REPRESENTATIVES FOR PETITIONERS:	Beth Henkel, Stefan Kirk
REPRESENTATIVES FOR RESPONDENT:	Marilyn Meighen, Brian Cusimano, Heather Scheel

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BEFORE THE
INDIANA BOARD OF TAX REVIEW

SEDD REALTY COMPANY, *et al.*	)	
	)	Petition Nos. See Attached List
	)	
Petitioners,	)	Parcel Nos. See Attached List
	)	
v.	)	
	)	
MADISON COUNTY ASSESSOR,	)	Assessment Dates: 2009-2012
	)	
Respondent.	)	

February 20, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DETERMINATION

I. INTRODUCTION

1. Although the parties agree that the lower-tier shopping center at issue in these appeals was over-assessed for each year, they disagree about how much it was actually worth. They offered opinions from two appraisers who applied significantly different methodologies to reach their conclusions. Although neither appraiser offered a credible analysis under the sales-comparison approach, we find that the record contains sufficient probative evidence from which to determine the property's value under the income approach. The Assessor's appraiser, David Hall, more closely adhered to generally accepted appraisal principles in applying that approach than did Sedd's appraiser. But we do not adopt Hall's opinions in their entirety, because we find that the evidence supports a higher capitalization rate than the rate he used.

II. PROCEDURAL HISTORY

2. Sedd Realty Company, Sedd Anderson, LLC, Dori Development Co., Neal Development Co., S&I East Development Co. (collectively "Sedd") challenged their assessments for 2009-2012.[1] The Madison County Property Tax Assessment Board of Appeals failed to act on Sedd's appeals, and Sedd timely filed Form 131 petitions with the Board.

3. Beginning on February 27, 2017, our designated administrative law judge, David Pardo ("ALJ"), held a five-day hearing on Sedd's petitions. Neither he nor the Board inspected the property. Jay Allardt, David Eskenazi, and David Hall testified under oath.

4. Sedd offered the following exhibits:

Exhibit P1	Revised Appraisal of River Ridge Plaza for March 1, 2009, prepared by Jay Allardt and Tina Hoopingarner
Exhibit P1B	Addenda to appraisal reports
Exhibit P2	Revised Appraisal for March 1, 2010,
Exhibit P3	Revised Appraisal for March 1, 2011,
Exhibit P4	Revised Appraisal for March 1, 2012,
Exhibit P5	Aerial Map Scatterfield Rd.
Exhibit P6A	River Ridge Income & NOI (graph)
Exhibit P6B	River Ridge Plaza % Occupancy (chart)
Exhibit P6C	City of Anderson Population (chart)
Exhibit P6D	Madison County Labor Market (chart)
Exhibit P6E	Population Trends within 5 Mile Radius – Comps (table)
Exhibit P6F	Chart comparing treatment of Kokomo Plaza East in appraisals
Exhibit P6H	Aerial maps of River Ridge
Exhibit P7	Property Record Card ("PRC")for Mounds Mall
Exhibit P8	Excerpt from CBRE Cap Rate Survey Feb 2012
Exhibit P12	Standards Rule 1-4 from Uniform Standards of Professional Appraisal Practice (2014)
Exhibit P13	Seller's and purchaser's statements from sale by Larry Robbins et. al. to Sedd Anderson et al., and Agreement Regarding Real Estate
Exhibit P15	List of parcels under appeal and owners of record, PRC for parcels under appeal
Exhibit P16A	Recorded deeds

[1] These were the owners of record, although counsel for Sedd also referred to Sedd Realty, LLC, which appears to be the same as Sedd Realty Company. *See Ex. P15; see also, Tr. 1054-57.* The Form 131 petitions named different taxpayers because the Assessor assessed the property to them. Nobody disputes that the entities described above are proper parties to these appeals and that the petitions are properly before the Board.

Exhibit P16B	Termination of Lease Agreements
Exhibit P17	Printouts with background on Sandor Development Company
Exhibit P19	Demonstrative
Exhibit P20	Lady – Income and Expense Projections p. 174
Exhibit P21	Revised Valuations Based on Owner's Tax Load and Flood Insurance
Exhibit P22	Excerpts from *The Appraisal of Real Estate*
Exhibit P23	Rent roll for 12/31/2009
Exhibit P24	Information regarding sale of 2811 Nichol Avenue
Exhibit P25	LoopNet printout for 21649 Lorraine Road
Exhibit P26	Plat map of River Ridge

5. The Assessor offered the following exhibits:

Exhibit R1	Comprehensive appraisal report of River Ridge by David Hall and Michael Lady, for March 1, 2009
Exhibit R2	Comprehensive appraisal report for March 1, 2010
Exhibit R3	Comprehensive appraisal report for March 1, 2011
Exhibit R4	Comprehensive appraisal report for March 1, 2012
Exhibit R6	Excerpts from *The Appraisal of Real Estate* (14th ed.)
Exhibit R7	Excerpts from *The Dictionary of Real Estate Appraisal* (6th ed.)
Exhibit R8A	LoopNet listing for Fairview Center
Exhibit R8B	Aerial image of Marquette Mall
Exhibit R8C	PRC for Kokomo Mall
Exhibit R8H	Sales Disclosure Form, 1424 Carrington Ave.
Exhibit R8I	LoopNet listing for 2110-2130 Markland Ave.
Exhibit R9B	Demonstrative exhibit
Exhibit R9C	Demonstrative exhibit
Exhibit R9D	Demonstrative exhibit (capitalization rate)
Exhibit R9E	Demonstrative exhibit
Exhibit R10	Aerial photographs[2]

6. The record also includes: (1) all pleadings, briefs, and other documents filed in these appeals, and (2) all orders and notices issued by the Board or our ALJ, and (3) the five-volume hearing transcript.

[2] The parties included other documents in the binders they submitted to the ALJ. Although labeled as exhibits, the parties did not offer those documents as evidence. They are not part of the evidentiary record, and we did not consider them in reaching our determination.

7. The following table summarizes the overall assessment for the parcels under appeal and what the parties argue are the correct values based on the opinions of their experts:

Year	Assessment[3]	Assessor	Sedd
2009	$12,469,000	$9,278,000	$5,900,000
2010	$11,778,110	$8,940,000	$5,300,000
2011	$11,968,600	$9,020,000	$4,900,000
2012	$9,950,400	$8,760,000	$4,100,000

IV. FINDINGS OF FACT

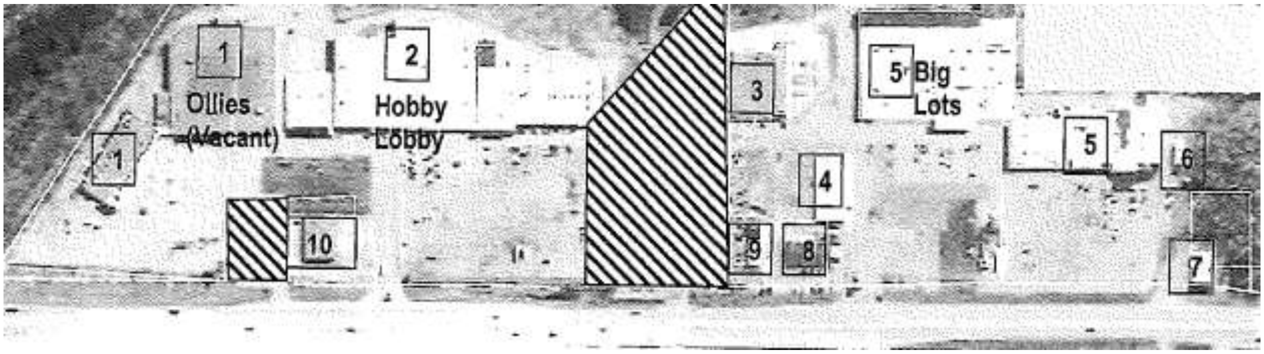
A. The Property

1. Layout and development

8. The parcels at issue make up most of a retail shopping center commonly known as River Ridge Plaza. River Ridge Plaza includes two other parcels (identified in the aerial photograph below with diagonal lines) that were not heard with these appeals. For ease of reference, we will refer to the parcels at issue in this decision as "River Ridge," and to the entire center as "River Ridge Plaza."

9. River Ridge is located on South Scatterfield Road in Anderson. It consists of 10 buildings and approximately 75 acres of land, much of which is undeveloped. It includes 17 tax parcels. All told, River Ridge has approximately 346,966 to 352,064 square feet of building area, 318,189 to 343,757 square feet of which is leasable.[4] This aerial photograph shows the layout of the improved portion with north being to the left of the picture:

[3] Sedd provided these assessment totals in Petitioners' Proposed Findings of Fact and Post Hearing Brief. The individual assessments are reflected on the property record cards for the parcels under appeal. *See Ex. P15*.
[4] The lower ends of those ranges are from Allardt's appraisals, while the higher ends are from Hall's appraisals. Allardt reported two different numbers for the property's leasable area: 318,189 square feet and 332,689 square feet. *Exs. P1-P4 at 2, 17-18.*



Exs. P1-P4 at 2, 17-18; Exs. R1-R4 at 2.

10. Sidney Eskenazi developed the southern part of River Ridge Plaza in the 1960s. The Robbins family owned land that had previously been a landfill. In the mid to late 1960s, Sidney Eskenazi, presumably as a principal in one or more companies, leased the land from the Robbins family and built a strip-center building (Building 5) together with several freestanding buildings (Buildings 4 and 6-9). Sedd's appraiser, Jay Allardt, referred to the buildings and surrounding land collectively as "Big Lots Plaza," named after the tenant that occupied the anchor space during the years under appeal. *Tr. 1054-55; see also Exs. P1-P4 at 2, 26; P26.*

11. In 1986, Sidney began to expand River Ridge. As part of that expansion, one of his companies, Sedd Realty Company, bought some land north of Big Lots Plaza. Over the next four years, Sidney built four more buildings: two strip centers, a freestanding building to the south, and another freestanding building closer to Scatterfield Road. Allardt alternately referred to the northern strip center (Building 1) and surrounding land as "Pharmor" or "Ollie's Bargain Outlet" and to the rest of the buildings (Buildings 2, 3, and 10) and land as "Rose's Plaza." Allardt sometimes referred to the strip-center building in Rose's Plaza (Building 2) as the "Hobby Lobby" building, referring to the tenant that occupied the anchor space during most of the years at issue in these appeals. Two buildings—the Ollie's Plaza strip center and the Hobby Lobby building—were built with ventilation systems to release methane from the underlying landfill. The Hobby Lobby building also has thousands of bats in the back. Because the bats are a protected species, they are difficult to move. *Exs. P1-P4 at 18-19; Ex. P16A; Tr. 1087-88.*

12. In 2008, several of the entities composing Sedd bought the rest of the land that had been leased from the Robbins family. Sidney's son, David Eskenazi, and other members of the Eskenazi family are partners of or members of all the Sedd entities. *Tr. 1057-60; Exs. P13, P16A.*

13. Sandor Development Company, which the Eskenazis also own, manages River Ridge. Sandor is one of the largest privately held shopping-center developers in the country, and it owns 52 properties in Indiana alone. It has operated retail centers for more than 50 years. *Tr. 468-69, Ex. P17 at 3*.

2. Zoning and flood designations

14. River Ridge is primarily zoned B-4: Community Shopping District. There are various requirements that go along with that zoning classification, including minimum setback and parking requirements. Buildings may cover only 50% of the property. Hard surfaces, which include all "impervious" surfaces such as asphalt, may cover no more than 75% of the property. *Exs. R1-R4 at 45-47; Tr. 308.*

15. The county's zoning map also includes additional classifications related to flooding. Flood maps from the Federal Emergency Management Agency ("FEMA") as well as local zoning maps show most of the north and northeast parts of the property as being within various flood designations. The entire strip center in Ollie's Plaza and about one third of the Hobby Lobby building in Rose's Plaza are within an area marked as "Floodway District" on the zoning map and as "Flood Hazard Area (Floodway)" on a FEMA map. The rest of the Hobby Lobby building is located within a "Flood Hazard Area (Zone AE)" on the FEMA map. Parts of the property are located in either a 100-year or a 500-year floodplain. It appears that the Ollie's Plaza strip center and the portions of the Hobby Lobby building located within the Floodway or Flood Hazard Area

also fall within a100-year floodplain (or a designation for even more frequent flooding).[5] The outlot from Rose's Plaza that contains Building 10 (also known as the "Blockbuster" building) is in a 500-year floodplain. *Exs. P1-P4 at 12-15; Exs. R1-R4 at 42-47; Tr. 85-86, 372, 463-65, 786-87, 1087.*

16. There are restrictions on constructing buildings within those areas, although the precise content of those restrictions is unclear. Allardt gave two different descriptions. On one hand, his appraisal report says that non-residential buildings could be constructed within a "Floodway District" with special permission. On the other hand, he testified that new buildings could not be built in a "Floodway" although they could be built within a "Flood Hazard Area." To do so, however, Allardt testified that a developer must get approval from the Army Corps of Engineers, because raising a building two feet above the base flood level, which would be necessary to avoid having to buy flood insurance, might displace water and cause flooding downriver. For his part, Hall indicated that development within a "Floodway District" requires a permit from the Department of Natural Resources and "special exception approval" from the Board of Zoning Appeals. *Exs. P1-P4 at 15-16; Exs. R1-R4 at 43-46; Tr. 431, 459-62.*

17. Although the record is muddled and the experts used imprecise terminology, we find that a buyer likely would not be able to construct a new building, or replace an existing one, where the building pad would be in an area zoned as Floodway or Flood Hazard Area (Zone AE).

