REPRESENTATIVES FOR PETITIONER: Paul Jones, Brigham Michaud, Jonesy Pyatt Law, LLC

REPRESENTATIVEs FOR RESPONDENT: Marilyn Meighen, Brian Cusimano, Ayn Engle, Attorneys at Law

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BEFORE THE
INDIANA BOARD OF TAX REVIEW

Cabela's Wholesale LLC & SPT Prairie 7700 CB Drive,	)	Petition Nos.: See Attached.
Petitioner,	)	Parcel Nos.: See Attached.
v.	)	County: Lake
Lake County Assessor,	)	Assessment Year: 2018 - 2020
Respondent.	)	

Date 9/26/2022

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board"), having reviewed the facts and evidence presented in the Parties' arguments, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

1. These assessment appeals involve the difficult task of valuing a very large, well-constructed and highly ornamented store for which there are few closely comparable sales and leases. The Petitioners, Cabela's Wholesale, LLC and SPT Prairie 7700 CB Drive (collectively "Cabela's"), offered an appraisal from Lawrence Allen, while the Assessor offered appraisals from Michael Lady and David Hall of Integra Realty Resources (Hall testified at the hearing and we will refer to the appraisal opinions as his).

Hall more accurately captured the property's utility, and he used better substitute properties in his analyses under the sales comparison and income approaches than Allen did. For the 2018 assessment, where Cabela's admitted it had the burden of proof, we therefore find that Hall's analysis under the income approach, with a few adjustments, is the most persuasive evidence of the property's market value-in-use, and we order that assessment to be reduced accordingly.

2. Cabela's did not admit that it had the burden of proof for 2019 and 2020, however. And we find that a specialized burden-shifting statute (I.C. § 6-1.1-15-17.2), which was the law on the date of the hearing, applies. The Assessor failed to meet her burden of offering evidence that "exactly and precisely conclude[s]" to the assessments, and Cabela's failed to prove that its proffered assessments were correct. Under those circumstances, the burden-shifting statute requires that the 2019 and 2020 assessments revert to the level we determined for 2018.

II. PROCEDURAL HISTORY

3. Cabela's appealed the assessments for four separate parcels—a main parcel that included a store and site improvements (Parcel 45-07-17-326-014.000-203), and three parcels of vacant land—to the Lake County Property Tax Assessment Board of Appeals ("PTABOA"). The appeals covered the 2018-2020 assessment years, although Cabela's did not appeal every parcel every year. The PTABOA issued a Form 115 determination on the main parcel's assessment for 2018, to which Cabela's responded by timely filing a Form 131 petition with us. The PTABOA did not issue determinations on any of the other appeals. Well after the statutory deadlines for the PTABOA to hold hearings and issue decisions on those appeals had passed, Cabela's filed Form 131 petitions with us.[1]

[1] We assigned petition number 45-023-18-1-4-00228-20 to Cabela's' appeal from the PTABOA determination on the main parcel. On April 12, 2021, Cabela's filed another Form 131 petition contesting the main parcel's 2018 assessment. That petition incorrectly indicates that it was a direct appeal because the maximum time for the PTABOA to act had passed. We assigned it a separate petition number (45-023-18-1-4-900343-21). Because Cabela's had already appealed the PTABOA's determination for that year, the second petition is duplicative. Cabela's similarly filed duplicative Form 131 petitions contesting the 2018 assessments for two of the vacant parcels, to which we also assigned separate petition numbers. In a pre-hearing conference, counsel for Cabela's

4. Beginning January 24, 2022, our designated administrative law judge, Erik Jones ("ALJ"), held a three-day hearing on Cabela's petitions. Neither he nor the Board inspected the property. Allen and Hall were sworn as witnesses.

5. Before we began our hearing on Cabela's appeal petitions, the parties stipulated to values in the appeals covering the three parcels of vacant land. The parties read those stipulations into the record:

Parcel	2018	2019	2020
45-07-17-327-003.000-023[2]	$3,446,400	--	--
45-07-17-401-003.000-023	$1,683,800	$1,683,800	$1,683,800
45-07-17-451-009.000-023[3]	--	--	$1,477,600

Tr. at 11-13.

6. That leaves the 2018-2020 appeals of the main parcel's assessment for our consideration. Those assessments were:

Year	Value
2018	$15,720,600
2019	$15,998,300
2020	$15,837,900

Form 131 pets.

7. Cabela's offered the following exhibits:

Petitioner's Exhibit A	Appraisal report for 2018 – 2020 assessment years by Allen & Associates Appraisal Group, Inc.,
Petitioner's Exhibit B	Integra Realty Resources appraisal report of Sam's Club property for Walmart Realty.

8. The Assessor offered the following Exhibits:

Respondent's Exhibit 1	2018 Integra appraisal report for subject property,
Respondent's Exhibit 2	David Hall Additional Work Experience,

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indicated that he would withdraw one of the duplicative petitions for each parcel, but he did not do so. While we issued separate hearing notices on all the petitions and list them all in the caption, there is only one 2018 appeal for each parcel in question.

[2] Cabela's did not appeal this parcel for the 2019 and 2020 assessment years.

[3] Cabela's did not appeal this parcel for the 2018 and 2019 assessment years.

Respondent's Exhibit 3	Excerpt from THE APPRAISAL FOUNDATION, 2020-2021 UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) with definition of Appraisal,
Respondent's Exhibit 4	Excerpt from THE APPRAISAL INSTITUTE, THE DICTIONARY OF REAL ESTATE APPRAISAL,
Respondent's Exhibit 5	Marshall Valuation Service ("MVS") Excerpt,
Respondent's Exhibit 6	Comparison of building types,
Respondent's Exhibit 7	Offering memoranda for At Home, Lowe's, Home Depot, and Dick's Sporting Goods,
Respondent's Exhibit 8	2019 Integra appraisal report for subject property,
Respondent's Exhibit 9	2020 Integra appraisal report for subject property,
Respondent's Exhibit 10	Excerpt from Allen appraisal report for a Lowe's store in Schererville,
Respondent's Exhibit 11	Excerpt from Allen appraisal report for a Target store Hobart,
Respondent's Exhibit 12	CoStar datasheet for former SuperK,
Respondent's Exhibit 13	Walmart Hammond Flyer,
Respondent's Exhibit 14	CoStar datasheet for Sale 3 from Allen's appraisal,
Respondent's Exhibit 25	Information for Lease 10 from Allen's appraisal
Respondent's Exhibit 30	Calculator Method excerpt from Marshall Valuation Services,
Respondent's Exhibit 31	Redevelopment agreement,
Respondent's Exhibit 32	CoStar and listing information for former Walmart and Sam's Club.

9. The record also includes the following: (1) all petitions, motions, and other documents filed in these appeals, including the parties' post-hearing briefs; (2) all orders and notices issued by the Board or our ALJ; and (3) the hearing transcript.

III. OBJECTIONS

10. The ALJ ruled on several objections at the hearing, and we adopt his rulings. He took other objections under advisement, which we now address.

11. The Assessor first objected to questions Cabela's posed to Allen about several sales of Sam's Club properties that he did not use in his appraisal. Allen did not use those sales because he determined that they were part of a five-property transaction where the buyer, At Home, was allowed to allocate the total price among the individual properties as it saw fit. *Tr. at 50-53*. The Assessor argued that the questions sought irrelevant information

because Allen did not use the sales in his report. Cabela's countered that Allen's reasons for excluding the sales, which involved otherwise seemingly comparable properties, were relevant.

12. We overrule the objection. Evidence is relevant if it tends to make a fact of consequence "more or less probable than it would be without the evidence." Evid. R. 401. "This often includes facts that merely fill in helpful background information . . . even though they may only be tangentially related to the issues presented." *Hill v. Gephart*, 62 N.E.3d 408, 410 (Ind. Ct. App. 2016). Allen's testimony about why he chose to include or disregard sales in completing his appraisal goes to the reliability of his valuation opinions, which is an important factual question in these appeals.

13. Indeed, the relevance of this line of questioning became more apparent when it was later revealed that the Assessor's appraiser, Hall, used two of those sales in his appraisals. *Tr.* at 340-41. While Hall disputed Allen's characterization of the sales as part of a single portfolio transaction, that factual question directly bears upon the credibility of Hall's valuation opinions. The Assessor nonetheless argues that we should still strike the testimony because it was not relevant to Cabela's case-in-chief. *Assessor's Brief* at 15 n. 1. Even if it were not readily apparent that Allen's testimony would be relevant to the credibility of Hall's valuation opinions at the time Cabela's originally elicited that testimony, Cabela's was allowed to "connect up" its relevance later in the hearing. *See Granger v. State*, 946 N.E.2d 1209, 1215 (Ind. Ct. App. 2011) ("[E]vidence with limited relevance or without adequate foundation upon admission may be introduced subject to the condition that its proponent demonstrates its relevance or establishes its foundation before the close of evidence."). As our Court of Appeals has recognized, "subsequent testimony may be used to shore up an exhibit's foundation and make harmless any error in premature admission of the evidence." *Id.* at 1216.

14. The Assessor also objected to Cabela's Exhibit B, an appraisal of one of the Sam's Club properties discussed above that Integra had prepared for Walmart Realty. The Assessor

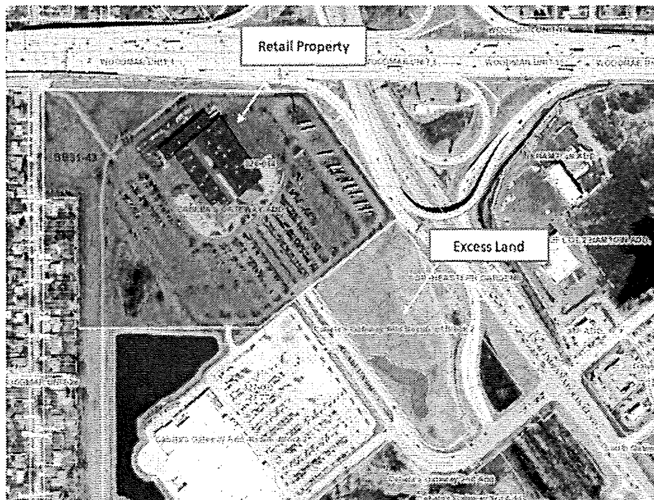
argued that the appraisal was irrelevant because it estimated the property's "fair value" rather than its market value or market value-in-use. *Tr.* at 344-46. Cabela's responded that the exhibit was relevant because Hall relied on the sale of the Sam's Club property in valuing the subject property.

15. We overrule the objection. The Assessor opened the door to the exhibit when, on direct examination, Hall testified about the appraisal to support his judgment that the sale was at arm's length and reflected market value. *Tr.* at 302-03. Beyond that, the exhibit helps fill in useful background information on a property that Hall used in appraising the subject property. It therefore is relevant.

IV. FINDINGS OF FACT

A. The Property

16. The approximately 32.04-acre subject property is located at, and is highly visible from, the interchange of Interstate 94 and U.S. Highway 41 (also known as Indianapolis Blvd.). That interchange is a major influence on the neighborhood; I-94 is one of the most traveled roads in Indiana. There is direct access to the property from an I-94 off-ramp, as well as access from Indianapolis Boulevard. A Walmart supercenter is also located immediately south of the property.



Pet'r Ex. A at 30; *Resp't Ex. 1, 8 and 9* at 5, 41-43; *Tr.* at 22-24, 228.

17. The site is part of a previously blighted area of Hammond known as the Gateway Allocation Area. Cabela's signed a redevelopment agreement with the city to develop the property. The agreement required Cabela's to relocate an existing bike trail to an area within the parcel that was approved by the city. It further provided that the dimensions of the trail had to be similar to, or better than, the existing dimensions, although the record does not specify what those dimensions were. The agreement further required Cabela's to either convey the relocated trail to the city or to record a permanent public recreation easement for the benefit of the city's parks-and-recreation department. Because both appraisers include the area in their description of the property, we find that Cabela's conveyed an easement to the city, rather than transferring the trail. *Resp't Ex. 31* at 27; *Tr.* at 21-22, 216-17.

18. The paved bike trail runs through a 9.7-acre, unimproved area along the property's west side. In addition to the bike trail, the 9.7-acres includes a paved service road along the parcel's northwest corner that extends from the rear of the parking lot to Northcote Avenue as well as an area to the south where foliage is visible on the aerial photograph. Allen described that area to the south as "lowland wetland area," although he did not know of any federal government map designating the area as wetland, and he neither explained the basis for his characterization nor identified any legal limitations on developing the area. Hall, by contrast, described the overall site as "generally level and at street grade," and he indicated that the topography did not cause "any particular development limitations." The area is within a "zone X" floodplain, meaning that it has a low probability of flooding. *Pet'r Ex. A* at 28*; Resp't Exs. 1, 8* & *9* at 40*; Tr.* at 95-97, 250-53.

19. While some part of the unimproved area may have a lower elevation, we credit Hall's testimony that it does not significantly impair the property's development or use. Aside

from uses that might encroach on the bike trail easement, we find that there were no legal impediments to using the 9.7-acre area.

