers described the subject property as superior and its immediate area as a "premiere" location for retail in the area. She reported on conditions in the national retail market, including job losses, increased vacancy, and effective rent growth. According to Coers, national data is relevant because the retail market is affected by more than just local factors. Investors in the retail market include regional and national buyers. *Pet'r Ex. A at 40-60; Vol. I at 161-70, 190, 236-37, 329.*

b. Coers' Valuation Approaches

35. Coers believed the income and sales-comparison approaches were better indicators of the property's true tax value than the cost approach. She explained that, unlike the other two approaches, the cost approach fails to capture external obsolescence during times of

national recession. Under those circumstances, she believed the sales-comparison and income approaches better-represented buyers' motivations when purchasing properties like the subject property. While she estimated a site value and depreciated cost of improvements, she did so only as part of a technique she used to estimate market rent in applying the income approach. *Pet'r Ex. A at 62; Vol. I at 171.*

i. Coers' Income Approach

36. Coers began her analysis under the income approach by determining market rent for the property. She reviewed the existing lease but determined that it did not reflect market rent because it was the product of a sale-leaseback transaction. She instead used three techniques to estimate market rent. First, she examined subleases of former CVS brand stores from several locations throughout Indiana. The subleases averaged $7.39/sq. ft. She believed the subleases were relevant because the buildings were similar to the subject building, and the leases showed what someone was willing to pay once a CVS brand store or a Walgreens vacated the building. *Pet'r Ex. A at 93-95; Vol. I at 177-80; Vol. II at 340.*

37. Second, Coers estimated market rent as a function of return on cost. She started by valuing the site as if vacant. To do so, she looked for vacant land in Bloomington that sold for retail use. She used sales to the operator of CVS brand stores with caution because she believes it has atypical motivations when buying land. *Vol. I at 171-72.*

38. She ultimately settled on 11 sales. One sale was the Starbucks site immediately north of the subject property that Johnson used in his appraisal. Five were from the Whitehall area of Bloomington, which she described as the city's other primary retail node where most of the recent retail development has been. She described that area as "close to as desirable [as the College Mall area] if not equal or slightly less, right . . . in the area depending on where you are in White Hall[*sic*]." The rest were from various other Bloomington locations. The sales occurred between January 2004 and August 2012, but she only used sales that occurred before the assessment date at issue for each year. For example, she used the six

sales through March 2007 for her 2007 analysis, while she used all 11 sales for 2013. *Pet'r Ex. A at 62-92; Vol. I at 171-77, 216.*

39. Coers adjusted the sale prices for several of the sites to account for differences between them and the subject site in terms of frontage and location as well as for differences in market conditions between the sale and assessment dates. She also adjusted for buyer expenditures, including costs of demolishing existing buildings, adding fill, and building retaining walls and ponds. *Pet'r Ex. A at 62-92; Vol. I at 171-77.*

40. As for her market-conditions adjustment, Coers explained that ideally she would have been able to analyze paired sales. But she has found that, particularly in the period covered by these appeals, sales and re-sales were rare and too often showed "huge swings," indicating unreasonable ranges of adjustment. In times of national recession, prices may fluctuate wildly. Paired sales, which may bracket longer periods, do not necessarily show those fluctuations. Coers therefore used an alternative method and based her market-conditions adjustment on changes to capitalization rates for Midwestern Tier-1 retail properties. She got that data from *The Real Estate Report*, a publication of the Real Estate Research Corporation ("RERC"). By using rates for Tier-1 properties (the best quality and location), she effectively isolated pure movements in the market as viewed by market participants. *Pet'r Ex. A at 77-80; Vol. I at 173-75.*

41. Coers' location adjustments considered traffic exposure, proximity to major retail nodes or travel corridors, access, population, median household income, and surrounding property development. She did not adjust the sale prices for the Whitehall sites, the Starbucks site immediately north of the subject property, or a site on North College Ave. She adjusted the sale price for each remaining site upward by 20% to account for its inferior location in comparison to the subject property. *Pet'r Ex. A at 64-76, 81-92; Vol. I at 175-77.*

42. To estimate replacement costs for the improvements, Coers used Marshall & Swift's base costs for a Class C drugstore of average construction quality. When handed a page from that publication listing various characteristics of good and average drugstores, Coers

acknowledged that the description for a good store includes a "mini drive-thru" and a pharmacy, while the description for an average store does not. She noted, however, that the description for an average store includes a prescription department. In any case, she explained that the one-page summary was only a small subset of Marshall & Swift's larger discussion about construction quality. For example, the description of an average store includes restrooms, but the description of a good store does not. That does not mean good stores lack restrooms. Based on a call to Marshall & Swift's technical support line, she understood that its average drugstore was based on the modern Walgreen's prototype, which includes a drive-through pharmacy. In any case, she explained that the cost of a pharmacy space and drive-through represents only a small portion of the difference in cost between average and good construction. *Pet'r Ex. A at 191-97; Resp't Ex. H; Vol. I at 178-80; Vol. II at 250-54, 342-46.*