18. But the experts agreed that the zoning and FEMA maps do not conclusively show whether any of River Ridge's building pads are within the Floodway, Flood Hazard Area (Zone AE), or other areas with flood-related building restrictions. To make that determination, a detailed topographical survey with elevations would be necessary.

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[5] The FEMA map from Allardt's appraisals has dots and diagonal lines that apparently show different flood designations; but there is no legible key or legend translating them. *Exs. P1-P4 at 13*. When read together with the maps from Hall's appraisals, it appears that the black dots, which encompass the Blockbuster building, represent a 500-year flood plain. *See Exs. R1-R4 at 44; Tr. 372*.

Despite Hall's request for such a survey, neither appraiser had seen one. Topographic surveys typically cost "a thousand bucks or two." *Tr. 85-86, 350-51, 424-25, 787-89;*

19. Despite that uncertainty, undisputed evidence shows that in 1989, the Department of Natural Resources and the Board of Zoning Appeals granted permission to develop the Ollie's Plaza strip center, with a stipulation that a publically accessible boardwalk be built along the White River. Presumably, that permission would have been unnecessary if the strip center's pad was outside the Floodway.[6] We do not draw the same inference for the Hobby Lobby building's pad. Unlike Ollie's Plaza, there is no evidence that Sydney had to get permission to build Rose's Plaza. Flood designations aside, there is no evidence that any buildings in River Ridge ever flooded. *Exs. P1-P4 at 16; Tr. 431, 789.*

20. The floodway extends east of Ollie's and Rose's Plazas and encompasses undeveloped land that is also part of the property. That land may be wetland or the equivalent, and it has little development potential. *Exs. R1-R4 at 43-44; see also, Tr. 348-51, 458.*

3. Occupancy and leasing history

21. When Sidney built Big Lots Plaza, its location on Scatterfield Road was within Anderson's primary retail corridor. Mounds Mall was built across the street around the same time. In 1971, Interstate 69 was completed, connecting Anderson to the north side of Indianapolis. Retail development began to shift southward on the Scatterfield Road corridor to an area near the I-69 interchange between 38th Street and County Road 500 South. That trend accelerated with the completion of Hoosier Park racetrack. From 1991 to 2008, 1,128,924 square feet of retail space was built between 38th Street and the south side of I-69. More than half of that space was added from 2002 to 2008. The average daily traffic count on Scatterfield Road near River Ridge declined from 25,068 vehicles in 2009 to 21,880 in 2012. *Exs. P1-P4 at 9; Exs. R1-R4 at 45; Tr. 347, 453-55, 1082-83.*

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[6] David Eskenazi testified that, because of the building's location in the floodway, "I believe we have some issues of soil and concerns over time that it might sort of be sinking a little bit." *Tr. at 1087*. Neither expert identified those as concerns.

22. Beginning in 2011, rumors began circulating about plans to build a huge reservoir in the area. People commonly referred to it as the "Mounds Lake project." If built, the reservoir would completely flood River Ridge, Mounds Mall, and many surrounding neighborhoods. Municipalities opposed the project and questions arose about its economic feasibility. While those concerns quelled the rumors, the rumors did not disappear entirely. David Eskenazi thought the project was infeasible. He testified that several tenants told him they would not renew their leases and that prospective tenants said they would not consider River Ridge because it would be underwater in three years. *Tr. 1084-85*

23. Even before the recession, River Ridge's occupancy was declining. Ollie's Plaza was more than 90% vacant since before 2009, and the anchor space within that building was vacant since before 2005. The same is true for half the anchor space in Big Lots Plaza. As for the occupied space, some tenants originally signed their leases as far back as the late 1980s, although they may have renewed those leases one or more times. Others leases were signed as recently as 2007 or 2008. Most of the tenants had net leases, which required them to reimburse Sedd for real estate taxes, insurance, common area maintenance ("CAM"), and similar expenses. Some had what Allardt described as expense "stops," where the tenants paid less than full reimbursement. Other tenants had gross leases, meaning they did not reimburse expenses. *Exs. P1-P4 at 51-52; Ex. R1 at Addenum B (rent roll); Tr. 293, 299-300, 427, 431, 521, 550-51, 591-92, 623, 646-47, 651, 654-56, 686-87, 919-21.*

24. Several leases expired during the years spanning these appeals or immediately afterward. River Ridge did not re-lease many of those spaces during the period covered by the rent rolls in evidence. The most notable exception is the 64,460-square-foot Hobby Lobby space. Hobby Lobby moved closer to Hoosier Park in 2011, although it continued paying on the River Ridge lease through its expiration on March 31, 2012. River Ridge re-leased that space to another tenant in September 2012. The base rent was less than half what Hobby Lobby paid, although the new lease also called for overage rent equaling 4% of gross sales. While Hobby Lobby had a triple-net lease under which it reimbursed

expenses at rates ranging from $1.76/sq. ft. to $2.14/sq. ft., the new tenant signed a gross lease. Four of the five leases signed after 2008 were gross leases. *Ex. R1 at Addendum B (rent roll); Tr. 648-50, 1159-69.*

25. The following tables show the approximate occupancy levels at the end of each calendar year from 2008 through 2012 as well as the relative number of gross and net leases:

Year End	**Leased Units**[7]	**Sq. Ft.**	**Vacant Units**	**Sq. Ft.**	**Occupancy**
2008	25 (6 gross)	214,654	14	129,103	62.44%
2009	20 (5 gross)	185,828	19	138,276	54.06%
2010	18 (4 gross)	180,008	21	163,749	52.36%
2011	18 (5 gross)	179,068	21	164,689	52.09%
2012	18 (6 gross)	179,168	21	164,589	52.12%

Ex. R1 at Addendum B (rent roll); Exs. P1-P4 at 47.

B. Expert Opinions

1. David Hall

26. The Assessor hired David Hall and Michael Lady of Integra Realty Resources to appraise River Ridge. Hall and Lady prepared comprehensive retrospective appraisal reports estimating the market value-in-use of the fee-simple interest in River Ridge. Although Hall collaborated with Lady, Hall was primarily responsible for the report's content, including the valuation analysis. We will therefore refer to Hall as the appraiser and to the valuation opinions as his. *Exs. P1-P4; Tr. 43*.

27. The Appraisal Institute has designated Hall as an MAI. That designation requires several hundred hours of advanced coursework beyond what is necessary for state licensure. It also requires an additional experience requirement, peer review of a candidate's work, and a two-day exam. Hall has appraised commercial real estate for about 12 years. He has completed more than 600 appraisal assignments, at least 100 of which involved retail properties. Of those, more than half were retail shopping centers in Indiana. Before

[7] This excludes a ground lease to Rally's, Inc.

becoming an appraiser, he worked as a city and county planner. *Exs. P1-P4 at cover letter, Tr. 36-40, 43.*

a. Hall's underlying valuation premises

28. Hall applied various limiting conditions to his appraisals. Because he was not given any studies indicating otherwise, he assumed that the property was free of any environmental hazards. *Exs. R1-R4 at 85.*

29 For valuation purposes, Hall broke the property into six different uses:

- "North Shopping Center." This use includes Ollie's Plaza, the Hobby Lobby building from Rose's, 17.7 acres of what Hall described as primary land, and 39 undeveloped acres to the east, which he described as surplus land. He valued the surplus land, which was within the Floodway, separately.

- "South Shopping Center." Hall said that this includes three buildings, but it really includes four—the other freestanding building from Rose's Plaza (Building 3), the Big Lots strip center (Building 5), and two freestanding buildings from Big Lots Plaza (Buildings 4 and 6).

- Four outlots, which he labeled as North Outlot 1 and South Outlots 2 through 4. They corresponded to Buildings 7 through 10.

Compare Exs. R1-R4 at 6-15 with Exs. P1-P4 at 18.

30. Hall offered several reasons for viewing this property as six separate units rather than as a single unit. First, he looked at its physical characteristics. It comprises 17 separate tax parcels with 10 separate buildings. In his view, if the property were regarded as a single development, it would be more typical to see a single parcel. *Exs. R1-R41 at 5-15; Tr. 44-45, 303, 422-23, 1117-20.*

31. Second, after extensive research, he could not find any properties with as many strip-center buildings and outlots as River Ridge. *Exs. R1-R41 at 5-15; Tr. 45, 303, 422-23.*

32. Third, Hall believed that separate ownership of strip-center buildings and outlots was typical of the market and mirrored market thinking. For support, he pointed to three nearby shopping centers where the strip centers and outlots were bought and sold independently of each other and had separate ownership. Also, because of their superior exposure and access, outlots tend to generate higher rents than similarly sized in-line stores. *Ex. R10*; *Tr. 45-47, 65, 424, 1117-20.*

33. Finally, Hall explained that larger shopping centers sell for different prices than outlots. Developers plat them separately because they plan to sell them separately. Outlots have different buyer profiles than shopping centers. They often have bank branches, fast food restaurants, and car washes. Those businesses may have their own real estate departments, and they often choose to own buildings instead of lease them. *Tr. 45-47, 64-65, 1117-20*.

34. Hall would not have divided the property into different uses if he thought that the parcels were too interconnected to be sold separately. While the separate uses might not meet current zoning restrictions, such as the limit on coverage by hard surfaces, the property was developed before those ordinances were adopted and was a "legal nonconforming propert[y]." The divided properties would not have to conform unless the buyers modified them, "scrap[ed] the buildings, and start[ed] over," and he was appraising the current use, rather than a future or different use. *Tr. 57-58, 301-02, 351-53, 1122-23*.

b. Valuation approaches

35. Hall developed the sales-comparison and income approaches to value. He did not develop the cost approach because he lacked sufficient data to reliably estimate depreciation for the improvements or a value for the primary land, although he felt he had sufficient data to estimate the surplus land's value. *Exs. R1-R4 at 19; Tr. 68.*

i. Surplus land

36. While the surplus land represented a relatively small value increment, Hall believed it was worth enough to consider. He focused on sales of land in flood hazard areas from central Indiana. He used the same three sales for all four years under appeal. At least one was capable of being developed and another had road frontage. He did not adjust any of the sale prices, explaining that he did a “very simple analysis” due to the lack of demand and development potential. He reconciled the sale prices to $2,500 per acre, or $100,000 (rounded) for the 39 acres of surplus land. *Exs. R1-R4 at 101-105; Tr. 105-07*.

ii. Sales-comparison approach

37. Hall then turned to the six uses into which he had divided River Ridge. For each one, he looked for sales of properties with similar uses and physical characteristics. For the two shopping-center uses, he looked for Indiana sales between March 2007 and March 2013 involving centers of at least 70,000 square feet that were built between the 1960s and 1990s. *Exs. R1-R4 at 107-109, 123-25; Tr. 142-43.*

38. The local market was relatively limited, and there were few similarly sized shopping centers in the Anderson area. But Hall found seven comparable sales from Fort Wayne, Kendallville, Kokomo, Lafayette, LaPorte, and Rensselear. He adjusted the sale prices to account for what he considered relevant differences between his comparable sales and the posited sale of the North and South Centers. For example, he adjusted several sale prices to account for differences in market conditions between the sale dates and his valuation dates. He concluded that the demand for retail shopping centers declined in 2008 and 2009. Leasing activity began to increase in 2009 (relative to the prior year) and asking prices started to trend higher, although there was negative net absorption through 2012 and no significant construction activity. He applied an adjustment of negative 5% per year through December 31, 2008, but he did not make any further adjustment through the valuation dates. That led him to adjust a June 2007 sale by negative 7.8% and two February 2008 sales by 4.5% and 4.6%, respectively, but not to adjust any of the sales from 2011-2013. *Exs. R1-R4 at 104-14, 127-29; Tr. 71-72, 108-09, 369, 421-22.*

