REPRESENTATIVE FOR PETITIONER: Paul M. Jones Jr., Brigham Michaud, Paul Jones Law, LLC
REPRESENTATIVES FOR RESPONDENT: Brian Cusimano, Attorney at Law
Marilyn Meighen, Attorney at Law

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Crossing at Hobart, LLC,	)	
	)	Petition Nos.: See attached
Petitioner,	)	
	)	
v.	)	
	)	Parcel Nos.: See attached
Lake County Assessor	)	
	)	Assessment Years: 2012-2015
Respondent	)	

7-28, 2021

FINAL DETERMINATION

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

I. INTRODUCTION

1. In these assessment appeals, the parties offered competing opinions from experts who estimated starkly different values for the retail power center at issue. The appraiser hired by the Assessor, David Hall, based his opinions on a detailed analysis of market data, and he credibly supported his underlying methodology and judgments. We find Hall's opinions far more persuasive than those of Andrew Hartigan, the appraiser hired by Crossing at Hobart, LLC, who did not even address a significant part of the power center (an addition to a Walmart store), offered little data to support most of his underlying methodology and judgments, and used data in his sales-comparison analyses that was plainly incomparable to the power center. Thus, apart from deducting a small amount to avoid double taxation of

some agricultural land that Hall mistakenly thought was on appeal, we adopt Hall's valuation opinion for each year.

II. PROCEDURAL HISTORY

2. Crossing filed notices with the Ross Township Assessor challenging its assessments. On September 29, 2016, the Lake County Property Tax Assessment Board of Appeals issued Form 115 determinations upholding the assessments, which were for the following total amounts:

Assessment Date	Value
March 1, 2012	$63,892,600
March 1, 2013	$63,791,600
March 1, 2014	$63,790,600
March 1, 2015	$61,480,900

Resp't Exs. A-D at 87.[1]

3. Beginning October 26, 2020, our designated administrative law judge, David Pardo ("ALJ"), held a three-day hearing on the petitions. Neither he nor the Board inspected the property.

4. Brian Cusimano represented the Assessor at the hearing. Paul Jones and Brigham Michaud represented Crossing. Hartigan, Hall, and Mark Ungar were sworn as witnesses.

5. Crossing offered the following exhibits:

Petitioner's Exhibit A Appraisal report by Hartigan of BBG, Inc. for March 1, 2012,
Petitioner's Exhibit B Hartigan appraisal report for March 1, 2013,
Petitioner's Exhibit C Hartigan appraisal report for March 1, 2014,
Petitioner's Exhibit D Hartigan appraisal report for March 1, 2015.

6. The Assessor offered the following exhibits:

Respondent's Exhibit A Appraisal report by Hall and Michael Lady of Integra Realty

[1] Crossing did not include Form 115 determinations for parcel 45-12-22-352-901.000-046. We have listed the total assessed values as reported in Hall's appraisals.

	Resources for March 1, 2012,
Respondent's Exhibit B	Hall and Lady appraisal for March 1, 2013,
Respondent's Exhibit C	Hall and Lady appraisal for March 1, 2014,
Respondent's Exhibit D	Hall and Lady appraisal for March 1, 2015,
Respondent's Exhibit E	Supplemental Addendum to Appraisal for March 1, 2012,
Respondent's Exhibit F	Supplemental Addendum to Appraisal for March 1, 2013,
Respondent's Exhibit G	Supplemental Addendum to Appraisal for March 1, 2014,
Respondent's Exhibit H	Supplemental Addendum to Appraisal for March 1, 2015,
Respondent's Exhibit L	Excerpt from DICTIONARY OF REAL ESTATE APPRAISAL (6th ed.),
Respondent's Exhibit M	Site plan,
Respondent's Exhibit O	Property record card ("PRC") for parcel 71-08-25-426-014.000-02,
Respondent's Exhibit P	PRC for parcel 85-14-03-401-002.000-008,
Respondent's Exhibit R	PRC for parcel 45-12-23-2000-006.000-046,
Respondent's Exhibit S	Demonstrative exhibit with addition of Walmart improvement AV,
Respondent's Exhibit T	Income statement for 2015,
Respondent's Exhibit U	Income statement for 2016.

7. 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

8. The ALJ ruled on several objections at the hearing, and we adopt his rulings. He also took one objection under advisement. Crossing asked Mark Ungar, the executive vice president of leasing and development for Schottenstein,[2] whether the tenant-owned improvements on ground leases at the subject property had much value other than for their use by those specific tenants. The Assessor objected on grounds that Ungar was not an appraiser and had not been qualified as an expert to give a valuation opinion. *Tr. at 545-47.*

9. We overrule the objection. Although the Assessor did not point to any legal authority for his objection, he presumably relied on Rule 702 of the Indiana Rules of Evidence. Among other things, that rule allows witnesses who are qualified as experts by knowledge, skill, experience, training, or education to testify in the form of an opinion if their scientific,

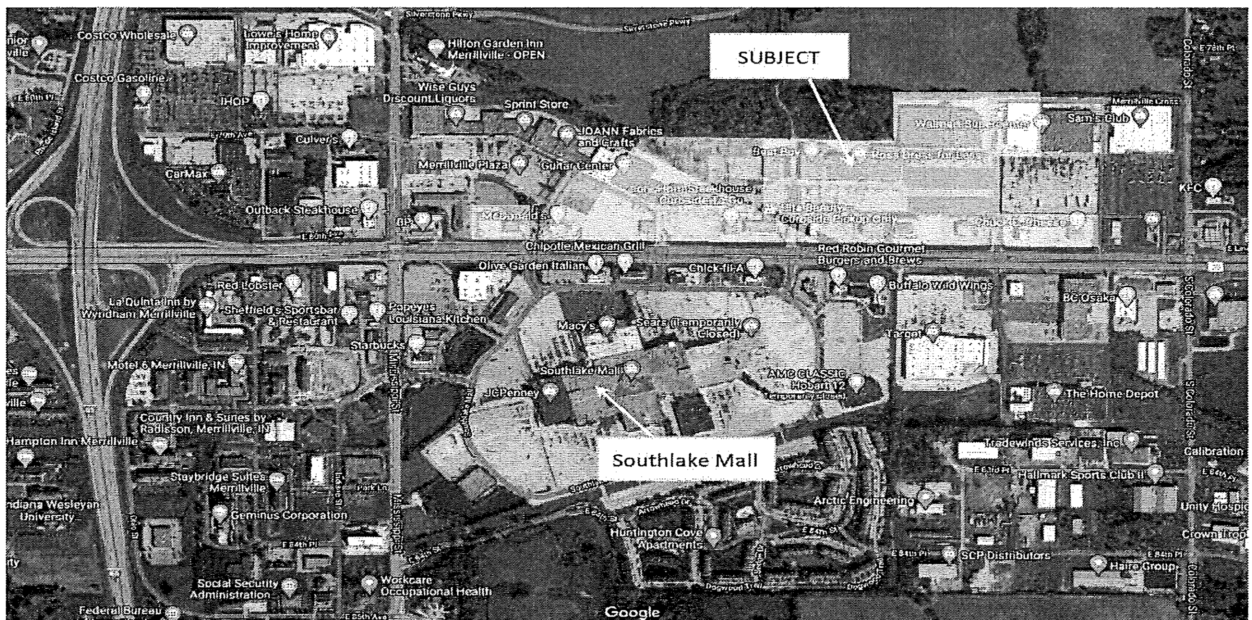
[2] Crossing is a subsidiary of Schottenstein Property Group. Schottenstein also manages the subject property. *Assessor's Brief at 2.*

technical, or other specialized knowledge will help the trier of fact understand the evidence or determine a fact in issue. Ind. Evid. R. 702. While our administrative law judges must regulate our proceedings "without recourse to the rules of evidence" (52 IAC 4-6-9(a)), the principles behind those rules may still inform our decision-making. If Ungar had given an opinion, this might be a closer call. Crossings did nothing to elucidate Ungar's knowledge, skill, experience, or training beyond having him state his job title. But Ungar answered the question with facts—not an opinion. He testified that three of the tenants closed, that Crossing had to tear down two of the buildings, and that Schottenstein was negotiating with a new tenant who would require the third building to be demolished as well. *Tr. at 548-49.*

IV. Findings of Fact

A. The Subject Property

10. The subject property is an open-air shopping center in Merrillville known as Crossing at Hobart. It sits across from the Southlake Mall, the only super-regional mall in Northwest Indiana, on Highway 30 (E. 81st Street). It is less than one mile east of the interchange with Interstate 69.

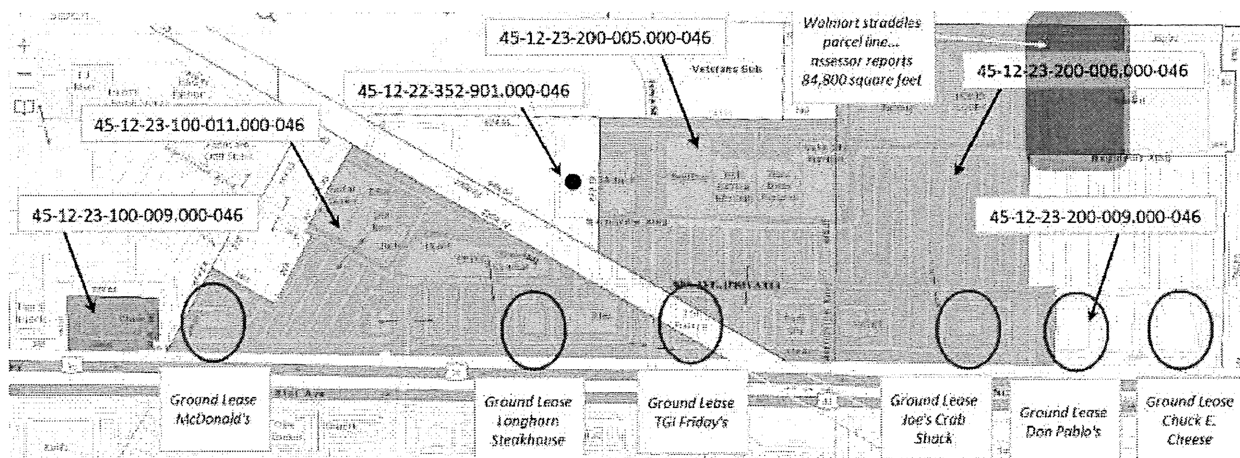


Resp't Ex. A at 45; Tr. at 421.

11. The Highway 30 corridor features commercial and retail development. It has various demand generators for retail shopping centers, including residential developments and other regional shopping and entertainment destinations. It is easily accessible from the heavily travelled I-65 corridor. *Resp't Ex. A at 22-25.*

12. The property includes five parcels with land and improvements. For some of the years under appeal, it also included a sixth parcel with a theatre building, but no land. The theatre was razed in November 2014. The evidence conflicts as to the total land area encompassed by the parcels. The two appraisers gave different measurements, and Hartigan excluded the land under the Walmart addition. We find that the total land area was roughly somewhere between 58 and 64 acres. *Pet'r Exs. A-D at 13; Resp't Exs. A-D at 38, M; Tr. at 70-73, 207, 427.*

13. The 1.432-acre rectangular parcel closest to I-69 is platted separately and contains a restaurant building. Hall referred to the parcel as the "outlot." An internal drive separates the outlot from the rest of the property. Each remaining parcel has at least two buildings on it. There is a multi-tenant shopping center with mostly large tenant spaces, multi-tenant strip centers, a mix of single-tenant and multi-tenant retail buildings, the Walmart addition, and six free-standing restaurant buildings. Customers can access the property at six different points, four of which are signalized intersections. One of those intersections gives access to the drive separating the outlot from the rest of the property.