43. Coers accounted for the physical depreciation of the improvements using the age-life method, but not for functional obsolescence, external obsolescence, or entrepreneurial profit. Although properties built for a specific business prototype may have functional obsolescence, the subject store was very similar to the average-quality store from Marshall & Swift. So she did not think functional obsolescence was relevant for her analysis. She did believe the store was affected by external obsolescence from the recession. As for entrepreneurial profit, she has found that build-to-suit properties do not have "a lot of profit built into their cost estimates labeled as such. It's usually inflated costs and so build-to-suit rates are typically based on these inflated costs." *Pet'r Ex. A at 190-209; Vol. I at 165, 178-81.*

44. Coers then calculated rent based on the return an investor would require on the property's land and depreciated improvement costs (not including obsolescence depreciation). Based on market surveys and her own observations about required rates of return, she calculated rent for each year based on three different rates of return: 7%, 8%, and 9%. Those rents

ranged from $14.35/sq. ft.[6] to $20.76/sq. ft., depending on the year and the rate of return. *Pet'r Ex. A at 95-99; Vol. I at 180-81.*

45. Finally, Coers calculated rent as a percentage of gross sales. CVS did not give her data for retail sales from the CVS brand store at the subject property, but she did not believe she needed it. Because of CVS's brand strength, she believed those sales would not have reflected market levels. She instead estimated a typical user's gross sales. To do so, she primarily relied on two sources. The first, *Dollars & Cents of Shopping Centers/The Score,* published data for all drugstore/pharmacy users as well as for those over 10,000 square feet. The most recent data from that publication was for 2006-2007. To adjust the data to the years at issue, Coers examined more recent national census data for pharmacy and drug store sales. She arrived at sales ranging from $420/sq. ft. to $495/sq. ft. depending on the assessment year. *Pet'r Ex. A at 99-101; Vol. I at 181-82, 338.*

46. *Dollars & Cents* reported percentage-rent levels ranging from 1.85% of sales to 3.1% of sales, with a median of 2.75%. Based on her market-level gross retail sales, Coers computed a rent using the low, median, and high percentage rates for each year. The lowest of those computations for any year was $7.77/sq. ft., while the highest was $15.35/sq. ft. *Pet'r Ex. A at 102-103; Vol. I at 182-83.*

47. Coers then reconciled the values from the CVS subleases, cost-based rent, and percentage rent, settling on market rents ranging from $16/sq. ft. to $17.50/sq. ft. for the various years at issue. *Pet'r Ex. A at 103; Vol. I at 182-83.*

48. From that potential gross income, Coers subtracted allowances for vacancy and collection loss ranging from 0.65% to 4.75%. She based her estimates on market conditions during the years at issue. She then deducted expenses. She used regional expense data, which she checked against Indiana data from her appraisal files. Although she included an insurance expense of $.20/sq. ft., she also reflected that expense as income in the form of a

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[6] Coers testified that the low end was "about $14.15," but her appraisal report shows a low of $14.35. *Vol. I at 180; Pet'r Ex. A at 97-99.*

reimbursement to the landlord. She estimated a management fee equaling 3% of EGI, which was on the low end of what the data from comparable drugstores indicated. Because she determined that investors would not have required reserves for any year except 2012, she included them as an expense only for that year. After applying expenses, she arrived at pro forma NOI ranging from $15.19/sq. ft. $16.62/sq. ft. for the various years at issue. *Pet'r Ex. A at 103-10; Vol. I at 183-86.*

49. Coers capitalized her pro forma NOI to reach a value conclusion for each year. She drew her capitalization rates from national market surveys and regional data published by RERC. She also considered sales of drugstores, including CVS brand and Walgreens stores. Those stores were leased at the time of sale, but she reasoned that the sale prices were less likely to reflect tenant creditworthiness because she focused on leases where the lease had fewer than 10 years remaining, the tenant had subleased the property, or the tenant had vacated. In addition, Coers relied on knowledge gained from interviewing people familiar with the relevant market. *Pet'r Ex. A at 110-114; Vol. I at 186-89.*

50. She did not think the band-of-investment technique, which relies on mortgage parameters like interest rates and loan-to-value requirements, was appropriate. According to Coers, the Federal Reserve was artificially suppressing mortgage rates during the years at issue, which meant they did not reflect the actual risk in the market. And there was a period where normal financing was not even available, so transactions involved either cash buyers or seller financing. *Pet'r Ex. A at 110-114; Vol. I at 186-89.*

51. Coers settled on overall rates ranging from 7.75% to 9% for the years at issue. She then loaded those rates with a percentage reflecting the landlord's share of the property tax burden (taxes paid during vacancy). Finally, she divided those loaded rates into the property's pro forma NOI for each year to arrive at the following values:

Year	Value
2007	$2,260,000
2008	$2,260,000
2009	$2,080,000

2010	$1,850,000
2011	$1,980,000
2012	$1,980,000
2013	$2,180,000

Pet'r Ex. A at 114-21 Vol. I at 186-89.

ii. Coers' Sales-Comparison Approach

52. For her sales-comparison analysis, Coers focused on fee simple, rather than leased fee, sales because the latter capture intangibles, such as tenant quality, rather than just the value of real estate. She believed it was more important to find sales of physically similar properties that sold for retail use than to only use sales from the Bloomington area. She also testified that investors looking at properties such as the subject property typically shop in a regional, rather than a local, market. Most of properties were vacant when sold. Several were vacant for more than one year. In some cases, the vacancy included the year leading up to the assessment date. *Pet'r Ex. A at 122-152; Vol. I at 189-97.*