39. Hall adjusted sale prices to account for differences in building size. Three of the sales had significantly smaller buildings than the North Center, but his data did not indicate significant differences in unit price, so he did not adjust downward for that factor. One center was significantly larger than either the North or South Center, so he believed an upward adjustment of 20% was appropriate. But if he had viewed the two centers as a single use, the comparable property would have actually been smaller than the property he was appraising. *Exs. R1-R4 at 104-14, 127-29; see also, Tr. 356-57.*

40. To adjust for differences in economic characteristics, Hall looked at tenant mixes and how occupancy levels compared to market-level occupancy. He found that a center's occupancy at the time of sale significantly affected its sale price. The occupancy levels of the comparable centers ranged from 45% to 100%, although four of the seven were at least 93% occupied. He compared those to a market occupancy of 55% for River Ridge as a whole. His adjustments ranged from 5% to -45% of sale price, although he did not explain how he quantified them. *Exs. R1-R4 at 104-14, 127-29; Tr. 104, 110, 136-37.*

41. To Hall's knowledge, none of the comparable buildings was in a flood zone. He did not adjust any sale prices to account for that fact, even though he acknowledged that some of the building pads for the North Center might be within a floodplain. *Tr. 229, 373.*

42. Hall did not make any adjustments to account for the Mounds Lake project. In doing his market research, he reviewed newspaper articles about the project. One article discussed a Ball State review of studies that had concluded the project was not economically feasible. Another cited statements from the manager of Mounds Mall to the effect that he was not overly concerned about the project. *Tr. 1180-82.*

43. Hall used a similar process for each outlot, again identifying sales from various Indiana locations. Only one was from Anderson. Hall considered adjusting the outlot sales for the same factors he considered in valuing the North and South Centers. He quantified his market-conditions and age/condition adjustments at the same levels. His other

adjustments differed depending on the specific characteristics of each outlot and sale. *Exs. R1-R4 at 116-22, 131-51, 1180-82.*

44. In reconciling his adjusted per-unit sale prices, Hall gave the greatest weight to measures of central tendency, and he arrived at the following values:

2009

Use	**Unit Value**	**Value (rounded)**
North Center	$28/sq. ft.	$5,270,000
North Outlot 1	$45/sq. ft.	$280,000
South Center	$24/sq. ft.	$3,560,000
South Outlot 1	$52/sq. ft.	$120,000
South Outlot 2	$59/sq. ft.	$240,000
South Outlot 3	$50/sq. ft.	$140,000
Surplus Land	$2,500/acre	$100,000
Total		**$9,710,000**

2010

Use	**Unit Value**	**Value (rounded)**
North Center	$27/sq. ft.	$5,080,000
North Outlot 1	$44/sq. ft.	$270,000
South Center	$24/sq. ft.	$3,560,000
South Outlot 1	$51/sq. ft.	$120,000
South Outlot 2	$58/sq. ft.	$230,000
South Outlot 3	$49/sq. ft.	$140,000
Surplus Land	$2,500/acre	$100,000
Total		**$9,500,000**

2011

Use	**Unit Value**	**Value (rounded)**
North Center	$27/sq. ft.	$5,080,000
North Outlot 1	$43/sq. ft.	$270,000
South Center	$23/sq. ft.	$3,420,000
South Outlot 1	$49/sq. ft.	$110,000$
South Outlot 2	$57/sq. ft.	$230,000
South Outlot 3	$48/sq. ft.	$130,000
Surplus Land	$2,500/acre	$100,000
Total		**$9,340,000**

2012

Use	Unit Value	Value (rounded)
North Center	$26/sq. ft.	$4,890,000
North Outlot 1	$42/sq. ft.	$260,000
South Center	$22/sq. ft.	$3,270,000
South Outlot 1	$48/sq. ft.	$110,000
South Outlot 2	$55/sq. ft.	$220,000
South Outlot 3	$56/sq. ft.	$130,000
Surplus Land	$2,500/acre	$100,000
Total		**$8,980,000**

Exs. R1-R4 at 115, 122, 130, 132, 144, 151.

iii. Income approach

45. Turning to the income approach, Hall explained that, because he was appraising the fee simple estate, he based his opinions on the hypothetical condition that River Ridge was unencumbered by any lease agreements. *E.g., Exs. R1-R4 at cover letter, 3, 20, 152-53; see also Tr. 156.*

46. Hall first determined net operating income. To do so, he estimated River Ridge's potential market rent. He then multiplied that number by its vacancy rate to determine effective gross income. Finally, he subtracted market-level expenses. *Exs. R1-R4 at 156.*

47. Because Hall regarded River Ridge as six different uses, he would have preferred historic income and expense information broken down according to those uses. River Ridge did not provide that breakdown, so he could not compare the separate uses' operating characteristics to the market. *Exs. R1-R4 at 156; Tr. 155-56.*

48. As Hall explained, being able to make that comparison is essential, because valuing the fee-simple interest unencumbered by leases requires an appraiser to estimate market rent. To do so, an appraiser must look beyond the contract rent for the property being appraised. Hall offered several reasons why contract rent for a given space may differ from market rent. Older leases are often inconsistent with the current market. Similarly,

a given lease may reflect atypical motivations and conditions. For example, a new tenant with no track record may negotiate below-market rent for the first few years and escalations that allow the landlord to recoup the difference over time. Or leases may have incentives based on gross sales. Thus, it is "fairly routine" for any single space's contract rent to differ from market rent. According to Hall, if he were to value the property based solely on its rent rolls, he would be appraising a leased-fee, rather than fee-simple, interest. *Exs. R1-R4 at 156; Tr. 155-56, 159-60, 261; 419-21, 1125-28, 1152-53.*

49. To estimate market rent, Hall divided River Ridge into five different types of space: anchor, junior anchor, in-line, restaurant, and freestanding retail. He also noted that there was one ground lease. He then examined Sedd's rent rolls, which reflected historic income and expense information for the various spaces within River Ridge. But he did not rely solely on that information. He also looked at rents from comparable spaces. *Exs. R1-R4 at 156-171*.

50. Hall did not find any comparable data for the ground lease, so he used the contract rent. Turning to the buildings, Hall's comparable anchor and junior-anchor leases came from a broader geographic area, while many of his in-line leases were from east central Indiana. The anchor and junior-anchor leases were from Greenfield, Kokomo, Muncie, New Castle, and Terre Haute. He used one in-line lease from Anderson; the rest were from Muncie and New Castle. The restaurant and freestanding retail leases were from Danville, Greenwood, Indianapolis, Lafayette, Muncie, Plainfield, and Wabash. *Exs. R1-R4 at 156-68.*

51. Hall explained that Anderson had few spaces the size of River Ridge's anchor spaces and that appraisers routinely expand the search for comparable properties beyond the area immediately surrounding a subject property if doing so is necessary to get enough transactions to analyze. Appraisers are paid to recognize and factor in locational differences. In any case, he described the market areas for many of his comparable anchor leases as "not dissimilar" to River Ridge's in terms of "broadened demographic

trends, economic, employment characteristics, and so forth." *Exs. R1-R4 at 156-68; Tr. 165-66, 1129-31, 1183-84.*

52. The buildings housing the spaces from his comparable leases were built between 1956 and 1998. The lease dates ranged from July 2008 to October 2013, although some were renewals of original leases from earlier dates. Hall assumed a triple-net lease structure, which he explained was the predominant structure for properties like River Ridge. A few leases from his comparable properties were either gross or modified-gross leases where landlords paid some expenses that tenants typically pay. In those instances, Hall determined a triple-net-equivalent rate. *Exs. R1-R4 at 156-171; Tr. 168-69.*

53. Hall also relied on the actual contract rent for River Ridge, although he did not convert the gross leases to triple-net equivalents or account for the expense stops. *Exs. R1-R4 at 156-171.*

54. Hall then reconciled his data to come up with per-square-foot market rents for all four valuation dates:

Space	**Comp. Range**	**Average**	**Midpoint**	**Contract**[8]	**Reconciled**
Anchor	$3.75-$6.00	$4.85	$4.88	$5.07	$5.00
Jr. Anchor	$4.00-$6.00	$5.27	$5.00	$4.40-$5.62	$5.50
In-line	$8.27-$13.00	$10.43	$10.64	$10.01-$12.16	$10.50
Freestanding	$9.00-$11.50	$9.67	$10.25	$13.05-14.89	$12.00
Restaurant	$9.00-$10.50	$9.65	$9.75	$15.00-$16.29	$11.00

The weighted average market rent for all space types was $6.64/sq. ft. for each year, while the weighted average of River Ridge's contract rent ranged from $6.32/sq. ft. to $6.95/sq. ft. *Exs. R1-R4 at 157-69, Addendum B (rent rolls).*

55. Hall used the same market data and reconciled to the same market rent for all four years because he found insufficient data to show that rents were dramatically changing between 2009 and 2012. Although there were some sharp declines in 2007 and 2008, there was

[8] Except for the anchor space, the average contract rent for each type of space varied between 2008 and 2011.

evidence that rents were beginning to stabilize by 2009, particularly for this type of property. *Exs. R1-R4 at 157-69; Tr. 217-18.*

56. Next, Hall looked to other sources of potential gross income. Overage rent—where tenants pay a percentage of sales income above a given threshold—varies widely by property and year. Hall based his projections on River Ridge's historic overage income. Because Hall assumed triple-net leases, he also included expense reimbursements in potential gross income. He only included reimbursements for insurance and common area maintenance ("CAM"). Although triple-net tenants also reimburse real estate taxes, Hall did not believe that River Ridge's assessment reflected its actual value. He therefore excluded taxes when calculating both reimbursement income and expenses. He instead accounted for taxes by loading the landlord's share of the tax rate into his capitalization rate. *Exs. R1-R4 at 170-74; Tr. 97, 176-77.*

57. Because the property would not realize its full potential gross income, Hall needed to account for vacancy and collection loss. He gave the greatest weight to River Ridge's historic trends, which he believed were the best indicators of its occupancy potential. But consistent with his underlying valuation premise and the property rights he was appraising, Hall also considered the local market. *Exs. R1-R4 at 154-55; Tr. 162-64.*

58. River Ridge's average occupancy rate from 2008 through 2011 was 55.24%. As for the market, the average occupancy rate for the shopping centers in Hall's sales-comparison analysis was 71.85%. Although net absorption was negative from 2009 through 2012, it was improving throughout that period. Hall also explained that an analytic survey from CoStar, a well-known provider of real estate data, reported a trailing five-year average occupancy rate of 75.3% for shopping centers in the larger Madison County market area. But he acknowledged on cross-examination that CoStar's trailing average did not include 2009-2011 and that CoStar did not segregate its data by class, size, or age. *R1-R4 at 154-55; Tr. 77, 186, 214-15, 343-46, 393-94, 406-07.*

59. Hall settled on 55% occupancy (or 45% vacancy) as a stabilized rate for River Ridge in all the years under appeal. He explained that collection loss was implicit in his vacancy estimate; he did not analyze it separately. *Exs. R1-R4 at 154-55; Tr. 394.*

60. Next, Hall deducted market expenses from River Ridge's projected effective income. Once again, he gave the greatest weight to the property's historical expense data. He also looked to industry expense information from TREPP, a leading provider of information analytics to the markets for commercial mortgage-backed securities, commercial real estate, and banking. The TREPP survey covered retail properties with at least 75,000 square feet in the Indianapolis-Carmel-Anderson metropolitan statistical area. River Ridge's expense trends fell within the ranges TREPP reported. *Exs. R1-R4 at 172-74.*

61. Hall projected the same insurance ($99,690 or $.29/sq. ft.) and CAM reimbursement ($316,858 or .90/sq. ft.) expenses for each year. He projected higher than average insurance because River Ridge is an older property, and some parts of it, even some of the buildings, might be within a floodplain. By contrast, he projected CAM expenses that were lower than the TREPP average for repairs and maintenance, because he would not expect owners to maintain older shopping centers at the same level as newer ones. He explained that River Ridge's parking lots did not have a lot of mileage and there probably was not a significant landscaping expense. *Exs. R1-R4 at 172-74; Tr. 183, 229-32.*

62. Turning to management fees, Hall explained that a typical fee for properties like River Ridge ranged from 2% to 5% of effective gross income and that TREPP reported a similar range. Considering River Ridge's location and market area, Hall projected a management fee equaling 3% of effective gross income for each year. Finally, he used River Ridge's reported land rent for each year. *Exs. R1-R4 at 172-74.*

63. Hall used several sources to estimate a capitalization rate. First, he extracted an overall rate from the market. To do so, he looked to four sales of comparable shopping centers from Clarksville, Kendallville, LaPorte, and Rensselaer. Two were built in stages, with initial construction in the late 1970s and completion dates in 1989 and 2001, respectively.