Exs. A-D at 23-42; Exs. E-H at 3; Tr. at 209, 245-48, 253-54.

14. The Walmart addition is an 84,800-square-foot improvement that is part of a larger 206,408-square-foot store. The rest of the store is assessed to another parcel that is not on appeal. The freestanding restaurant buildings sat on land owned by Crossing and leased to tenants on ground leases. The tenants owned those buildings, which according to Crossing's rent rolls ranged from 3,900 to 11,441 square feet (2012-2014) or 14,244 (2015) square feet for a total of 41,218 (2012-2014) to 44,021 (2015) square feet. Nonetheless, they were assessed to parcels owned by Crossing and are included on the property record cards for those parcels. Most of the ground leases convey only the footprint of the buildings. Parking, as well as ingress and egress, is shared. Crossing maintains the parking fields and lighting for the restaurants. *Resp't Exs. A at 2, E-H at 3-4; Tr. at 210-11, 256, 545, 551-52.*

15. The various buildings were built between 1990 and 2009. The experts differed as to the building area included in their appraisals. Hartigan excluded the Walmart addition and reported gross building area ranging from 568,546 to 607,450 square feet (566,810 to 600,516 square feet of net leasable area) for the years under appeal. Hall, by contrast, included the Walmart addition and reported the property having 651,610 to 685,316 square feet of building area. But as explained below, he analyzed part of that area—the freestanding restaurant buildings—separately in supplemental addenda to his reports. And, as also discussed below, he did not assign the 36,521-square-foot theatre building any value. *Pet'r Exs. A-D at 4, 16; Resp't Exs. A-D at 61, E-F at 32; Tr. 24-25, 69-70.*

16. The property was more than 94% occupied for the entire period, although the percentages reported by the appraisers differ because they excluded different areas in reporting their occupancy rates. In any case, many of the tenants were national chains. *See Resp't Exs. A-D at 31; Tr. at 223, 346-47.*

B. Expert Opinions

1. Hartigan's appraisal

17. Crossing hired Hartigan to appraise the market value-in-use of the fee-simple interest in the property. He holds an MAI designation from the Appraisal Institute as well as various other professional designations. Hartigan certified that he performed his appraisals and prepared his reports in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'r Ex. A at 2-4, Addendum; Tr. at 22-23.*

a. Market analysis

18. Hartigan began by analyzing the property and its market. He looked at the property's access characteristics. He also looked at land use patterns and the economic and demographic profiles for its market area, which he defined as a five-mile radius surrounding the property. For each quarter of each year under appeal, Hartigan looked at averages for market rent, vacancy rates, and capitalization rates for retail properties within the market area that were built after 1980. With some minor exceptions, capitalization and vacancy rates steadily declined over the period encompassing the appeals. Rental rates declined slightly over the first year or so but then gradually increased. *Pet'r Exs. A-D at 9-12.*

19. Hartigan also reported the amount of new retail construction, which for most of the quarters covering the appeal period, was none. For demographics, he looked at census data on population, households, and household income for one- three- and five-mile radii surrounding the property. He concluded that the area's economic outlook appeared to be stable. *Pet'r Exs. A-D at 9-12.*

b. Valuation approaches

20. With those things in mind, Hartigan turned to the three generally recognized valuation approaches—the cost, sales-comparison, and income approaches. He considered all three but chose to develop only the sales-comparison and income approaches. Investors are the

most likely buyers for properties of this type, and Hartigan explained that investors do not typically rely on the cost approach when buying such properties. He also explained that estimating depreciation is subjective, and he did not want to mislead people reading his appraisal report. Given the quality and quantity of data supporting the other two approaches, Hartigan did not believe that excluding the cost approach diminished the reliability of his value conclusions. *Pet'r Exs. A-D at 5, 21, 40; Tr. at 30.*

i. Sales-comparison approach

21. Hartigan began with the sales-comparison approach. For each year, he used the following five sales:

	Sale 1	**Sale 2**	**Sale 3**	**Sale 4**	**Sale 5**
Location	Sagamore Pky. Lafayette	Greenbrush St. Lafayette	Erskine Plaza South Bend	N. Cass Ave. Wabash	W. 300 N. Warsaw
Sale Date	Dec. 2014	Oct. 2014	Sep't 2014	Oct. 2012	Mar. 2012
Gross Bldg. Size	101,087 sf	90,500 sf	91,862 sf	163,000 sf	68,804 sf
Land to Bldg. ratio	4.09:1	5.95:1	3.83:1	4.81:1	3.63:1
Year Built	1962	1970	2003	1998	2005
Price	$7,000,000	$4,825,000	$2,100,000	$8,025,000	$6,500,000
Unit Price	$69.25/sf	$53.31/sf	$22.86/sf	$49.23/sf	$94.47/sf

Pet'r Exs. A-D at 23-24.

22. While Hartigan looked at sales occurring before the valuation dates, some of the properties sold as "REOs,"[3] and others had high vacancy. He believed that everything he looked at from 2010 or 2011 was too affected by the economic downturn from 2008. He was appraising during that period, and in conversations with market participants he found that even if properties were not reported as distressed, sellers were struggling. So he decided to avoid sales from 2010 and 2011. *Tr. at 79.*

23. Although Hartigan acknowledged that the subject property was a power center, none of his comparable properties fit within that retail subtype. On cross-examination, Hartigan

[3] We assume Hartigan was using an abbreviation for "real estate owned," meaning property acquired by a financial institution through foreclosure. *See Auerbach v. Great Western Bank,* 74 Cal. App. 4th 1172, 88 Cal. Rptr. 2d 718, 721 n. 2 (1999) ("'REO' stands for 'real estate owned' and means a property the bank acquired through foreclosure.").

initially described the first four comparable properties as most closely fitting the outlet center subtype and the fifth as fitting between a neighborhood center and outlet center. He later acknowledged that the first four comparable properties might not be outlet centers and that the fifth was a Kohl's store within a larger retail center. But he explained that in looking for comparable sales data, his most important criterion was that the sales be from Indiana, and in-state sales of 600,000-square-foot power centers were rare. *Pet'r Ex. A at appendix C; Tr. at 30, 34, 84-85, 99-100.*

24. While Hartigan acknowledged that he sometimes used out-of-state sales when appraising properties for financing, he rarely did so when appraising properties for ad valorem tax purposes. He justified his approach as a matter of professional judgment based on his training and experience. He testified that he trained under MAI appraisers in the Chicago area who subscribed to the same accepted methodology. And he had spoken to many investors across the country who, for example, would be happy to invest in Indiana but would not touch Illinois. He said that was particularly true of properties in Cook County and collar counties because of their tax systems. While an appraiser might be able to adjust for differences in tax systems, Hartigan believes that those adjustments are difficult and that many investors would not agree with that methodology. He would rather adjust for size differences. *Tr. at 35, 38, 107-09, 168-69, 182.*

25. Hartigan acknowledged that some out-of-state institutional investors would buy properties of the subject property's caliber. But he explained that institutional investors have different investment criteria than "mom and pop" investors do, and that institutional investors can do different things with their portfolios. When appraising a fee-simple interest for ad valorem tax purposes, Hartigan believes that an appraiser should rely on the general marketplace. According to Hartigan, institutional investors are only a small segment of that marketplace and there would be non-institutional investors who would be willing to buy the subject property. He further testified that a buyer of the subject property could come from the same investor pool as the buyers of his comparable properties "in theory." But when asked whether that was true in practice, he responded: "I don't have that much money. I don't know. I've never played with $50 million and bought a property." *Tr. at 80-82, 168-69.*

26. Hartigan acknowledged that his comparable sales were not perfect but said that those were his choices. According to Hartigan, they were the best available sales from Indiana within the valuation dates. And he wanted to have a secondary approach as a check on the reasonableness of his value conclusions under the income approach. *Tr. at 34-35, 105.*

27. Having chosen comparable sales, Hartigan next considered various elements of comparison to determine whether he needed to adjust the sale prices. He found that only one transactional adjustment was warranted: an adjustment for differences in market conditions between the sale dates for his comparable properties and the valuation dates for his appraisals. Those adjustments ranged from -5% for the 2014 sales in his 2012 appraisal, to 7.5% for the 2012 sales in his 2015 appraisal. Hartigan did not adjust for differences in property rights transferred. Although he admitted that he did not have access to rent rolls for his first four sales, he assumed they were all leased at market rates. The only other adjustments Hartigan made were for differences in building size and age (year built). He uniformly adjusted each sale downward by 5% for building size. In each appraisal, he adjusted the sales from Lafayette (Sales 1 and 2) 5% for age but did not adjust the other sales, which he described as "somewhat" comparable to the subject property's age. His report did not identify any market data on which he based his adjustments. At hearing, he testified only that he based the adjustments on his opinion. *Pet'r Exs. A-D at 24-27; Tr. at 104-5, 112-13, 167.*

28. When asked why he did not make any location adjustments, Hartigan testified that while none of the comparable properties were located next to a 1.2 million-square-foot super-regional mall like Southlake Mall, they were all located in areas that supported residential development needed to "build the community." He further testified that they were in well-travelled locations within their respective areas, that they all had a good amount of traffic warranting significant retail development, and that properties in those areas generally were not dilapidated. But he acknowledged that neither his appraisal reports nor work files contained traffic counts or demographic information for the comparable properties' locations. *Tr. at 36-37,97-99.*

29. In reconciling his sales data, Hartigan looked at the range of his adjusted sale prices for each year. He settled on a value at the higher end of the range, with all the sale prices except the Kohl's store falling below that value:

Year	Range	Average	Indicated	Rounded Value
2012	$20.63/sf - $89.75/sf	$54.72/sf	$87.50/sf	$53,150,000
2013	$21.17/sf - $91.99/sf	$55.89/sf	$87.50/sf	$53,150,000
2014	$21.72/sf - $94.24/sf	$57.52/sf	$87.50/sf	$53,150,000
2015	$21.72/sf - $96.48/sf	$58.21/sf	$92.50/sf	$52,590,000

Pet'r Exs. A-D at 28; Tr. at 114-15.

30. For what Hartigan described as an "additional check on reasonableness," he considered seven Indiana shopping-center sales from 2014 and 2015. The prices ranged from $25.55/sf to $51.53/sf. But Hartigan did not look at any demographic information or adjust the sale prices in any way. *Pet'r Exs. A-D at 27-28; Tr. at 35-36, 114*

ii. Income approach

31. Hartigan began his analysis under the income approach by projecting market rent for the subject property. To do so, he looked at leases for comparable space. While he found the subject property's historical experience relevant, he explained that in appraising the property's fee-simple interest for ad valorem taxes, he had to base his analysis on the market. According to Hartigan, relying on the subject property's experience would yield the value of a leased-fee—rather than a fee-simple—interest. *Pet'r Exs. A-D at 30-33; Tr. at 175, 180.*

32. According to Hartigan, Crossing leased out space at the subject property on a "net" basis, which he believed was a market-supported structure for properties of that type. He therefore looked for net leases of comparable retail space in Northern Indiana. He divided the leasable space at the subject property into three size-based categories:
    - 0-10,000 square feet,
    - 10,000 to 25,000 square feet, and

- More than 25,000 square feet.