53. Her comparables included sales of a former Osco, a former Blockbuster, a former Walgreens, and a former Goodwill, among other retail buildings. The properties were located across Indiana in markets such as Carmel, Indianapolis, Lafayette, Bloomington, Greencastle, and New Albany. One sale was from Cincinnati. Coers described various similarities between the subject property and her comparable properties as well as the various differences for which she adjusted the comparable properties' sale prices, including adjustments for differences in location and market conditions. *Pet'r Ex. A at 122-175; Vol. I at 189-99.*

54. Coers reached the following value conclusions under the sales-comparison approach:

Year	Value
2007	$1,860,000
2008	$1,860,000
2009	$1,690,000
2010	$1,650,000
2011	$1,690,000

2012	$1,730,000
2013	$1,830,000

Pet'r Ex. A at 175; Vol. I at 198.

c. Coers' Reconciliation

55. Because she felt the market was split relatively equally between owner-occupants and investor-speculators, Coers gave equal weight to her conclusions under the sales-comparison and income approaches. For the 2007-2009 assessment years, the valuation date was January 1 of the previous year. She therefore developed trending factors of 1.0101, 1.0373, and 0.9607, respectively to trend her reconciled values back to the valuation date. She ultimately arrived at the following values:

Year	**Value**
2007	$2,040,000
2008	$1,990,000
2009	$1,970,000
2010	$1,750,000
2011	$1,840,000
2012	$1,860,000
2013	$2,010,000

Pet'r Ex. A at 176-82; Vol. I at 198-200.

3. Tillema's Review of Coers' Appraisal

56. The Assessor engaged Nick Tillema of Access Group, LLC to review Coers' appraisal. He has been designated as an MAI since 1992. He also holds various other professional designations, including the AI-GRS, which is a new designation for review appraisers. He has appraised a wide variety of properties using various standards, including market value-in-use. *Resp't Ex. F at 1-3; Vol. II at 349-55.*

57. Tillema identified several technical errors in Coers' appraisal. He did not argue that those errors were significant enough to make the appraisal unreliable. Instead, he focused the bulk of his criticism on Coers' methodology, which he found led her to estimate the property's market value rather than its true tax value. *Resp't Ex. F at 1-32; Vol. II at 349-98.*

58. He began by criticizing Coers' market overview. He believed she erred by focusing on Bloomington's general retail market rather than on its pharmacy market. To illustrate, he offered a chart showing the strength of CVS Corporation's stock during the years at issue. He also believed Coers should have done a thorough highest and best use analysis because it would have allowed her to determine whether the property's true tax value would be lower or higher than the value for its highest and best use. He acknowledged that the subject property was not a special purpose property. *Resp't Ex. F at 10-18; Vol. II at 368-79; 404-05.*

59. Turning to Coers' land valuation, Tillema explained that buyers like CVS brand stores and Walgreens pay a "remarkable" amount more for land compared to what the local market will pay. They have very specific purchase requirements for vacant land—they are concerned more with census criteria than with what others are paying for similar property. The site's true tax value, which he believed was its value to a national pharmacy chain, was therefore greater than its market value. Yet Coers settled on values that were significantly below the median sale price for her comparable sites that were ultimately developed into pharmacies. *Resp't Ex. F at 19-20; Vol. II at 380-83.*

60. Tillema felt Coers did not adequately explain her location adjustments. He similarly testified that her method of extracting market-conditions adjustments from changes in retail capitalization rates was not a recognized technique and was based on illogical assumptions, such as the assumption of a linear relationship that was not supported by actual events. According to Tillema, land values fell in 2006 and only came back after an extended period of being flat. *Resp't Ex. F at 19-21; Vol. II at 380-84.*

61. He also pointed out that Coers did not fully develop the cost approach. He felt she should have included entrepreneurial incentive or at least explained why she did not include it. There would be no incentive to build the property without profit. It was a developer-constructed project with entrepreneurial profit built into the cost because that profit could easily be recovered in the financing lease. Although Coers justified her decision not to fully develop the cost approach on grounds that it would not reflect the motivations of market participants during the years at issue, Tillema disagreed. *Resp't Ex. F at 21; Vol. II at 379-80, 448*.

62. Moving on to Coers' analysis under the income approach, Tillema took issue with how she estimated market rent. He believed her cost-based technique was filled with assumptions. More importantly, she used the technique without fully applying the cost approach. As to her other techniques for determining market rent, Tillema found that the sub-leased stores were not comparable because they represented spaces that CVS brand stores had decided to vacate, whereas the subject property housed an ongoing operation. He similarly disagreed with the viability of calculating rent as a percentage of gross retail sales without using sales from the subject store. *Resp't Ex. F at 22-26; Vol. II at 384-90.*

63. Tillema similarly took issue with Coers' capitalization rates, which appeared high to him. He supported his belief with a chart of capitalization rates derived from leased fee sales of ongoing CVS brand and Walgreens stores. He acknowledged that those rates might have also reflected personal property, inventory, and business value. He also explained that they were "more likely to reflect the parent company's credit rating than the location or physical characteristics of the subject property." *Resp't Ex. F at 22-26; Vol. II at 384-90.*

64. As for Coers' sales-comparison analysis, Tillema argued that there are no fee simple sales of ongoing national pharmacy operations, such as CVS brand, Walgreens, or Rite-Aid stores from which to draw a value. He also criticized her choice of sales for various reasons such as their distance from the subject property, the fact that they were vacant, and their overall lack of comparability. *Resp't Ex. F at 26-29; Vol. II at 390-91*.