20. Cabela's finished building the improvements, which include an approximately 180,620-square-foot store and a parking lot, in 2007. The store's exterior walls are a combination of painted tilt-up concrete, decorative stone, and wood. The entryways and portions of the exterior are attractive and ornamented. The interior is finished with polished or stained concrete, ceramic tile, carpeting, and decorative lighting. The ceiling height varies, but it is 40 feet in the store's atrium. Some of the ceiling is exposed and has decorative timber beams and skylights. *Pet'r Ex. 1* at 31-33; *Resp't Exs. 1, 8* & *9* at 54-56, 64-84; *Tr.* at 26-27, 100, 264, 269-70, 275-76.

21. The ground floor includes approximately 133,120 square feet. That level contains, among other things, a retail sales floor, restrooms, employee areas, office space, and warehouse storage. The remainder of the store consists of an approximately 47,500-square-foot mezzanine, which is accessible by stairs, escalator, and two elevators. The mezzanine includes a retail-sales area, a café, a shooting gallery, an archery range, a conference center, restrooms, offices, and ancillary areas. The store is larger than most retail stores, including newer Cabela's brand stores, some of which are less than 80,000 square feet. Those newer Cabela's brand stores do not have large mezzanines. Indeed, Cabela's has closed all the cafés in its stores. *Pet'r Ex. 1* at 31-33; *Resp't Exs. 1, 8* and *9* at 54-56, 64-84; *Tr.* at 24-25, 27, 100, 160-61.

22. Cabela's Wholesale, LLC owned the property through 2017, when Bass Pro Shops acquired the Cabela's brand. At the same time, Bass sold the property together with 20 other stores and three distribution centers to Starwood Property Trust, Inc. Bass then leased the properties back under a master triple-net lease agreement. Bass operated a Cabela's brand store at the property during all the years under appeal. Neither appraiser used the portion of the overall sale price allocated to the subject property in his analyses. *Pet'r Ex. 1* at 6; *Resp't Exs. 1, 8* and *9* at 6.

B. Expert Opinions

1. Allen's appraisal

23. Cabela's hired Allen to appraise the property. Allen is an MAI appraiser with significant experience appraising big-box stores, which he defines as single-occupant stores over 80,000 square feet. Through those assignments, Allen was able to study sales, offerings, and leases of big-box stores throughout the Midwest. As a broker, he has also located sites for big-box retailers. *Pet'r Ex. A* at 142; *Tr.* at 18-19, 405-06.

24. Allen prepared a single appraisal report covering all three assessment years. For each year, he appraised the market value-in-use of the fee-simple interest in the property and certified that his appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'r Ex. A* at 9.

a. Mezzanine and vacant land

25. Throughout his appraisal, Allen emphasized his belief that the store's mezzanine offered diminished utility and was not desirable in the market. According to Allen, typical users of stores with 180,000 square feet or more, such as Walmart or Meijer superstores, have extensive grocery areas and do not want mezzanines because customers cannot readily get shopping carts up to that level. Mall department stores often have a second floor of retail space, and freestanding department stores occasionally have them as well. Other discount retailers like Target and Dick's Sporting Goods do not generally include mezzanines in their floorplans. According to Allen, Menards is about the only other non-department store that includes a retail mezzanine in its floorplans. It usually keeps packaged appliances and items that do not require much customer interaction on that level. Although the subject building's mezzanine includes space for inventory and sales, Allen explained that its office space and defunct café are less useful to other retailers. Allen therefore discounted the mezzanine's contributory value throughout his analyses. *Pet'r Ex. A* at 100; *Tr.* at 25, 29, 58, 98-100.

26. Also, because (1) Allen considered the 9.7-acre area along the property's west side as unusable, and (2) the land-to-building ratio was typical for big-box retail development even without considering that area, Allen did not include that area in estimating the subject property's value. *Pet'r Ex. A* at 28, 124, 184; *Tr.* at 94-99, 208.

b. Area and market analysis

27. Hammond is part of the Gary metropolitan subdivision of the Chicago-Joliet-Naperville, IL-IN-WI metropolitan statistical area ("Chicago MSA"). After examining key economic indicators and demographic information, Allen concluded that the property was in a desirable location for retail. Based on Allen's investigation of the market, he concluded that the store's current use as a retail property was also its highest-and-best-use. Throughout his testimony, however, Allen explained that the property was best classified as a discount retail store. According to Allen, it is "basically a big-box store with open ceilings and nicer flooring." In his opinion, the market for the subject property included buyers like At Home, Floor & Décor, and similar retailers who would compare the subject property to other discount stores. *Pet'r Ex. A* at 12-27, 56; *Tr.* at 43, 76-77, 92, 123, 158.

28. Allen also explained that during the years leading up to the 2018 valuation date and continuing forward, the retail industry entered a transitionary phase as retailers struggled with an oversupply of malls, the growth of e-commerce, and changes in financial positions. He cited to various sources detailing thousands of brick-and-mortar store closures, including big-box and department stores, from 2014-forward. Publications have coined the term "retail apocalypse" for the severity of the closures, which have brought many more big-box stores on the market. That has resulted in more transactions and changes in the types of users who want those properties. *Pet'r Ex. A* at 57-63; *Tr.* at 29-32.

29. According to Allen, the shifts in the retail industry affected the universe of potential buyers for the subject property. The most active buyers of big-box stores during the period at issue were At Home, which was expanding across the Midwest, although it was looking for stores in the 100,000-square-foot range; Blaine's Farm and Fleet; and Rural King. U-Haul was also active in the market for big-box stores. The remaining major buyers of big-box discount stores were developers, who would often convert them to multi-tenant use. *Tr. at* 29-32.

c. Valuation approaches

30. With those things in mind, Allen turned to the three generally recognized valuation approaches—the cost, sales-comparison, and income approaches. *See Pet'r Ex. A passim.*

(1) Sales-comparison approach

31. Allen began with the sales-comparison approach. He found that there were adequate sales of substitute properties from which to reliably estimate the subject property's value. *Pet'r Ex. A* at 65-66; *Tr.* at 32-33.

i. Comparable sales

32. In searching for comparable sales, Allen looked for fee-simple sales of big-box stores from 2014-2019. He focused on sales from the Midwest, explaining that it tends to be one of the more affordable markets compared to the East and West Coasts and to the Southeast and Southwest. Rents in the Midwest are generally lower and capitalization rates are higher because the development market considers the Midwest riskier and more cyclical than those other areas. *Pet'r Ex. A* at 65; *Tr.* at 32, 47, 116, 158.

33. Allen ultimately selected the same eight sales for each year's analysis:

Sale Details	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Development	Cabela's	Super K	Walmart	Walmart Super Ctr.	Menards	Lowe's	Home Depot	Target	Lowe's
Location	Hammond, IN	Southgate, MI	Hammond, IN	Hartland Twp., MI	Portage, MI	Portage, IN	Holland Twp., MI	Memphis, TN	Elgin Twp., IL
Sale Date		Jul-16	Nov-17	Jul-16	Mar-18	Jun-19	Jan-14	Jun-14	Apr-16
Bldg. Area	180,620	174,758	145,554	186,763	81,569	133,841	103,540	124,287	139,410
Year Built	2007	1998	2000	2009	1988	2003	2006	2005	2006
Land Size	22.34	15.69	11.27	22.92	12.76	12.39	12.01	15.16	12.76
LTB Ratio	5.39	3.91	3.37	5.35	6.81	4.03	5.05	5.31	3.99
Rights Conveyed		Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Sale Price		$5,500,000	$2,600,000	$4,175,000	$2,800,000	$3,823,000	$1,750,000	$4,612,000	$5,300,000
Price/SF		$31.47	$17.86	$22.35	$34.33	$28.56	$16.90	$37.11	$38.02
Community Data									
5-mile radius									
Population	230,596	185,613	235,425	30,904	128,066	82,846	93,369	180,919	160,329
Households	87,679	77,186	89,397	11,064	52,451	31,500	33,453	69,246	51,974
Avg. HH Size	2.61	2.38	2.61	2.79	2.30	2.62	2.68	2.60	3.04
Med HH Inc	$52,660	$56,333	$49,554	$100,038	$52,561	$60,546	$64,598	$59,494	$79,519
Avg. HH Spend	$39,165	$41,528	$36,908	$66,353	$43,115	$41,833	$45,608	$49,884	$57,638
10-mile radius									
Population	621,865	469,369	630,835	145,796	237,076	262,087	138,221	501,208	440,490
Households	229,171	185,061	231,830	55,180	95,846	101,463	49,857	189,434	147,047
Med HH Inc	$51,923	$60,614	$52,216	$105,742	$55,133	$57,904	$67,807	$64,505	$85,436
Avg. HH Spend	$38,991	$39,852	$37,405	$62,259	$43,483	$43,982	$48,028	$49,650	$64,759
Pop. Δ '10-'20 (5 mi.)	-3.13%	-0.63%	-3.29%	10.16%	5.44%	2.68%	9.49%	4.39%	6.83%
Pop. Δ '10- '20 (10 mi.)	-3.10%	0.00%	-3.97%	7.24%	5.93%	1.14%	10.53%	4.80%	4.98%
Pop. Δ '20-'25 (5 mi.)	-1.73%	-0.77%	-1.78%	4.23%	2.97%	1.25%	5.04%	1.98%	2.79%
Pop. Δ '20- '25 (10 mi.)	1.56%	-0.57%	-1.89%	3.66%	3.00%	0.87%	5.19%	2.34%	2.10%
Traffic Count	216,663	54,515	16,757	84,800	13,443	20,692	26,100	69,792	36,900

Allen could not find any sales of stores with mezzanines that otherwise met his criteria, so all the stores were one level. *Pet'r Ex. A* at 66; *Tr.* at 33-36, 122-23.

34. Three of the properties (Sales 4, 7, and 8) sold to owner-users (Blain's Farm & Fleet, At Home, and Blain's Farm & Fleet, respectively) who occupied the entire store. Two other properties (Sales 1 and 3) sold to owner users (Kroger and Rural King, respectively) who occupied part of the stores and put the rest up for lease. The remaining three properties sold to developers. One of those developers, the purchaser of Sale 5, bought the property through a "sealed bid" process, where the seller did not have to accept any of the bids, and the buyer planned to convert the property to multi-tenant use. Although Allen acknowledged that the sealed-bid process was not typical, he thought that the seller was able to get a market price. The developer who bought Sale 6 planned to lease part of the store to Dick's Sporting Goods and market the rest. And the developer who bought Sale 2 anticipated leasing the property to one or more tenants, whichever it was able to do. *Pet'r Ex. A* at 68-81; *Tr.* at 33-37, 143-44.

35. Allen acknowledged that the sale from Memphis (Sale 7) was outside the Midwest. But he used it because the property backed up to what he described as a major expressway interchange with good visibility and it had frontage on Winchester Road, a major retail area. It was part of the Centennial Place shopping center and was not a freestanding store. Allen also acknowledged that Sale 4 was not on a major artery. But he explained that it was on an access drive for a regional mall. Similarly, Sale 6 was in a major retail area near the Westshore Mall, which has been converted to an open-air shopping center with big-box stores and smaller retailers. *Pet'r Ex. A* at 82-83; *Tr.* at 35-37, 147.

36. As already explained, Allen decided against using the sale of a Sam's Club from Indianapolis on grounds that it was part of a portfolio sale of five stores to At Home where the parties negotiated an overall price and At Home was allowed to allocate that price among the five stores based on what was most advantageous to its business. Allen confirmed the details of the transaction directly with the seller, Walmart. *Tr.* at 50-56.

ii. Adjustments

37. Allen considered adjusting his comparable properties' sale prices to account for transactional and property-related differences. According to Allen's report, he developed adjustments based on a review of numerous market-area transactions and his experience in the market, which he checked using statistical analyses. But when asked about the basis for specific adjustments, he did not claim to have used statistical analyses. *Pet'r Ex. A* at 84; *Tr.* at 150.

38. As for transactional differences, four of Allen's sales (Sales 2, 3, 5, and 8) included deed covenants restricting the properties' uses, although they all had exceptions permitting the buyer's intended use. Allen concluded that those covenants did not affect the sale prices. Nonetheless, one study of big-box stores indicated that deed restrictions lowered sale prices by an average of 6%. He decided to adjust the sale prices of his deed-restricted properties upward by 5%. *Pet'r Ex. A* at 72, 84-85, 94; *Tr.* at 34, 40-42, 131-39.

39. Turning to market conditions, Allen relied on several sources, including CoStar data and investor surveys. From these sources and his own experience regarding market conditions during the years on appeal, Allen concluded an annual appreciation rate of 2% through 2017 and 3% thereafter. *Pet'r Ex. A* at 86-89; *Tr.* at 43-44, 149-50.

40. He also considered the following characteristics: land-to-building ratio; building size, design, age, and condition; and location-related characteristics, such as arterial attributes, demographic attributes, and retail submarkets. *Pet'r Ex. A* at 94-96, 104; *Tr.* at 153-54, 166.