Hartigan identified 23 leases at 13 different properties in Merrillville, Hobart, and Crown Point. Of those 23 leases, 16 were from the first size category, four were from the second, and only three were from the third. The buildings housing those spaces were built between 1965 and 2009, and the leases were signed between February 2009 and December 2014. When asked about using leases from 2009-2011, Hartigan answered that he did not believe the recession and its aftermath affected lease rates as much as it affected sale prices. *Pet'r Exs. A-D at 30-33; Tr. at 40, 116-17.*

33. Hartigan reported that all the comparable spaces were leased on a "net" expense structure, although he did not review the leases to verify the specific expense terms. He tried to contact people involved both in his comparable-sale and comparable-lease transactions, but they either did not remember the details of the transactions, did not want to talk to him, or were no longer around. *Pet'r Exs. A-D at 30-33; Tr. at 40, 75-76.*

34. Because Hartigan considered the spaces in buildings constructed from 1965 through 1985 to be older than space in the subject property, he adjusted their rental rates upward, although he did not say by how much. He viewed the comparable spaces as being from "somewhat" similar areas as the subject property and therefore felt that only minimal, if any, location adjustments were warranted. He settled on the following market rents:

Category	**Range**	**Market Rate**
0-10,000 sf	$6.00/sf. - $23.50/sf	$25.00/sf
10,000 – 25,000 sf	$6.32/sf - $12.00/sf	$14.00/sf
Over 25,000 sf	$6.45/sf - $12.43/sf	$7.50/sf

Pet'r Exs. A-D at 30-33; Tr. at 171-72.

35. Hartigan's projected market rent for the first category fell above the average historical rate for corresponding space in the subject property. But his projections for the last category fell slightly below the subject property's average. He explained that rent for various spaces within the subject property was set by leases that were signed before the economic

downturn in 2008 and therefore reflected superior market conditions. *Pet'r Exs. A-D at 30-33, 36; Tr. at 171-72.*

36. When asked why he did not have a separate category for outlot-type space, such as the freestanding restaurants at the subject property, Hartigan agreed that those spaces had superior visibility to similarly sized inline space. But he testified that he looked at market rent for other outlots and found that they ranged from $20/sf to $30/sf with a blended rate of $25/sf—the rate he used for all space less than 10,000 square feet. *Tr. at 122.*

37. Although the subject property's freestanding restaurant buildings were owned by tenants who leased the underlying land through ground leases, Hartigan valued the property as if each restaurant was leased together with the underlying land. He gave several reasons for his decision:

    - He was appraising the value of a fee-simple—rather than a leased-fee—interest in the property. While it is not atypical for owners of a property like the subject property to enter ground leases for outlot restaurants, it is not the market standard either.
    - He was valuing the subject property as a single synergistic economic unit rather than as individual components. The whole does not necessarily equal the sum of its parts. An appraiser cannot value the land and improvements together and then "double-dip" by adding a ground lease on top of that.
    - Based on conversations with other MAI appraisers and institutional investors, Hartigan believes that ground leases inherently include business value. As an example, he explained that McDonald's does not lease ground based on what market rent is; instead, it determines how many hamburgers it can sell at the location. It will enter the lease if that sales volume justifies the amortized costs of entering a 99-year lease and constructing a restaurant that typically will revert to the owner of the underlying land. The lessee is trying to secure the location: McDonald's will pay a premium to keep Burger King from getting the location. McDonald's is not a second-generation tenant coming in to lease the restaurant at

market rent; rather it is a first-generation tenant putting up a building "with all the bells and whistles as well as its colors and flags."

Tr. at 73, 125-32, 170, 173-74; 183-84; 188.

38. While Crossing received additional income attributable to expense reimbursements from tenants, Hartigan did not include that income in his projection. He offered imprecise and confusing explanations for this. According to Hartigan, he valued the property on a "net lease basis with no expense recoveries." He explained that under a "net" lease, "the tenant is responsible for the utilities and the ownership is - - the tenant is responsible for the expenses. The ownership tends to have minimal expenses." But how those expenses are shared can vary based on whether a lease is "net" or "triple net" as well as on whether there are tax stops, expense stops, or "things of that type of nature." Tenants at the subject property reimbursed Crossing for various expenses, such as common area maintenance, real estate taxes, and insurance. Hartigan, however, could not verify the degree to which tenants in his comparable leases did the same. *Pet'r Exs. A-D at 33; Tr. at 31-32, 42, 74-76, 144-45, 148, 175, 177-79.*

39. Based on Hartigan's experience, a property owner would not actually get reimbursement income. National credit-rated tenants like Walgreens or Chase Bank might sign triple-net leases where nothing gets reported back to management and the tenant pays all expenses directly to contractors, taxing authorities, and others. Other tenants, like nail salons, would not. And some tenants would sign modified net leases with expense stops or other provisions making them responsible for fewer expenses. Thus, in projecting gross income for the property, Hartigan posited a "hybrid in between, more on the net side, obviously." Thus, he did not include any reimbursement income above the line or corresponding expenses below the line for tenants who were responsible for expenses. Instead, he based his analysis on tenants paying those expenses directly. *Tr. at 31-32, 42, 74-76, 144-45, 148, 175, 177-79.*

40. Hartigan arrived at effective gross income ("EGI") by adjusting the property's potential gross income (without expense reimbursements) to account for vacancy and collection loss.

He used 5% for 2012-2014 and 3% for 2015. He arrived at those rates after considering (1) the vacancy rates from the first two quarters of each valuation year[4] for retail buildings in the subject property's market area that were at least 20,000 square feet and that were built after 1980, and (2) the subject property's historical vacancy rates. *Pet'r Exs. A-D at 32, Tr. at 31, 41-42, 49, 51, 133.*

41. From his projected EGI, Hartigan then deducted a portion of common-area maintenance, utilities, and insurance expenses. Again, under his hybrid structure, the deductions purportedly represented portions of those expenses that the owner would pay during periods of vacancy or pursuant to operating stops in leases for smaller, non-credit-rated tenants. He used $1.00/sf to estimate common-area maintenance. He did not refer to any source for that estimate, such as data from comparable properties; instead, he testified that he based the deduction on his experience. He also included $.10/sf for utilities, again without identifying any source for his data. *Pet'r Exs. A-D at 33-34; Resp't Exs. T-U; Tr. at 31-32, 42, 135, 148-49, 177-79, 183.*

42. Hartigan's expense deductions included $.30/sf for insurance. While he indicated that insurance could range from $.10/sf to $.50/sf or higher, he did not say where he got that data from. It is more than double what was reported for the subject property during two of the years at issue, and close to double what was reported for the other two years. And he multiplied that unit cost by the property's entire leasable area. It therefore appears that Hartigan's projected expense deduction accounts for the entire cost of insurance, not just an amount to account for periods of vacancy and some modified leases. Yet Hartigan acknowledged that tenants under triple-net leases are responsible for insurance and that at least some of the tenants at the subject property reimbursed Crossing for insurance. *Pet'r Exs. A-D at 33, 36; Resp't Ex. A at 197; Tr. at 145, 149-50.*

43. Turning to operating expenses that the owner would bear even under a triple-net expense structure, Hartigan estimated a management fee equal to 5% of EGI, which was near the

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[4] Hartigan's report for 2015 refers to the first two quarters of 2014.

upper end of what he described as the range for similar properties. For structural reserves, he turned to RealtyRates' investor survey for retail properties, which reported an average of $.57/sf. Based on the property's overall age and condition and his experience, Hartigan believed that amount was reasonable. *Pet'r Exs. A-D at 34-36.*

44. All told, Hartigan's expenses were 24% of his estimated EGI. According to Hartigan, that ratio was reasonable based on the improvements' overall age. For each valuation date, however, his projected unrecovered expenses from common area maintenance, utilities, and insurance were between roughly $310,000 and $638,000 more than the subject property's actual unrecovered expenses (excluding unrecovered real estate taxes) for the preceding calendar year. He ended up with projected net operating income ranging from $4,684,426 to $4,728,452 for the years under appeal, which was less than the subject property's historical NOI for each year. *Pet'r Exs. A-D at 34-36, Appendices (Historical Income Expense Data); Tr. at 32, 42-43.*

45. Having projected NOI for the property, Hartigan turned his attention to estimating an appropriate capitalization rate. He first derived a rate from six sales, four of which he had used in his sales-comparison analysis plus, one each from Logansport and Merrillville. The largest property was 101,087 square feet. Two sales were from 2012 and the rest were from 2014. The extracted rates for the two 2012 sales were 6.72% and 12.00%, respectively. The extracted rates from the 2014 sales were 7.10%, 7.12%, 8.50%, and 10.00%. *Pet'r Exs. A-C at 37-38; Pet'r Ex. D at 38-40; Tr. at 150-51.*

46. Hartigan also looked at CoStar's reported rates for retail buildings with more than 20,000 square feet within a five-mile radius of the subject property. The average reported rate was 8.2% for the first quarter of 2012. The rates declined steadily down to 7.39% in the second quarter of 2015. Hartigan also calculated a rate of 8.66% based on bands of investment, using the same inputs for loan-to-value ratio, amortization period, interest rate, mortgage constant, and equity-dividend rate for each year. *Pet'r Exs. A-C at 37-38; Pet'r Ex. D at 38-40; Tr. at 157.*

47. Despite the decreasing rates reported by CoStar, Hartigan settled on the same base capitalization rate of 8.5% for each year. According to Hartigan, there was still a lot of skepticism and risk in the market, even if some data showed cap rates decreasing and things improving in later years. He believed it was important to talk to ownership and get a grassroots feeling as to what was going on. According to Hartigan, looking only at power center data and things like Price Waterhouse surveys that tend to reflect exclusively the opinions of institutional investors does not give a sense of the general marketplace, which includes "mom-and-pop" and middle-grade investors. And through 2015, people other than institutional investors with very deep pockets were still struggling and were not yet ready to spend money. Hartigan explained that even though trends looked like they were going down, institutional investors were taking advantage of people looking to get out of the real estate market. When the Assessor pointed out that Hartigan accounted for improving market conditions through market-conditions adjustments in his sales-comparison analysis, Hartigan responded that the sales-comparison approach was not his primary approach. *Pet'r Exs. A-C at 37-38; Pet'r Ex. D at 38-40; Tr. at 32-33, 49, 55-56, 158-59.*

48. Hartigan settled on a base capitalization rate of 8.5% for each year, which he loaded with the landlord's share of real estate taxes due to vacancy and collection loss. He then used that loaded rate to capitalize his projected NOI for each year and arrived at the following values:

Year	**NOI**	**Loaded Cap Rate**	**Rounded Value**
2012	$4,719,697	8.66%	$54,500,000
2013	$4,728,452	8.63%	$54,790,000
2014	$4,728,452	8.63%	$54,790,000
2015	$4,684,426	8.57%	$54,660,000

Pet'r Exs. A-C at 38-39; Pet'r Ex. D at 39-40.

c. Reconciliation

49. In reconciling his conclusions, Hartigan gave secondary weight to the sales-comparison approach. He gave the income approach primary weight, explaining that he had good

quality of data for developing appropriate rental and capitalization rates. His final value conclusions therefore mirrored his conclusions under the income approach:

Year	Value
2012	$54,500,000
2013	$54,790,000
2014	$54,790,000
2015	$54,660,000

Pet'r Exs. A-D at 40.