The other two were built in the 1980s. The four properties sold between 2008 and 2012 at rates ranging from 9.85% to 11.12%, with an average of 10.5% and a median of 10.51%. *Exs. R1-R4 at 175.*

64. The shopping centers from which Hall extracted his overall rates were all between 93% and 100% occupied. While those occupancy levels were significantly higher than the level he projected for River Ridge, they were all stabilized. According to Hall, occupancy level is not the only factor in determining comparability when extracting a capitalization rate from the market. His goal was to find stabilized properties and compare them to River Ridge, which he also viewed as stabilized. The sales were from smaller communities that he described as "not dissimilar" to Anderson, and the buildings were from the 1970s and 1980s. *Exs. R1-R4 at 175; Tr. 184-85, 1148-49.*

65. Second, Hall examined CoStar's trailing five-year average and a national survey published by PwC that reported rates for strip shopping centers. In each instance, he reconciled the PwC data to the high end of the reported range, reasoning that River Ridge would likely have less appeal than most investment-grade shopping centers in superior market areas. *Exs. R1-R4 at 175-76; Tr. 185-87, 1150-51.*

66. Finally, Hall developed a rate using the band-of-investment method. He took the components from *RealtyRates.com*'s survey for anchored retail centers, which draws its data from a wide spectrum of market participants and real estate professionals. He used the data from the first quarter for each year under appeal. Hall said that he chose the midpoint between the average and maximum for each component. But for the equity-dividend and interest-rate components, it appears that he chose values closer to the average than to the maximum. *Exs. R1-R4 at 175-76; Tr. 185-87, 1151.*

67. Hall ultimately used the average rate from those sources as his overall rate ("OAR") for each year. He then loaded River Ridge's share of the property tax rate, which he derived through multiplying the maximum tax rate of 3% by River Ridge's vacancy rate, on the

theory that River Ridge would not be reimbursed for taxes on vacant space. After completing that analysis, Hall settled on the following capitalization rates:

Year	Sales	CoStar	PwC	Band	OAR	Taxes	Loaded Rate
2009	10.50%	9.00%	10.0%	10.19%	9.92%	1.35%	11.25%
2010	10.50%	9.00%	11.14%	10.48%	10.34%	1.35%	11.70%
2011	10.50%	9.00%	9.50%	10.66%	9.91%	1.35%	11.25%
2012	10.50%	9.00%	9.50%	10.66%	9.91%	1.35%	11.25%

*Exs. R1-R4 at 177-78; Tr. 263-64***.**

68. As his last step under the income approach, Hall divided each year's projected net operating income by that year's capitalization rate and then added the surplus land's contributory value:

Year	**NOI**	**Cap Rate**	**Subtotal**	**Surplus land**	**Rounded Total**
2009	$998,718	11.25%	$8,877,946	$100,000	$8,990,000
2010	$968,610	11.70%	$8,278,721	$100,000	$8,380,000
2011	$966,428	11.25%	$8,590,470	$100,000	$8,690,000
2012	$948,725	11.25%	$8,433,114	$100,000	$8,530,000

Exs. R1-R4 at 178.

c. Reconciliation

69. Hall gave similar weight to his conclusions under the sales-comparison and income approaches, explaining that buyers, sellers, and brokers use both approaches. He acknowledged a passage in *The Appraisal of Real Estate* indicating that, when an appraiser uses more than one approach to value an income-producing property, the indication from the income capitalization approach might be given greater weight in reconciling to a final value conclusion. But he emphasized the word "might." Had River Ridge been closer to 100% occupied, he might have given greater weight to the income approach. As it was, he arrived at the following reconciled values for the assessment dates at issue:

Year	**Sales**	**Income**	**Reconciled**
2009	$9,710,000	$8,980,000	$9,350,000
2010	$9,500,000	$8,380,000	$8,940,000
2011	$9,340,000	$8,690,000	$9,020,000
2012	$8,980,000	$8,530,000	$8,760,000

The valuation date for 2009 assessments was January 1, 2008. Hall therefore used changes in the Consumer Price Index for All Urban Consumers to develop an adjustment factor of .992, which he then used to trend his March 1, 2009 valuation to $9,278,000 as of January 1, 2008. *Ex. R1 at 179-82; Exs. R2-R4 at 179-80; Tr. 197, 233, 340-41, 419-21*.

2. Jay Allardt

70. Sedd hired Jay Allardt and Tina Hoopingarner of American United Appraisal Co., Inc. to appraise River Ridge's retrospective market value-in-use for the four assessment dates at issue. The record contains little information about each appraiser's relative contribution to the appraisals, but only Allardt testified. We will therefore refer to the appraisal reports and valuation opinions as Allardt's.

71. Allardt graduated from Indiana University's Kelley School of Business. He became a certified general appraiser in Indiana when licensure began, and has an SRA designation from the Appraisal Institute. He is also a member and former president, secretary, and treasurer of the Hoosier chapter of the Appraisal Institute. He is a licensed real estate broker as well. Allardt has appraised commercial properties for more than 25 years. He has appraised big-box stores and shopping centers, including a previous appraisal of River Ridge. *Ex. P1B; Tr. 433-37.*

a. Allardt's revisions to his opinions

72. Allardt revised his opinions at least twice. He prepared his first set of summary appraisal reports in 2013. Those reports are not in evidence. On February 2, 2017, he prepared revised reports with different valuation opinions than the opinions from his original reports. He explained that he learned more about appraising properties for tax appeals and that he made the changes either from having more knowledge about that process or from getting additional information about the property. More specifically, his reports indicate that he made the revisions to "correct the treatment of property rights for real

estate encumbered by net lease contracts," which he testified referred to a ground lease from River Ridge Plaza that was not included in these appeals and that therefore needed to be deducted. *Exs. P1-P4 at 4; Tr. 439-40, 772-73.*

73. Because River Ridge would be responsible for taxes on vacant space and space leased under gross, rather than triple-net, leases, Allardt also revised his reports to include tax reimbursement income "as part of the total income[,] essentially adjusting the triple net leases to shift the burden of the real estate tax expense to the owner." According to his revised reports, Allardt then "correctly" capitalized net income using a capitalization rate loaded with the full 3% maximum net tax rate for commercial property. He also changed his overall capitalization rates "to a small degree." *Exs. P1-P4 at 4; Tr. 439-40, 772-73.*

74. Allardt revised his opinions a second time. This time he did not prepare a new report, but instead offered a one-page summary exhibit (P21) to illustrate his revisions. Those revisions centered on his analysis under the income approach. He made them at least partly in response to Sedd's counsel asking him (1) to look at his first revised appraisals and adjust them as necessary to omit real estate taxes from the tenants' reimbursements, and (2) to load the capitalization rate with the percentage of taxes Sedd would be paying. *Ex. P21; Tr. 578-79, 587-88.*

75. Finally, Allardt apparently revised his opinions a third time when he testified that, if David Eskenazi's testimony about River Ridge being built on a landfill and two buildings having methane vents were true, the property might have a market value-in-use but no value in exchange. Allardt reasoned that environmental site inspections have become increasingly more common since River Ridge was developed, and that those facts might significantly affect the property's marketability. He even speculated that they might explain why the outlots are leased rather than sold, although he acknowledged that he did not know the answer to that question. *Tr. 1191-96.*

b. Analysis of the economy, property, and market

i. The economy

76. Allardt believed that the Great Recession's effects extended through the years under appeal. He pointed to slow growth of the gross domestic product through March 2010 and to the elevated national unemployment rate through that same period. He also believed that, from the perspective of the earlier assessment dates, insufficient credit capacity for over $1 trillion in commercial real estate loans expected to mature in the next few years threatened the commercial real estate market. In Allardt's view, the recession affected commercial real estate everywhere. *Exs. P1-P4 at 7*; *Tr. 449-50.*

77. Even before the recession, population was declining both in Madison County as a whole and in Anderson in particular. So was employment, as the area lost manufacturing jobs. Madison County's unemployment rate climbed to all-time highs between 2008 and 2009, exceeding the national average. And the population moved to the south and southwest parts of the county. According to Allardt, those people do not shop in Anderson; they instead shop off Exit 210 along Interstate 69. *Ex. P1 at 8-9; Tr. 450-51*.

ii. River Ridge and its market

78. Unlike Hall, Allardt considered River Ridge and Mounds Mall as a submarket in and of themselves. Like River Ridge, Mounds Mall struggled to maintain occupancy as primary commercial retail activity moved south. *Exs. P1-P4 at 11*; *Tr. 454-58.*

79. Unlike Hall, Allardt viewed River Ridge as one economic unit, because in his view it had functioned that way since 1968. And contrary to Hall, Allardt believed there was abundant data to show that sales of retail centers often include both strip-style buildings and outlots. He offered several reasons for his view. Developers who own the strip centers with anchor space often want to control what happens at the front of their properties in order to protect their investments. Strip-center tenants do not want outlots to be leased to competitors, and many leases prohibit that. Outlots often have uses, such

as restaurants, that attract people to the shopping center. The public might find other types of uses objectionable. *Tr. 484-86, 673-75, 996-98, 1062-66.*

80. Strip-center owners would not have the same type of control if they sold outlots separately. While developers can put restrictions in deeds to outlots, they cannot anticipate all the uses, like tattoo parlors, that might come down the road. And buyers might construct buildings that obscure the strip center. David Eskenazi echoed some of those points, explaining that there were reasons for developers to sell properties like River Ridge either way: as a single property or as separate pieces. But he believed that selling River Ridge as a single property would be simpler. *Tr. 484-86, 673-75, 996-98, 1062-66.*

81. Allardt also posited that selling the property off in pieces might raise zoning issues. For example, if a buyer needed to replace buildings that were near the end of their economic lives, the separate properties Hall envisioned might not have adequate green space to support replacing the buildings. Similarly, the underlying land is comprised of two tracts, with different, albeit related, owners. The line between the two tracts runs through the Hobby Lobby building. *Tr. 750, 997-98.*

82. Allardt believed that only 28.8 acres of the property were usable. The balance of the land was either drainage area to the rear (east) of Ollie's and Rose's Plazas or wooded area and hillside on the south end. According to Allardt, the 39 acres that Hall characterized as surplus land was unusable because it had no road access and was either wetlands or the equivalent. *Tr. 442, 458.*

83. Like Hall, Allardt assumed various facts and imposed limiting conditions on his appraisals. Because he is not qualified to detect hazardous waste or toxic materials, he assumed that the property had no hazardous waste or toxic materials unless otherwise stated. And his reports did not identify any of those things. *Exs. P1-P4 at 67.*

c. Valuation approaches

84. Allardt considered all three approaches to value, but developed only the sales-comparison and income approaches. Like Hall, Allardt did not believe the cost approach was appropriate. The improvements were built at different times, and he believed there was significant external obsolescence that would be difficult to quantify. *Exs. P1-P4 at 16-25; Tr. 441*.

i. Sales-comparison approach

85. For his sales-comparison analysis, Allardt considered seven sales—six from Indiana and one from Cincinnati, Ohio. He did not use all the sales in every year; he instead used four sales for each appraisal. Three of the seven sales were enclosed malls, although Allardt incorrectly identified them as community shopping centers in his appraisal reports. Some included outlots. In many cases, however, immediately surrounding outlots were not part of the sale. It is unclear whether those excluded outlots were owned by the sellers. *Exs. P1-P4 at 36-45; Ex. R8B; Tr. 444-45, 487, 673-74, 816-21, 847-48, 852-59.*

86. Like Hall, Allardt adjusted the sale prices to account for various differences between the sold properties and River Ridge, including adjustments for market conditions, location, size, and age and condition. Also like Hall, Allardt did not make any flood-related adjustments, even though none of his comparable properties was in a floodway or floodplain. And while he testified that the rumored Mounds Lake project could have significantly limited Sedd's ability to lease River Ridge, he did not make any adjustments to account for that. *Exs. P1-P4 at 42-45; 787-89*; *1197-99*.