65. Tillema concluded by reviewing Coers' final reconciliations. While she relied on the sales-comparison and income approaches, Tillema did not believe there were sufficient sales or market leases to credibly develop those approaches if one appropriately considers the property as an ongoing pharmacy operation. Thus, he felt the cost approach, which Coers did not fully develop, was the most appropriate method by which to value the property. *Resp't Ex. F at 30-31; Vol. II at 394-98, 448-49.*

4. Coers' Response

66. Coers defended her decisions not to fully develop the cost approach or analyze the property's highest and best use, explaining that those decisions were appropriate under USPAP. She did not dispute Tillema's assertion that she valued the building as general retail, which she believed was correct under Indiana's true tax value standard. In her view, valuing the property as a "national pharmacy" would incorrectly imply specific tenants, which "gets away" from valuing the real property. For support, she noted the Indiana Tax Court had referred to a different CVS store as a "general retail building" and that Indiana's assessment guidelines classify drugstores as general retail. As Coers explained, identical properties with equally valuable locations should not be valued differently based on the owner's identity. *Vol. II at 422-27, 437-38.*

67. She also defended her land value analysis, noting that some of Tillema's criticisms were too vague to merit a response. She further explained her decision not to include entrepreneurial profit, testifying that when a building like the subject building is constructed for owner occupancy, entrepreneurial profit is questionable. The owner builds the property to use it, not to make money off the construction. In her view, including entrepreneurial profit is questionable for build to suit properties, because costs are calculated including a developer's fee, which is not entrepreneurial profit, and rent is determined by applying a rate of return. *Vol. II at 430-35.*

68. Turning to Tillema's criticisms of her analysis under the income approach, and specifically of her estimate of market rent based on a percentage of sales, Coers reiterated that using

actual sales from the subject store would have risked valuing the particular business model of CVS brand stores rather than just the real property. Regarding her capitalization rates, she testified that she attempted to get as close to the fee simple interest as possible by using leased sales with little time remaining on their lease terms. She also explained that the capitalization rates from CVS stores that Tillema presented would have reflected more of the credit-worthiness of the tenant as well as the extremely long lease terms. *Vol. II at 434-39.*

69. As for Tillema's main criticism of her sales-comparison analysis—that only sales of ongoing CVS brand, Walgreen, or Rite-Aid stores without leases were appropriate for valuing the fee simple interest in the subject property—Coers explained that all else being equal, a vacant property would be worth the same as an identical property occupied by a national retailer. *Vol. II at 439-440.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

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

71. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. First, where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). Second, the assessor also has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following year represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase. . . ." I.C. § 6-1.1-15-17.2(d).

72. In any case, if an assessor has the burden and fails to meet it, the taxpayer still may offer evidence of the correct assessment. If neither party offers evidence that suffices to prove the property's correct assessment, it reverts to the previous year's value. *See* I.C. § 6-1.1-15-17.2(b).

73. Here, the parties agreed, and property record cards confirm, that the Assessor has the burden for 2007. Under Ind. Code § 6-1.1-15-17.2(d), the burden for each succeeding year turns on our decision for the preceding year. For example, if we order a reduction for 2007 that lowers that assessment below the 2008 level, the Assessor will have the burden in the 2008 appeal as well. In a case like this, where both sides offer appraisals from qualified experts, the burden question is largely theoretical. We must weigh the evidence to determine which party most persuasively shows the true tax value for each year under appeal.

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

74. Before weighing the merits of Johnson's and Coers' appraisals, we briefly address Tillema's overriding methodological criticism of Coers' appraisal—that, by treating the property as a "general retail building" rather than as an "ongoing national retail pharmacy," she effectively appraised the property's market value rather than its true tax value. We analyzed this issue in detail in *SCP 2007-C-26-002, LLC v. Monroe County Assessor* pet. nos. 53-005-09-1-4-00009 etc. (IBTR August 19, 2015).[7] In lesser detail, we address this argument again.

75. Tillema asks us to limit the scope of comparable data to that of "national retail pharmacies." We note that Johnson joined Coers in valuing the property as a general retail building. Tillema's criticism is even more applicable to Johnson's appraisal, as Johnson went beyond retail to look at office data for a number of his calculations.

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

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

77. Tillema, a licensed attorney, was clearly aware of these decisions. In fact, Coers cited to several of them in her appraisal report, the very report Tillema was hired to review. Aside from pointing out Coers' reference to *Trimas,* Tillema did not even acknowledge those decisions much less address them. Instead, he offered his own interpretation of true tax value, which on its face, contradicts the Tax Court's holdings. We cannot accept Tillema and the Assessor's apparent invitation to ignore those holdings.