50. As explained above, Hartigan excluded the Walmart addition and its land footprint in valuing the subject property. He did not view those as being part of his assignment. *Resp't Ex. R; Tr. at 24-25, 69-70*

2. Hall's Appraisal

51. The Assessor hired David Hall and Michael Lady, MAI appraisers for Integra Realty Resources, to appraise the subject property. They prepared comprehensive retrospective appraisal reports. Like Hartigan, they certified that they appraised the property and prepared their reports in conformity with USPAP. Only Hall testified. For ease of reference, we will refer to Hall as the appraiser and to the valuation opinions as his. *Resp't Exs. A at 212-13, B at 216-17, C at 217-18, D at 219-20.*

52. Like Hartigan, Hall estimated the market-value-in-use of the fee-simple interest in the property. Unlike Hartigan, Hall included in his appraisal the 84,800-square-foot Walmart addition that was part of the appealed parcels. *Resp't Exs. A-D at 4, 60.*

53. Because Hall did not get a clear answer on whether the freestanding restaurant improvements were part of the appeal, he estimated their contributory value in supplemental addenda to his appraisal reports. Although he may have referred to the addenda as supplemental reports in some instances, they were not standalone appraisals; instead, they were integral to his overall appraisals. In Hall's view, his chosen approach makes it easier for us to determine an appropriate value either way. If we decide that the

restaurant improvements should be included, we can add the values from the main reports and the supplemental addenda. If, on the other hand, we decide that the restaurants should be excluded, we can simply use the values from the main reports. Contrary to Crossings' assertions, Hall explained that he did not double count anything. *Resp't Exs. A-H*; *Tr. at 221, 237, 372, 414.*

a. Market-segmentation analysis

54. Hall performed a market-segmentation analysis, which he explained is often used synonymously with the term "market analysis." It is the process by which an appraiser analyzes the property being appraised and its competitive market. The appraiser tries to understand the context of the property and what sort of properties should be considered peers or competitors as well as what sorts of properties might offer supporting or complimentary uses. It helps the appraiser develop a framework from which comparable properties may be selected to analyze market sale prices or rents. Hall based his analysis on market research from a wide variety of sources, including CoStar, Loopnet, and his firm's own national database. *Resp't Exs. A-D at 27-37; Tr. at 214, 237.*

55. In Hall's view, the subject property had good access and exposure. It had greater than normal frontage along U.S. 30, exceeding even Southlake Mall's frontage. That is important, because drivers can see the property for a longer time. *Resp't Exs. A-D at 22-25; Tr. at 247-48.*

56. Turning to the improvements, roughly 75% of the leasable space (excluding the theatre) was made up of three categories: big box space; anchor space (which Hall described as space that might occupy as much as 100,000 square feet); and junior anchors space (which he testified can range from a little less than 25,000 square feet through roughly 40,000 square feet, but which he classified in his appraisal reports as spaces between 30,000 and 60,000 square feet). The buildings were of good construction quality, and Hall estimated their effective ages as being consistent with their actual ages. Because the property was more than 90% occupied and its mix of tenant space was well-suited for retail use, he found

no economic or functional obsolescence (except for the theatre building) beyond what a property of this type would normally experience as it ages. By contrast, he found that the theatre was completely obsolete and that it did not contribute anything to the subject property's value. He based his finding on the lack of market demand for a theatre building of its type, its lack of visibility from U.S. 30, the difficulty of retrofitting it for a different use, and Crossing's inability to lease it. *Resp't Exs. A at 62-63, 155, B at 62-63, 159, C at 62-63, 160, D at 62-63, 162; Tr. at 219-24, 262-63, 290-91, 433, 451.*

57. Hall compared the subject property's characteristics to descriptions for shopping center categories published by the International Council of Shopping Centers and CBRE, the world's largest commercial real estate services and investment company. The property was consistent with both sources' descriptions of a power center, based on things like size, land area, and space mix (70% to 90% anchor space). The property also had more frontage than is typical for other categories of shopping centers, such as neighborhood centers or community centers. Hall further concluded that it had characteristics matching CBRE's description of both Class A and Class B properties. Its tenant mix was consistent with Class A properties, which compete for "higher-quality" tenants. To make sure he was basing his opinion on market assumptions rather than the property's specific tenant mix, however, Hall viewed the property as a Class B power center, which competes for a "wide range" of tenants with rents in the average range for the area. While Hall acknowledged that there was some overlap between power centers and neighborhood centers in terms of gross leasable area, an investor looking for large format, big-box, value-oriented tenants would be more interested in power centers because of the mix of tenant space. *Resp't Exs. A-D at 28-31; Tr. at 222-24, 252, 418-19.*

58. Hall viewed the property's trade area—the area from which it draws customers—as Lake County, which is part of the larger Chicago-Naperville-Elgin IN-IL-WI metropolitan statistical area. He looked at economic and demographic information both for Lake County as a whole and for the subject property's neighborhood, which he defined as the U.S. 30 corridor between I-65 and Colorado Street. He concluded that the location had good highway access, supporting and complimentary uses, and market appeal. It also had good

demand generators, particularly the Southlake Mall, which Hall explained drew many potential customers to the area. *Resp't Exs. A-D at 14-37; Tr. at 243-47, 421-22.*

59. Turning to supply and demand, Hall examined trends in rental, vacancy, and capitalization rates for Lake County power centers. His data was not limited to any single class of buyers but instead reflected all power-center transactions. Average rental rates declined significantly between 2008 and 2012 but fluctuated within a relatively narrow range ($13.50/sf - $13.80/sf) from 2012-2015. Vacancy rates were relatively stable from 2012-2015 and were consistent with the subject property's historical experience during that period. Average capitalization rates spiked between 2008 and 2010, jumping from 7.55% to 8.71%. Rates then steadily declined between 2010 and 2015, falling from 8.71% to 7.5%. Rising rates normally correlate with decreasing investor demand and falling sale prices, while declining rates have the opposite effect. Indeed, average sale prices fell by a compound annual average of 11% between 2008 and 2010 but rose by a compound annual average of 5.9% between 2010 and 2015. The Lake County capitalization-rate trends mirrored national trends in the broader market for shopping centers. *Resp't Exs. A-D at 33-37; Tr. at 231-34.*

b. Valuation approaches

60. With those preliminary analyses in mind, Hall turned to valuation. He developed all three generally recognized approaches. Although Hall agreed with Hartigan that most investors in power centers do not base purchase decisions on the cost approach, Hall explained that investors nonetheless are well versed in construction costs. And he believed that the cost approach provided a useful test of reasonableness for the sales-comparison and income approaches. Also, because the cost approach does not consider income characteristics, it inherently estimates the value of a property's fee simple interest at stabilized occupancy. Hall therefore believes it is useful for appraising a property under Indiana's market value-in-use standard. *Resp't Exs. A-D at 12-13; Tr. at 239-40, 293-94.*

i. Cost approach

61. Hall began his analysis under the cost approach by estimating the value of the land as if vacant. He believed that the property was configured into two distinct sites: the outlot at the property's far west end and a larger site made up of the rest of the parcels. Based on the outlot's characteristics—its size and access from an internal drive off a signalized intersection and the fact that it was separately platted—as well as on his analysis of the market, Hall believed that the site would be marketed, sold, and rented or developed separately from the larger property. While he regarded the outlot as part of the power center complex, he believed it was appropriate to consider a separate set of comparable sales for it. *Resp't Exs. A-D at 39; Tr. at 249-50, 254, 436.*

62. For the outlot, Hall researched sales of comparable Lake County sites between one and 2.5 acres. He believed it was important to find sales that occurred before each assessment date because typical buyers and sellers theoretically could know about the transactions and use that data in making their decisions. He used sales as far back as 2008, reasoning that he had adequate data to credibly adjust the sale prices to account for differences in market conditions. *Resp't Exs. A-C at 94-104, D at 94-106*; *Tr. at 270-71.*

63. Hall settled on the same five Lake County sales for each valuation date. The sites sold for unadjusted prices ranging from $413,793/acre to $686,214/acre. He considered adjusting the sale prices along several lines, including transactional adjustments for things like differences in property rights, financing terms, conditions of sale, and market conditions. He also considered adjustments for location, frontage and accessibility, size, physical characteristics, and zoning or use. Based on the data from his market analysis, Hall adjusted for market conditions by applying a negative 15% per year from 2008 through 2010 and a positive 5% per year from 2010 through each valuation date. He adjusted one sale downward by 10% because it benefitted from the drawing power of an adjacent big-box store and it was from the wealthy town of St. John. He settled on values ranging from

$505,000/acre to $570,000/acre for the four valuation dates. *Resp't Exs. A-C at 94-104, D at 94-106; Tr. at 271-76.*

64. For the larger shopping center site, Hall looked for commercial sites of 10 or more acres from Lake, Porter, and St. Joseph counties that sold as far back as 2006. He located four sales that he used for all four appraisals, but he added between one and two additional sales for the post-2012 valuation dates. The sites ranged from 10.82 to 57.03 acres. He considered the same types of adjustments as he did for the outlot sales, and he used the same data and concluded rates for his market-conditions adjustments. But he made more adjustments for things like size, location, and frontage and accessibility than he made to his outlot sales, ultimately settling on values ranging from $160,000/acre to $190,000/acre for the four valuation dates. Hall explained that the per-acre value for the shopping center site could be viewed as a blended or weighted average. The restaurant parcels, which were closer to the road, would have higher contributory value than would areas toward the property's rear. If he were valuing the parcels separately, he would use different sets of comparable sales. *Resp't Exs. A-C at 105-15, D at 107-17; Tr. at 277-83, 339-40,427-28; 439-41.*

65. To value the improvements, Hall used replacement-cost data from Marshall Valuation Services ("MVS"). As explained above, he did not include the theatre because he found it offered no contributory value. Hall explained that MVS data does not include all indirect costs. Based on the subject property's size and complexity, he estimated those costs at 2% of total replacement costs. He also included entrepreneurial incentive or profit, which he estimated at 8% of total cost—the low end of the range indicated by his conversations with developers and contractors and approximated by the reported equity dividend rates for anchored retail shopping centers. *Resp't Exs. A-C at 116-24, D at 118-26; Tr. at 283-86.*

66. Hall then used the economic age-life method to calculate depreciation for the buildings and site improvements. He estimated the buildings' effective ages as consistent with their actual ages and the site improvements as being at one half their lifespans. As already

noted, he found no functional or external obsolescence beyond what was inherent in his age-life depreciation. He arrived at the following values for each year:

	2012	**2013**	**2014**	**2015**
Replacement Cost New	$82,171,139	$85,971,067	$88,834,149	$90,676,913
Depreciation	- $28,458,806	- $31,470,787	- 34,221,055	- $36,723,461
Rounded Depreciated Cost	$53,710,000	$54,500,000	$54,610,000	$53,950,000
Outlot Land	$720,000	$760,000	$790,000	$820,000
Shopping Center Land	$9,120,000	$9,690,000	$10,260,000	$10,830,000
Rounded Total	$63,550,000	$64,950,000	$65,660,000	$65,600,000

Resp't Exs. A-C at 122-28, D at 124-30.

ii. Sales-comparison approach

67. Hall began his sales-comparison analysis by looking for substitute properties. His market-segmentation analysis guided the criteria for his search, in which he looked for sales that:

- Involved retail shopping centers between 300,000 and 900,000 square feet that were built or renovated between the 1990s and 2000s,
- Were from suburban communities, and
- Occurred from 2010 through the valuation years at issue.

Resp't Exs. A-C at 129, D at 131; Tr. at 296-99.