41. Allen did not adjust for size, explaining that he saw no trend showing that size differences affected sale prices for buildings in the big-box category. He did adjust each sale price upward by 10% to account for the subject building's comparatively more attractive design. Although Allen believed that the design had mixed effects, such as higher heating costs, and that most retailers would change the design, he acknowledged that the atrium is "very very attractive." He based the size of the adjustment on his 40 years of experience specializing in big-box properties and on interviews with buyers, sellers, and brokers. It was his interpretation of the market based on the feedback he had received. Indeed, he explained that appraisal in general is an opinion of value based on an appraiser's investigation of the market. *Pet'r Ex. A* at 90, 96; *Tr.* at 44, 125-26, 166, 203-06.

42. Turning to location-related characteristics, Allen considered visibility, access, and traffic counts and applied adjustments ranging from 10% to 25% for arterial attributes. For demographics, he focused on the community data he had collected. He gave the greatest weight to population density, although he also considered market size, median household income, and average spending. He considered the subject property superior to each property except for Sale 2, and he applied adjustments ranging from 0% to 15%. *Pet'r Ex. A* at 90-92; *Tr.* at 35, 44-46, 126, 152.

43. For his last location-related adjustment, Allen compared the properties' retail submarkets. He based this adjustment on effective asking rent, which was a function of asking rent and vacancy, for the five-mile radius surrounding each property. His adjustments ranged from -5% to 15%. Finally, Allen determined that the subject property was in average condition for its age on each valuation date. He adjusted sale prices by 1% for each year difference in age. *Pet'r Ex. A at 90, 93; Tr.* at 46-48, 125-26143, 209-10.

44. Based on his adjusted sale prices for his comparable properties, Allen settled on the following unit prices for the subject property:

2018

Sale	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**
Adjusted Unit Price	$44.48	$27.85	$37.53	$53.71	$46.33	$25.80	$49.94	$49.15

Average: $41.85
Concluded: $47.00

2019

Sale	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**
Adjusted Unit Price	$45.35	$28.42	$38.22	$54.84	$47.33	$26.24	$50.82	$50.08

Average: $42.66
Concluded: $48.50

2020

Sale	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**
Adjusted Unit Price	$46.20	$28.98	$38.89	$55.93	$48.30	$26.91	$52.13	$51.44

Average: $43.60
Concluded: $50.00

Pet'r Ex. A at 94-96.; *Tr.* at 48-50.

45. He then applied those unit prices to the subject property. He used the full unit price for the ground floor but discounted it by 30% for the mezzanine:

	2018	**2019**	**2020**
Ground Fl/sf	$47.00	$48.50	$50.00
Ground Fl. Area	133,120	133,120	133,120
Ground Fl. Value	$6,256,640	$6,456,320	$6,656,000
Mezz./sf	$32.90	$33.95	$35.00
Mezz. Area	47,500	47,500	47,500
Mezz. Value	$1,562,750	$1,612,625	$1,662,500

Rounded Value	$7,820,000	$8,070,000	$8,320,000

When asked how he determined the discounted rate for the mezzanine, Allen testified that the cost to build a mezzanine "is much less, something like 30% less than the first-floor space." *Pet'r Ex. A* at 100; *Tr.* at 59-60, 78, 161-62.

(2) Income capitalization approach

46. After completing his sales-comparison analysis, Allen turned to the income approach. He used direct capitalization, requiring him to capitalize one year of projected net operating income ("NOI") for the property. *Pet'r Ex. A at 102*; *Tr.* at 60-61.

47. To project NOI, Allen first had to estimate market rent for the property. He assumed a triple-net lease, under which the tenant pays, as additional rent, the costs of insurance, real estate taxes, and exterior maintenance. He selected 13 leases for comparison, which he narrowed down to the following six for each year:

	Lease 3	**Lease 7**	**Lease 10**	**Lease 11**	**Lease 12**	**Lease 13**
Tenant	Strack & Van Til	Walmart	Floor & Decor	At Home	G4CE Entertainment	At Home
City	Hobart	Homewood, IL.	Cincinnati, OH	Bloomfield Hills, MI	Warren, MI	Shelby Twp., MI
Date	Aug.-09	Aug-13	June-14	Sep-16	Nov-17	Sep-19
Bldg. Size	85,252	196,000	118,977	120,650	101,773	91,500
Yr. Built	1988	1992	1994	1993	1993	2000
Rent/sf	$3.52	$3.06	$5.50	$5.60	$4.75	$6.25
Population	103,008	216,996	231,081	157,181	336,496	252,303
Med. HH Income	$49,419	$55,359	$55,545	$63,586	$55,846	$74,893
Av. HH Spending	$35,727	$42,130	$49,080	$62,290	$42,545	$51,709
SubMkt. Effective Ask Rent	$11.27	$11.16	$13.69	$11.93	$15.56	$11.33
Traffic	19,078	34,900	33,325	52,898	38,003	98,879

As with his comparable sales, all the buildings were single story. *Pet'r Ex. A* at 102-05; *Tr*. at 162-69.

48. Lease 13 was on what Allen characterized as a huge traffic artery. Most of the leases were in freestanding buildings, although at least one building (Lease 11) was attached as part of a shopping center. *Pet'r Ex. A* at 102-05; *Tr.* at 63-67, 168-69.

49. Allen adjusted his rental rates largely along the same lines he used to adjust his comparable sales, although he acknowledged that his market-rent analysis was more qualitative than his sales-comparison analysis.

50. For market conditions, Allen examined asking-rent trends for the Chicago MSA and Indiana, and he adjusted all the rents to reflect conditions as of January 1, 2018. Four of the six adjustments were minor: between -2% and 2%. The outlier was the August 2009 lease (Lease 3), which Allen adjusted downward by 9%. Most of that change was attributable to rent levels for the Chicago MSA plummeting between the fourth quarter of 2009 and the fourth quarter of 2010. Allen only adjusted one lease for building size—the 196,000-square-foot Walmart (Lease 7)—which he increased by 5%. He adjusted all the leases upward by a flat 5% to account for their inferior age/condition. As with his comparable sales, he adjusted all the leases upward by 10% to account for inferior building design. *Pet'r Ex. A* at 104-05; *Tr.* at 169.

51. Turning to location-related comparisons, Allen adjusted the leases upward between 10% and 20% to account for their inferior arterial attributes. He viewed the properties' demographics as comparable to the subject property, except for Lease 3, which he viewed as inferior and adjusted upward by 15%, and Lease 12, which he viewed as superior and adjusted downward by 5%. Similarly, he considered all the retail submarkets as comparable to the subject property's submarket, except for the properties from Cincinnati and Warren, Michigan (Leases 10 and 12), which he viewed as having superior submarkets. He adjusted those two leases downward by 10% and 20%, respectively. *Pet'r Ex. A* at 105.

52. After considering all the adjusted leases, Allen settled on ground-floor unit rent of $5.50/sf for 2018. That was slightly below the average of $5.98/sf. But he believed that the adjusted rent from the top of his range (Leases 11 and 13) was overstated. Lease 13 had an unaccounted-for tenant build-out allowance. And the proximity of Lease 11 to the city of Pontiac distorted that property's demographics, and Allen's accompanying

adjustment. That property was in a very desirable location in a high-end mall in Bloomfield Hills, which has the highest income in Michigan. Allen inflated his 2018 rent by 3% annually to arrive at rent of $5.65/sf, and $5.80/sf, respectively for the 2019 and 2020 valuation dates. As with his sales-comparison analysis, Allen discounted his unit rate by 30% for the mezzanine. *Pet'r Ex. A* at 105-06; *Tr.* at 63-65, 173-74, 176.

53. To arrive at potential gross income ("PGI"), Allen added two reimbursable operating expenses—common area maintenance ("CAM") and insurance. Allen admittedly overestimated insurance reimbursement, but that error would have only minorly affected his NOI calculation. He did not include real estate taxes as an expense or reimbursement because he addressed them in his capitalization rate. *Pet'r Ex. A* at 107-08.; *Tr.* at 66-67, 175-76; *see also Tr.* at 210.

54. Allen then estimated the property's effective gross income ("EGI") by adjusting his PGI to account for stabilized vacancy and credit loss. He explained that stores of comparable size and design as the subject store take longer to lease than other types of retail properties and can remain on the market for years. But when they do lease, it is usually for at least 10 years. Allen examined CoStar data for all retail property types, explaining that high vacancy for retail generally also means high vacancy for big boxes. He also explained that those vacancy figures overestimate market vacancy because they include owner-user properties. He settled on a 5% stabilized vacancy rate and credit loss for all three years. His estimate did not consider the costs needed to achieve stabilization, which he believed had to be included under his fee-simple valuation premise. He dealt with those later in his analysis. *Pet'r Ex. A* at 107-08; *Tr.* at 67-68.

55. To arrive at NOI, Allen subtracted operating expenses from the property's EGI. In addition to CAM and insurance, he also needed to subtract un-reimbursable operating expenses, which he identified as a management fee and replacement reserves. Because the property would be leased to a single tenant under a triple-net structure, he settled on a

management fee equaling 3% of EGI. For replacement reserves, he looked at ranges from an investment survey. *Pet'r Ex. A* at 107.

56. Allen then turned to determining an appropriate capitalization rate. His goal was to estimate an overall rate that valued the fee-simple, rather than a leased-fee, interest in the property. Unfortunately for Allen, sources for overall rates (like extraction from market sales) are for leased-fee interests. He explained that leased-fee rates are lower because they do not include many of the risks associated with buying the fee-simple interest, like the need to find tenants whose creditworthiness will be unknown at time of sale, negotiate a lease, and possibly provide tenant improvements. *Pet'r Ex. A* at 108; *Tr.* at 67-69.

57. Keeping that in mind, Allen used several methods and sources to determine a capitalization rate. He calculated a rate by analyzing bands of investment. He also looked at rates reported through investor surveys, rates extracted through market sales, and rates reported in a study of big-box stores published by Situs RERC. *Pet'r Ex. A* at 109; *Tr.* at 69-70.

58. Much of Allen's survey data was national. But he believed that the Indiana market was riskier than what was reflected in the national averages because of economic conditions in the Midwest and greater demand in major coastal markets. That was borne out by two of the surveys, which indicated higher rates for the Midwest. None of the survey information was ideal, but he found all of it useful. Allen included market-extracted rates to illustrate how not having a lease in place affects capitalization rates. He used sales and listings with less than five years remaining on the existing leases where, at a minimum, there was a risk of the tenant leaving at the end of the term. But he gave the rates extracted from those sales less weight than the other indicators. *Pet'r Ex. A* at 109-113, 179; *Tr.* at 69-70.

59. Based on this data and the property's attributes, Allen estimated capitalization rates of 8% for 2018 and 2019, and 8.5% for 2020. He then loaded that rate with the landlord's share of property taxes during vacancy. *Pet'r Ex. A* at 108-14; *Tr.* at 67-70, 179.

60. But Allen had one final step. Because his definition of fee-simple interest contemplates the property being available for lease on the valuation dates, he felt he needed to account for leasing commissions and holding costs that would be incurred in achieving stabilized occupancy. Even though he separately adjusted his potential gross income for vacancy, he did not view his deductions as double counting. His vacancy adjustment was part of his estimated stabilized NOI, but he first had to get the property to stabilized occupancy before it could be sold to an investor on a stabilized basis. He acknowledged, however, that the property would be stabilized upon being leased to a single tenant. *Pet'r Ex. A* at 114-15; *Tr.* at 70-71, 183.

61. Because Allen found that the big-box market treats leasing commissions as a one-time cost, he applied those commissions "below the line," meaning he did not deduct them as an expense in calculating NOI. Based on broker interviews, he used a commission equaling 6% of PGI over the first five years of his hypothesized lease. His holding costs included lost rent and reimbursement of expenses during the lease-up period, which he estimated at nine months. *Pet'r Ex. A* at 114-116; *Tr.* at 71.

62. Allen arrived at the following values under the income approach:

	2018	**2019**	**2020**
PGI	$1,187,793	$1,213,104	$1,238,416
Vacancy & Credit Loss	($59,390)	($60,655)	($61,921)
EGI	$1,128,493	$1,152,449	$1,176,495
CAM	($159,744)	($159,744)	($159,744)
Ins.	($99,951)	($99,951)	($99,951)
Mgmt. Fee	($33,852)	($34,572)	($35,295)
Repl. Res.	($26,624)	($26,624)	($26,624)
NOI	$796,195	$819,191	$842,188
Cap Rate	÷0820318	÷0818829	÷0868649
Capitalized NOI	$9,705,927	$10,004,423	$9,695,347
Leasing Comm.	($274,511)	($281,997)	($289,484)
Holding Costs	($881,048)	($899,764)	($918,481)
Value (Rounded)	$8,550,000	$8,820,000	$8,490,000

Pet'r Ex. A at 115-16; *Tr.* at 71-72.

(3) Cost approach

63. Allen began his cost approach analysis by estimating the value of the subject site. He identified four sales and adjusted the prices along largely the same lines and using similar methodology as he used to adjust his improved sales. For 2018, he estimated a land value of $275,000/acre for the subject property. He then estimated annual appreciation of 3% for 2019 and 2020. However, because he viewed 9.7 acres of the parcel as unusable, Allen applied those unit rates to only 22.34 acres rather than to the parcel's full 32.04 acres. *Pet'r Ex. A* at 117, 123-24; *Tr.* at 73-76.