87. Allardt similarly agreed with Hall that there is generally an inverse relationship between size and per-unit sale prices. To develop a size adjustment, he analyzed sales data of older retail centers in secondary locations or midsize market areas. While the data was limited, it suggested a 15% negative adjustment for the size difference between properties

with 150,000 to 200,000 square feet and River Ridge. *Exs. P1-P4 at 42-45; Tr. 489, 787-88*.

88. Turning to his market-conditions adjustments, Allardt explained that the economy continued to improve until sometime in late 2007 or early 2008. Although he believed the market began to deteriorate after that point, his adjustments suggest that the depreciation occurred entirely between March and July of 2009. *Exs. P1-P4 at 42-45; Tr. 494, 894-96, 908-09.*

89. After reconciling his adjusted sale prices for each year's appraisal, Allardt settled on the following values under the sales comparison approach:

Year	**Value**
2009	$5,900,000
2010	$4,700,000
2011	$4,700,000
2012	$4,500,000

Exs. P1-P4 at 42-45.

ii. Income approach

90. Unlike Hall, Allardt relied almost exclusively on the property's historic income and expenses to project net operating income. Although Allardt looked at data from outside River Ridge's immediate vicinity (and used that data in his sales-comparison analysis), he believed that only leases from what he viewed as River Ridge's submarket—River Ridge itself and Mounds Mall—would apply. He did not have any lease information for Mounds Mall. He therefore concluded that leases from River Ridge, particularly recent ones, best reflected its market. *Tr. 457-58, 510-18, 636, 753-54, 910-12, 1036-38.*

91. Allardt justified his decision, in part, by pointing to his belief in Sandor's ability to control expenses and lease River Ridge to its highest potential. He also pointed to *The Appraisal of Real Estate,* which indicates that rent levels from recent leases of the property being appraised may be a good indicator of market rent. Allardt, however,

acknowledged that some of River Ridge's leases might have included non-market terms and concessions. Many originally began long before the dates at issue in these appeals. The terms may have changed over time, and the leases may have been subject to renewal at the tenant's option. He acknowledged that at least one lease—Blockbuster Video—was not at market rent.[9] *Ex. P22 at 471-72; Ex. P17; Tr. 468-69, 510-18, 753-54, 909-12, 916-19, 1036-43.*

92. Allardt looked at the declining occupancy and its causes, including the southward shift of prime retail space. He believed that investors would be very concerned with expiring leases, particularly while the country was in a deep recession. When viewed from each assessment date, multiple leases were set to expire within the next few years, including the Hobby Lobby lease that paid about 30% of the total rent collected at River Ridge. Because several spaces were not re-leased, and the ones that Sedd did re-lease mostly had gross leases with lower base rates than the ones they replaced, River Ridge's income steadily declined from 2007 forward. *Exs. P1-P4 at 49-52; Tr. 519-20, 605-06, 629-30, 649-49, 654.*

93. In his first revised reports, Allardt projected rent that was close to, but less than, the actual rent received in the immediately preceding calendar year. To that projected rent, he added reimbursements, which included real estate taxes, insurance, CAM, building maintenance, and utilities. For each year, his projected effective gross income was less than, but within at least 89% of, the actual income from the preceding calendar year. *See Exs. P1-P4 at 50-58.*

94. On the eve of hearing, Allardt revised those projections by, among other things, excluding reimbursements for real estate taxes and instead loading his capitalization rates with what he believed was the landlord's share of the effective tax rate. But comparing apples to apples—rent, overage income, and reimbursements for CAM and insurance (excluding flood insurance)—his projections were still less than the previous year's

[9] Although Blockbuster vacated the space before its lease expired on February 28, 2010, it continued to pay rent. *Tr. 548, 628, 649; see also Exs. P1-P2 at 47.*

actual income. Interestingly, although Allardt included tenant reimbursements for the insurance that River Ridge actually carried, he did not explicitly project any reimbursement for flood insurance.[10] Yet he projected flood insurance as an expense. *See Exs. P1-P4 at 46-57; Ex. P21; Tr. 586-88.*

95. Thus, Allardt did not explicitly project either potential gross rent or vacancy and collection loss. He testified that he implicitly performed those steps because "you can take the numbers and work backward through" what was in his reports. So potential gross rent could be determined by first dividing his projected rent by the area that was actually leased. That would give rent per square foot, which when multiplied by the property's gross leasable area, would yield potential gross rent. The difference between the potential gross rent and the actual rent collected would represent vacancy and collection loss. *Tr. 1036-43.*

96. Allardt then deducted operating expenses, excluding real estate taxes. He noted that operating expenses increased from $1.03/sq. ft. to $1.84/sq. ft. over six years. He expected such an increase in older shopping centers, which he testified require more maintenance for parking areas and short-lived items. The property had significant deferred maintenance, and it appeared that Sandor was trying to address it a little bit each year. He reasoned that repair and maintenance expenses would decline slightly once Sandor had addressed the deferred maintenance. He included a management fee equal to 5% of effective gross income, which he felt might have been a little low given the services required for a center with so much vacant space. *Exs. P1-P4 at 46-57; Tr. 552-58.*

97. As already discussed, Allardt included an expense for flood insurance in his second revised opinions. Sometime during the month leading up to the hearing, Allardt called Sandor's insurance agent, Hub Insurance, to find out if River Ridge's policies included

[10] Allardt testified that he simply deducted real estate taxes from the projected reimbursement in his first revised reports to get effective gross income for his second revised opinions. Because Allardt based the reimbursement income in first revised reports the property's actual operating history, and Sedd carried no flood insurance, it appears that his second revised opinions do not include any reimbursement for that expense. *See Tr. 587.*

premiums for flood insurance. They did not. According to Allardt, buyers would likely finance any sale, and lenders require insurance for buildings that are even partly in a "flood area," which apparently refers to areas within a 100-year floodplain or a floodway. *Tr. 462-63, 588-89, 943.*

98. Allardt projected a flood-insurance expense of $35,000 for each year. Hub estimated premiums ranging from $2,500 to $7,500 per building. Allardt used the midpoint of $5,000 and multiplied it by seven to account for the seven buildings that he believed were wholly or partially in a flood area. He did not identify which seven buildings those were. As explained above, the FEMA and zoning maps show that only two buildings—the Ollie's Plaza strip center and the Hobby Lobby building from Rose's Plaza—are in a 100-year floodplain or floodway. *Exs. P1-P4 at 13, 15; Exs. R1-R4 at 43-44; Tr. 462-63, 588-89, 943*.

99. Turning to capitalization rates, Allardt noted that the trend in rates for retail investment properties increased during the recession, and that the recovery showed up in net-leased properties and other primary retail with minimal vacancy risk. For awhile following the crash, investors had trouble financing commercial properties, and there was no market for new commercial-backed mortgage securities. The Korpacz survey data showed that capitalization rates for regional malls peaked in late 2009 and early 2010. Sales of secondary commercial properties were almost entirely due to foreclosure. There were few sales involving retail malls or strip centers in secondary locations, and capitalization rates for properties with income streams carrying similar risk levels as River Ridge's were nearly non-existent from 2007 through 2009. Economic conditions in 2011 improved slightly over 2009, and financing for tertiary retail property became more available. *Exs. P1-P4 at 57-61*.

100. Allardt found 11 sales and two listings of what he described as "larger retail properties and similar denomination commercial property situated in secondary locations":

Sale	Location	Size/Type	Year	Occup.	Date	Rate
1	Mason, OH	Hotel	'77		Mar.-11	16.26%
2	Fairview Park, OH	179,703 sf strip center	'47, '96	62%	June-11	16.24%
3	Indianapolis	18,362 sf convenience strip center	'07	60%	Aug.-11	11.70%
4	Boonville	Mfg./Warehouse	'90	95%	Oct.-10	14.10%
5	Crawfordsville	Countryside Plaza 91,119 sf strip center	'76	82%	May-10	10.90%
6	Indianapolis	Office building	'98		Dec.-09	12.40%
7	Franklin	Mfg. facility	'92, '97		Dec.-08	11.58%
8	Indianapolis	Maywood Crossing 47,388 sf strip center	'76	96%	Sep.-06	14.03%
9	Elkhart	Concord Mall 609,674 sf mall, strip center, outlots	'72	85%	Dec.-03	13.93%
10	Indianapolis	High School Rd. Shoppes 29,354 sf strip center		97%	Apr.-03	11.14%
11	Muncie	Freestanding retail 86,152 sf (K-Mart)	'71	100%	Nov.-01	14.10%
Listing	Fort Wayne	Maplecrest Shops 25,607 sf strip center	'04	62%		12.90%
Listing	Greenwood	Warehouse	'90	100%		15.00%

Exs. P1-P4 at 58-61.

101. Allardt used all the sales and both listings in his 2009 and 2010 appraisals. For 2011 and 2012, he used the five most recent sales and both listings. Although it was from a different state, Allardt believed the Fairview Park, Ohio sale was very important because it was a larger-sized strip center. Similarly, he felt that the Concord Mall sale was significant because it helped bracket Riverview's size, and it included both a strip center and outlots. The Concord Mall sold in 2003 when, if anything, the market was better. Allardt believed that the freestanding big box store (K-Mart) was relevant because it was from Muncie, a market he described as similar to Anderson. Also, it was built in 1971 and was in a flood zone. It sold for only $11.96/sq. ft. Although several of the sales were not retail properties, Allardt felt they bolstered his conclusions. *Exs. P1-P4 at 58-61; Tr. 560-64, 1011-26.*

102. He did not average the extracted rates but instead looked at sales that bracketed River Ridge's size and that had similar occupancy levels. He also looked at the strengths and weaknesses of the various locations. He settled on rates of 14% for 2009 and 14.5% for the other three years. *Exs. P1-P4 at 58-61; Tr. 1011-26***.**

103. Allardt did not rely significantly on investor surveys, which he explained are typically for larger metropolitan areas. According to Allardt, the surveys are voluntary and normally do not include poorly performing shopping centers like River Ridge. But he did rely partly on a February 2012 survey published by CB Richard Ellis ("CBRE") as a test of reasonableness for the rates he extracted from the market. *Ex. P8; Tr. 559, 564-72.*

104. The CBRE survey included Indianapolis retail community centers. It reported "value add" rates of 12%-14% for Class C properties and "stabilized" rates of 9.5%-10.5% for that property class. The survey's overview indicates that stabilized rates were "based on in-place NOI for the latest year before adjusted for reserves," and that "value-add cap rates were based on projected stabilized NOI." The survey further defines a "value-add property" as "an underperforming property that has an occupancy level below the average under typical market conditions." Allardt did not believe that River Ridge was "stabilized" in the sense of the overall market for retail properties, and he explained that his rates were at or above the high-end of the "value add" range because he would expect River Ridge to perform worse than properties in the Indianapolis market. *Ex. P8; Tr. 564-72, 948-49, 1027-28.*

105. In his first revised reports, Allardt included tax reimbursements in his effective gross income and loaded his capitalization rates with the maximum effective tax rate of 3%. As explained above, he then revised his opinions a second time after being asked by counsel to value the property by excluding taxes from reimbursement income and loading the capitalization rate with the landlord's share of the tax expense (expressed as a portion of the effective tax rate). *Exs. P1-P4 at 4; Ex. P21; Tr. 578-79, 587-88*.

106. Unlike Hall, Allardt did not simply multiply the maximum effective tax rate by the River Ridge's market vacancy rate to determine the landlord's share of the tax expense. Indeed, Allardt did not expressly project a vacancy rate. Instead, he used the percentage of River Ridge's total insurance expense that tenants actually reimbursed each year. That percentage did not correspond to vacancy, because some of the occupied spaces had gross leases where the tenants did not reimburse any expenses. Allardt justified using insurance reimbursements as a proxy for taxes on grounds that River Ridge's historical taxes were based on higher assessments, and determining the correct assessment is what these appeals are about. According to Allardt, tax reimbursements generally follow insurance reimbursements. *Ex. P21; Tr. 620-23, 1029-31*.