78. After Tillema prepared his report and testified, the General Assembly enacted 2015 Ind. Acts 249, relevant parts of which are codified at Ind. Code § 6-1.1-4-44 as follows:

> (a) This section applies to a real property assessment of commercial nonincome producing real property, including a sale-leaseback property, for:
>
> (1) the 2014 assessment date and assessment dates thereafter; or
>
> (2) any assessment date, if an assessment appeal is pending before the county property tax assessment board of appeals or the board of tax review.
>
> …
>
> (c) As used in this section, "sale-leaseback" means a transaction in which one (1) party sells a property to a buyer, and the buyer leases the property back to the seller.
>
> (d) In determining the true tax value of real property under this section which has improvements with an effective age of ten (10) years or less under the

> rules of the department, a comparable real property sale may not be used if the comparable real property:
>
> (1) has been vacant for more than one (1) year as of the assessment date or in the case of industrial property vacant for more than five (5) years;[8]
> (2) has significant restrictions placed on the use of the real property by a recorded covenant, restriction, easement, or other encumbrance on the use of the real property;
> (3) was sold and is no longer used for the purpose, or a similar purpose, for which the property was used by the original occupant or tenant; or
> (4) was not sold in an arm's length transaction.

I.C. § 6-1.1-4-44.[9]

79. That statute is relevant to these appeals. It limits the sales that may be used in determining the true tax value for properties, such as the subject property, that have been part of a sale-leaseback transaction. As discussed below, that limitation has ramifications for the experts' sales-comparison analyses in these appeals. But it does not purport to significantly change the true tax value standard as interpreted by the Tax Court.

80. Having dismissed Tillema's main criticisms, we must still weigh Johnson's and Coers' appraisals. There are legitimate criticisms to both. We will address those criticisms, as well as the strengths of each appraisal, in turn. As explained below, we ultimately find Coers' conclusions under the income approach to be the more reliable evidence of the property's true tax value.

1. Johnson's Opinions

81. Johnson gave little weight to his conclusions under the sales-comparison approach, relying instead on the cost and income approaches. But there are significant problems with his analyses under both approaches.

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[8] We address subsection (1) in our analysis of Coers' sales-comparison technique below.

[9] The Governor signed the Act on May 6, 2015, and the relevant portions apply to all appeals pending before the Board.

a. Johnson's Sales-Comparison Approach

82. We agree with Johnson's judgment that his sales-comparison data was too dissimilar to the subject property and required adjustments that were too significant for it to carry much weight.

b. Johnson's Cost Approach

83. CVS pointed to several problems with Johnson's analysis under the cost approach. It took issue with his land sales for various reasons, including the facts that the sites largely were not put to retail use and that he made uniform location adjustments for properties with manifestly unequal locations. It also argued that Johnson failed to adequately account for the impact of the national recession.

84. We agree that Johnson's land sales were problematic. At 1.97 acres, the subject site was larger than any of his comparables. *The Appraisal of Real Estate* explains, "Whenever possible, an appraiser should avoid using sales that differ substantially in size from the appraised parcel. Parcels of greatly different size appeal to different sectors of the market and command much different unit prices." *Pet'r Ex. A at 53 (Appraisal of Real Estate, 14thed. at 44).* Not only were various of Johnson's comparable sites sold for uses other than retail, some appear to be too small to have been suitable for a freestanding retail building such as the subject property.

85. We also find Johnson's location adjustments implausible. As CVS pointed out, he adjusted each comparable site's sale price upward by 30% to account for what he viewed as its inferior location. We are not persuaded that all of those locations are equal to each other, and specifically, that the Starbucks site immediately to the north of the subject site is appreciably inferior. Coers judged the two sites as roughly equal and did not adjust that sale for location. In any case, the Starbucks location is demonstrably superior to Johnson's other comparable sites, particularly the ones on Clarizz Boulevard. Because of those

manifest differences, applying an identical location adjustment for each sale implies a lack of careful analysis and lacks credibility.

86. As for CVS's claim that Johnson failed to account for the effects of the national recession, his views about Bloomington's reaction to the recession colored both the market-conditions adjustments he applied to his land sales and his conclusion that the property was unaffected by any external obsolescence. Turning to the first point, we begin by observing that Johnson's comparable sales were far removed from most of the assessment dates at issue. The sale dates ranged from January 11, 2000 to September 17, 2007. Four of the six were from 2000-2004. Johnson adjusted the sale prices, but CVS criticized how he quantified his adjustment. The problem is exacerbated in later years. For 2013, the most recent land sale is approximately 5 ½ years removed from the assessment date, while the furthest is over 13 years removed.

87. Johnson supported his market-conditions adjustment in several ways. He pointed to economic data, including the increase in student population and continued construction of multi-family housing projects, to show that Bloomington was unique in its resistance to the recession. He also analyzed paired sales for three vacant sites and seven improved properties—six office buildings and a restaurant.

88. The economic data is a mixed bag. CVS and Coers pointed to the decline in housing permits and a rise in unemployment, albeit one that was less than the state average. And she testified that national and regional economic conditions necessarily affected the Bloomington market, particularly given the amount of outside investment in the market. Those facts make it less likely that Bloomington was as impervious to the recession as Johnson suggests.

89. More importantly, Johnson's paired-sales analyses do little to support his broader conclusions about appropriate market-conditions adjustments or the lack of external obsolescence. While he chose annual appreciation of 2%, his paired sales, particularly his paired land sales, indicate wildly varying rates of appreciation. One set of paired sales

indicates annual appreciation of 66%. Many of the paired sales do not relate to retail use. In two instances, the buyers bought vacant parcels to construct office buildings. His improved sales similarly include office buildings. None of his paired land sales go back as far as 2000, the dates for two of the sales from his cost approach, and none are from later than February 2012, more than a year before the last assessment date under appeal. In any case, while much of his data came from paired sales that spanned several years, Johnson simply applied an average rate of annual appreciation. That is both imprecise, and given the economic volatility during the years covered by these appeals, difficult to believe, without corroborating data.