64. Allen next looked to Marshall Valuation Service ("MVS") to estimate the replacement cost of the improvements. He used the base costs for an average quality, class-C discount store. He then added soft costs that were not included in MVS. Having estimated replacement cost, Allen turned to depreciation. He used the age-life method to estimate physical depreciation for the building and site improvements. That entailed dividing the useful lives of the buildings and site improvements (35 and 15 years, respectively) by their ages as of each valuation date. *Pet'r Ex. A* at 123-28; *Tr.* at 76-80, 206-07.

65. Allen then considered whether the property suffered from obsolescence. According to Allen, appraisers need to test their cost conclusions against the market to see if a property suffers from obsolescence. Big boxes are only built to suit specific retailers. If those properties did not suffer from obsolescence—that is to say, if selling them on the market would support their cost new—developers would build them on speculation. *Pet'r Ex. A* at 128-29; *Tr.* at 81-82.

66. While it is difficult to distinguish between functional and external obsolescence, Allen believed that the property suffered from both. As for functional obsolescence, he found that the store was oversized, that it had a mezzanine with less functional utility than

ground-floor space; that it had a façade and other interior designs and layouts specific to the Cabela's brand with no value to other users and that would create more potential costs for retrofitting to the buyer's image; and that some of its features, such as its 40-foot atrium, cause excess heating or other costs. Any buyer would have to spend money to renovate or modify the features that are specific to Cabela's' business or be forced to use features different from those it desires. In Allen's view, the property also suffered from external obsolescence because demand for large commercial buildings is very limited in its market and surrounding areas. He believed that this intertwined with the property's functional obsolescence, which is why he ultimately did not differentiate between the two in his analysis. *Pet'r Ex. A* at 128; *Tr.* at 24-29, 80-83, 185.

67. Allen considered several methods in estimating the amount of that obsolescence: an analysis of build-to-suit leases compared to re-leases; market extraction from sales; capitalization of deficient income; and an analysis of modification costs. He explained that the 13th edition of *The Appraisal of Real Estate* recommends capitalizing deficient income as an approach to quantifying obsolescence. That approach entails calculating the difference between (1) the income necessary to support the physically depreciated cost of the improvements and land, and (2) the economic rent for the property determined under the income approach, and then capitalizing that difference. *Pet'r Ex. A* at 128-33; *Tr.* at 81-85.

68. Allen settled on obsolescence equaling the capitalized income loss because it reflected the subject property directly, whereas his other methods measured obsolescence in the market that was not directly tied to the property. But he acknowledged that this method depended on the accuracy of his judgments under the income approach, such as his estimates of NOI and selection of a capitalization rate. The capitalized income loss was $68.00/sf for 2018, $66.00/sf for 2019, and $64.00/sf for 2020. He then incorporated this obsolescence into his final calculations, leaving the following values:

	2018	2019	2020
Bldg. Cost	$18,012,349	$18,799,224	$18,808,547
Site Imp. Cost	$5,604,509	$5,849,343	$5,852,224
Total Cost	$23,616,858	$24,648,567	$24,660,791
Bldg. Dep.	($5,146,385)	($5,908,327)	($6,8,645)
Site Imp. Dep.	($2,616,437)	($3,119,650)	($3,511,347)
Obsolescence	($12,282,160)	($11,920,920)	($11,559,680)
Depreciated Cost	$3,572,875	$3,669,670	$3,141,120
Land Value	$6,140,000	$6,330,000	$6,520,000
Total Value	$9,710,000	$10,030,000	$9,660,000

Pet'r Ex. A at 136; *Tr.* at 86, 186, 190-91.

(*4) Reconciliation*

69. In reconciling his conclusions, Allen explained that the sales-comparison approach provided a reliable primary indicator of value and that he gave his conclusions under that approach the most weight. He believed that his conclusions under the income approach were also reliable, but that they possibly overstated the property's value because they did not reflect unknown allowances for tenant improvements. He therefore gave his conclusions under that approach less weight. He also gave his conclusions under the cost approach less weight because of the large amount of depreciation, the fact that buyers and sellers in the subject property's marketplace would not use that approach, and the fact that it required him to rely on the other valuation approaches to calculate obsolescence. He ultimately reached the following conclusions:

Year	Cost	Sales	Income	Reconciled Value
2018	$9,710,000	$7,820,000	$8,550,000	$8,230,000
2019	$10,030,000	$8,070,000	$8,820,000	$8,490,000
2020	$9,660,000	$8,320,000	$8,490,000	$8,510,000

Pet'r Ex. A at 138-39; *Tr.* at 20, 86-88.

2. Hall's Appraisals

70. The Assessor hired Hall to appraise the property. Hall has been an MAI appraiser for approximately 10 years and has appraised the spectrum of commercial, industrial, and multi-family properties. Including oral reports, he has appraised more than 40 big-box

stores and has also worked as a city planner. *Resp't Exs. 1, 8 & 9* at Addendum A; *Resp't Ex. 2*; *Tr.* at 220-21.

71. Like Allen, Hall estimated the market value-in-use of the fee-simple interest in the property and certified that he performed the appraisal and prepared his report in conformity with USPAP. He described the purpose of his assignment as "to determine if the total assessments" were "consistent with our opinions of retrospective market value-in-use" as of those dates. He settled on that purpose partly in response to *Southlake Ind., LLC v. Lake Cty. Ass'r ("Southlake I")*, 174 N.E.3d 177, 179 (Ind. 2021), where our state Supreme Court held that an assessor who has the burden of proof under Ind. Code § 6-1.1-15-17.2, must prove that her assessment is "correct." He therefore estimated value ranges and compared the assessments to those ranges. He explained that his approach was consistent both with USPAP and with routine appraisal practice of comparing a concluded value or range of values to a benchmark, such as an assessment, an historical asking price, or a reported capitalization rate. *See Resp't Exs. 1, 8*, & *9* at 9, 12-13, 89-90; *Tr.* at 225, 230-38, 299.

a. Mezzanine

72. Unlike Allen, Hall did not discount the mezzanine in his analyses. He testified that sellers and brokers do not differentiate between ground floor space and additional levels. To illustrate, he pointed to an offering memorandum for a two-story Dick's Sporting Goods store in Charlotte, North Carolina. Both in listing an asking price and in describing the rent under the existing lease, the memorandum gives one unit price for the total building area without differentiating between levels. *Resp't Ex.* 7; *Resp't Ex. 1* at 133, 152; *Resp't Exs. 8 & 9* at 133, 54; *Tr.* at 326-27, 418-22.

b. Market and highest-and-best-use analyses.

73. Hall concluded that relevant demographic and economic trends and indicators for Lake County were stable—gradual population loss but improving employment levels. He also concluded that the surrounding area had indicators of stable demographics. The area is

well-developed and multiple properties were recently acquired for development. *Resp't Exs. 1, 8 & 9* at 24, 27; *Tr.* at 239-42.

74. In his market segmentation analysis, Hall explained that the property's greatest utility and appeal was for use as a retail store, and that a regional trade area, including Indiana and surrounding portions of the Chicago MSA, would be typical for the property. He determined that the property's current use was its highest-and-best use as improved. *Resp't Exs. 1, 8 & 9* at 30-31, 33-35, 48-50; *Tr.* at 245-49.

c. Valuation approaches

75. Like Allen, Hall developed all three generally accepted valuation approaches.

(1) Cost approach

76. Hall used the same five sales of vacant land to estimate the value of the subject site for each year. One of the sales was the site for the Walmart supercenter adjacent to the subject property. After adjusting the sale prices to account for transactional and property-related differences, Hall settled on the following average adjusted unit prices:

Year	**Unit Price**	**Total**
2018	$211,000/acre	$6,760,000
2019	$213,000/acre	$6,820,000
2020	$213,000/acre	$6,820,000

Resp't Exs. 1, 8 & 9 at 95, 99-104; *Tr.* at 281-83, 287.

77. Hall applied his unit rate to the entire parcel, including the undeveloped 9.7 acres that Allen excluded from his land valuation. In Hall's view, the undeveloped area is an integral part of the site. He explained that, to comply with local zoning requirements, a minimum of 10% of the total site must be covered with landscaping. The unimproved portion also accommodates required building setbacks, provides space for utility easements that are typically required for a commercial site, and offers a buffer to satisfy homeowners in an adjacent residential development. And it provides room for additional

outdoor storage or possible expansion of the parking area. According to Hall, the bike trail and service road that cut through parts of the unimproved area also offer utility: the trail provides access to the store for bikers and pedestrians, and the service road provides access to Northcote Ave. *Resp't Exs. 1, 8 & 9* at 104; *Tr.* at 251-53.

78. To calculate the building's replacement cost, Hall relied on MVS cost schedules for a class-C "good" retail store. He contrasted the model for a retail store, which MVS describes in part as buildings that "usually have display and/or decorative fronts," with its model of a discount store, which it describes as "typically large, open shells with some partitioning for offices and storage areas." Hall also contrasted photographs of the subject store, showing its exterior and interior ornamentation, with photographs of a Target store that meets MVS's description of a warehouse discount store. He further contrasted MVS's descriptions of good- and excellent-quality retail stores with its description for the same categories for warehouse discount stores. Although both include block-tilt-up construction, MVS describes retail stores as having additional ornamentation and good display fronts and facades. Like Allen, Hall also added soft costs. *Resp't Exs 1, 8, & 9* at 58-61, 108-10; *Resp't Exs. 5-6*; *Tr.* at 225-27, 245, 260-71, 275-76, 288-90.

79. Hall then analyzed depreciation. Like Allen, Hall considered both physical deterioration and functional obsolescence. But because Hall used the 50-year useful life for a good-quality class C retail store, as opposed to Allen's 35-year useful life for an average-quality class C discount store, however, Hall estimated less physical deterioration to the building than Allen did. *Resp't Exs. 1, 8 & 9* at 110-11.

80. Like Allen, Hall believed that the building suffers from incurable functional obsolescence because many of its architectural features would not add the same increment of utility to other retailers with different brand images. Also like Allen, he calculated obsolescence by capitalizing deficient income. But Hall used the estimated NOI and capitalization rate from his own report for each year and calculated adjustments of 33%, 33.4% and 32.3%,

respectively for the three years. Unlike Allen, Hall found no external obsolescence, explaining that the property is in a well-established area with nearby retailers, and that rents were rising, while vacancy was low. *Resp't Exs. 1, 8* & *9* at 111-13; *Tr.* at 271-72, 291-96.

81. Hall arrived at the following conclusions under the cost approach:

	2018	**2019**	**2020**
Bldg. Cost	$20,132,155	$20,703,790	$21,040,162
Site Imp. Cost	$2,173,518	$2,267,307	$2,399,652
Total Cost	$22,305,673	$22,971,097	$23,439,814
Phys. Dep.	($5,437,585)	($6,049,078)	($6,649,254)
Obs. (Rounded)	($7,370,000)	($7,670,000)	($7,570,000)
Dep. Cost (Rounded)	$9,500,000	$9,250,000	$9,220,000
Land Value	$6,760,000	$6,820,000	$6,890,000
Total Value (Rounded)	$16,300,000	$16,100,000	$16,100,000

Resp't Exs. 1, 8 & *9* at 108-15; *Tr.* at 296.

(2) Sales-comparison approach

i. Comparable sales

82. Turning to the sales-comparison approach, Hall had looked first for sales of vacant Cabela's, Bass Pro Shops, or similar stores with limited success. The relative dearth of comparable sales led him to conclude that the property had a limited market. He was forced to expand his search outside the Midwest, and he considered other building types that were not identical to the subject building but that "had a lot of similar characteristics." His parameters included fee-simple sales in the Midwest and Southern United States with 80,000 or more square feet and continued retail use both before and after the sale. He selected the following five sales, all of which were single story buildings:

	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Location	Indianapolis	Madison, WI	Boynton Beach, FL	Buford, GA	Port St. Lucie, FL
Metro Area	Indianapolis	Madison	Miami	Gainesville, GA	Port St. Lucie
Former Occupant	Sam's Club	Sam's Club	Expo (Home Depot)	Bandsmart USA	Kohl's[4]
Later Occupant	At Home	At Home	Camping World[5]	Floor & Decor	Bass Pro Shop
Date	Dec-18	Oct-18	May-18	March-15	Apr-13
Sale Price	$8,400,000	$9,800,000	$8,250,000	$9,567,000	$9,300,000
Price/sf	$61.58	$82.05	$93.78	$89.80	$93.00
Bldg. Size	136,403	119,440	87,968	106,542	100,000
Yr. Built	1992	1987	1998	2009	2011
2020 pop. 5-mile	150,501	173,162	228,561	163,030	119,381
Interchange	1 mile from I-465 exchange.	US 41/Gammon Rd. (limited access)	I-95/Woolbright Rd.	I-85/Hwy 20	I-95/Gatlin Blvd.