107. When asked to point to authority endorsing his approach, Allardt replied, "[g]enerally on retail -- there is nothing written about this." But he believed that his conclusions reflected the market for a tertiary property like River Ridge. He ended up with loaded capitalization rates of 15.68% (2009), 16.17% (2010), 16.22% (2011), and 16.11% (2012). *Ex. P21; Tr. 620-23, 982-83***.**

108. Allardt had to make one more adjustment. Unlike Hall, who determined market rent for each unit, Allardt used income and expense information for River Ridge Plaza as a whole, which included two parcels that were not part of these appeals. He referred to them as the "Ponderosa" parcels. He calculated an adjustment factor of 96.62%, which he felt as sufficient to deduct the contributory value of those parcels from his conclusion for each year. *Exs. P1-P4 at 63; Ex. P23; Tr. 526, 543-48, 572-75, 772.*

109. After making all his adjustments and revisions, Allardt estimated the following values under the income approach:

Year	**2009**	**2010**	**2011**	**2012**
NOI	$952,106	$892,626	$830,626	$687,876
Loaded Cap Rate	15.69%	16.17%	16.22%	16.11%
Value	$6,067,461	$5,521,967	$5,122,262	$4,268,810
Ponderosa Adjustment	96.62%	96.62%	96.62%	96.62%
Rounded Value	**$5,900,000**	**$5,300,000**	**$4,900,000**	**$4,100,000**

Ex. P21; Tr. 592-93.

d. Reconciliation

110. In his first revised reports, Allardt gave some weight to his conclusions under the sales-comparison approach, although he reconciled to values matching his conclusions under the income approach for three of the four years. While Allardt originally testified that he gave "much greater emphasis" to the income approach in forming his second revised opinions, we credit his testimony on cross-examination that he relied exclusively on that approach. Indeed, Allardt did not believe the sales-comparison approach was an appropriate indicator of the property's value. In his opinion, there were no good comparable sales for River Ridge, and investors would buy the property strictly for its ability to produce an income stream. *Exs. P1-P4 at 64-65; Ex. P21; Tr. 482-83, 593, 624-25, 1005.*

e. Allardt's review of Hall's appraisals

111. At Sedd's request, Allardt reviewed Hall's appraisals, although he did not prepare a report. Much of his testimony consisted of reiterating his and Hall's differing views on whether the sales-comparison approach applies to valuing an income-producing property like River Ridge and whether River Ridge should be viewed as a single unit or as separate uses. *Ex. P12; Tr. 668-78, 688.*

112. Allardt also criticized a few other aspects of Hall's appraisals. He criticized Hall's use of properties with superior locations and occupancy rates in his sales-comparison analysis. He also took issue with several of Hall's adjustments, including his adjustments for size and location. Although Allardt acknowledged that factors other than population affect location quality, he prepared a table showing that the area surrounding six of Hall's comparable sales had greater population density and growth than the area around River Ridge. *Ex. P6E; Tr. 725-30*.

113. Allardt disagreed with Hall's hypothetical condition that no lease agreements were in place at River Ridge. He believed that applying that condition led Hall to overestimate the property's net operating income. Allardt pointed to several spaces within River Ridge where Hall used market rent that was higher than the contract rent, although Allardt admitted on cross-examination that the opposite was true for other spaces. *Tr. 668, 685-88, 759-61.*

114. According to Allardt, the fact that River Ridge had several spaces with gross leases and expense stops exacerbated the problem. He calculated that Sedd received $148,000 less in reimbursement income for 2009 than it would have received if, as Hall projected, River Ridge had all triple-net leases without expense stops. The reimbursement loss increased in later years. Allardt calculated the reimbursement loss by first determining full reimbursement per square foot for tenants without gross leases or stops. He then took the difference between that amount and the amount paid by each tenant with a stop and multiplied it by the amount of square feet leased by that tenant. That gave him the reimbursement lost through expense stops. He similarly multiplied the full reimbursement rate by the total area subject to gross leases. That gave him the reimbursement lost through gross leases. He then summed the totals. *Tr. 999-1005.*[11]

115. But Hall did not include real estate tax reimbursements in estimating River Ridge's effective gross income, while Allardt's calculations of the CAM reimbursement loss may have done so. At a minimum, Allard's calculations of that loss appear to be too high. His calculations for 2008 illustrate that fact. He used $2.30/sq. ft. as the average full reimbursement for that year, but he did not explain where he got that number. In his first revised appraisal reports, Allardt segregated real estate taxes from all other operating expenses. Dividing the segregated operating expenses (which included a non-reimbursable management fee) by River Ridge's gross building area yields $1.59/sq. ft.

[11] When Allardt accounted for that loss in CAM and insurance reimbursement by converting River Ridge's contract rent to a triple-net equivalent, the differences between Hall's weighted average market rent and the weighted average contract rent were much greater than what was reflected in Hall's report. *Tr. 999-1005.*

Dividing those expenses by the property's leasable area yields $1.74/sq. ft.[12] *Ex. P1 at 47, 50-53; Tr. 999-1005.*

116. Allardt also criticized Hall's choice of rent comparables, noting that only one was from Anderson. In Allardt's view, there is a difference between a property being comparable to another property and being competitive with it. A property would be competitive with River Ridge if buyers would consider it "a replacement or similar location if they were looking to locate an anchor size or junior anchor or inline property in Anderson, Indiana." According to Allardt, only properties within the same submarket, which he believed consisted solely of River Ridge and Mounds Mall, were competitive with River Ridge. *Tr. 482, 683-84, 731-33.*

117. As he did with Hall's sales comparables, Allardt compared population density and growth in the area around River Ridge to the population density and growth around eight of Hall's rent comparables. Five of the eight were comparables for the three outlot buildings Hall classified as freestanding retail. All had significantly greater density than the area around River Ridge, and several were experiencing growth. Of the three River Ridge buildings Hall classified as freestanding retail, one was vacant and two were occupied under triple-net leases calling for rent in excess of Hall's projected market rent. One of those leases was from 2008. *Ex. P6E; Exs. R1-R4 at 153, 156-167; Tr. 731-33.*

118. Surprisingly, given his own struggles in coming to grips with how to address real estate taxes, Allardt believed that Hall inadvertently included taxes in his estimated reimbursement income. Allardt's reasoning on this point was difficult to follow and patently wrong. Hall did estimate more reimbursement income than what the property historically generated. But that is because Hall projected triple-net leases for all the spaces while some of them actually had gross leases and expense stops—not because he

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[12] The segregated operating expenses were $552,978.41. *See Ex. P1 at 54*. As explained earlier, Allardt reported two different numbers for River Ridge's leasable area. Our calculation assumes the lower of the two (318,189 sq. ft.).

included real estate taxes in his projected reimbursement income. *See Exs. R1-R4 at 174;Ex. P20; Tr. 704-05; 714-17; 762-65; 1134-35.*

119. Finally, Allardt believed that Hall's capitalization rate was unreasonably low for each year. Hall extracted a rate from the market using sales of properties with high occupancy. But Allardt testified that, all else being equal, capitalization rates and vacancy rates are related. And he reiterated his skepticism about relying on survey data, singling out Hall's reliance on the Co-Star survey that included years with much lower interest rates than the years under appeal. Allardt also believed that, given River Ridge's low occupancy rate during the midst of a recession, the equity dividend rate in Hall's band-of-investment analysis underestimated the risk of investing in the property. *Tr. 704-11*.

V. Conclusions of Law

A. Objections

120. The ALJ admitted most of the parties' exhibits without objection. He admitted others over objection. He sustained objections to two documents that Sedd offered while cross-examining Hall, although he indicated that Sedd could try to lay a foundation for their admission during its case-in-chief.[13] We adopt his rulings on all those objections. We do the same for the other evidentiary objections on which he ruled. The ALJ also took several objections under advisement, to which we now turn.

1. Assessor's objections

a. Exhibits P20 and P21

121. First, the Assessor objected to Exhibits P20 and P21. Exhibit P20 is a table illustrating Allardt's conclusion that Hall inadvertently included real estate taxes in reimbursement income. Exhibit P21 is a table illustrating Allardt's second revised valuation opinions.

[13] Those documents, marked for purposes of identification as Exhibits P7 and P19 were a property record card for Mounds Mall and a related document that Sedd referred to as demonstrative. Sedd did not attempt to offer those documents in its case-in-chief.

The Assessor objected because Sedd did not provide her with copies of those exhibits until 7:00 p.m. on the eve of hearing.

122. The parties addressed pre-hearing disclosures in their agreed appeal management plan. That plan was based on a hearing date of August 22, 2016. At Sedd's request, the Board later continued the hearing to February 27, 2017; but the plan was not amended. The plan indicates that the Assessor had already exchanged Hall's appraisal reports and sets deadlines for Sedd to identify its experts and exchange their reports. It also sets deadlines for exchanging witness and exhibit lists and copies of exhibits. The plan further indicates, "[t]hough every effort will be made to identify and exchange all exhibits prior to hearing, the parties understand and agree that additional exhibits may be presented at hearing for rebuttal purposes."

123. Although the Assessor does not seek to hold Sedd to the plan's deadlines, he does object to Sedd waiting until the eve of hearing to exchange the contested exhibits. By doing so, Sedd failed to meet the default deadlines laid out in our procedural rules. *See* 52 IAC 2-7-1(b) (requiring parties to exchange witness and exhibit lists at least 15 business days before a hearing and copies of exhibits at least 5 business days before a hearing).

124. As a general matter, the purpose of discovery rules is "to allow a free exchange of fact information and to permit each party to prepare its case for trial without concerns about trial by surprise or ambush." *Brandenburg Indus. Serv. Co. v. Ind. Dep't of State Revenue*, 26 N.E.3d 147, 152 (Ind. Tax Ct. 2015). And the Indiana Supreme Court has "consistently rejected a 'gaming view' of the litigation process." *Outback Steakhouse of Fl., Inc. v. Markley*, 856 N.E.2d 65, 75 (Ind. 2006). For those reasons, failure to comply with our procedural rule governing pre-hearing disclosures "may serve as grounds to exclude the evidence[.]" 52 IAC 2-7-1(b), (f).

125. With that in mind, we turn to the exhibits at issue. Sedd argues that the revisions reflected in Exhibit P21 were necessary to correct errors that would have led to an

improper valuation. The Assessor, however, responds that those revisions are more than mathematical corrections—they change Allardt's underlying methodology. *Tr. 577-85*.

126. First, we note that the Assessor objected to the exhibit itself rather than to Allardt's testimony about his revised opinions. Indeed, the exhibit simply demonstrates Allardt's testimony. But given that (1) Allardt repeatedly tied his testimony about his revised opinions to the exhibit, and (2) the ALJ took the objection under advisement, the parties likely understood the Assessor's objection as extending to Allardt's testimony as well.

127. While we do not think that Sedd was trying to ambush the Assessor or otherwise game the discovery process, we agree that Allardt's revised opinions, as reflected in Exhibit P21, are more than simple mathematical corrections. Regardless, we find that their late disclosure did not prejudice the Assessor.

128. Allardt revised two components of his analysis under the income approach: (1) he changed how he treated real estate taxes by omitting them from reimbursement income and loading his capitalization rate with what he calculated as the landlord's share of the maximum tax rate; and (2) he deducted $35,000 for flood insurance as an expense. The Assessor can hardly complain about the first change—her own appraiser similarly omitted taxes from reimbursement income and loaded his capitalization rate with the landlord's share of the maximum tax rate. And the Assessor successfully impeached Allardt's method for calculating the landlord's share of that maximum tax rate.

129. While the second change lowered Allardt's opinions of the property's value, it did not alter his underlying methodology. The experts agreed that flood insurance would be a deductible expense. *See Tr. 229-30* (Hall explaining that in projecting an insurance expense, he subjectively accounted for the fact that some of the buildings might be covered by floodplain, which could affect their insurance rates). Allardt was correcting a factual error—he had wrongly assumed that River Ridge's premiums included flood insurance. We therefore overrule the Assessor's objection and admit both Exhibit P21 and Allardt's testimony about his second revised valuation opinions.

130. Turning to Exhibit P20—the chart illustrating Allardt's conclusions that Hall inadvertently included tax reimbursements in estimating potential gross income—Sedd points to the language from the appeal management plan regarding rebuttal evidence. *Tr. 713-14*. Sedd apparently interprets that language as relieving the parties of the duty they otherwise would have had to exchange known and anticipated exhibits well before hearing. *See Evansville Courier Co. v. Vandeburgh Cty. Ass'r*, 78 N.E.3d 746, 752 (Ind. Tax Ct. 2017) (explaining that the failure to disclose a known and anticipated exhibit within the deadlines laid out by the Board's procedural rules constituted "precisely the type of 'gotcha' litigation that Indiana courts abhor.").

