REPRESENTATIVE FOR PETITIONER:
Brent A. Auberry, Abraham M. Benson, Brigham E. Michaud
Faegre Drinker Biddle & Reath, LLP

REPRESENTATIVE FOR RESPONDENT:
A. Robert Masters
Nemeth, Feeney, Masters & Campiti, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

KOHL'S INDIANA LP,	)	Petition Nos.:	71-005-18-1-4-00211-23 71-005-19-1-4-00212-23 71-005-20-1-4-00213-23 71-005-21-1-4-00214-23 71-005-22-1-4-00215-23
Petitioner,	)		
v.	)		
ST. JOSEPH COUNTY ASSESSOR,	)	Parcel No.:	71-04-33-402-001.000-005
Respondent.	)	County:	St. Joseph
	)	Township:	Clay
	)	Assessment Years:	2018-2022

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 of a big-box retail store, the parties offered competing value opinions from expert appraisers: Laurence Allen for Kohl's Indiana, LP, and Michelle Farrington for the St. Joseph County Assessor. After weighing the evidence, we find that Allen's value opinions are the most persuasive evidence of the property's true tax value,

and therefore, of its correct assessment, for each valuation date.

II. PROCEDURAL HISTORY

2. Kohl's filed Form 130 petitions contesting its 2018 through 2022 assessments on August 29, 2018, June 4, 2019, June 2, 2020, June 2, 2021, and June 8, 2022, respectively. On December 12, 2022, the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") determined the following assessments:

Year	Improvements	Land	Total
2018	$2,136,600	$2,205,400	$4,342,000
2019	$2,136,600	$2,205,400	$4,342,000
2020	$2,136,600	$2,205,400	$4,342,000
2021	$2,394,600	$2,205,400	$4,600,000
2022	$2,479,700	$2,120,300	$4,600,000

3. Kohl's appealed all five PTABOA determinations to us. Beginning on June 6, 2024, our designated administrative law judge, Erik Jones ("ALJ"), held a four-day hearing on Kohl's' petitions. Neither he nor we inspected the property. Allen, Farrington, and Kevin Byrnes, an appraiser hired to review Allen's appraisal report, testified under oath.

4. Kohl's submitted the following exhibits:

Exhibit P-1	Appraisal report prepared by Allen & Associates,
Exhibit P-1(a)	Corrected pages to Allen & Associates' appraisal report,
Exhibit P-3	Kohl's store openings 2010-2021,
Exhibit P-4	Update on Kohl's store optimization initiatives,
Exhibit P-5	Kohl's rightsize summary,
Exhibit P-7	Market conditions conclusions and factors, as of January 1, 2018, 2019, 2020, 2021, and 2022,
Exhibit P-8	Site plan for Princess City Plaza,
Exhibit P-10	CoStar summary report for 8150 Rockville Road (Kroger),
Exhibit P-11	CoStar summary report for 3660 Commerce Drive (Stock & Field),
Exhibit P-12	CoStar summary report (Ollie's Bargain Outlet),
Exhibit P-13	Excerpts from Marshall & Swift Valuation Service,
Exhibit P-19	St. Joseph County Assessor's answers to Kohl's Indiana LP's requests for admission, interrogatories, and requests for production of documents,

The Assessor submitted the following exhibits:

Exhibit R-A	Appraisal review report, prepared by Kevin Byrnes, dated April 11, 2024,
Exhibit R-B	Real property appraisal report, prepared by Michelle Farrington, dated March 15, 2024,
Exhibit R-C	City of Mishawaka building permit summaries for subject Kohl's

5. The record also includes the following: (1) all petitions, briefs, and other documents filed in these appeals, (2) all orders and notices issued by the Board or ALJ; and (3) the hearing transcript.[1]