Resp't Exs. 1, 8 & 9 at 118, 123; *Tr.* at 238, 299, 411-12, 458-59.

83. Hall felt comfortable using the sales from Georgia and Florida because they were all located directly at, or next to, interstate highway exchanges, which he viewed as a significant influence on the subject property's location. As Hall explained, passing traffic is a potential source of demand and adds to a property's exposure and visibility. Sale 4 is also just south of the Mall of Georgia. *Tr.* at 228-29, 299-300, 308-11, 361-65, 412.

84. When asked whether any of the buyers from his comparable sales would be likely to buy the subject property, Hall responded that Camping World, a direct competitor of Cabela's, was the most similar user to Cabela's. He believed that the subject store's architectural style and ornamentation would also align with the brand image of Bass Pro Shops, and that Bass Pro would be a more likely buyer than companies like Home Depot or Sam's Club. He thought Bandsmart, the former occupant from Sale 4, would find a two-story building appealing. He similarly believed that Floor & Décor might find some utility to the mezzanine level, although he did not view Floor & Décor as a likely buyer unless it significantly modified the building. He did not think that Expo, the former occupant from Sale 3 which he described as a now-defunct "offshoot" or "sibling brand"

[4] Although the building was originally built for Kohl's to occupy, Kohl's never occupied it and the property later sold to Bass Pro Shops. *Resp't Exs. 1, 8* and *9* at 118.
[5] Camping World acquired the Gander Mountain brand through bankruptcy. *Resp't Exs. 1, 8 & 9* at 118.

of Home Depot that was meant to be "a little higher level," would be a likely buyer. The same was true for At Home. *Tr.* at 299-300, 359, 363, 403-08.

85. Owner-occupiers bought four of Hall's comparable properties; the exception was Sale 4, which sold along with two parcels that an investor bought for separate development (and the reported value of which Hall deducted to arrive at his sale price). The investor then leased the property to Floor & Décor. All the buildings were freestanding, although Sale 3 was part of a larger shopping center featuring other anchors like Home Depot and Staples. *Resp't Exs. 1, 8 & 9* at 118.

86. Although Allen identified Hall's Sales 1 and 2 as part of a five-store portfolio transaction between Walmart and At Home, where At Home was allowed to allocate the sale price among individual stores however it chose, Hall saw no indication that was true. He explained that the two reported sales were a few months apart, and the properties were marketed individually, as shown by listings from Loopnet and CBRE. The Loopnet listing for Sale 2 was from June 11, 2018, a few months before the property sold. Walmart had previously hired Hall's firm, Integra, to appraise 81 Sam's Clubs, including the five stores Allen described. Integra completed the appraisals in late 2017. According to Hall, those appraisals show that Walmart valued the properties individually. And Hall asserted that, based on the information he gathered, At Home valued the properties individually as well. *Resp't Exs. 1, 8 & 9* at 118; *Tr.* at 302-03, 340-43, 355-56; 362-63, 435-36.

87. Hall was inconsistent when asked about whether CoStar indicated that the two sales were part of a portfolio transaction: he first testified that he recalled some discussion in Costar about the two properties being involved in a portfolio sale, but he later pointed out that CoStar sheets for the properties identified the sales as "Owner User" as opposed to "portfolio." He also alternately testified that not everything in CoStar is accurate and that CoStar does a really good job of capturing information for investment-grade properties. Regardless, he did not use CoStar to verify the sales. Hall also looked at Walmart's form

10K filings with the Securities and Exchange Commission and found no indication that the properties were part of a portfolio sale, although he acknowledged that such information would not necessarily be reflected in a Form 10K. *Resp't Ex.* 32; *Tr.* at 302-03, 340-43, 435-41, 451.

88. In any case, Hall testified that the properties' inclusion in a portfolio transaction would affect their legitimacy for use in his sales-comparison analysis only if the allocated sale prices were inconsistent with the properties' market value. According to Hall, Integra's assignment to appraise the 81 Sam's Clubs gave him access to information about the properties, including financial information, market rent data, and in some cases, information about sale contracts that were pending when Integra completed its appraisals in 2017. After looking at all the data, he believed that the reported sale prices for Sales 1 and 2 were consistent with market value. *Tr.* at 302-03, 341-43, 359, 376.

89. Integra, however, appraised the "fair value" of a fee-simple interest in the Madison Sam's Club (Sale 2) at only $3 million as of December 17, 2017, which is $6.8 million less than the reported sale price from just 10 months later that Hall used in his report. But Hall testified that while fair value could hypothetically equal market value, they are different standards and could lead to two very different value conclusions. *Tr.* at 350-55.

ii. Adjustments

90. Like Allen, Hall adjusted his sale prices to account for differences between the comparable sales and the subject property. He did not believe any adjustment for property rights transferred was necessary. Although Sale 2 sold with a deed covenant restricting various types of future uses, Hall neither adjusted its sale price on that ground nor addressed why he believed that the covenant did not affect the sale price. *Resp't Exs. 1, 8* & *9* at 118, 121-23; *Tr.* at 305-06.

91. Hall next considered market conditions. He found that data reflecting various trends indicated strengthening demand, and he estimated annual appreciation of 1%. But he

found no appreciation thereafter because "relatively stable market conditions prevailed." *Resp't Exs. 1, 8 & 9* at 122; *Tr.* at 307-09.

92. Turning to location and access, Hall considered each property's metropolitan area, access and exposure, and population in the five-mile radius surrounding the property. He rated each property as superior, inferior, or equal to the subject property as to each element and then quantified an overall adjustment. He found that three of the sales were from inferior metropolitan areas: Sale 2 (Madison), Sale 4 (Gainesville), and Sale 5 (Port St. Lucie). He viewed the other two metropolitan areas as roughly equal to the Chicago MSA. Hall considered the surrounding populations roughly comparable to the population surrounding the subject property, except for the former Kohl's from Port St. Lucie, which he considered inferior. And he considered the two former Sam's Clubs (Sales 1 and 2) as having inferior access and exposure. Indeed, he considered the Sam's Club from Indianapolis, which was not located at, or next to, an interstate exchange, as significantly inferior. He considered the remaining three sales as having comparable access and exposure as the subject property. Overall, he adjusted the sale prices for Sales 1, 2, and 5 upward by 10% and Sale 4's price upward by 5%. *Resp't Exs. 1, 8 & 9* at 123, 132; *Tr.* at 308-09.

93. Although Hall looked at land values and rental rates in the areas surrounding his comparable sales, he did not use that information as metrics in his adjustments for demographics or access and exposure. He expected land sales and rental rates to be lower in Gainesville Georgia. That was reflected in his upward adjustment to Sale 5 for its inferior metropolitan area. *Tr.* at 369, 376-79.

94. Unlike Allen, Hall found an inverse relationship between unit price and building size. He therefore adjusted sales of buildings that were between 40,000 and 80,000 square feet smaller than the subject property (Sales 1, 2 and 4) downward by 5%, and the sale prices for the two buildings that were more than 80,000 feet smaller (Sales 3 and 5) downward by 10%. *Resp't Exs. 1, 8 & 9* at 130; *Tr.* at 313.

95. Hall then considered other physical characteristics. He viewed the subject property's construction quality as generally superior to his chosen comparable stores, which fit into the "spectrum of 'low cost' to 'average' quality" under MVS. MVS also notes that unit costs for those categories of retail store are roughly 25%-45% lower than "good" quality construction. But Hall did not adjust any of the sale prices to account for their inferior construction quality. He explained that the subject property's superior construction created some obsolescence. But he also explained that there was not much market data for fee-simple sales of good quality discount stores, making it hard to quantify an adjustment. He believed that his inability to quantify an adjustment to account for differences in construction quality likely was the reason that his conclusions under the sales-comparison approach were lower than his conclusions under the other two approaches. *Resp't Ex. 1, 8 & 9* at 130; *Tr.* at 311-13, 332.

96. Like Allen, Hall adjusted his comparable sales by 1% for each year of difference in effective age. *Resp't Exs. 1, 8 & 9* at 130-31; *Tr.* at 314.

97. For 2018, Hall's adjusted sale prices ranged from $73.81/sf to $93.46/sf and averaged $87.66/sf. His ranges and averages were very similar for 2019 and 2020. He settled on a unit value of $87.00/sf for each year. Unlike Allen, who applied a reduced unit rate to the mezzanine, Hall applied his concluded unit rate to the entire building area, which yielded a total value of $15.7 million for each year. *Resp't Exs. 1, 8 & 9* at 132-33; *Tr.* at 315.

(3) <u>Income capitalization approach</u>

98. Like Allen, Hall began his analysis under the income approach by estimating market rent for the subject property. He identified the same five leases for each year. They were from the Midwest and Southern United States, and they all had a triple-net expense structure. All the buildings were single story:

	Lease 1	Lease 2	Lease 3	Lease 4	Lease 5
Location	Farragut, TN	Columbus, OH	Manchester, MO	Columbus, OH	Hilliard, OH
Former Occupant	Gander Mtn.	Great Indoors	Expo	Kittles	Kmart
Tenant	At Home	Dick's + Field & Stream[6]	Weekends Only	Kittles	Floor & Decor
Date	Apr-18	Sep-15	Nov-10	Jul-10	Oct-10
Term (months)	300	185	120	77	120
Rent/sf	$8.97	$8.08[7]	$6.00	$7.11	$7.19
Bldg. Size	81,202	134,473	125,000	91,347	118,161[8]
Yr. Built	2006	2001	1994	1996	1994
Metro Area	Knoxville	Columbus	St. Louis	Columbus	Columbus
2020 pop. 5-mile	78,302	220,722	160,135	202,799	228,732
Interchange (near)	I-40/75	I-71/Gemini Pl.	US 141/Manchester Rd.	I-270/Tuttle Crossing	I-270/Cemetery Rd.

Resp't Ex. 1 at 134-38; *Resp't Exs. 8 & 9* at 135-39.

99. As already explained, Hall did not believe that Dick's + Field & Stream or Floor & Décor would be likely to buy the subject property, although he was not asked if those entities would be likely to rent it. He did testify that Weekends Only would not be a likely user of the property. Although the leased properties were near interstate interchanges, none were adjacent to those interchanges. But based on aerial photographs, it appears that all but Lease 5 were visible either from an interstate or major road that was part of the nearby interchange. *Resp't Ex. 1* at 136, 142-47; *Resp't Exs. 8 & 9* at 143-48; *see also Tr.* at 319, 386-87, 404-11.

100. Although Lease 5 was a freestanding building, it was part of a larger retail development that included big-box stores. The building from Lease 3 shares a common wall with a smaller building, but its parcel is separately platted. Similarly, the building from Lease 2 is an anchor store that is physically attached to a mall, although the building site and supporting land are platted separately from the mall. Hall agreed that the economics affecting a mall anchor can differ from those affecting a store like the subject property. Mall owners desire a symbiotic relationship between their anchors and in-line tenants.

[6] Dick's + Field & Stream is a sub-brand of Dick's Sporting Goods. *Resp't Ex. 1* at 136; *Tr.* at 382-83.

[7] This was a rate that Hall extracted based on the stated rent of $14.72 minus a tenant allowance of $13.75 million ($102.25/sf) for mostly non-structural interior and exterior renovations amortized over the lease term. *Resp't Ex. 1* at 136; *Tr.* at 383-85.

[8] Floor & Décor only leased 80,091 square feet of the building. The remaining approximately 38,070 was leased to a furniture retailer. *Resp't Exs. 1, 8 & 9* at 136.

But Hall believes that those motivations become less significant for second- and third-generation users who modify former anchor stores for their own use, especially for stores like Dick's Field + Stream that are intended to be destinations unto themselves. In Hall's opinion, an investor would be most interested in the income that could be generated by the building specifically, rather than by the mall. *Resp't Exs. 1* at 136; *Resp't Exs. 8 & 9* at 137; *Tr.* at 382-389, 443-44, 472-73.

101. The tenant in Lease 4, Kittles Furniture, had leased the building since its construction. Rather than exercising its renewal option, which was for $12.60/sf and was significantly above market rent, Kittles negotiated a new lease for $7.11/sf with 2% annual increases. Hall disagreed with the suggestion that the existing lessor-lessee relationship made Kittles and the landlord related parties, explaining that they did not have any business interests in common. But he acknowledged that the space was not marketed before Kittles signed the renegotiated lease. *Resp't Exs. 1* at 136; *Resp't Exs. 8* & 9 at 137; *Tr.* at 398-400.

102. Hall then adjusted his leases, beginning with market conditions. As with his sales-comparison, he found that the area surrounding the subject property was showing strengthening demand and again concluded 1% annual appreciation through January 1, 2018, but no appreciation thereafter. *Resp't Ex. 1* at140; *Resp't Exs. 8 & 9* at 141.