131. We need not decide that issue, because the exhibit is merely demonstrative. Allardt separately testified to the opinions summarized in the exhibit as part of his oral review of Hall's appraisal. And the Assessor did not object to Allardt testifying to that review. We therefore overrule the Assessor's objection and admit Exhibit P21.

b. Exhibit P26

132. The Assessor next objected to Exhibit P26—a plat map of River Ridge showing how ownership of the land was divided. Sedd offered the exhibit through David Eskenazi, but an employee from his office, who did not testify, prepared it. The Assessor therefore argued that it was hearsay. Sedd responded that we may admit hearsay under our procedural rules and that the map could "easily" fall within the "business record[s]" exception to the hearsay rule. *Tr. 1052-56.*

133. Hearsay is an out-of-hearing assertion offered to prove the truth of the matter asserted. *See* Ind. Evid. R. 801(a)-(c). Our procedural rules allow us to admit hearsay, with the caveat that if a party objects to the hearsay and it does not fall within a recognized exception to the hearsay rule, we cannot base our determination solely on that evidence. 52 IAC 2-7-3.

134. Maps and diagrams can be testimonial or merely demonstrative. In the first case, they may be hearsay. *See Jenkins v. State*, 263 Ind. 589, 335 N.E.2d 215, 217 (1975) (finding hearsay objections well grounded where drawing contained items not known by drawer's personal observation but told to him by others). In the second, they are mere aids to understanding the testimony of somebody with personal knowledge of the things they depict. The map at issue here is demonstrative. David Eskenazi, who is a partner, owner, or member of all the entities that own River Ridge, personally knew the property's layout and ownership. And he testified that the map showed an overview of the property. *Tr. 1053-54*. Thus, the map is not hearsay, and the fact that someone else prepared it does not preclude its admissibility. *See Jones v. State,* 269 Ind. 543, 381 N.E.2d 543, 545 (Ind. 1978) ("A witness utilizing a map as representing his knowledge of the area depicted need not be the maker of it."). In any case, we do not rely on the map in reaching our determination in these appeals.

c. Eskenazi testimony

135. Finally, the Assessor objected to David Eskenazi testifying about how broader economic forces, including the recession and accompanying scarcity of credit, affected Sandor's ability to lease or sell River Ridge. The Assessor argued that Eskenazi was not a licensed or certified appraiser and therefore was not qualified as an expert. Sedd responded that, as a partner in Sandor, Eskenazi had extensive experience in buying, selling, and valuing real estate. *Tr. 1069-82, 1088-89*.

136. We overrule the objection. Although the Assessor did not point to any legal authority for his objection, he presumably relied on Rule 702 of the Indiana Rules of Evidence. Among other things, that rule allows witnesses who are qualified as experts by knowledge, skill, experience, training, or education to testify in the form of an opinion if their scientific, technical, or other specialized knowledge will help the trier of fact understand the evidence or determine a fact in issue. Ind. Evid. R. 702. While our ALJs must regulate our proceedings "without recourse to the rules of evidence" (52 IAC 2-7-2), the principles behind those rules may still inform our decision-making. We find

David Eskenazi's experience and specialized knowledge sufficiently helpful to our understanding of the facts at issue in these appeals—including River Ridge's actual and market-level occupancy—to be admissible.

137. That does not mean we give his opinions much weight. He has an ownership interest in the entities that own River Ridge. Thus, he has a financial interest in us determining as low a value for the property as possible.

2. Sedd's objection

138. Sedd objected to Ex. R8A—a LoopNet listing sheet for the Fairview Ohio property that Allardt used in extracting capitalization rates from the market—on grounds that portions of the exhibit, including the date on which the listing was last updated, are illegible. *Tr. 952-59*. In taking the objection under advisement, the ALJ indicated that the Assessor could offer to substitute a more legible copy. *Id. at 959*. He did not take advantage of that opportunity.

139. We overrule the objection. Although the print is very small and light, the portions of the document about which Sedd complained are legible.[14]

B. Burden of Proof

140. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. 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—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I .C. § 6-1.1-15-17.2(b), (d).

[14] The exhibit is only marginally relevant. The property later sold at a lower price (and higher capitalization rate), and Allardt used the sale price, rather than the listing price, in his analysis. *Ex. P25; Tr. 1022-24*.

141. The parties agree that the Assessor has the burden of proof for the appeal of River Ridge's 2009 assessment (assigning the burden for the other years would necessarily depend on our decision for each preceding year). We accept their agreement. Indeed, we have no reason to do otherwise, because they did not offer any evidence to show the property's assessment for 2008. In any case, the question is largely moot. Assigning the burden largely matters only where the parties fail to offer probative evidence from which to determine the appealed property's true tax value. Here, we have sufficient evidence to make that determination.

C. True Tax Value

142. In Indiana, real property is assessed based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e); I.C. § 6-1.1-31-5(a). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he 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 REAL PROPERTY ASSESSMENT MANUAL 2; *see also*, 2002 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r,* 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

D. Valuation Evidence

143. Everyone agrees that River Ridge is not a prime retail property. The newest building was approximately 19 years old in 2009, and some buildings were much older. The pad for one building is in a floodway, and the pad for another building may be in a 100-year floodplain, although there is no evidence that any of the buildings have flooded. While River Ridge was in Anderson's prime retail location when it was built, new retail development has moved south. For many of these reasons, River Ridge's occupancy

began declining before 2005 and accelerated somewhat when the recession began in 2008.

144. The experts, and the parties who hired them, dispute the degree to which these problems affected River Ridge's value. Allardt viewed the effects as severe, and he repeatedly revised his opinions downward, going so far as to speculate that the property had no value-in-exchange. In any case, he ultimately estimated its market value-in-use at less than $6 million for each year under appeal, and at barely more than $4 million for the final year, despite the fact that it had more than 300,000 square feet of leasable space and was at least 50% occupied. Hall was more tempered in his view. Although he recognized the property's occupancy challenges, he believed that its stabilized income stream, while lower than higher-tier properties, still had significant value to investors.

1. Hall was more credible and persuasive than Allardt or Eskenazi.

145. While we do not wholly adopt either appraiser's opinions, we find Hall more credible and his data and judgments generally more persuasive. Hall is an MAI appraiser, a designation Allardt has not achieved despite years of appraising commercial properties. By itself, that distinction may not mean much. But several issues with Allardt's valuation opinions support the notion that Hall's training and experience made him more qualified to appraise a property like River Ridge. Allardt serially revised his valuation opinions, most notably struggling with how to treat the real estate tax expense when using the income approach to value a property for purposes of an assessment appeal. He also ignored basic steps for estimating the market value of a fee-simple interest under the income approach. And he offered confusing calculations and explanations to support various aspects of his opinions.

a. There is little probative evidence to show that environmental conditions significantly affected River Ridge's value.

146. Those are general conclusions. To explain the reasons underlying them, we turn to the significant points of dispute between the experts (and parties). We begin with the effect

of two issues identified by David Eskenazi that deal with the property's condition: (1) its location on the site of a former landfill, which required methane vents in the Ollies' Plaza and Hobby Lobby buildings, and (2) the bats in the Hobby Lobby building. While both of those conditions conceivably could have affected the property's value, there is no evidence to show they did so appreciably. Both appraisers included limiting conditions indicating that they assumed the property was free of hazardous waste or toxic materials. It was not until the last day of the hearing that Allardt offered an opinion about the effect of being located on a former landfill, and he offered no analysis to support his opinion. Given the dearth of information about the potential contamination that Eskenazi offered, we cannot even imagine what that analysis would have been. Allardt offered nothing to show that he had any expertise in analyzing the effects of environmental contamination on property values. As for the bats, even Allardt did not offer an opinion about how they affected River Ridge's value.

b. We give no weight to either appraiser's analysis under the sales-comparison approach.

147. Next the appraisers disagreed about whether the property should be valued as six separate units, as Hall believed, or as a single unit, as Allardt believed. Each appraiser offered plausible reasons for his position. Hall may have overstated the scarcity of sales that included both strip centers and developed outlots in the same transaction. But they commonly sell separately in the market, likely for the reasons he outlined. On the other hand, both Allardt and David Eskenazi offered legitimate reasons why developers may want to maintain common ownership of strip centers and their corresponding outlots.

148. Thus, either method might be appropriate for valuing a property like River Ridge, even if one might ultimately be more persuasive. Because Hall valued the property as a single unit under the income approach, however, the question only matters in distinguishing between the appraisers' sales-comparison analyses. Allardt did not rely on the sales-comparison approach in reaching his valuation opinions, and we give little weight to Hall's conclusions under that approach for reasons independent of whether valuing strip centers separately from associated outlots is appropriate.

149. Hall did not just separate outlots from strip centers—he also valued the Ollie's Plaza and Rose's Plaza strip-center buildings separately from the Big Lots strip center. He did not satisfactorily explain why. Although Ollie's and Rose's Plazas were built around the same time, Hall did not base his decision on that. Most of the reasons he gave for grouping those buildings together would also apply to grouping all the strip-center buildings together. Because he separated them, however, he adjusted the price for one of his comparable sales upward by 20% to account for it being significantly larger than either the North or South Center. Had he viewed the River Ridge strip centers as a single unit, it would have been larger than the comparable property and a positive adjustment would not have been warranted.

150. Also, while Hall divided the strip-center buildings into two different uses, he did not view their market occupancy levels separately. Instead, he considered the occupancy level of River Ridge in its entirety, including all the strip-center and freestanding buildings. If considered individually, however, they likely had different market occupancy levels. The Ollie's Plaza strip center had been 90% vacant since at least 2005. By carving out the Ollie's Plaza and Rose's Plaza strip-center buildings as a separate use, but using River Ridge's occupancy rate as a whole for purposes of making adjustments in his sales-comparison analysis, Hall likely overestimated the North Center's value.

151. Hall's treatment of floodway restrictions also gives us pause. His approach may have stemmed from his uncertainty about whether any of the building pads were in the floodway. But he did nothing to relieve that uncertainty, such as insist on a topographical survey with elevations. As indicated above, we find that the pad for the Ollie's Plaza strip center was in the floodway. While, as Hall pointed out, Ollie's Plaza was an existing non-conforming use, we believe the floodway restrictions still likely affected its value. Hall dismissed the restrictions on grounds that he was valuing the property's current use, so he was unconcerned by restrictions on rebuilding. We are not so cavalier about those restrictions. Instead, we find that a buyer would likely care about the restrictions, even if it intended to continue using the property as a retail strip center. That

being said, we do not mean to overstate the effect of problems relating to potential flooding on the property's value. There is no evidence that the property had actually flooded.

152. Finally, Hall recognized that, when appraising an income-producing property, the value indication from the income approach might be given greater weight than indications under other approaches. Although a well-supported analysis of River Ridge under the sales-comparison approach likely would be entitled to some weight, Hall's analysis under that approach has significant problems. And his conclusions are substantially more than $1 million higher than what we find is supportable under the income approach for each year. In three of the four years, they are more than $2 million higher. We therefore give no weight to Hall's conclusions under the sales-comparison approach.

c. In applying the income approach, Hall more closely followed generally accepted appraisal principles than Allardt did.

153. The parties and their experts also fundamentally disagree about the appropriate way to value the property under the income approach. Sedd accuses Hall of ignoring River Ridge's actual operating characteristics, while the Assessor accuses Allardt of ignoring basic steps under the income approach and relying solely on the property's historic operating characteristics to the exclusion of market data. In the process, the Assessor and Hall believe that Allardt valued a leased-fee—rather than a fee-simple—interest in the property. Sedd and Allardt overstate their criticisms of Hall's analysis. The Assessor's and Hall's criticisms of Allardt's analysis hit much closer to the mark.

154. The dispute stems from how the two appraisers projected net operating income. We begin with Hall's analysis. He followed the classic steps for working from potential gross income to net operating income: (1) he researched income and expense data for River Ridge and comparable properties; (2) he estimated potential gross income based on that data; (3) he estimated vacancy and collection loss; (4) he subtracted that loss to arrive at effective gross income; (5) he estimated total operating expenses for River

Ridge; and (6) he subtracted those expenses from effective gross income. *See Ex. R6* THE APPRAISAL OF REAL ESTATE at 466.

155. Contrary to what Sedd and Allardt claim, Hall did not ignore River Ridge's historic income, expenses, and vacancy rates. He examined the rent rolls and included them in his reports. As *The Appraisal of Real Estate* contemplates, he reduced the actual rents to unit values and compared them to rent from recent leases for space in comparable retail centers. While only one of those comparable leases was from Anderson, many were from nearby cities in east central Indiana, such as Muncie, New Castle, and Kokomo.

156. Allardt criticized Hall's reliance on those leases because Allardt did not believe that any of the properties competed with River Ridge. In his mind, River Ridge competed with only one property for tenants (or investors)—Mounds Mall. We find Hall's broader view of River Ridge's market more persuasive.