III. Findings of Fact

A. The Subject Property

6. The subject property is located at 4410 Grape Road, in Mishawaka. It consists of a retail store and site improvements on 8.27 acres of land in a retail shopping complex known as Princess City Plaza. Princess City Plaza is bordered by Grape Road, Main Street, and Day Road. The subject property is visible and directly accessible from Grape Road. It also has obstructed visibility from Day Road. *Ex. P-1 at 18; Tr. at 22-23, 34, 49, 257-58, 435, 440.*

7. The store includes roughly 86,854 square feet with an additional 7,040 square feet of mezzanine storage space. It has been partially renovated or remodeled three times, including in 2012, when the roof was replaced, and 2021. The 2021 renovation involved, among other things, demising an approximately 2,700-square-foot area and installing a counter for selling cosmetic products under a licensing deal with Sephora. The renovation also included replacing carpeting with vinyl-plank flooring in some areas. *Ex. P-1 at 18, 24-26; Ex. R-B at 12-20; Ex. R-C; Tr. at 35, 37-39, 48, 212, 430, 435-36, 457-58, 590.*

[1] The transcript is bound in four volumes, but the pages are numbered consecutively from 1 to 721. We will cite to the transcript, without reference to the volume, using the following format: Tr. at (page number).

8. Mishawaka is located within the South Bend-Mishawaka metropolitan statistical area ("South Bend MSA"). Princess City Plaza, in turn, is in the University Park Trade Area, a strong commercial district located roughly five miles northeast of downtown South Bend. For the years under appeal, average daily traffic counts on both Grape Road and Main Street were in the low-to-mid 20,000s. *Ex. R-B at 3, 21-22*; *Ex. P-1 at 14-15; Tr. at 435-37, 440.*

9. Princess City Plaza is a multi-tenant shopping center. The other spaces within the center range from 995 to 53,409 square feet. The largest of those spaces, which is currently occupied by a Dick's Sporting Goods store, shares a wall with Kohl's. That space had previously been occupied by a Gordman store, but it sat vacant for approximately three years after Gordman moved out in 2020. Before moving to the vacated Gordman space, Dick's occupied a different approximately 50,000-square-foot space in the shopping center. After Dick's moved, the developer rented Dick's' former space to two retailers: Marshalls and Burlington. Two other large retail spaces within ¼ mile of the subject property were vacant for much shorter times before being re-occupied by a Hobby Lobby store and a furniture store, respectively. *Ex. P-8; Tr. at 346-349, 441, 616-17.*

B. Expert Opinions

1. <u>Allen's Appraisal</u>

10. Kohl's offered an appraisal report from Allen. Allen is a certified general real estate appraiser in Indiana and several other states. He is also a licensed real estate broker in Michigan. He has been a real estate appraiser for over 40 years, and he holds several professional designations, including the MAI from the Appraisal Institute. To become an MAI, an appraiser must take preliminary and specialized courses, pass a comprehensive exam, and prepare a report demonstrating his knowledge. Allen has lectured on the valuation of real property to the graduate business programs at the University of Michigan and Michigan State University. He has also published articles on real property valuation in the *Appraisal Journal*. *Ex. P-1 at 8-9, 174-76; Tr. at 15-20, 23-24, 250.*

11. During his 40 years in the profession, Allen has appraised many property types, including big-box stores, several of which were in or near Mishawaka. Over the five years preceding the hearing, he had inspected approximately 50 to 100 big-box stores in connection with appraisal assignments. As a broker, Allen has discussed with buyers and sellers the factors that big-box retailers consider important in selecting store locations, and he has been hired to locate sites for Meijer, Walmart, and Menard stores. Although there is no uniform definition of what constitutes a big-box store, Allen explained that a size threshold of 50,000 square feet is probably the most common criterion. *Ex. P-1 at 53; Tr. at 19-22, 70-71.*

12. Allen researched various economic indicators for the South Bend MSA, Indiana, and the United States. He determined that the MSA suffered from challenges due to automation and outsourcing but had overall slow, yet stable economic growth. He considered the property's neighborhood, which he defined as the area within a half-mile radius of the property, to be in the "stability stage" of its lifecycle. *Ex. P-1 at 11-16; Tr. at 43-44, 108-10.*