90. Given the size disparity between the subject site and his comparables, the lack of reliably supported market-conditions adjustments, and his use of identical location adjustments for properties with manifestly dissimilar locations, we find his land values detract significantly from the reliability of his conclusions under the cost approach and to some extent color his overall credibility.

c. Johnson's Income Approach

91. CVS also pointed out serious problems with Johnson's analysis under the income approach. He estimated market rent by examining leases from the local market. But the majority of those leases were not from comparable properties. For example, he primarily used leases of strip centers and offices instead of freestanding buildings leased to retail users. Johnson acknowledged the shortcomings in his data, but felt it was more important to use local data than to find properties from farther away that were more physically comparable to the subject property. Although we have no qualms with his preference for local data, we are not persuaded that the Bloomington market is so distinctive as to preclude using properly adjusted data from other markets.[10] Even if we were to accept Johnson's premise that his data is the best available, it does not make the data or his decision based on it any more reliable.

[10] The Assessor continually stressed that Johnson is a Bloomington resident and knows the local market. Local knowledge does not eliminate the need for an appraiser to support his conclusions with reliable data. An appraiser's reliance on experience and accumulated file data is not a substitute for a probing analysis.

92. CVS also points out that the average rental rate for the leases in Johnson's first data set was $14.57/sq. ft. Only three of the 22 leases were above $19/sq. ft., and they were some of the least comparable properties, including leases for two offices of less than 2,500 square feet. Yet Johnson used a range of $19/sq. ft. to $22/sq. ft. to estimate market rent for the subject property. The Assessor argues that office properties were only a small portion of Johnson's comparables. But he pointed to little other support for choosing such high rent. In fact, one of most comparable properties from his list, a freestanding retail building in the Whitehall area of Bloomington, leased for $16.64/sq. ft.

93. Johnson's second data set was arguably worse. A grocery store lease for a space several times the subject building's size was the only lease above $18/sq. ft. And that was only after Johnson applied a huge market-conditions adjustment raising the rent from its original level of $13.16/sq. ft. The most physically comparable building, a freestanding retail building approximately the same size as the subject building, leased for an adjusted rate of only $13.68/sq. ft.

94. Thus, we find little support for Johnson's conclusions about market rent. Given that lack of support, neither Johnson's experience nor his knowledge of the local market persuades us that his market rent was appropriate.

d. Johnson's Valuation Opinions

95. As explained above, we agree with Johnson's own view that his sales-comparison analysis carries little weight. Despite the significant problems with his analysis under the two approaches he did rely on, we find the valuations are probative. We now turn to whether Coers' opinion is more persuasive.

2. Coers' Opinions

a. Coers' Sales-Comparison Approach

96. As explained above, the legislature recently enacted Ind. Code § 6-1.1-4-44, which limits the sales that may be used to determine the true tax value of certain nonincome producing properties. On its face, the statute applies to "any assessment date, if an assessment appeal is pending before … the board of tax review." I.C. § 6-1.1-4-44(a)(2). We had already held the hearing and the parties had submitted their briefs before the statute was enacted. We therefore gave them the opportunity to file supplemental briefs on how the statute affects these appeals.

97. Despite being given that opportunity, CVS merely argued (1) that the statute was unconstitutional,[11] and (2) that it did not apply to the subject property because the property was leased, and therefore was not "nonincome producing." Everyone agrees the property was part of a sale-leaseback transaction, and the statute expressly applies to the assessment of "commercial nonincome producing real property, *including a sale-leaseback property*." I.C. § 6-1.1-4-44(a). CVS argues that the reference to sale-leaseback properties describes a subset of "nonincome producing" properties rather than an additional class of properties to which the statute applies. Under CVS's interpretation, however, it is difficult to posit what that subset would be, given that the existence of a lease would automatically exclude a property from being "nonincome producing," and sale-leaseback properties are leased by definition. We find the legislature plainly intended the statute to apply to leased properties where the lease arose from a sale-leaseback.

98. Having committed itself wholly to the argument that Ind. Code § 6-1.1-4-44 does not apply, CVS neglected to analyze how subsection (d)(1), which prohibits using the sale of a property that has been vacant for more than one (1) year as of the assessment date to value a property like the subject property, affects Coers' comparable sales. A party must walk

[11] As an administrative agency, we cannot declare a statute unconstitutional on its face. *Bileski v. Zorn*, 627 N.E.2d 880, 888 (Ind. Tax Ct. 1994).

the Board through its evidence; it cannot assume the evidence speaks for itself. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Given the statute's general applicability to these appeals, Coers' comparable sales cannot stand on their own without some analysis of Ind. Code § 6-1.1-4-44(d)(1). We will not make a party's case for it, so we give no weight to Coers' conclusions under the sales comparison approach.[12]

b. Coers' Income Approach

99. The Assessor took issue with Coers' technique of estimating market rent as a function of return on cost, arguing that it lacks independence from the cost approach and that it runs counter to Coers' own claim that market participants do not consider the cost approach. The Assessor also found fault with how Coers applied the technique, criticizing: (1) her choice of comparable land sales; (2) her alleged failure to make any location adjustments; (3) her use of changes in capitalization rates to adjust for time-related differences in market conditions; (4) her use of base costs for an "average" instead of a "good" drugstore; and (5) her use of data that potentially included sale-leasebacks in determining an appropriate rate of return.