157. Of course, that does not necessarily mean that the retail centers from which Hall drew his comparable lease data were substantially similar to River Ridge. As part of reviewing Hall's appraisal, Allardt questioned whether eight of Hall's rent comparables were in similar locations. We give little weight to Allardt's review, however. First, we have general concerns about Allardt's credibility. He either misunderstood or mischaracterized Hall's analysis in other respects, such as his claim that Hall inadvertently included income taxes in his projection of CAM reimbursements. He also repeatedly changed his own opinion about the property's value, including on the eve of hearing and arguably at the hearing itself.

158. Second, Allardt was reviewing another appraiser's opinion about a property he himself valued at a significantly lower amount. And he testified in support of his opinion. That creates a danger of conscious or subconscious bias in Allardt's review, something he did nothing to dispel. Indeed, rather than consider the locational characteristics of all of Hall's rent comparables, he selected only the ones that he felt undermined Hall's opinion.

159. Finally, bias aside, Allardt's testimony did little to show that Hall's choice of comparables led him to overestimate market rent. Hall used most of the highlighted comparables in estimating rent for three outlots, and he projected market rent that was below the actual contract rent for two of those outlots. In any case, Allardt acknowledged that population density and growth are components, rather than the sole measure, of location quality. Allardt's review therefore does little to impeach the reliability of Hall's market-rent analysis.

160. Thus, in estimating potential gross income, vacancy, and expenses, Hall correctly relied on both River Ridge's actual experience and the market. Relying exclusively on River Ridge's actual rent, which came from leases dating back as far as the 1980s, would have been inappropriate in appraising the market value-in-use of a fee simple interest in the property. *See Indiana MHC, LLC v. Scott Cty. Ass'r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (*citing* THE APPRAISAL OF REAL ESTATE 493, 501, 509, 511-12 (12th ed. 2001)) ("[T]o provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income, expenses and occupancy rates for the subject property, but the income, expenses, and occupancy rates of comparable properties <u>in the market</u> as well.") (emphasis in original).

161. That being said, Hall's market-income estimates were higher than what the leases in place at River Ridge called for. And the difference was greater than the comparison in his reports would lead us to believe. When comparing his estimated weighted per-square-foot rent to River Ridge's actual weighted rent, Hall did not compute triple-net equivalents for River City's gross leases and leases with expense stops. Although Allardt overstated the amount of the reimbursement loss from those leases, there was still some loss. The difference between Hall's projected gross income and contract income widened each year; newer leases at River Ridge were generally gross, rather than triple net, and many were at lower rates than the previous leases for the same space.

162. But again, a property's actual income is not dispositive of its market-level income. Individual leases may not reflect market rent for various reasons. For example, they may

have been signed under different market conditions than the conditions prevailing on the valuation date. Similarly, the trend toward gross leases and expense stops at River Ridge might stem partly from the property's real estate taxes, which tenants under triple-net leases must reimburse. The experts agreed that River Ridge was assessed too high during the years in question. If the property were properly assessed, tax reimbursements would decrease, presumably making River Ridge more attractive for tenants to lease on a triple-net basis.

163. Of course, potential market-level income is only part of the story; appraisers must also account for vacancy and collection loss to derive effective gross income. Hall's estimate of vacancy and collection loss skewed toward the low side of what his data supported. He relied primarily on River Ridge's average occupancy rate for 2008-2011. That rate was declining, however, and investors likely would have considered that trend. While we find that Hall's 55% occupancy (and 45% vacancy) was a reasonable projection, we lack his supreme confidence in its stability. There is more risk than he acknowledged.

164. We do not find that the rumored Mounds Lake project significantly increased that risk, however. David Eskenazi's hearsay testimony about the motivations of tenants and prospective tenants aside, neither appraiser considered the rumors to have affected River Ridge's value when they prepared their appraisal reports. Hall actively investigated the issue. While Allardt later testified that he believed the rumors limited Sandor's ability to lease the property, he did not account for them in his sales-comparison analysis, even though he compared River Ridge to properties outside the area that the project was rumored to affect.

165. That brings us to the last step in estimating net operating income—operating expenses. Hall projected market expenses that were similar to River Ridge's actual operating history. His insurance expense was very close to what River Ridge paid. His CAM expenses were lower than the property's actual expenses for some of the immediately preceding years, but they were generally in line with River Ridge's experience over time. That may have stemmed from River Ridge having addressed deferred maintenance in

some of those years. Although Hall's management expense of 3% of EGI was lower than River Ridge's actual management fees, which generally ranged between 4% and 5% of EGI, it was in line with the market. Overall, he reasonably supported his expense estimates.

166. Thus, while far from perfect, we find Hall's projected net operating income for each year probative.

167. Unlike Hall, Allardt did not follow the classic steps for working from potential gross income to net operating income. He did little to research income and expense data for comparable properties and compare it to River Ridge's data. Instead, he decided that River Ridge competed in submarket with just one other property—Mounds Mall—for which he did not have any data. As explained above, we are not persuaded by that conclusion.

168. In any case, Allardt did not estimate potential gross income or market vacancy and collection loss—the second and third steps for estimating market income. Allardt claimed that he implicitly followed those steps because those numbers could be gleaned by "working backward" through his projected rent, which closely mirrored the rent Sedd actually received. We disagree. It simply means the effective gross income—an unknown variable that an appraiser applying the income approach must solve for—may be calculated through a basic mathematical formula once other variables are known. But an appraiser must use market data and his judgment to estimate those other variables, including potential gross income and vacancy and collection loss.

169. We are also troubled by other aspects of how Allardt determined net operating income, such as his treatment of reimbursement income. As explained above, he viewed the property's actual gross leases and expense stops as automatically reflecting the market, even though the property's tax burden presumably influenced whether tenants would insist on those terms or would instead agree to net leases. That tax burden is a function of River Ridge's assessment, which is the very issue in these appeals. And the parties

agree that the assessments should be reduced. In Allardt's view, they should be more than halved.

170. Also, Allardt did not include any tenant reimbursement for flood insurance in his second revised opinions, even though he deducted it as an expense. At a minimum, that merits an explanation, given that both appraisers otherwise treated insurance as a reimbursable expense under triple-net leases.

171. Indeed, Allardt's treatment of flood-related issues generally gives us pause. At hearing, he treated the potential for flooding as a major problem that greatly affected River Ridge's value. Yet he did not know if the property had ever flooded. And he did not adjust any prices from his sales-comparison analysis to account for the fact that his comparable sales were located outside of flood zones.

172. In his second revised opinions, Allardt included a $35,000 expense—$5,000 per building for seven buildings—for flood insurance, on grounds that lenders require buyers to get flood insurance for any building with even part of its pad in a 100-year floodplain or floodway. At most, the pads for only two buildings meet those criteria, and that assumes the pad for the Hobby Lobby building is within a floodway or 100-year floodplain, something that Allardt acknowledged could only be determined through a topographical survey. Even if he were referring to building segments instead of whole buildings (a distinction he did not make), only five segments would even arguably be within the floodway or 100-year floodplain.

173. In short, we largely agree with the Assessor's primary criticism of Allardt's analysis under the income approach—that he essentially valued a leased-fee interest, rather than a fee-simple interest, in the property. We therefore give his determination of net operating income, and consequently, his conclusions under the income approach, no weight. By contrast, we find Hall's estimate of net operating income probative, if toward the high end of what the data supports.

d. Hall's capitalization rates were too low. The evidence supports a loaded rate of 13.35% for each year

174. But that does not mean that we agree with Hall's value conclusions under the income approach. Sedd raises legitimate concerns leading us to conclude that Hall's capitalization rates were too low.

175. Hall looked to three sources to determine a capitalization rate: survey data, rates extracted from sales of what he believed were comparable leased properties, and a rate built using the band-of-investment method. As for the surveys, Hall admitted that one of them—Co-Star's analytic survey—did not include any data from before 2012. We therefore agree with Sedd that the Co-Star survey has little relevance for determining appropriate capitalization rates for the years under appeal. That survey had the lowest indicated rate of any of Hall's sources, which is significant, because Hall reconciled his data by averaging the rates from those sources.

176. We have similar misgivings about Hall's market-extracted rate. While the sales from which he extracted that rate involved retail centers of roughly the same vintage as River Ridge, they all had significantly higher occupancy rates than River Ridge.

177. Hall acknowledged the higher occupancy rates, but emphasized that occupancy is not the only factor in determining comparability and explained that the stability of the projected income stream is what matters most. Although we agree that stability is important in assessing risk, we disagree that sales of buildings with occupancy rates of 90% to 100% necessarily compare very closely to property with a market occupancy rate of 55%. In any case, we lack Hall's supreme confidence in the stability of his projected income stream and find that it carries more risk than is reflected in the overall rate he extracted from his sales.

178. We have the same problem with Hall's band-of-investment analysis. He claimed to use the "midpoint" between the average and maximum rates for the various components as reported by *Realty Rates*. But in most instances, he used values below that midpoint.

Given the issues facing River Ridge, we would expect an appropriate rate to fall close to or at the high end of the *Realty Rates* survey data.

179. Thus, while Hall's analysis and underlying data say something about what an appropriate overall rate might be, we think his conclusions underestimate that rate in light of the risks associated with River Ridge. Of course, that begs the question: What is an appropriate overall rate? Allardt also estimated overall rates. We therefore turn to his analysis to see if it offers any help.

180. Unlike Hall, Allardt relied exclusively on rates extracted from market sales. But several of his sales involved property types other than retail, while another was for a freestanding big-box building. Others were years removed from the assessment dates. Allardt did not offer any convincing reasons for including the non-retail properties. While he justified using the older sales on grounds that there were few sales of community retail centers from secondary locations, that dearth of sales data should have led him to explore other avenues for estimating an overall rate. Yet he decided against pursuing those avenues. Rather, he simply looked at the CBRE survey for Indianapolis as a test of reasonableness.

181. Of the three retail properties that sold between 2008 and 2011, the overall rates ranged from 10.9% to 16.24%, with an average of 12.94% and a median of 11.7%. The properties' occupancy rates ranged from 60% to 82%, and they were built between 1947 (one of two construction dates given for the Fairfield, Ohio property) and 2007. While we have little faith in Allardt's analysis in general, we find that those three sales are relevant to determining an appropriate overall rate.

182. Looking at the upper ends of the ranges indicated by Hall's analyses (excluding the Co-Star Analytics survey) and the rates extracted from Allardt's recent sales for retail centers, we find that 12% is a reasonable overall rate for each year.

183. The appraisers ultimately agreed that the overall rate must be loaded with the landlord's share of the maximum 3% tax rate, although it took Allardt three tries to come to that

conclusion, and then only at the prompting of counsel. But they disagreed about what the landlord's share was. Hall used a straightforward method to calculate it—he multiplied the tax rate by his projected vacancy rate. Because Allardt did not explicitly develop a vacancy rate, he took a more convoluted approach than Hall and derived the landlord's share of taxes by calculating the percentage of insurance expenses that tenants reimbursed. Once again, he premised his calculations on gross leases and expense stops that may partly have been a product of River Ridge's overassessment.

184. We therefore agree with Hall that the overall rate should be loaded by 1.35% as the landlord's share of the tax rate. That yields a loaded capitalization rate of 13.35% for each year. When applied to Hall's projected net operating income ("NOI"), the loaded rate produces the following values:

Year	**NOI**	**Cap Rate**	**Value (rounded)**
2009	$998,718	13.35%	$7,481,000
2010	$968,610	13.35%	$7,255,500
2011	$966,428	13.35%	$7,239,200
2012	$948,725	13.35%	$7,106,600

But Hall acknowledged that his valuation estimate for 2009 needed to be trended to a value as of January 1, 2008 valuation date. Using Hall's own method (changes in the CPI) we adjust the 2009 value to $7,421,200.[15]

185. Finally, we are not persuaded by Hall's addition of $100,000 for the value of the 39 acres he described as surplus land. Given the zoning restrictions governing maximum coverage by hard surfaces, at least some of the land may actually support the property's use as a retail shopping center, if for no other reason than as a safeguard to be able to rebuild in the event that any of the buildings are severely damaged or destroyed. In any case, Hall used sales of tracts that were more desirable than River Ridge's land, but he did not adjust their sales prices to account for those differences in his admittedly "simple" sales-comparison analysis.

[15] $7,481,000 x .992 = $7,421,152 ($7,421,200 rounded to nearest $100).

FINAL DETERMINATION

186. The total assessment for the parcels under appeal must be changed to the following values:

Year	Value
2009	$7,421,200
2010	$7,255,500
2011	$7,239,200
2012	$7,106,600

We issue this Final Determination 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>.