103. For location and access, Hall considered the same factors as he did in his sales-comparison analysis. He viewed the Knoxville metropolitan area (Lease 1) as inferior to the Chicago MSA but rated the others as equal. He came to the same conclusion when comparing the surrounding populations. He viewed Lease 3 as having inferior access and exposure, but he considered the other properties as equal in that respect. Overall, Hall adjusted Leases 1 and 3 upward by 10% and 5%, respectively. He did not adjust the other three. Hall used the same criteria to adjust for differences in building size and age and condition as he used in his sales-comparison analysis. *Resp't Exs. 1* at 140-41, 148; *Resp't Exs. 8 & 9* at 141-42, 149-50; *Tr.* at 319-20.

104. The adjusted rents for 2018 ranged from $6.82/sf to $9.13/sf with an average of $7.74/sf. The ranges and averages were very similar for 2019 and 2020. Hall settled on market rent of $8.00/sf for each year. As with his sales-comparison approach, he applied that rate to the entire rentable area without any discount for the mezzanine, and he arrived at base rental income of $1,480,000. *Resp't Ex. 1* at 56, 152; *Resp't Exs. 8 & 9* at 56, 154.

105. But Hall applied his unit rent to 185,000 square feet instead of the building's actual area of 180,620 square feet. He did not explain why, but it appears to be an error. Everywhere else in his appraisals, he treated the building as having 180,620 square feet. Even within the income approach, he estimated replacement reserves based on 180,620 square feet. The only place where Hall referred to the building as having a different area was in the section of his reports containing a description and analysis of the property. There, he listed three sources for the building's total area, two of which described the building as having 185,324 square feet (CoStar) and 185,000 square feet (Cabela's), respectively. But he reconciled that data in favor of the 180,620 square feet measured by the Assessor. *Resp't Ex. 1* at 56, 152; *Resp't Exs. 8 & 9* at 56, 154.

106. Hall did not include expenses or reimbursements for real estate taxes, insurance, or maintenance, explaining that under his assumed triple-net expense structure, tenants pay those expenses directly. According to Hall, large-format retail stores are marketed without including those reimbursements or expenses when advertising NOI or capitalization rates. To project a vacancy rate, Hall relied on CoStar data for retail properties in the five-mile radius surrounding the subject property. He settled on vacancy and collection loss equaling 8% for each year. Finally, Hall subtracted estimated management expenses and replacement reserves to get to NOI. He estimated management expenses as 2.5% of EGI for 2018 and 2019 and 2.31% of EGI for 2020. He estimated replacement reserves of $0.15/sf. for 2018 and $0.23/sf for 2019 and 2020. *Resp't Ex. 1* at 152-53; *Resp't Exs. 8 & 9* at 152-55; *Resp't Ex. 7; Tr.* at 320-28.

107. Like Allen, Hall relied on several sources to estimate a capitalization rate, including investor surveys; market sales of mostly single-tenant big-box stores with between four and seven years remaining on their leases; and a rate calculated based on bands of investment. The average from those sources was 8%, which Hall used as his capitalization rate. Consistent with his view that properties are marketed, and that capitalization rates are derived and reported, without considering real estate expenses, Hall did not load his capitalization rate. *Resp't Ex. 1, 8* at 155-58; *Resp't Exs. 8 & 9* at 157-60; *Tr.* at 330.

108. Based on his analysis, Hall arrived at the following values under the income approach:

	2018	**2019**	**2020**
PGI	$1,480,000	$1,480,000	$1,480,000
Vacancy	($118,400)	($118,400)	($118,400)
EGI	$1,361,600	$1,361,600	$1,361,600
Mgmt. Fee	($34,040)	($34,040)	($31,453)
Reserves	($27,093)	($41,453)	($41,543)
NOI	$1,300,467	$1,286,017	$1,288,604
Cap Rate	÷.08	÷.08	÷.08
Rounded Value	$16,300,000	$16,100,000	$16,100,000

Resp't Exs. 1 at 154-60; *Resp't Exs. 8 & 9* at 156-62.

(4) Conclusions

109. Hall believed that all three approaches were appropriate for valuing the subject property. Although it was a little more challenging to find "apples-to-apples" comparisons, he felt there was enough data to develop a credible opinion under the sales-comparison approach. Similarly, Cabela's brand stores are income-producing properties, making the income approach appropriate. Hall also explained that the cost approach applies to properties, like the subject property, that are not frequently exchanged in the market. He concluded the following values under the three approaches:

Year	**Cost**	**Sales-Comparison**	**Income**
2018	$16,300,000	$15,700,000	$16,300,000
2019	$16,100,000	$15,700,000	$16,100,000
2020	$16,100,000	$15,700,000	$16,100,000

For each year, the property's assessment was within the range indicated by Hall's conclusions under the three approaches. *Resp' Ex. 1* at 161*; Resp't Exs. 8 & 9* at 163*; Tr.* at 231, 277-781, 332-33, 455-56, 460-61.

V. CONCLUSIONS OF LAW

A. Although the since-repealed burden-shifting statute (Ind. Code § 6-1.1-15-17.2) generally applies to these appeals, Cabela's made a binding admission that it had the burden of proof for its appeal of the 2018 assessment.

110. Before we address the merits of Cabela's appeal, we must first deal with a preliminary question: Who had the burden of proof and what was that burden? It is partly academic because, as discussed below, Cabela's counsel made a binding judicial admission that Cabela's had the burden of proof for 2018. But it is an open question for Cabela's 2019 and 2020 appeals, owing to the intricacies of a since-repealed statute commonly known as the "burden shifting statute" (Ind. Code § 6-1.1-15-17.2) that made assignment of the burden for those later years depend on our determination for 2018. Cabela's argues that the burden-shifting statute applies to these appeals. The Assessor, by contrast, argues that the burden-shifting statute does not govern these appeals because the repealing act applies to all appeals that were pending on the act's effective date (March 21, 2022), even if the evidentiary hearing occurred before that effective date.

111. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cty. Ass'r,* 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022). Until its repeal on March 21, 2022, however, the burden-shifting statute created an exception to the general rule and required an assessor to prove that a challenged assessment was "correct" where, among other things, the assessment represented an increase of more than 5% over the prior year's assessment as determined by a reviewing authority. I.C. § 6-1.1-15- 17.2(a)-(b) (repealed by 2022 Ind. Acts 174, § 32 effective on passage). But the burden remained with the taxpayer if the assessment that was the subject of the appeal

was based on "substantial renovations or new improvements," zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-1.1-15-17.2(c).

112. Where an assessor had the burden, her evidence needed to "exactly and precisely conclude" to the assessment. *Southlake Ind. LLC v. Lake Cty. Ass'r* ("*Southlake II*"), 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). If the assessor failed to meet her burden, the taxpayer could prove that its proffered assessment value was correct. If neither party met its burden, the assessment reverted to the prior year's level. I.C. § 6-1.1-15-17.2(b); *Southlake Ind., LLC v. Lake Cty. Ass'r* ("*Southlake I*"), 174 N.E.3d 177, 179-80 (Ind. 2021).

113. At the same time the Legislature repealed the burden-shifting statute, it enacted Ind. Code § 6-1.1-15-20. 2022 Ind Acts 174, § 34. That statute also assigns the burden of proof to assessors in appeals where the assessment represents an increase of more than 5% over the prior year. I.C. § 6-1.1-15-20(b). But it no longer requires the evidence to "exactly and precisely conclude" to the assessment, and it allows the Board to determine a value based on the totality of the evidence. Only where the evidence is insufficient to determine a property's true tax value does the assessment revert to the prior year's level. *See* I.C. § 6-1.1-15-20(f). The new burden statute, however, only applies to appeals filed after its March 21, 2022 effective date. I.C. § 6-1.1-15-20(h).

1. <u>Because we held our evidentiary hearing before the effective date of the burden-shifting statute's repeal, applying the repeal to these appeals would be a retroactive application.</u>

114. Thus, we are tasked with determining whether the act repealing the old burden-shifting statute made that statute inapplicable to these appeals. If so, the general burden of proof standard applies, and Cabela's would have the burden for all three years under appeal. If not, the parties might have specialized burdens for 2019 and 2020 that could result in those assessments reverting to what we determine for 2018.

115. We start with the principle that we must apply the law as it existed at the time of the evidentiary hearing. Statutes apply prospectively only, unless the Legislature "unequivocally and unambiguously" intended retroactive application, or "strong and compelling" reasons dictate retroactive application. *State v. Pelley*, 828 N.E.2d 915, 919 (Ind. 2005). The same is true for acts repealing existing statutes. Indeed, the Legislature has codified that presumption in the context of repeals, whether explicit or implied:

> [T]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing statute shall so expressly provide; and such statute shall be treated as still remaining in force for the purposes of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

I.C. § 1-1-5-1; *see also Rouseff v. Dean Witter & Co.*, 453 F. Supp. 774, 779 (N.D. Ind. 1978) (citing *State ex. rel. Mental Health Comm'r v. Estate of Lotts*, 332 N.E.2d 234, 238 (Ind. Ct. App. 1975) (recognizing that I.C. § 1-1-5-1 codifies the principal that substantive amendatory acts, which by implication repeal prior law to the extent they conflict, are to be construed prospectively unless the Legislature specifically provides otherwise); *but cf., e.g., Ind. State Highway Comm'n v. Ziliak,* 428 N.E.2d 275, 279 (Ind. Ct. App. 1981) (quoting 26 I.L.E. Statutes § 195 at 380 (1960) ("[T]he repeal of a statute without a saving clause, where no vested right is impaired, completely obliterates it, and renders it as ineffective as if it never existed.").

116. Thus, we must determine what constitutes a prospective, as opposed to a retroactive, application. To answer that question, we must determine whether the "'new provision attaches new legal consequences to events completed before its enactment.'" *Church v. State*, 189 N.E.3d 580, 587 (quoting *Martin v. Hadix*, 527 U.S. 343, 357-58, 119 S.Ct. 1998, 144 L.E.2d 347 (1999)). That, in turn, requires "'identifying the conduct or event that triggers the statute's application.'" *Id.* (quoting *State v. Beaudoin*, 137 A.3d 717, 722 (R.I. 2016)). Once identified, the triggering, or "operative," event "guides the analysis." *Id.* A statute "operates prospectively when it is applied to the operative event of the statute, and that event occurs after the statute took effect." *Id.* at 587-88. It follows that the repeal of an existing statute likewise operates prospectively when it is

applied to the operative event governed by the repeal, and that event occurs after the repeal took effect. A statute (or repeal) operates retroactively only when its "adverse effects" are activated by events that occurred before its effective date. *Id.* at 588 (quoting *R.I. Insurers' Insolvency Fund v. Leviton Mfg. Co.*, 716 A.2d 730, 735 (R.I. 1998).

117. In *Church*, the defendant sought to depose the child victim of a sex offense. After the defendant was charged, but before he sought to depose the child, the Legislature passed a statute requiring court approval to depose child victims if the prosecutor objects to the deposition. *Church*, 2022 Ind. Lexis at 584-85; I.C. § 35-40-5-11.5. After the defendant was denied authorization to depose the child, he appealed, arguing that the trial court had impermissibly applied the new statute retroactively. The Court disagreed, holding that the triggering event of the statute was the defendant seeking to depose the child. *Id.* at 588. Because the deposition statute was already in effect when the defendant sought to depose the child, the statute was being applied prospectively. *Id.* Had the defendant sought the deposition in the eight days between being charged and the statute taking effect, applying it would have been retroactive. *Id.*

118. The burden-shifting statute addresses the burden of proof in assessment appeals. So does its repeal, the effect of which is to return cases that the statute had carved out for special treatment back to the default rule governing the burden of proof in assessment appeals generally, at least until the new burden-shifting statute (I.C. § 6-1.1-15-20) kicks in. The operative event is when a hearing on the merits convenes. The burden-shifting statute had not yet been repealed at the time the hearing on Cabela's' appeals convened, and we must apply the law as it existed at the time of that evidentiary hearing. In arguing otherwise, the Assessor asks that we apply the repealing statute retroactively.

2. <u>The Assessor does not argue that the repeal was remedial or otherwise offer compelling reasons to apply the repeal retroactively.</u>

119. We find no support for the Assessor's position. The Legislature did not clearly and unequivocally indicate that it intended the repeal to apply retroactively. To the contrary,

the repealing act simply specified an effective date for the repeal. Nonetheless, our state courts have recognized an exception to the general rule of prospective application for "remedial statutes," e.g., "statutes intended to cure a defect or mischief that existed in a prior statute." *Pelly*, 828 N.E.2d at 919. Even then, courts *may* apply a remedial statute retroactively but are not required to do so. *Id.* at 920 (declining to apply statute creating counselor-client privilege retroactively even assuming it was remedial). The Assessor does not argue that the repealing act was remedial, much less offer strong and compelling reasons for us to apply it retroactively. If anything, compelling reasons dictate the opposite conclusion. Retroactively applying the repeal of the burden-shifting statute would be unfair to litigants who based their trial strategy on that statute. The only way to avoid that unfairness would be to hold a new hearing, requiring the parties and the Board to devote additional time and resources.