13. Allen also described changes in the retail industry over the last ten years or so, including what some have termed the "retail apocalypse." He cited various sources that tracked retail-chain store closures from 2014 through 2021, showing what he described as a giant wave of closures beginning in 2016. Those closures included big-box stores, although much of the closure data in his report is not specific to big-box retailers. Allen attributed the apocalypse to the dramatic effect that the growth in e-commerce has had on every sector of the retail industry. And those challenges continued during and after the COVID-19 pandemic. *Ex. P-1 at 39-48; Tr. at 48-65, 186-87.*

14. According to Allen, the retail apocalypse has had the greatest effect on malls and the second biggest effect on big-box stores. It has led to big-box retailers, including Kohl's, closing or downsizing their stores. Kohl's has also rightsized existing stores by leasing

out portions of the stores and widening aisles to make it look like they are carrying the same amount of merchandise as previously. According to Allen, the increased closures and decreased demand for larger format, big-box stores like the subject property have led to an oversupply of vacant stores and longer marketing times. The effects have been felt across Indiana, as well as in Princess City Plaza, as evidenced by the Gordman store closing. *Exs. P-3, P-4, P-5; Tr. at 48-59.*

15. Allen determined the market value-in-use of the subject property's fee simple interest as of January 1 for each year under appeal, and he certified that his appraisal report complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He considered and ultimately developed all three valuation approaches: the sales-comparison income-capitalization, and cost approaches. *Ex. P-1 at 4, 8-9, 50-51*; *Tr. at 23, 28-40, 64-65.*

a. Allen's Sales-Comparison Analysis

16. For his sales-comparison analysis, Allen looked for sales of big-box stores that had more than 50,000 square feet and that sold for single-occupant retail use from 2015 to 2021. Although he considered limiting his search to Indiana, many of the buyers from those in-state sales did not put the properties to retail use. Instead, those properties were frequently bought for entertainment or self-storage facilities or for conversion to medical or office buildings. Allen previously had used sales of a Hammond Walmart store and a Portage Lowe's store in appraising a Kohl's store from Anderson. He had also previously used the sale of a Target store from Anderson. But the buyers converted those properties to multi-tenant use, and Allen testified that we had not looked favorably on that fact in our determination of the Anderson Kohl's appeal. He therefore refined his filter to exclude sales of properties that were converted to multi-tenant use. Thus, because he did not have sufficient Indiana sales and a store like the subject property is likely to be bought and used by a regional or national retailer, Allen expanded his search to nearby states. *Ex. P-1 at 52-53*; *Tr. at 70-71, 196-203, 238-39, 245.*

17. Allen, however, limited his search to sales of the fee-simple interest, meaning the properties were unencumbered and available to be leased, as opposed to sales of the "leased fee" interest, where the properties were sold subject to existing leases. Although Allen considered using leased-fee sales, he believed it would be difficult to adjust the sale prices to account for differences in things like the specific lease terms, the length of time remaining on the lease, above or below-market rents, tenant creditworthiness, and the premium that investors pay for having a tenant in place versus having to find a tenant and lease the property. *Ex. P-1 at 53*; *Tr. at 32-33, 77-80.*

18. Even if one were to use leased-fee sales, Allen explained that it is not an acceptable approach within the appraisal community to simply presume a lease is at market rent. Often, when leased big-box stores are sold, the leases in place are build-to-suit leases. Allen believes that such leases are not reliable indications of market rent but are instead financing leases for the original construction costs. *Tr. at 77-80.*