68. Unlike Hartigan, Hall did not limit his search to Indiana because there were very few power centers with 600,000 square feet or more of leasable space in the state. In applying the sales-comparison approach, the goal is to find properties that are of similar utility to, and that would be substitutes for, the property being appraised. Size is an important component to that equation. In Hall's opinion, a 100,000-square-foot big-box store would not be a substitute for the subject property. An investor looking for properties of the subject property's type therefore would consider alternative properties from a much broader geographic area than just Lake County or even just Indiana. Because Hall's firm has offices across the country, he was able to get a fair amount of data for all his sales. *Tr. at 226-28, 299-303.*

69. Hall settled on the following eight sales:

	Sale 1	Sale 2	Sale 3	Sale 4
Location	Governor's Pointe Mason OH	Regal Ct. Shreveport, LA	Colonial Commons Harrisburg, PA	Burbank Station Burbank, IL
Sale Date	Feb. 2010	May 2010	Jan. 2011	Nov. 2012
Sale Price	$27,500,000	$43,500,000	$51,000,000	$34,000,000
Unit Price	$76.39/sf	$126.65/sf	$104.72/sf	$112/sf
Bldg. Size	360,001 sf	343,470 sf	487,000 sf	303,566 sf
Year(s) Built	1997	2008	1991	1993
Occupancy	100%	98%	94%	98%
	Sale 5	**Sale 6**	**Sale 7**	**Sale 8**
Location	Carolina Pavilion Charlotte, NC	Riverside Center Utica, NY	Rivertowne Commons Oxon Hill, MD	The Shoppes at South Hills Poughkeepsie, NY
Sale Date	Dec. 2012	Sep't 2013	Oct. 2013	Dec. 2014
Sale Price	$106,000,000	$60,500,000	$58,500,000	$48,300,000
Unit Price	$124.29/sf	$83.79/sf	$152.21/sf	$93.47/sf
Bldg. Size	852,826 sf	722,084	384,343 sf	516,769 sf
Year(s) Built	1995-1997	1973	1986	2008 (1979)[5]
Occupancy	94%	94%	89%	86%

Some of the properties were near interstate highways and all had frontage along a major thoroughfare. Similarly, all the properties had a mix of inline, anchor, and jr. anchor space. Some of the properties had outlots or outbuildings. Hall used sales 1-5 for his 2012 and 2013 appraisals, sales 1-7 for his 2014 appraisal, and all eight sales for his 2015 appraisal. *Resp't Exs. A at 130-49, B at 130-53, C at 130-54, D at 132-56; Tr. at 304-05.*

70. As with his vacant land sales, Hall analyzed whether the shopping center sales should be adjusted for differences between those sales and his posited fee-simple transaction for the subject property as well as for various other differences between the properties. *Resp't Exs. A at 138-49, B at 142-53, C at 143-54, D at 145-56.*

71. He began with real property rights transferred. Although all the sales involved a leased-fee interest, meaning that the properties sold with tenants in place, Hall explained that using leased-fee sales to estimate the value of a fee-simple interest is accepted appraisal practice. As explained by the 14th edition of The Appraisal of Real Estate, a leased-fee sale may be used in valuing the fee-simple interest of another property only if reasonable and supportable adjustments for the differences in rights can be made. The appraiser must

[5] The shopping center was originally built in 1979 but was partially demolished and redeveloped/converted in 2007-2008. *Resp't Exs C at 131, D at 133.*

determine if the contract rent was above, below, or equal to market rent. According to Hall, assuming no other differences, a property leased at market rent would be expected to have a value that approximates the value of the fee-simple interest. Hall adjusted Sale 3 downward by $3 million to reflect a sublease. For the remaining sales, his review of local rental data suggested that each property had leasing characteristics that were typical of the market at the time of sale. *Resp't Exs. A at 138-40, B at 142-44, C at 143-45, D at 145-47.*

72. The only other transactional adjustment that Hall found was warranted was an adjustment for market conditions. He used the same Lake County data that he used in his analysis of land sales. Because the market for the subject property was wider than just Lake County or Indiana, Hall compared the Lake County data to national data for power centers, which reflected similar trends. He ended up using the same concluded rates of market appreciation and depreciation that he employed to analyze his land sales. *Resp't Exs. A at 140-44, B at 144-48, C at 145-49, D at 147-51*; *Tr. at 306.*

73. Hall then turned to differences in location appeal between the subject property and his comparable properties, which he broke down into different components: (1) demographics, and (2) location and access. Starting with demographics, he judged potential customer demand by looking at the population, population growth, and household income for each property's primary trade area. Those were the demographic factors brokers, buyers, and sellers of power centers wanted to know. Hall qualitatively rated the properties under each factor and came up with overall adjustments ranging from -20% to 5%. For the other location component, Hall explained that all the properties were located either on the far suburban fringe of a large city or within the corporate limits of a smaller city or town, and that they all had similar appeal to the subject property in that regard. *Resp't Exs. A at 145-46, B at 149-50, C at 151-52, D at 152-54; Tr. at 308, 310-11, 462.*

74. Hall's remaining adjustments were for size, age and condition, and economic characteristics. He adjusted Sale 5 upward because its size was near the upper limit of the typical market range for power centers, reasoning that the pool of potential buyers would be smaller and marketing time would be longer. And prices for properties that size tend to

be lower compared to smaller properties. He did not adjust the other sales, explaining that buyers and sellers do not draw distinctions in unit price for properties within the typical 300,000 to 600,000 square foot range for power centers. Hall adjusted prices by 1% per year for differences in effective age. He determined that amount by looking at the average depreciation rate indicated by the typical building life for most retail buildings, but also recognizing that depreciation rates tend to slow as time passes. *Resp't Exs. A at 146-48, B at 151-53, C at 152-54, D at 154-56; Tr. at 464.*

75. Turning to economic characteristics, Hall explained that the comparable properties had a similar mix of space type as the subject property. After looking at CoStar leasing histories and interviewing colleagues from Integra's affiliated offices in the comparable properties' markets, he determined that the properties were leased at rates within the normal market range. *Tr. at 315-16.*

76. Hall also looked at how the comparable properties' occupancy rates compared to the market occupancy rate of 94.5% that he had projected for the subject property based on its leasing history and local market trends. Even though the first property was 100% occupied, Hall adjusted its sale price upward by 15%. Unlike the subject property, 40% of the space was leased to a single tenant that was struggling, which increased the property's risk. He similarly adjusted Sale 8 upward by 10% for its inferior occupancy. He adjusted Sale 2 downward by 10% because (1) it had superior occupancy (98%) and its tenant mix consisted primarily of national chains with the remaining tenants signed to leases for 5 to 10 years, and (2) it had a proven history of stable cash flow with the two largest anchor tenants signed to long-term ground leases. Both those factors suggested superior market appeal. *Resp't Exs. A at 146-48, B at 151-53, C at 152-54, D at 154-56*; *Tr. at 312-15, 456.*

77. In reconciling his data, Hall gave the greatest weight to the average of the adjusted comparable sale prices and multiplied that unit price by the subject property's building area (excluding the theatre and restaurant buildings):

Year	Range	Average	Indicated	Rounded Value
2012	$90.07/sf - $104.02/sf	$100.43/sf	$100/sf	$60,760,000
2013	$88.06/sf - $110.68/sf	$102.78/sf	$102/sf	$61,970,000
2014	$91.73/sf - $114.84/sf	$104.71/sf	$105/sf	$63,800,000
2015	$95.31/sf - $118.84/sf	$108.33/sf	$108/sf	$65,620,000

Resp't Exs. A at 140-50, B at 153-54, C at 154-55, D at 156-57.

iii. Income approach

78. Like Hartigan, Hall began his analysis under the income approach by estimating market rent for the subject property. But he segregated the types of space into eight different categories:

- Small: spaces up to 5,999 square feet (12 spaces)
- Medium: spaces from 6,000 to 15,999 square feet (7 spaces)
- Large: spaces from 16,000 to 29,999 square feet (2 spaces)
- Jr. Anchor: spaces from 30,000 to 60,000 square feet (6 spaces)
- Anchor: a 102,788-square-foot space occupied by Burlington Coat Factory
- Big Box: an 84,800-square-foot portion of the larger 206,408-square-foot Wal-Mart building
- Ground leases
- Farm lease

Resp't Exs. A at 155-56, B at 159-60, C at 160-61, D at 162-63.

79. Hall focused his search for the small, medium, large, and jr. anchor categories on retail spaces from Lake County. He looked to Northern Indiana for comparable ground leases, and he expanded his search for the anchor and big box categories to Indiana, Illinois, and Michigan. He found ten comparable leases for small space, five for medium, four for large, four for jr. anchor, and the same six leases for both the anchor and big-box categories. One of the jr. anchor leases (Lease 4) was a newly negotiated lease between the landlord and the

entity that bought the existing tenant. Two of the anchor/big box leases (Leases 2 and 3) were build-to-suit leases, and a third (Lease 6) was a 2015 extension of a lease that had originally been signed in 1990. All the leases were triple net. Hall did not have any information on the actual land covered by the farm lease listed in Crossing's rent rolls, so he could not identify comparable leases. He therefore assumed that the contract rent ($3,243/yr.) was at market and he used that amount in his income projections. *Resp't Exs. A at 153-92, B at 158-196, C at 159-97, D at 161-99; Tr. at 330, 469-75.*

80. For his ground leases, Hall used four leases to restaurants and one to a bank. The sites ranged from 29,185 to 117,612 square feet (.67 to 2.7 acres). They rented for rates between $60,000 and $123,500 per year. Hall was not given legal descriptions for the leases at the subject property and therefore did not know how much land they encompassed. He assumed they covered more than just the building footprint, explaining that ground leases typically include additional land for things like parking, drive-thru lanes, and landscaping. Indeed, the ground leases for his comparable properties included land beyond the building footprints. Even if the leases at the subject property were just for the building footprint, the tenants would need to use other areas for things like parking. Hall therefore made the market assumption that the leases at the subject property would be between roughly .5 and 3 acres, with an average of about 1.5 acres. *Resp't Exs. A at 187-91, B at 191-95, C 192-96, D at 194-98; Tr. at 343-46, 480, 487, 503-04, 532.*

81. Hall explained that appraisal practice allows for various units of comparison for ground leases, including price per square foot, price per acre, and price per site. Based on the lack of legal descriptions for the subject property's ground leases and the fact that, with one exception, the total rent for the six leases fell within a fairly narrow range, Hall believed it was reasonable to use rent-per-site as the unit of comparison. He also noted that local market participants sometimes view ground leases in that way. He acknowledged that rent varies a little with total land area, and that some restaurants, like McDonalds, would need less land than others, like Chuck E. Cheese. But he was looking at what the average would be. *Resp't Exs. A at 187-91, B at 191-95, C 192-96, D at 194-98; Tr. at 343-46, 500-01.*

82. According to Hall, ground leases are fairly common in power centers; indeed, he noticed a few in his sales-comparison analysis. And he had a good amount of data to estimate market rent for the ground leases. Hall rejected the notion that ground leases inherently include intangible value, such as business value or going-concern value. For support he quoted from page 371 of the Appraisal of Real Estate (14th ed.):

> Ground rent is the amount paid for the right to use and occupy the land according to the terms of a ground lease. . . .[I]f the current rent of a parcel corresponds to the market rent for comparable parcels with similar highest and best use[s], the value indication obtained is likely to be equivalent to the market value of the of the fee simple estate of the land.

Tr. at 326-29.