3. <u>Cabela's counsel made a binding admission that Cabela's had the burden of proof for 2018, but not for the other two years at issue.</u>

120. We nonetheless agree with the Assessor that Cabela's counsel made a binding judicial admission that Cabela's had the burden of proof, at least for its appeal of the 2018 assessment. A judicial admission is "an admission in a current pleading or made during the course of trial; it is conclusive upon the party making it and relieves the opposing party of the duty to present evidence on that issue." *Horizon Bank v. Huizar*, 178 N.E.3d 326, 336 (Ind. Ct. App. 2021) (quoting *Weinberger v. Boyer*, 956 N.E.2d 1095, 1105 (Ind. Ct. App. 2011)). Where counsel makes a clear and unequivocal admission of fact it is "binding upon his or her client." *Id.* at 336-37 (holding that counsel made a binding judicial admission that defendant was not a "debt collector" within the meaning of the Fair Debt Collection Practices Act).

121. At the hearing's outset, Cabela's' counsel responded to the ALJ's question about whether the parties agreed who had the burden of proof by saying "[t]he taxpayer has the burden here." *Tr.* at 10. That statement was clear and unequivocal, and counsel did not retract it at any point during the hearing. While Cabela's did argue in its post-hearing brief that

the Assessor has the burden of proof (*Pet'r Br.* at 9), it was too late to retract the admission. The Assessor could have based strategic choices in presenting her evidence on Cabela's' concession. And once Cabela's conceded the burden, the Assessor was no longer on notice that she needed to offer any evidence to prove an exception to the burden-shifting rule, such as substantial renovations or new improvements to the property between 2017 and 2018. *See Lutz v. Erie Ins. Exch.,* 848 N.E.2d 675, 678 (Ind. 2006) (explaining that "[o]pposing parties prepare their case on the assumption that facts admitted by other parties require no proof.")

122. Counsel, however, did not clearly admit that Cabela's had the burden of proof for 2019 and 2020. Because the burden-shifting statute necessarily makes the burden of proof in a multi-year hearing depend on the outcome of the prior year's appeal, it would be unreasonable to extend an admission beyond 2018. Accordingly, the Assessor has the burden for 2019 and 2020.

B. Hall better captured the property's nature and utility and used better substitute properties than Allen did. When adjusted to reflect the building's correct area and the mezzanine's comparatively diminished utility, Hall's conclusions under the income approach are the most persuasive evidence of the property's market value-in-use for 2018.

123. In Indiana, assessments are based on a property's "true tax value." True tax value does not mean fair market value. I.C. § 6-1.1-31-6(c). Nor does it mean the value of the property to the user. I.C. § 6-1.1-31-6(e). Subject to these somewhat tautological directives, the legislature relies on the Indiana Department of Local Government Finance ("DLGF") to define true tax value. I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.[9] The Manual offers further guidance, defining "market value-in-use," "value-in-use," and "use value," as being synonymous. MANUAL

[9] The 2021 Manual, which went into effect after the assessment dates on appeal, mirrors this definition. 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

at 6-8. But it also states that a property's true tax value will equal its value-in-exchange when properties are frequently exchanged and used for the same purposes by the buyer and seller. MANUAL at 2. Thus, true tax value is something other than purely market value or value-in-use. Given mandates from the Indiana Supreme Court and Legislature, the DLGF created a valuation standard that relies heavily on what it terms as objectively verifiable data from the market, but that still maintains the notion of property wealth gained through utility and therefore recognizes situations where true tax value will differ from market value.

124. This is not an easy valuation question, as illustrated by the more than $7 million chasm between Allen's opinions and the low end of Hall's value range for each year. The appraisers agree on a few basic facts, such as that the subject property's location is conducive to its retail use and that it suffers from at least some obsolescence. But their differences transcend those similarities.

1. <u>We are more persuaded by Hall's overall view of the subject property's land and improvements than by Allen's view.</u>

125. Many of the departures between the two appraisers stem from their differing views of the property itself. Those include differences as basic as whether a 9.7-acre chunk of the site adds any value to the property and the significance of the building's size, physical layout, and other physical characteristics. Both appraisers acknowledged that the market would not pay for all the building's features dollar-for-dollar because various features are, at least to some extent, geared toward the Cabela's brand and business model. But the appraisers also agreed that many of those features are still at least partially desirable in the market, hence Allen's adjustment to his comparable properties' sale prices and rents to account for their comparatively inferior building designs. Nonetheless, Hall believes that the building's physical characteristics provide far greater utility than Allen does.

126. The appraisers' differing views of the property most directly manifest themselves in Hall's and Allen's respective analyses under the cost approach, which explicitly values

the separate components of land and improvements. We find Hall's treatment of the property under that approach more persuasive than Allen's. While we accept that the bike-path easement limits the potential uses for part of the 9.7-acre section that Allen excluded from his valuation, the land has significant utility for, among other things, compliance with local ordinances, use as a buffer area, and for expansion of the store's parking lot. Even if the section's contributory value may be less than that of the parking lot and land under the building's footprint, we disagree with Allen's decision to assign it no value whatsoever.

127. Similarly, we credit Hall's choice to use the model for a good-quality retail store to estimate replacement cost over Allen's choice of the model for an average-quality discount store. Even accepting Allen's justification for choosing the discount store model—that the building is mostly a large open space with high ceilings, which is what potential buyers are looking for—we agree with Hall that the building's construction more closely mirrors MVS's description of good, as opposed to average, quality.

2. <u>The appraisers' conclusions under the cost approach are too dependent on their analyses under the income approach to serve as separate value indications.</u>

128. But those differences in choice of building model and quality rating ultimately do not control the appraisers' conclusions under the cost approach. Their conclusions instead largely hinge on each appraiser's calculation of obsolescence through capitalizing deficient income. Had Allen used Hall's replacement cost model, the income deficiency would have been greater, and he presumably would have deducted more for obsolescence. Similarly, had Hall used Allen's model, the income deficiency would have been smaller, and he would have deducted less for obsolescence. And the appraisers' income-deficiency calculations depended on their determinations of NOI and appropriate capitalization rates. Thus, their conclusions under the cost approach were too dependent on their analyses under the income approach to serve as separate indications of the subject property's market value-in-use.

3. Hall's conclusions under the sales-comparison and income approaches, which he based on better substitute properties than Allen did, are more persuasive than Allen's conclusions.

129. The appraisers' differing views of the property extend beyond the cost approach: those differences also colored the appraisers' choices of comparable sales and leases for their analyses under the other two approaches. Hall cared more about the building's physical characteristics, including its ornamentation and quality interior finishes, as well as its location at an interstate exchange with correspondingly high traffic counts. The dearth of sales involving physically similar stores prompted Hall to expand his search beyond the Midwest to the Southeast.[10] Allen, by contrast, cared less about similarities in construction quality and wanted to limit his search to the Midwest, which he believed was influenced by different economic conditions than the East and West Coasts or the Southeast. Allen also apparently did not care as much as Hall about traffic exposure: few of Allen's properties were located near interstates, and the nearby traffic counts paled compared to those at the subject property.

130. More than any other factor, the appraisers' choice of comparable sales and leases explains the gulf between their value opinions. Allen's unadjusted sale prices ranged from $16.90/sf to $38.02/sf, while Hall's unadjusted sale prices ranged from $61.58/sf to $93.78/sf. Similarly, Allen's unadjusted rents ranged from $3.06/sf. to $6.26/sf, while Hall's rents ranged from $6.00/sf to $8.97/sf. Each appraiser adjusted those sale prices and rents, offering varying degrees of support for their adjustments. And we will discuss some of the more significant ones in our analysis. But those adjustments, or lack thereof, did little to close the gap between the appraisers' starting points. So we must weigh which appraiser's sale and lease comparables are better substitutes for the subject property.

[10] Cabela's makes much of the fact that, while Hall testified that the lack of closely comparable substitute properties led him to conclude that the subject property was a limited-market property, he did not say so in his report. According to Cabela's, Hall's testimony was self-contradicting and misleading and hurts his credibility. *See Pet'r Br.* at 36-40. We disagree. Calling the property a limited-market property was not the basis for Hall's analysis, but rather a conclusion he drew from the fact that closely comparable properties did not frequently sell or rent in the market. *See Tr.* at 238, 458-65. He ultimately believed that he had sufficient data to develop all three approaches. *Tr.* at 460-61.

a. Except for the two sales that were part of a portfolio transaction, Hall used sales that were better substitutes for the subject property than Allen did.

131. We begin with the appraisers' comparable sales. Although Hall's sales included slightly smaller buildings overall than did Allen's, neither appraiser thought size differences in stores above 80,000 square feet greatly affected unit prices. And overall, the ages of the buildings in the appraisers' respective comparable sets were roughly similar. So we do not view building size or age as a significant differentiating factor.

132. Each appraiser used a mix of sales to owner-occupiers and developers. But Hall's sales were all to buyers who put the properties to a use that most closely resembles Cabela's' current use of the subject property: as a single-occupant retail store. Allen, by contrast, used several sales to buyers who intended to occupy part of the store and lease out the remainder, and to a developer who planned to lease the property to multiple tenants. Significantly, Allen's three highest unadjusted and adjusted sale prices were for the stores that sold for single-occupant use.

133. While Allen stayed in the Midwest, Hall ventured into the Southeast, choosing two sales from Florida and one from Georgia. We give some credence to Allen's testimony that different economic conditions prevail in the Midwest than in the Southeast. But Hall generally looked at market rents and land values in the metropolitan areas where his Florida and Georgia sales were located, even if he did not use them as metrics in his adjustments. And Cabela's did not offer any evidence to show significant differences in land values, rental rates, or other economic conditions in the areas around Hall's sales compared to the economic conditions affecting the subject property. So while we give some weight to the fact that Allen's sales were closer to the subject property geographically than were Hall's sales, we still give Hall's sales from Florida and Georgia significant weight.

134. Despite Hall's focus on the subject property's design, layout, and construction quality, his comparable properties did not differ too greatly from Allen's comparables in that regard. Two of Hall's sales were to buyers who fit under his comparatively narrower view of entities likely to buy the subject property for owner occupancy: Camping World (Sale 3) and Bass Pro Shop (Sale 5). As a group, however, the two appraisers' comparable buildings appear relatively similar in design and construction quality. But unlike Allen, Hall recognized the comparable properties' inferior design and construction quality as a significant shortcoming because he lacked adequate data to quantify an adjustment for that difference.

135. Finally, we agree with Hall's view that traffic exposure is vital to a property like the subject property, which competes with other destination-type retail stores. It generates demand. While a few of Allen's comparable sales were near malls or were part of retail developments, which also generate demand, their traffic exposure paled in comparison to the exposure benefitting both Hall's comparable sales and the subject property.

136. But there were also more specific issues with some of each appraiser's comparable sales. We begin with Hall's sales of former Sam's Clubs in Indianapolis (Sale 1) and Madison, Wisconsin (Sale 2). Although there is conflicting evidence, we credit Allen's testimony that he confirmed with a representative of the seller, Walmart Realty, that those sales were part of a five-property portfolio transaction where the parties negotiated a single price and the buyer, At Home, was allowed to allocate that price among the properties as it saw fit. Unlike Allen, Hall did not directly confirm with the parties whether the properties were part of a portfolio sale rather than individually negotiated transactions. While Hall testified that Integra had information from Walmart, that information came from an appraisal assignment that predated the sales. Although Walmart may have ordered individual appraisals for the properties and marketed them individually, At Home could easily have made an offer to buy the five properties in question as a group.

137. The other evidence that the Assessor offered to counter Allen's testimony is similarly inconclusive. Hall acknowledged that Walmart's SEC filings would not necessarily reference a portfolio transaction. The fact that the CoStar sheets for the two sales list the sale type as "Owner User" rather than "portfolio" carries a little more weight. But Hall's testimony on cross-examination that there was some discussion of a portfolio sale in CoStar and that CoStar might not be accurate, undercuts that weight. Although Hall backed away from those statements on re-direct, his inconsistency hardly helps the Assessor's case. The strongest evidence that the sales were individually negotiated transactions is that they had different reported sale dates. Absent more background about the reporting, however, that discrepancy does not persuade us.

138. We likewise give little weight to Hall's claim that the information he received from Integra's appraisals of the Sam's Clubs, including unspecified financial information from Walmart that Integra gathered as part of its assignment, allowed him to determine that the reported sale prices were at market value. The analytical value from a comparable sale lies in the fact that it shows the price that market participants negotiated for a substitute property. Even if properties were bought as part of a portfolio, the prices allocated to the individual properties might still be good indicators of market value if the parties separately negotiated those allocations. But that was not the case here. To the extent other information showed the market value of the two former Sam's Clubs, it is that information—not the buyer's independent allocation—that is relevant. And Hall only vaguely referenced that other information. Indeed, the only evidence in the record from Integra's appraisal assignment for Walmart is the appraisal estimating the Madison Sam's Club's fair value at less than one third of the allocated sale price that Hall used in his appraisal of the subject property.

139. Allen, however, also used a sale (Sale 5), where we have at least some doubts about whether the sale price served as a good indicator of the property's market value on top of our concerns that the property was bought for conversion to multi-tenant use. Allen acknowledged that the "sealed bid" process for that sale was atypical. Without more, his

assurances that the seller was able to get a market price is no more convincing that Hall's similar assurances about the portfolio sales.