100. We give little weight to many of those criticisms. Although Coers used only one sale from the subject property's neighborhood, it was the Starbucks site immediately north of the subject property that the Assessor's own expert used in his appraisal. And five of Coers' sales were from Whitehall, an area she testified was Bloomington's other primary retail node where most of the recent development of retail properties had occurred.

101. The Assessor misstates the record by claiming that Coers failed to make any location adjustments.[13] To the contrary, Coers adjusted four of her comparable sales upward by 20% to account for what she viewed as their comparatively inferior locations. The sales she did not adjust—the Whitehall and Starbucks sites and one other site—she judged as

[12] The Assessor made several arguments that Ind. Code 6-1.1-4-44 rendered Coers' sales-comparison approach unreliable. Because we give Coers' conclusions under that approach no weight, we need not address those arguments.

[13] *Assessor's Post-Hearing Brief at 24* ("Coers concludes that the subject property is superior in terms of locational characteristics and overall rating [citation omitted]. However, no location adjustments were made even though the area in which this CVS is located is one of the busiest thoroughfares in Bloomington.")

having locations that were equally desirable as the subject site. Because she did not provide the data she used in making that determination, we have some reservations about her adjustments. Given the aerial photograph of the subject property and the Starbucks site, however, we are persuaded that Coers better captured their relative desirability than did Johnson.[14] And her adjustments as a whole are less suspect than Johnson's adjustments, which treat the Starbucks site the same as other manifestly inferior sites, such as those on Clarizz Boulevard.

102. Similarly, while Coers' methodology for determining her market-conditions adjustments is not perfect, it is more persuasive than Johnson's. Her reason for not using paired sales—few such sales happened during the period and the ones that did showed huge variances in appreciation—is borne out by Johnson's own data.

103. As for the Assessor's complaint that Coers used base costs for an "average" drugstore rather than base costs for a "good" drugstore as Johnson did, we find both appraisers' judgments plausible. We have no reason to doubt Coers' testimony that Marshall & Swift's model for an average drugstore includes a drive through pharmacy. On the other hand, Johnson pointed to elements of the subject building that are consistent with Marshall & Swift's abbreviated description of good construction. We note, however, that the actual costs for the small-town drugstore that Johnson referenced in his appraisal do not necessarily support his estimate of the subject building's cost. In any case, the dispute is minor given the other issues over which Johnson and Coers differ.

104. We agree with the Assessor that the data Coers used in estimating required rates of return may have included sale-leasebacks, which would not necessarily reflect the return required by someone buying the fee simple interest in the subject property. We also agree that Coers' use of cost-based rent appears somewhat incompatible with her belief that market participants did not consider the cost approach, particularly during the recession. Despite

[14] Coers also made separate adjustments for frontage, whereas Johnson did not.

those problems, we find that her cost-based rent analysis offers at least some indication of the market rent for this property.

105. The Assessor criticized Coers for examining subleases of CVS brand and Walgreens stores from various cities throughout Indiana, arguing that she should not have looked outside Bloomington. In part, that goes along with the Assessor's general claims that Johnson's opinions were more reliable because they focus on local data. As explained above, we disagree with the notion that an appraiser should not look outside the local market for sales or lease data where comparable local data is in short supply and the regional data is from sufficiently comparable markets.

106. But the Assessor also makes a more pointed argument. In her post-hearing brief, the Assessor repeatedly argues that by looking at the subleases for CVS, Coers unnecessarily relied on data for national pharmacy retail use to the exclusion of local data for general retail use. According to the Assessor, by limiting her analysis to a specific use, and a former use at that, Coers violated our holding in *Kohls Indiana, LP v. Howard County Ass'r*, pet nos. 4-002-10-1-4-00350 etc. (IBTR Dec. 31, 2014).

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

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

> are irrelevant or that an appraiser's reliance on them necessarily means she is appraising something other than the property's true tax value.

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

108. That beings said, Coers, did not purport to explain how the markets in which those subleased drugstores competed compared to the market in which the subject property competed or make any adjustments for differences in location. Her lack of explanation detracts from the reliability of the subleases as an indicator of market rent for the subject property. That shortcoming, however, is offset by the fact that market rent estimate was much higher than any of the subleases.

109. Turning to Coers' third technique, both the Assessor and Tillema faulted her for estimating rent as a percentage of gross sales without using the subject store's actual retail sales. But we are persuaded by Coers' explanation that doing so would have risked valuing the operator's business enterprise instead of just the real property. The Assessor also criticized Coers for making unexplained location and market-condition adjustments. We agree that she offered largely conclusory explanations for her adjustments, which detracts from the persuasiveness of her analysis. Nevertheless, given the lack of anything to show those adjustments were inappropriate, we find her conclusions reasonable.

110. Thus, despite some valid criticisms, we find Coers' estimates of market rent sufficiently reliable. In addition, to the extent Johnson's admittedly problematic lease data supports any conclusion about market rent, it supports Coers' rent estimates rather than his own.