83. Unlike in his sales-comparison analysis, Hall used the same leases for all four valuation dates. The leases for the small, medium, large, and jr. anchor categories all began between May 2009 and November 2015. The leases for the other two categories had start dates ranging from October 2006 to October 2015. Ideally, Hall would have preferred to use leases from before each valuation date. But he had more confidence in using post-valuation date leases in his rent analysis because he had very good data showing stability in rental rates for power centers from 2012-2015. That, coupled with the fact that he knew he was appraising the property for four years, led him to believe it was appropriate to use post-valuation-date leases. The ground leases had start dates between September 2007 and October 2014. *Resp't Exs. A at 155-91, B at 159-95, C at 160-97, D at 162-99; Tr. at 336-37, 448.*

84. Next, Hall analyzed and adjusted the leases using several elements of comparison: expense structure, conditions of lease, market conditions, market area and location, retail drawing power, size, and age and condition. He based his quantitative market-conditions adjustment on rental rates for Lake County power centers, which showed a gradual decline from 2008 to 2012 and relative stability from 2012 through 2015. He therefore adjusted lease rates downward by 2% per year through 2012. *Resp't Exs. A at 155-91, B at 159-95, C at 160-97, D at 162-99; Tr. at 336.*

85. While Hall acknowledged that some build-to-suit leases are financing mechanisms, he did not adjust either of the build-to-suit leases in his anchor/big box analyses to account for that. He found that the rental rate for Lease 2 fell within the market range indicated by his other comparable leases. And he spoke to appraisers from an affiliate office who had appraised Lease 3 (a Walmart store) and found that its rental rate was at market. He similarly did not adjust Lease 6 to account for the fact that it was an extension, even though he acknowledged that it would be atypical for a landlord to market the property to other potential tenants while negotiating an extension. *Tr. at 472-74.*

86. Hall then qualitatively analyzed the leases under the remaining elements of comparison and determined overall qualitative adjustments. He came up with potential gross rent between $5,946,087.50 and $5,954,657.50 for each year, which was based on his analysis of the comparable leases and the subject property's leasing history:

Type	Indicated Comp. Range	Subject Average Range (2012-15)	Indicated
Small	$20.53 - $26.09	$23.65 - $24.03	$24.00/sf
Medium	$11.78 - $16.46	$14.98 - $17.69	$15.50/sf
Large	$8.00 - $11.50	$9.62 - $10.12	$10.00/sf
Jr. Anchor	$6.00 - $7.21	$7.50 - $7.75	$7.00/sf
Anchor	$5.31 - $6.51	$6.32	$6.25/sf
Big Box	$4.50 - $5.04	$4.34	$4.50/sf
Ground	$109,058 - $112,382[6]	$99,305 - $106,305	$100,000

In his reconciliation for the anchor/big box spaces, Hall testified that he gave the most weight to Leases 4 and 5. His appraisal reports, however, suggest that he gave the most weight to Leases 3 and 4 for the anchor space and Leases 1 and 2 for the big box space. He gave the least weight to Lease 6, partly because it was an extension. *Resp't Exs. A at 155-91, B at 159-95, C at 160-97, D at 162-99; Tr. at 474-75, 530-31.*

87. Even though Hall used the same comparable leases for the anchor and big-box spaces, he projected different rates because of his differing qualitative size adjustments. To avoid overestimating market rent, he did not analyze the 84,800-square-foot Walmart addition as if it were a standalone building that would be leased separately from the rest of the store.

[6] The indicated range was from Hall's first two comparable ground leases. The other three ranged from $59,602 to $79,355. *Resp't Exs. A at 191, B at 195, C at 196, D at 198.*

Instead, he estimated the unit rate that the larger 206,408-square-foot store would lease for and allocated the rent attributable to the addition by multiplying that unit rate by 84,800 square feet. *Resp't Exs. A at 177-86, B at 181-90, C at 182-91, D at 184-93; Tr. at 320-22, 342.*

88. Unlike Hartigan, Hall added expense reimbursements (except real estate taxes, which like Hartigan, he loaded into his capitalization rate) to the property's potential gross rent. Hall acknowledged that variations in expense structure can affect rental rates. For example, rent under a single-net lease might be higher than under a triple-net lease because the tenant would pay fewer expenses. In any case, Hall explained that in a fee-simple appraisal, the market should determine the expense structure. Based on his analysis of the market, he determined that a triple-net structure was the most prevalent expense structure for power centers. Under that structure, tenants normally reimburse landlords for their pro-rata share of real estate taxes, insurance, and common-area maintenance (including utilities that are not individually metered). With one or two exceptions, that was also true at the subject property. *Resp't Exs. A at 192-98, B at 199-202, C at 200-03, D at 202-05; Tr. at 323-24; 466-68.*

89. Hall labeled the reimbursements as CAM. Of the components he included in CAM, he estimated insurance at $.10/sf and common-area maintenance ranging from $911,366 to $911,384. Because Hall determined expenses (and reimbursements) based on building area, and his analysis of the shopping center did not include the restaurant buildings, he did not include any reimbursement income for the ground leases. Indeed, ground leases would normally be absolute net, with the tenant directly paying all its own maintenance expenses. *Resp't Exs. A at 192-98, B at 199-202, C at 200-03, D at 202-05; Tr. at 485, 499.*

90. To estimate a vacancy rate, Hall examined the subject property's historical rates as well as the rates for other Lake County power centers. He gave the greatest weight to the market and projected 5.5% vacancy and collection loss for each year. He then applied that rate to the property's potential gross income to arrive at effective gross income ("EGI") for each year. *Resp't Exs. A at 195, B at 199, C at 200, D at 202; Tr. at 228-32, 354-56.*

91. From that EGI, Hall arrived at NOI by deducting CAM as well as two non-reimbursable operating expenses: a management fee and replacement reserves. To estimate a management fee, he examined the property's historical expenses as well as data from PwC for the national power-center market. He settled on a fee equaling between 2.8% and 3.2% of EGI for the years in question, which was close to the average indicated by PwC data but lower than the property's historical management expenses. For replacement reserves, he again used the averages from PwC. *Resp't Exs. A at 198-99, B at 202-03, C at 203-04, D at 205-06; Tr. at 357-59.*

92. For comparison, Hall looked at the expenses reported for three comparable shopping centers. In some cases, including insurance, they bracketed both Hall's projection and the subject property's historical experience. In others—such as common-area maintenance, where both Hall's projection and the subject property's experience were higher for most years—they did not. Hall, however, explained that property owners vary in how they report things like CAM and general administrative expenses, and he tried to take that into account. *See Resp't Ex. A at 197, B at 201, C at 202, D at 204*; *Tr. at 350-51.*

93. Moving to capitalization rates, Hall looked at four data sets: Co-Star's reported rates for Lake County power centers; rates extracted from seven sales of comparable properties, three of which were included in his sales-comparison analyses; rates for power centers reported in two national investor surveys; and rates developed through a band-of-investment analysis. Taking the rounded average of those sources, Hall settled on the following rates: 8.3% (2012), 8.1% (2013), 7.6% (2014-15). He then loaded those rates with a percentage of the tax rate attributable to periods of vacancy. *Resp't Exs. A at 201-06, B at 205-10, C at 206-11, D at 208-13; Tr. at 363-70, 392.*

94. Hall then applied his loaded capitalization rates to the property's projected NOI to reach a value conclusion for each year:

Year	NOI	Loaded Cap Rate	Rounded Value
2012	$5,160,970	8.45%	$61,080,000
2013	$5,160,341	8.25%	$62,550,000
2014	$5,161,329	7.75%	$66,600,000
2015	$5,188,252	7.75%	$66,950,000

Resp't Ex A at 207; Resp't Ex. B at 211; Ex. C at 212; Ex. D at 214.

c. Reconciliation

95. Finally, Hall reconciled his conclusions under the three valuation approaches to determine a value for the property, excluding the six freestanding restaurant buildings. In his reports, Hall said that based on the extent and quality of data, practices typical of the market, and the definition of market value-in-use, he gave similar weight to all three approaches. But at hearing, he testified that he "probably" gave the cost approach less weight because it did not specifically account for income characteristics. In any case, he arrived at the following values:

Year	Cost	Sales	Income	Value
2012	$63,550,000	$60,760,000	$61,080,000	$62,000,000
2013	$64,950,000	$61,970,000	$62,550,000	$63,000,000
2014	$65,660,000	$63,800,000	$66,600,000	$65,000,000
2015	$65,600,000	$65,620,000	$66,950,000	$66,000,000

Resp' Exs. A at 208, B at 212, C at 213, D at 215; Tr. at 370-71.

d. Supplemental addenda for restaurant improvements

96. As explained above, Hall prepared supplemental addenda in which he valued the six freestanding tenant-owned restaurant improvements. He applied the cost and sales-comparison approaches to value those improvements. *Resp't Exs. E-H*; *Tr. at 372-73.*

97. Hall's analysis under the cost approach largely mirrored his analysis for the larger property. In Hall's view, the restaurants had several characteristics consistent with good or even excellent quality buildings described in MVS. But he used replacement costs for average

quality buildings to eliminate anything that might be attributable to a brand or franchise for a retail chain. As with the other buildings, he added indirect costs not included in the MVS data. But he did not include anything for entrepreneurial incentive, explaining that the improvements were built for owner occupiers and that there were no known industry surveys covering profit for buildings exclusive of land. He used the economic age-life method to estimate depreciation and found no economic or functional obsolescence. He arrived at values ranging from $4,100,000 to $4,320,000 for the years at issue. *Resp't Exs. E-H at 12-21; Tr. at 374-76, 378-79.*

98. For his sales-comparison analysis, Hall looked for sales of northern Indiana restaurants built between the 1980s and 2000s with at least 2,500 square feet. He identified six such sales between February 2008 and December 2014: five from Lake County and one from Fort Wayne. The buildings ranged from 2,789 to 7,607 square feet and the properties sold for unadjusted prices ranging from $82.86/sf to $127.01/sf. *Resp't Exs E-H at 22-25.*

99. Hall adjusted each sale price by subtracting the contributory value of the underlying land and site improvements. To determine that contributory value, he analyzed land sales from each property's market area and came up with a per-acre value, which he then multiplied by the land area for each site. Although Hall did not include the land sales in his addenda, he testified that there were plenty to choose from in Lake County, and some of the data he analyzed was included in the land value section of his main reports. He used largely the same methodology to determine his other adjustments as he used in his sales-comparison analysis of the rest of the shopping center. Based on the adjusted sale prices, Hall settled on unit values ranging from $95/sf to $105/sf and total values ranging from $3,920,000 to $4,620,000 for the four valuation dates. One of the restaurant buildings expanded in 2015, which contributed to an increase in value. *Resp't Exs. E-H at 26-32; Tr. at 381-83, 411, 515.*

100. Hall reconciled his conclusions under the two approaches as follows:

Year	Cost	Sales	Value
2012	$4,150,000	$3,920,000	$4,050,000
2013	$4,140,000	$4,040,000	$4,100,000
2014	$4,100,000	$4,200,000	$4,150,000
2015	$4,320,000	$4,620,000	$4,450,000

Resp't Exs. E-H at 33; Tr. at 384.

e. Overall value

101. Finally, Hall explained that if we decide the tenant-owned restaurant buildings should be included in the property being valued on appeal, we simply need to add the conclusions from his supplemental addenda to those from the body of his report:

Year	Report	Addendum	Total Value
2012	$62,000,000	$4,050,000	$66,050,000
2013	$63,000,000	$4,100,000	$67,100,000
2014	$65,000,000	$4,150,000	$69,150,000
2015	$66,000,000	$4,450,000	$70,450,000

102. Although Hall analyzed the contributory value of the restaurant buildings separately in his supplemental addenda, he explained that his conclusions probably would have been very similar had he simply included those buildings as part of the property's total building area and applied the unit prices from his sales-comparison analyses in the main reports. *Tr. at 567-69.*

V. Conclusions of Law and Analysis

A. Burden of Proof and Valuation Standard

103. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Various statutes create an exception to that rule. The most cited statute, Indiana Code § 6-1.1-15-17.2, assigns the burden to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful

appeal of the prior year's assessment, regardless of by how much. I.C. § 6-1.1-15-17.2(a)-(b), (d).