19. Allen ultimately identified eight comparable fee-simple sales: three from Michigan, two from Illinois, and one each from Indiana, Wisconsin, and Missouri. All the buildings were configured for single occupancy at the time of sale and were used for retail purposes both pre- and post-sale. They were all vacant and had been marketed for sale for periods ranging from roughly four months to more than four years, with several having been marketed for over two years. Allen provided extensive information about the properties and their surrounding market areas:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Development		Target	Lowe's	Super K	Kroger	Menards	Kmart	Target	Super Walmart
Location		McHenry IL.	Elgin, IL.	Southgate MI	Indianapolis IN	Portage MI	Cape Girardeau MI	Greenfield MI	Hartland Twp. MI
Sale Date		Aug-15	Apr-16	Jul-16	Sep-17	Mar-18	Dec-19	Jan-20	Jan-21
Bldg. Area	86,854	95,420	139,410	174,758	65,006	81,569	80,936	130,125	78,434
Year Built	1995	1994	2006	1998	2000	1988	1989	1970	2009
Land Size	8.27	9.02	12.76	15.69	7.67	12.76	5.55	12.94	10.92
LTB Ratio	4.15	4.12	3.99	3.91	5.14	6.81	2.99	4.33	6.06
Sale Price		$2,100,000	$5,300,000	$5,500,000	$2,600,000	$2,800,000	$2,500,000	$4,000,000	$2,425,000
Price/SF		$22.01	$38.02	$31.47	$40.00	$34.33	$30.89	$30.74	$30.92
Community Data									
<u>5-mile radius</u>									
Population	167,899	63,432	157,720	185,613	183,807	128,006	43,783	337,251	30,904
Households	66,247	24,872	48,599	77,186	70,871	52,451	17,916	134,439	11,064
Med HH Inc	$52,387	$72,536	$88,407	$56,333	$68,097	$52,561	$53,509	$51,400	$100,038
Avg. HH Spend	$45,084	$55,161	$65,272	$41,528	$51,159	$43,115	$44,159	$37,543	$66,353
Spending Power	$2,987	$1,372	$3,172	$3,205	$3,626	$2,261	$791	$5,047	$734

Pop Δ 2010-20	3.45%	-0.85%	5.20%	-0.63%	14.95%	5.44%	3.71%	-1.55%	10.16%
5-year projected Δ	0.31%	4.83%	-1.57%	-0.77%	2.81%	2.97%	1.27%	0.51%	4.23%
Sub Mkt. Eff. Ask Rent	$10.08	$13.68	$15.53	$10.94	$16.34	$13.40	$10.50	$14.58	$10.28
Traffic Count	27,994	23,400	36,900	54,515	49,879	13,443	41,204	30,800	98,848

Sale 8 involved a former Wal-Mart Supercenter that Rural King bought in 2016. Rural King then subdivided the 186,763-square-foot building into two spaces and sold a 78,434-square-foot space to an appliance store, which is the sale that Allen used. *Ex. P-1 at 54-71; Ex. P-1(a); Tr. at 75-76, 80-87, 91.*

20. Allen communicated with the brokers or parties involved in all the sales. He also physically inspected each property to form an impression of the property and its neighborhood. And he used all eight sales for each valuation date. *Tr. at 80, 91.*

21. After selecting comparable sales, Allen considered whether he needed to adjust the sale prices to account for relevant differences between the sales and the posited transaction for the subject property, as well as for differences in property characteristics. *Ex. P-1 at 72-81; Tr. at 89-113.*

22. Allen saw the need for two transactional adjustments. The first was for property rights conveyed. Sales 2, 4 and 8 sold with deed covenants restricting the properties from some future retail uses. Sale 2 sold with a restriction precluding the property from being used as a retailer like Lowe's, Home Depot, Menard's, 84 Lumber, etc. for five years following the sale. Sale 4 transferred with a restriction on grocery-store use for four years. Sale 8 had a restriction that had been created when the property previously sold to Rural King in 2016. It prohibited the property from being used as a department store or discount store of more than 50,000 square feet for purposes of selling hard and soft goods in a retail operation like Walmart. The restriction was for 25 years. *Ex. P-1 at 72-73; Tr. at 91-94.*