111. The Assessor also takes issue with Coers' choice of capitalization rates. Coers relied on national and regional data, while Johnson combined regional and national data with rates extracted from the local market. Of course, Johnson extracted his local rates largely from sales of properties that were dissimilar to the subject property, including offices and professional buildings. Leaving that aside, the Assessor raises a valid concern, and not just

about Coers' choice of capitalization rates. The Assessor faults Coers for relying on aggregate national and regional data throughout her report. Broadly speaking, an appraiser's use of national or regional survey data, without confirming how that data applies to the market in which the property being appraised competes, may detract from the reliability of her valuation opinion. But here, the experts explained that Bloomington receives significant regional and national investment. Under those circumstances, we find Coers' use of regional and national data acceptable.

112. Finally, the Assessor claims that Coers based her sales-comparison analysis on data prohibited by Ind. Code § 6-1.1-4-44. Because Coers came to similar value conclusions under the income approach, the Assessor argues that we should dismiss her findings under that approach as well. We disagree.

113. Foremost, the Assessor bases her position on flawed logic. As explained above, we agree with the Assessor that Coers' improved sales data runs sufficiently foul of the new statute as to render her opinions under the sales comparison approach unreliable. But, that fact does not affirmatively prove similar values determined under the income approach are also invalid. Rather, the Assessor must show that Coers relied on prohibited sales data in her income approach. The Assessor has failed to direct us to the comparable property sales Coers specifically relied upon in her income approach or to provide evidence of the periods during which the properties were vacant relative to the assessment date. Because the Assessor failed to show that Coers "used" prohibited comparable sales in this part of her analysis, we do not find that Ind. Code 6-1.1-4-44 requires us to disregard Coers' conclusions under the income approach.

114. Coers determined the subject property's site value and the depreciated cost of its improvements, which she used in estimating cost-based market rent under the income approach. Beyond that, she did not fully develop the cost approach or rely on that approach in forming her valuation opinion. We disagree with Tillema's claim that the 2002 and 2011 Real Property Assessment Guidelines required her to fully develop all three approaches. While an appraiser should consider all three approaches, she need not fully

develop an approach if she believes it will not provide a reliable indication of value for the property being appraised.

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

115. The Assessor and Tillema criticized Coers for not fully developing the cost approach. Coers, however, explained that the cost approach (1) fails to capture external obsolescence in periods of national recession, and (2) would have been given little consideration by market participants.

116. The cost approach assumes potential buyers will pay no more for a property than it would cost to buy an equally desirable substitute parcel of vacant land and build an equally desirable substitute improvement. *See* 2002 MANUAL at 13. We are not necessarily persuaded by Coers' opinion that market participants likely would give the cost approach little consideration during several of the later years at issue, which spanned an historic recession and its aftermath. A significant drop in construction costs or vacant land values during a recession might cause market participants to consider new construction.

117. But her explanation is not as compelling for the earliest years covered by her appraisal. For example, her appraisal summarized reports showing that investors anticipated some slowdown in 2007 and 2008. But those reports did not show that investors were anticipating a recession at the outset of those years. The building was only four years old in 2007, presumably making the property a better candidate for evaluation under the cost approach. Thus, while her valuation opinions for the earlier years may have been more reliable had she used the cost approach as a check against her conclusions under the other approaches, we ultimately find her conclusions under the income approach sufficiently reliable to show the property's true tax value.

118. Finally, while the Assessor does not point to it, we recognize the disparity between what Hooks SuperRx paid for the site in 2001 and Coers' valuation conclusions. As discussed above, both Coers and Tillema assert that national retail pharmacy chains are willing to pay

more for land than other actors in the local market are willing to pay. Tillema even goes so far as to characterize that difference as "remarkable." The land, however, is not "national retail pharmacy land," it is land zoned for commercial use in Bloomington. We do not find that the willingness of one specific type of business to overpay for land necessarily makes that land more valuable under the true tax value standard. The local market still dictates the value of non-special purpose property. And as discussed above, all of the experts agreed this was not a special purpose property. Moreover, because neither Johnson nor Coers attempted to value the subject property using the pre-recession sale from 2001, we do not give that sale price any weight.

C. Conclusions

119. We recognize that this is a complicated valuation assignment. Both sides have pointed to significant problems that seriously detract from each appraiser's valuation opinions. Coers' appraisal was permeated with national data that had either vague adjustments to the local market or no adjustments at all. Johnson's appraisal was even more troubling because his data did not support his conclusions. In some cases, such as his lease data, the data presented indicated significantly lower values would have been more appropriate. Ultimately, we find Coers' conclusions under the income approach marginally more persuasive. The assessments must be changed to correspond to Coers' conclusions under the income approach.

120. That is a straightforward proposition for 2010-2013. For 2007-2009, a little more is required. The valuation date for those years was January 1 of the prior year. In applying the income approach, however, Coers valued the property as of March 1 of the assessment year. She used changes in market surveys of capitalization rates and the consumer price index to adjust her reconciled conclusions for those years to reflect values as of the appropriate valuation dates. We use the same divisors (1.0101, 1.0373, and 0.9607 respectively) to adjust her value conclusions under the income approach.

121. We therefore order the assessments be changed to the following values:

Year	Total Assessment
2007	$2,237,402
2008	$2,178,733
2009	$2,165,088
2010	$1,850,000
2011	$1,980,000
2012	$1,980,000
2013	$2,180,000

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

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