104. The parties agree that Crossing had the burden of proof for the 2012 valuation date. The burden for later years necessarily depends on the value we determine for 2012. In any case, the question is largely moot. Assigning the burden typically matters only where the parties fail to offer probative evidence from which to determine the appealed property's true tax value. Here, we have sufficient evidence to make that determination.

105. In Indiana, real property is assessed based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r,* 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

106. A valuation does not reflect the true tax value of an improved property if the purportedly comparable sales "have a different market or submarket than the current use of the improved property based on a market segmentation analysis." I.C. § 6-1.1-31-6(d). Market segmentation analyses "must be conducted in conformity with generally accepted appraisal principles" and are not limited to the categories of markets and submarkets laid out in the DLGF's rules or guidance materials. *Id.*

B. Hall's Valuation Opinions Are More Reliable than Hartigan's Opinions

107. We find Hall's valuation opinions far more credible that Hartigan's opinions. We do so both because of the overall quality and detail of Hall's research and analysis compared to Hartigan's, and because we find Hall's underlying approaches more credible and supported on several key issues over which the two appraisers differed.

1. Hall's opinions were of far higher overall quality and were based on more detailed research and analysis than were Hartigan's opinions.

108. We begin with the stark differences in the quality and detail of the two appraisers' research and analysis. Hall developed all three generally recognized approaches to value, providing helpful checks on the reasonableness of his conclusions under any one approach. Hartigan, by contrast, excluded the cost approach. By itself, that is not troubling. Even Hall recognized that market participants do not give that approach much weight when dealing with power centers. But we seriously question the accuracy of Hartigan's statement that, given the quantity and quality of data supporting the other two approaches, excluding the cost approach would not affect the credibility of his valuation conclusions. As explained below, Hartigan's purportedly comparable sales were so dissimilar to the subject property as to make his conclusions under the sales-comparison approach meaningless. That left him with only one arguably viable approach and nothing by which to check the reasonableness of his conclusions.

109. In keeping with his more comprehensive methodology, Hall thoroughly researched the market and frequently based his judgments on market data. For example, he scrutinized the subject property and the segment of the market in which it competed. That, in turn, informed several of his key judgments, such as choosing comparable sales. Hartigan, by contrast, did little to segment the market, and he struggled to identify the market-based categories into which his comparable sales fit. Indeed, when pressed on whether, in practice, a buyer of the subject property could come from the same investor pool as the buyers of his comparable properties, Hartigan flippantly responded: "I don't have that

much money. I don't know. I've never played with $50 million and bought a property." *Tr. at 81-82.*

110. Unlike Hartigan, Hall was able to confirm most of his comparable sale and lease data with parties to the transactions or other appraisers. And he largely relied on market data when considering whether to adjust the sale prices and rents for his comparable properties and leasable spaces. Conversely, Hartigan was unable to confirm most of his comparable sale and lease data. And he offered scant other market data to support his valuation opinions. For example, he acknowledged that neither his appraisal reports nor work files had any traffic counts or other demographic information for any of his comparable sales. Similarly, when asked at hearing what he based many of his adjustments on, Hartigan responded only that they were based on his opinion.

2. Hall's opinions were more credible regarding most of the issues on which the two appraisers differed.

111. Those overarching observations also play into some of the specific issues over which the two appraisers differed:
    - The sales Hall and Hartigan chose for their sales-comparison analyses.
    - The market rents and expense structures under their respective income approaches.
    - Their capitalization rates.
    - The extent to which each appraiser did or did not treat the property as a single economic unit, including their differing treatment of the Walmart addition, their choices concerning the freestanding restaurants that were leased on ground leases, and Hall's treatment of the outlot in his land analysis.
    - Their differing treatment of the vacant theatre.

a. Hall used time-adjusted sales of similar power centers from comparable market areas in his sales-comparison approach, while Hartigan used incomparably sized retail properties from other market segments and did not analyze their locations.

112. As already discussed, Hall analyzed the market segment in which the subject property competes—similarly sized power centers located in suburban communities—which in turn

helped him identify sales of properties that would be true substitutes for the subject property. Because there were no sales of such properties from Indiana, Hall expanded the geographic scope of his search. We are persuaded by his explanation that investors who buy such properties do not limit their activity to a single state.

113. Crossing argues that Hall chose most of his comparable sales from areas with different regulatory and tax regimes than Indiana, although Crossing did not offer any evidence comparing those regimes. And it faults Hall for not examining real estate prices in the areas from which he drew his sales and comparing those prices to real estate prices in Lake County. Of course, as explained below, Hartigan did not do that for his sales from other areas within Indiana either. Regardless, Hall examined key location-related factors that drive markets for power centers, such as traffic counts, demographics, and supporting and complimentary uses.

114. Unlike Hall, Hartigan artificially chose to limit his search to Indiana because he did not feel comfortable using out-of-state sales when appraising properties for ad valorem tax purposes, although he did use such sales when appraising properties for financing. He did not adequately explain why doing so would lead to a credible opinion in one and not the other. To justify his decision, Hartigan pointed to conversations with investors who, for example, would be happy to invest in Indiana but not in Cook County Illinois and collar counties because of their tax systems. Hartigan believes that adjusting for differences in tax systems is more difficult than adjusting for differences in building size.

115. Of course, Illinois is only one state. That hardly means investors who buy properties in Indiana do not consider any other states. Indeed, Hartigan acknowledged that some out-of-state institutional investors buy properties like the subject property. That did not sway him, however, because he believed that appraisers should rely on the general marketplace when valuing property for ad valorem tax purposes. And according to Hartigan, the general marketplace includes "mom and pop" investors who have different investment criteria than institutional investors. But his flippant answer concerning whether a buyer of the subject

property would, as a practical matter, come from the same investor pool as his comparable properties belies his approach.

116. So does his claim that institutional investors with deep pockets were taking advantage of "mom-and-pop" and middle-grade investors who were seeking to get out of the market. If anything, Hartigan's claim shows that institutional investors were an important, if not the most important, component of the investor pool from which a buyer of the subject property would likely have emerged. Because those investors would not limit their search for competing alternate investment opportunities to Indiana, we are troubled by Hartigan's choice to limit his search in that way. His methodology might even run afoul of the market-segmentation guidelines from I.C. § 6-1.1-31-6(d). At a minimum, it undermines the credibility of his conclusions.

117. Hartigan's decision to limit his search to sales from Indiana led him to choose properties that were unlike the subject property in almost all relevant respects. They were a fraction of the subject property's size and none were power centers. One was not even a shopping center: it was a single-tenant Kohl's store. Hartigan's sales may not have been from areas with similar demographics. We do not know for sure because Hartigan apparently did not examine demographic information. He certainly did not provide that information in his appraisal reports, work files, or testimony.

118. The two appraisers also differed over whether to use sales that pre-dated the 2008 recession and its immediate aftermath. Neither appraiser's approach strikes us as necessarily wrong. Hall's detailed analysis of changing market conditions allowed him to confidently apply adjustments to sales pre-dating the recession, which in turn allowed him to use only sales that market participants could have known about on each valuation date. Hartigan, who did not perform anything approaching Hall's analysis of changing market conditions, did not feel comfortable using sales from before 2012. While that led him to use data from after the valuation date in many instances, the Assessor points to no authority automatically invalidating that approach either. Hall and Hartigan both used post-valuation-date data in estimating market rent.

b. Hall's estimates of market rent and expenses were more consistent, better supported, and more methodologically sound than were Hartigan's estimates.

119. Hall and Hartigan also differed in how they determined market rent and expenses under the income approach. Again, we find Hall's methodology more reliable. He stratified the space at the subject property into market-driven categories, such as anchor, jr. anchor, and big box, as well as into other size-based categories. We find that approach more persuasive than Hartigan's decision to divide all the space into three size-based categories. Indeed, Hartigan lumped all space of more than 25,000 square feet into a single category for which he used only three comparable leases, even though that space composed most of the subject property's leasable area.

120. That does not mean Hall's data was perfect. Of the six leases he used for his anchor and big-box categories, two were for build-to-suit spaces, which Hall acknowledged can be financing mechanisms, and a third was an extension of an existing lease. Hall confirmed that one of the build-to-suit leases (Lease 3) was at market rent and therefore used it without any adjustment for lease conditions. But his justification for using the other build-to-suit lease (Lease 2) without adjusting it—that it fell within the market range indicated by his other comparable leases—strikes us as a little circular.[7] We harbor more significant doubts about his use of the lease extension, given that the landlord likely did not expose the space to the market before negotiating the extension. But our concerns do not significantly detract from the reliability of Hall's rent projections. He gave the least weight to the extension, and he had other non-build-to-suit leases, although his report (but not his testimony) indicates that he gave significant weight to Lease 2 in projecting rent for the big box space.

121. The two appraisers also disagreed as to how to structure expenses: Hall examined the market and determined that properties like the subject property typically use a triple-net

[7] Nonetheless, Hall followed the Tax Court's guidance and exercised caution in using build-to-suit leases. *See Southlake Ind., LLC v. Lake Cnty. Ass'r,* 135 N.E.692, 697 (Ind. Tax Ct. 2019) (explaining that, while using sale-leaseback and build-to-suit transactions is not prohibited, appraisers must exercise caution and adjust rent to remove any non-realty interests or show that that the rent reflects the market value of the real property alone).

expense structure, which matched the structure from his comparable leases. Consistent with that structure, Hall projected reimbursements for CAM (including insurance) as part of the property's potential gross income. And despite Crossing's claims otherwise, Hall accounted for the landlord bearing the CAM expense during periods of vacancy. He estimated EGI by applying a market rate for vacancy and collection loss to his potential gross income, which included CAM reimbursements. He then subtracted operating expenses, including CAM, from his EGI. It is true that the subject property's owner shouldered a portion of CAM expenses beyond those attributable to vacancy, likely due to some smaller tenants signing leases with different expense structures. But those tenants also likely paid higher rent than if they had signed triple-net leases. And Hall made the market assumption, supported by confirmed leases for comparable space, that all the leases would be triple net. We find no error in Hall applying market rent and market expenses in his analysis.

122. Hartigan, by contrast, did not clearly articulate how he treated expenses. Part of the confusion stemmed from his loose use of the term "net lease." At times, he appeared to use that term to refer to an expense structure where the tenant is responsible for all expenses and pays those expenses directly instead of reimbursing the landlord. At other times, he seemed to be using the term to mean a structure where the tenant is responsible for some, but not all, expenses that it would be responsible for under a triple-net structure. In its post-hearing brief, Crossing alternately argues that Hartigan posited (1) a "single net" structure where the landlord recovered only real estate taxes from tenants, and (2) a "modified gross lease" structure. *Petitioner's Brief at 6, 13, 20.*

123. As best we can tell, however, Hartigan used a "hybrid" structure where he projected tenants being responsible for more than just real estate taxes, but less than the full array of expenses assigned to a tenant under a triple-net structure. We have no qualms with his basic assertion—that not every tenant in all shopping centers will sign a pure triple-net lease. As he explained, some inline tenants, like nail salons, may sign modified-net leases with expense stops, while national credit-rated tenants, like banks or Walgreens stores, will sign leases making them directly responsible for virtually all expenses. Of course, we are

dealing with a power center, where most of the leasable area is more likely to attract national retailers than local nail salons. In any case, Hartigan did not describe what his posited hybrid structure entailed: he just gave raw numbers for expenses that he asserted the owner would bear, whether due to vacancy or negotiated allocation. His owner-borne common-area-maintenance and insurance expenses were significantly higher than the corresponding historical unreimbursed expenses for the subject property. Indeed, it appears that Hartigan projected that the subject property's owner would bear the entire insurance expense. And he used a per-square-foot rate that was roughly double the rate reported for the subject property. Unlike Hall, who examined expenses from comparable power centers, Hartigan did not point to any source for his projected expenses.