140. Except for the two sales that were part of a portfolio transaction, we find that Hall's comparable sales were better substitutes for the subject property than Allen's sales were. They were most like the subject property's single-occupant use and had far more similar traffic exposure. Hall's comparable sales also reflected a much tighter range of unit prices.

b. Hall used leases that were better substitutes for the subject property than Allen's leases were.

141. Turning to the appraisers' choice of comparable leases, both stayed largely in the Midwest. Except for Allen's Lease 1, which was for a 196,000-square-foot building, the two appraisers' leases generally were for similarly sized buildings. The buildings from Hall's leases were a little newer at the time of lease than were the buildings from Allen's leases, and they were closer to the subject building's age as of the valuation date. As with the sales-comparison approach, however, neither appraiser viewed age differences as very significant: Hall adjusted lease rates by 1% for each year difference, while Allen adjusted his leases, which all involved buildings that were at least nine years older than the subject building as of January 1, 2018, upward by a flat 5%.

142. But Hall again prioritized the subject property's location at a heavily travelled interstate interchange. While his comparable leases were not located directly at such interchanges, they were located nearby. All but one was visible from either an interstate or from another major road that was part of the nearby interchange. And the traffic counts largely approximated those at the subject property, while Allen's comparable leased properties had only a fraction of the subject property's traffic and accompanying exposure.

143. Turning to more specific issues with the appraisers' comparable leases, Cabela's criticizes Hall for using three leases from 2010, which was before the "retail apocalypse"

that Allen described in his appraisal. All else being equal, we believe that leases closer in time to the valuation dates are generally more persuasive, especially given the transformation of the retail industry that Allen described. But Allen used a lease from 2009 that was even further removed from the valuation date than Hall's leases were. And Hall's two most recent leases also had the highest unadjusted effective rent.

144. While Cabela's criticizes Hall for using a lease of a building from a shopping center (Lease 2), Allen did the same thing (Lease 11). And Hall credibly explained that, while the economics affecting a mall anchor can differ from those affecting a store like the subject property, those economics become less significant for second- and third-generation users of anchor stores that are separately platted and that are intended to be destinations unto themselves.

145. We find a little more merit to Cabela's' criticism of Hall's Lease 5, the renegotiated lease for the Kittles furniture store from Columbus. We disagree with Cabela's' claim that the transaction was not at arm's length: Hall explained that Kittles and the landlord were not related entities, and there is no reason to assume they acted in anything other than their own self-interest. But we believe that appraisers should use new or renewed leases negotiated by existing tenants with caution. The parties may have atypical motivations. *See Archway Mktg. Servs. v. County of Hennepin*, 882 N.W.2d 890, 897 (Minn. 2016) (quoting THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 466 (14th ed.) ("'[L]ease renewals or extensions negotiated with existing tenants should be used with caution' because existing tenants may be willing to pay higher rents to avoid relocating or may be offered lower rents to avoid vacancies[.]"). More importantly, leased space that is subject to a renewal or extension may not have been exposed to the market. Indeed, Hall acknowledged that the Kittles space was not exposed to the market before the parties negotiated the lease.

146. As with the appraisers' sales, we find that Hall's leases were better substitutes for a projected lease of the subject property than Allen's leases were. The most significant

differentiating factor is exposure, where Hall's leases were far more comparable to the subject property than Allen's. While we give little weight to the renegotiated Kittles lease, it was still solidly within the range of Hall's other leases and does not appear to have greatly influenced his estimate of market rent.

c Adjustment decisions affected the credibility of each appraiser's conclusions: Allen's adjustment for his comparable buildings' significantly inferior design and quality, and Hall's lack of adjustment to reflect the mezzanine's comparatively lower utility.

147. Each side complains about the adjustments, or lack thereof, that the other side's appraiser applied to his comparable rents and sale prices. They largely reflect three general types of claims: (1) that the appraiser's report lacks underlying data relating to the adjustment, (2) that the appraiser failed to explain how he quantified his adjustments, or (3) that the appraiser's own underlying data supports a different adjustment than the one he applied.

148. Neither appraiser included comprehensive data underlying all the judgments he made in considering adjustments. Nor do we think that is always necessary, although a fuller understanding of the data underlying an appraiser's judgment may heighten his credibility in some instances. In any case, except for Allen's adjustment for the comparable properties' inferior designs and Hall's treatment of the store's mezzanine, we are not particularly troubled by the amount of data the appraisers provided. In some cases where we might otherwise be troubled by a lack of underlying data, such as the appraisers' treatment of differences in building age, their adjustments were sufficiently alike as to create little concern.

149. Even where the appraisal reports contain underlying data relating to adjustments, however, neither appraiser explained how he quantified those adjustments. That does not make the adjustments wrong: appraisal is more art than science, and appraisers often examine market data through the lens of experience when exercising judgment about how to quantify adjustments. Of course, the less an appraiser explains how an adjustment is quantified, the more open to criticism the adjustment becomes. The Assessor criticizes several of Allen's adjustments on grounds that they were not supported by his own data.

We disagree. In most instances, the Assessor is simply trying to substitute his own judgment for Allen's.

150. But that does not mean all of Allen's adjustments (or lack thereof) are persuasive. Like the Assessor, we harbor serious doubts about whether Allen's building-design adjustment sufficed to capture the difference in market desirability between the subject property and Allen's comparable properties. Allen offered only vague support for this adjustment, referring to his experience and to interviews with market participants. That lack of specificity is telling, given Hall's testimony that he could not find sufficient data to quantify a similar adjustment for his comparable sales and leases, even though they were also inferior to the subject property. Admittedly, that might have led Hall to underestimate the subject property's value. The lack of an adequate way to adjust for this difference highlights the difficulty of the appraisal assignment. But Hall's candor on this point bolsters his overall credibility.

151. That leads us to a separate design-related question the two appraisers clashed over: whether the subject building's mezzanine level contributed comparatively less value than the ground floor, and if so, how much to adjust for that diminished utility. The difference is important, because both appraisers derived their market sale price and rent conclusions from comparable properties that were single story. Thus, if the subject building's mezzanine contributed comparatively less value than its ground floor, an adjustment was necessary. Allen believed that the mezzanine contributed less value and accounted for that in both the sales-comparison and income approaches by applying a unit value to the mezzanine that was only 70% of the unit value he applied to the ground floor. Hall, by contrast, did not treat the mezzanine any differently than he treated the first floor.

152. To support his view, Hall pointed to an offering memorandum for a Dick's Sporting Goods store that did not differentiate between floor levels when listing a unit price for the store or setting forth the unit rent for the existing lease. But Dick's was not renting the two areas separately, nor would a buyer purchase them separately. To the contrary,

anyone buying the Dick's store or buying or leasing the subject property would pay a single price, regardless of the relative utility of the two areas. The advertised unit price or rental rate is simply a function of dividing the total rent or sale price by the store's total area. We therefore give no weight to Hall's justification for treating the mezzanine and ground floor the same.

153. Allen offered a more credible explanation for treating the contributory value of the two levels differently. Indeed, few freestanding retail chains include retail (as opposed to storage) mezzanines in their floorplans. One chain that does—Menards—normally uses its mezzanines for packaged appliances and items that do not require much customer interaction. And the subject building's mezzanine includes space that is less useful to other retailers. We also give weight to the basis on which Allen quantified his adjustment—the approximate difference in the cost to build the two levels.

154. In addition, in calculating PGI, Hall inadvertently multiplied his base rate by 185,000 square feet rather than by the building's actual area of 180,620 square feet.

d. Even if stabilization costs should be considered, those costs may already be accounted for in the appraisers' vacancy and capitalization rates.

155. Finally, the parties argue about one more differentiating factor between the two appraisals: Allen's deduction from his capitalized NOI of leasing commissions and holding costs to bring the property to stabilization, and the absence of such a deduction in Hall's appraisals.

156. That begs the question of whether a market value-in-use appraisal for ad valorem tax purposes should account for costs incurred to bring a property that is not built on speculation to stabilization rather than simply valuing the property as if stabilized at market rent. Neither side points to any Indiana law squarely addressing that question. In any case, we share the Assessor's concerns about overstating stabilization expenses, although not necessarily for the same reasons. Both appraisers used CoStar data to

estimate vacancy rates. But it is unclear whether that data excludes properties that were recently bought by investors who were in the process of finding a new tenant—the precise scenario on which Allen based his deduction. We are also concerned that stabilization expenses may be implicitly included in the appraisers' capitalization rates. Indeed, Allen went out of his way to explain that he was estimating a fee-simple rate, which in his view reflected increased risk above the risk associated with a property leased to a known tenant.

157. Given those uncertainties, we do not put much weight on this issue as a differentiating factor between the credibility of the two appraisers' valuation opinions.

e. Overall, Hall's estimates under the sales-comparison and income approaches are more credible than Allen's, and recalculating Hall's income-approach analysis to include an adjustment for the mezzanine's comparatively diminished utility and to apply unit rent to the correct building area, is the most persuasive evidence of the property's value for 2018.

158. In sum, the issues with Allen's appraisal, including his choice of substitute properties, his unsupported adjustment for building design, and his questionable deduction of stabilization expenses, led him to effectively estimate the contributory value of an attractive, 10-to-12-year-old, 180,620-square-foot building at roughly $2.1 million.[11] And that is with him excluding almost 10 acres of land that has at least some utility. Assuming even a moderate value for that land, Allen's valuation opinion assigns a contributory value to the building that is considerably less than $2 million. Thus, while we find some of Allen's judgments, such as his adjustment for the mezzanine, convincing, we do not find his ultimate valuation opinions probative of the property's market value-in-use.

159. Hall's opinions were not free from problems either. We are most troubled by his use of the allocated sale prices for the two former Sam's Clubs that were part of the portfolio sale to At Home, his treatment of the mezzanine, and his mistake regarding the building's

[11] For 2018, Allen estimated a land value at $6,140,000, and reconciled overall value of $8,230,000. That leaves an effective contributory value of $2,090,000 ($8,230-000 - $6,140,000 = $2,090,000).

total area when estimating market rent. But overall, we find that he used better substitutes for the subject property, and therefore a more credible starting point in his analyses under the sales-comparison and income approaches, than Allen did. Moreover, most of Hall's leases were from the Midwest and the re-negotiated Kittles lease is the only major concern. Accordingly, we find Hall's income approach to be the most credible framework.

160. We can easily address our main concerns about Hall's income-approach analysis by (1) applying Hall's unit rate to the correct building area, and (2) using Allen's percentage adjustment (30% discount from the ground floor rate) to the mezzanine:

Ground Fl.	$1,064,960[12]
Mezz.	$266,000[13]
PGI	$1,330,960
Vacancy (8% EGI)	($106,477)
EGI	$1,224,483
Mgmt. Fee (2.5% EGI)	($30,612)
Reserves	($27,093)
NOI	$1,166,778
Cap Rate	÷.08
Rounded Value	$14,584,700

We therefore find that Hall's analysis under the income approach, with the adjustments we have identified, offers the most persuasive evidence of the subject property's market value-in-use for 2018. Cabela's' 2018 assessment therefore must be changed to $14,584,700.

C. Because neither party met its burden under Ind. Code § 6-1.1-15-17.2 for 2019 or 2020, those assessments must revert to the amount we determined for 2018.

161. Because the property's 2019 assessment represents an increase of more than 5% over what we have determined for 2018, the Assessor had the burden of proving the 2019 assessment was exactly and precisely correct. The Assessor failed to meet that burden, and Cabela's similarly failed to prove that its proffered value—the amount estimated in Allen's appraisal—was correct. The 2019 assessment therefore reverts to the amount we

[12] 133,120 sq. ft. x $8.00/sf = $1,064,960

[13] Seventy percent of Hall's unit rate is $5.60 ($8.00 x .7 = $5.60). And 47,500 sq. ft. x $5.60/sf = $266,000.

have determined for 2018. The same scenario applies for 2020, and that assessment also must revert.

VI. Conclusion

162. Based on the foregoing, we order that the assessment for the main parcel under appeal (45-07-17-326-014.000-203) be changed to $14,584,700 for 2018, 2019, and 2020. We adopt the parties' stipulation as to the assessments for the other three parcels.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 of 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>.

Petition Number	Parcel Number
45-023-18-1-4-00230-20	45-07-17-401-003.000-023
45-023-18-1-4-00341-21(duplicate filing)	45-07-17-401-003.000-023
45-023-19-1-4-00342-21	45-07-17-401-003.000-023
45-023-20-1-4-00053-22	45-07-17-401-003.000-023
45-023-20-1-4-00051-22	45-07-17-451-009.000-023
45-023-18-1-4-00229-20	45-07-17-327-003.000-023
45-023-18-1-4-00344-21(duplicate filing)	45-07-17-327-003.000-023
45-023-18-1-4-00228-20	45-07-17-326-014.000-023
45-023-18-1-4-00343-21 (duplicate filing)	45-07-17-326-014.000-023
45-023-19-1-4-00345-21	45-07-17-326-014.000-023
45-023-20-1-4-00052-22	45-07-17-326-014.000-023