124. The lack of clarity in Hartigan's hybrid expense structure also magnifies our concerns with the reliability of his rent projections. As Hall explained, a lease's expense structure may affect the negotiated rent. The more expenses a tenant bears, the less it may be willing to pay in rent. Unlike Hall, who used comparable triple-net leases to project rent and then consistently applied a triple-net structure in estimating reimbursement income and expenses, Hartigan's lack of clarity about his hybrid expense structure makes it impossible to tell if he was being consistent in his projections.

c. Hall's capitalization rates, which reflected improving market conditions for power centers, were more reliable that Hartigan's static rates.

125. Hall and Hartigan projected similar capitalization rates for the first year (8.3% pre-loaded and 8.45% loaded for Hall, compared to 8.5% pre-loaded and 8.66% loaded for Hartigan). Even then, Hall based his conclusions largely on data for power centers while Hartigan did not. More importantly, the two appraisers' rates diverged significantly in later years because Hall projected declining rates based on improving market conditions while Hartigan used the same unloaded rate each year.

126. We find Hall's conclusions, which he backed up with comprehensive data, far more convincing. Hartigan shrugged off the data showing improving market conditions and declining capitalization rates as being limited to institutional investors and therefore not

reflective of the general market. We have already explained why we give those justifications little credence. Indeed, Hartigan's decision to adjust sale prices in his sales-comparison analysis to account for improving market conditions belies his position.

d. Contrary to Crossing's assertions, Hall came closer to valuing the power center as a single economic unit than Hartigan did.

127. Crossing repeatedly accuses Hall of valuing the property as a sum of its component parts rather than as a single economic unit. It points mainly to three things: Hall's inclusion of the Walmart addition, his decision to project rent for ground leases and separately value the restaurant improvements on the leased ground, and his use of separate land sales for the outlot. Ironically, by excluding the Walmart addition and underlying land, Hartigan and Crossing—not Hall and the Assessor—are the ones most guilty of valuing the property as something other than a single economic unit.

i. Hartigan's exclusion of the Walmart addition artificially separates the power center into components for valuation purposes.

128. It is undisputed that the Walmart addition sits on one of the appealed parcels. It similarly appears that the larger Walmart store to which the addition is attached is also part of the power center. Crossing's rent rolls include rent for the entire store. Yet Crossing chose to artificially treat the Walmart separately from the rest of the power center by not appealing the parcel with the main building and by claiming that it is not disputing the assessment for the addition. *See Tr. at 558; Petitioner's Brief at 28.*

129. To treat the power center as a single economic unit, the appraisers could have valued the entire center, including the un-appealed Walmart parcel. We could have then determined the value of the entire center and ordered that the assessments of the appealed parcels be adjusted so that the total assessment of all the parcels comprising the center equaled that value. Hall at least did the next best thing and valued everything included on the appealed parcels.

130. Hall did not, as Crossing claims, value the Walmart addition separately from the rest of the power center. Although he estimated depreciated replacement costs for the addition under the cost approach, that is in keeping with how that approach works, whether valuing a single property or separate components. Although Crossing tried to extract a land value that Hall supposedly applied to the addition's footprint, Hall did not separately value that land. He instead valued the entire site. Had he undertaken to value just the land under the addition, he would have used very different comparable sales. As for the other two approaches, Hall projected rent for the addition using a rate that recognized it was part of a larger store, which not only treated the addition as part of the larger power center, but accurately treated it as part of the Walmart store as a whole. And he simply included the addition's square footage in the shopping center's total area under the sales-comparison approach. Again, had he valued the addition separately from the power center, he would have used different comparable sales.

ii. Hall's decision to separately estimate the contributory values of the freestanding restaurant improvements and add them to the value for the rest of the center does not undermine his conclusions.

131. Hall did separately determine the contributory value of the freestanding restaurant improvements. He had a good reason for doing so: he could not clarify whether those improvements—which were owned by the tenants rather than by Crossing—should be included in the appeals even though they were assessed to the appealed parcels. He therefore tried to structure his opinion so that the values attributable to those improvements could easily be segregated from the value for the rest of the property if necessary. If we determined the restaurant improvements should be excluded, his methodology already did so. If we determined that those improvements should be included, we would need only add their values to his conclusions for the rest of the property.

132. Although neither side disputes that the restaurant improvements are part of the appeals and should be included in the valuation, we do not fault Hall for recognizing the separate ownership and trying to address any problems that might pose. But he could have avoided any potential for distortion by flipping his approach: including both the restaurant land and

improvements in his main report and offering the addenda so we could *subtract* the contributory value of the restaurant improvements if we deemed it necessary.

133. That said, we do not agree with Hartigan and Crossing that by using rent from ground leases, Hall necessarily included business or other intangible value or that Hall's market ground rent automatically incorporated the value of the restaurant improvements such that his separate analysis of the improvements' contributory value resulted in double counting. To the contrary, Hall pointed to an authoritative source—the 14th Edition of the Appraisal of Real Estate—for the proposition that capitalizing market rent from a ground lease likely equals the market value of the fee-simple estate in the land. It does not say anything about including business value or a value for improvements on the land.

134. In any case, Crossing's complaints about Hall's supposed inclusion of business value and double counting target only his conclusions under the income approach. Crossing does not, nor can it, claim that Hall double counted the value of the restaurant improvements under the other two approaches. Hall pointedly excluded those improvements from his replacement cost estimates (cost approach) and total square footage (sales-comparison approach) in the main bodies of his reports. His addenda properly added the value of those omitted improvements. Relying on the credible analyses under Hall's cost and sales-comparison approaches in his addenda, we accept Hall's valuation of the restaurant improvements.

iii. Hall's analysis of the outlot land was defensible, and it had little effect on his valuation opinions.

135. We similarly give little weight to Crossing's criticism of Hall's decision to estimate the outlot site's value separately from the shopping center land. The outlot was not, as Crossing argues, identically situated to the freestanding restaurants. Given the outlot's separate platting and access, we find it plausible that a potential buyer might engage in a similar exercise as Hall even if it intended to continue to lease out the outlot as part of the larger power center. Even if it would have been better to include the outlot site with the

rest of the land, the difference only marginally affected Hall's conclusions under the cost approach. And it did not affect his conclusions under the other two approaches.

e. Hall better accounted for the theatre building's obsolescence.

136. Hall and Hartigan also treated the theatre building differently. Hartigan included it in the leasable area he used to multiply his unit value under the sales-comparison approach and in his market-rent calculations under the income approach. Hall, by contrast, determined that the building was obsolete and did not contribute any value to the property.

137. We agree with Hall that the theatre was obsolete and likely contributed little or nothing to the power center's value. Crossing wrongly argues that Hall based his analysis on the fact that it eventually razed the building. Hall instead analyzed the lack of demand for a building like the theatre situated where it was on the property. By contrast, while Hartigan may have partly accounted for the theatre's obsolescence through his vacancy rate under the income approach, it is not clear that he accounted for its obsolescence in his sales-comparison analysis.

C. To avoid any potential for double taxation on the agricultural parcel that was neither on appeal nor part of the power center, we deduct the capitalized value of the farm rent from Hall's valuation opinions.

138. Finally, Crossing correctly points out that while Hall included rent from the farm lease in his analysis under the income approach, the parcel that generated that income is not on appeal. It would be tempting to simply point out that only one of Hall's approaches—the income approach—improperly considered the farm parcel and that the effect on his conclusions under that approach amounted to little more than a rounding error. But the farm parcel is presumably being separately assessed and taxed, posing the danger of double taxation. We have also held in various other appeals that agricultural land must be valued under the soil productivity methodology laid out in the DLGF's Guidelines, so it would be improper to value the farm parcel with the power center. To avoid those problems, we

calculate the capitalized value[8] of the farm rent and deduct that amount from Hall's overall value conclusions:

	2012	2013	2014	2015
Value with Farm Parcel	$66,050,000	$67,100,000	$69,150,000	$70,450,000
Capitalized Farm Rent[9]	- $38,400	- $39,300	- $41,800	- $41,800
Value excluding Farm	$66,011,600	$67,060,700	$69,108,200	$70,408,200

VI. CONCLUSION

139. Because we find Hall's valuation opinions (minus an adjustment for the farm parcel) to be the most credible evidence of the subject property's market value-in-use, we order the assessments changed to the following amounts:

Valuation Date	Value
March 1, 2012	$66,011,600
March 1, 2013	$67,060,700
March 1, 2014	$69,108,200
March 1, 2015	$70,408,200

We issue this Final Determination on the date written above.

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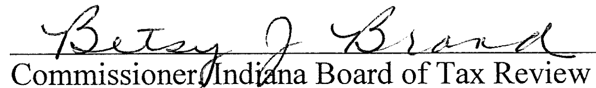
Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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[8] We use Hall's capitalization rates from his income approach. Because the farm-lease income is lumped in with the rest of the property's potential gross income, we arguable should adjust for vacancy and collection loss and possibly for some operating costs. Our simplified deduction may therefore overstate the effect Hall's inclusion of the farm-lease income had on his valuation opinions. But that additional increment is de minimis.

[9] The farm rent for each year was $3,243. We capitalized that rent using Hall's loaded capitalization rate for each year: 8.45% for 2012, 8.25% for 2013, and 7.75% for 2014 and 2015.

- APPEAL RIGHTS -

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

Petition Number	Parcel Number
45-046-12-1-4-02009-16 45-046-13-1-4-02010-16 45-046-14-1-4-02011-16	45-12-22-352-901.000-046 45-12-22-352-901.000-046 45-12-22-352-901.000-046
45-046-12-1-4-02016-16 45-046-13-1-4-02017-16 45-046-14-1-4-02022-16 45-046-15-1-4-02031-16	45-12-23-100-009.000-046 45-12-23-100-009.000-046 45-12-23-100-009.000-046 45-12-23-100-009.000-046
45-046-12-1-4-02015-16 45-046-13-1-4-02018-16 45-046-14-1-4-02023-16 45-046-15-1-4-02030-16	45-12-23-100-011.000-046 45-12-23-100-011.000-046 45-12-23-100-011.000-046 45-12-23-100-011.000-046
45-046-12-1-4-02014-16 45-046-13-1-4-02019-16 45-046-14-1-4-02024-16 45-046-15-1-4-02029-16	45-12-23-200-005.000-046 45-12-23-200-005.000-046 45-12-23-200-005.000-046 45-12-23-200-005.000-046
45-046-12-1-4-02013-16 45-046-13-1-4-02020-16 45-046-14-1-4-02025-16 45-046-15-1-4-02028-16	45-12-23-200-006.000-046 45-12-23-200-006.000-046 45-12-23-200-006.000-046 45-12-23-200-006.000-046
45-046-12-1-4-02012-16 45-046-13-1-4-02021-16 45-046-14-1-4-02026-16 45-046-15-1-4-02027-16	45-12-23-200-009.000-046 45-12-23-200-009.000-046 45-12-23-200-009.000-046 45-12-23-200-009.000-046