23. After speaking with the brokers and sellers involved in the sales, Allen determined that the restrictions in Sales 2 and 4 were placed on the properties after the sale prices had been established. And they did not impinge upon the buyers' use of the properties. In fact, the restriction from Sale 2 specifically listed the buyer's store as a permitted use. Allen explained that the seller of that property, Lowe's, always makes such exceptions and has never needed to lower a price to negotiate a deed restriction. But he acknowledged that the restriction could limit the buyer's exit strategy when it decided to sell the property. By contrast, Sale 4's deed restriction was only four years, and Allen thought the buyer probably had a lease in place that would extend past the restriction. In any case, he concluded that the restrictions did not affect the sale prices for those two properties. *Exs. P-1 72-73; Tr. at 91-94, 205-08.*

24. That was not true for Sale 8, however. Allen concluded that the restriction created when Rural King bought the property in 2016 affected the sale price from the later sale that he used in his analysis. To quantify an adjustment, he looked at two national studies of big-box sales: one prepared by Brett Harrington of the International Appraisal Co., which examined sales of stores with over 90,000 square feet from 2011 through 2015, and another prepared by Situs RERC, which examined sales of stores that were 30,000 square feet and larger from 2010 through early 2018. The Harrington study indicated that, on average, stores with deed restrictions sold for 6% less than unrestricted stores, while the Situs RERC study showed no downward effect on sale prices for stores over 50,000 square feet. Allen ultimately adjusted the price from Sale 8 upward by 5% to account for its deed restriction. *Ex. P-1 at 72-73; Tr. 91-94, 116-119, 207.*

25. To quantify adjustments for market conditions, Allen looked at various sources to determine how those conditions had changed between the sale dates of his comparable properties and the valuation dates for his appraisal. The sources included national data from Real Capital Analytics as well as data from both the South Bend MSA and the MSAs of all his comparable sales. He did not rely exclusively on the subject property's market because he was deciding what the comparable properties would have sold for on

each valuation date. He made other adjustments to account for non-time-related differences between markets. Based on his data, Allen estimated annual appreciation of 2% from year-end 2016 through year-end 2017, 3% for 2018-2019, 0% for 2020 during the COVID pandemic, and 5% for 2021. *Exs. P-1 at 73-77, P-1(a) at 82-96; P-7; Tr. at 96-100, 116-17.*

26. After making his transactional adjustments, Allen turned to property characteristics. To help determine the effect that differences in building size have on sale prices, Allen performed a matched-pair analysis of the property from Sale 8. He compared the sale price from 2016, when the property had a 186,763-square-foot building, to the 2021 sale of a portion of the original property that now contained a 78,434-square-foot building. After adjusting for market conditions and property rights (5% for the existing deed restriction at the time of the second sale), he found a 20% difference in unit price. Allen also looked at the Situs RERC study, which disaggregated average and median sale prices based on building-size thresholds. He concluded that Sales 2, 3, and 7 required upward adjustments for their larger building sizes. But he considered the stores from Sales 1, 4, 5, 6, and 8 to be similar to the subject store's size and therefore did not adjust those sale prices. *Exs. P-1 at 77-78, P-1(a) at 82-96; Tr. at 101-04, 116-17.*

27. Because arterial attributes are important to buyers of big-box stores, Allen compared the properties in terms of access, visibility, and traffic counts. He concluded that two of the sales were inferior to the subject property and that the other six were superior. He made adjustments ranging from -15% to 5%. *Exs. P-1 at 78-79, P-1(a) at 82-96; Tr. at 104-07, 116-17.*

28. To compare other locational characteristics, Allen considered demographic data from both 5-mile and 10-mile radii around each property. That data included population density and growth, household density, median household income, and average household spending power. Of those characteristics, Allen believes spending power (a combination of average household spending and number of households) is particularly

important to big-box-market participants. He concluded that Sales 1, 5, 6, and 8 were inferior to the subject property, requiring upward adjustments between 5% and 15%. Sales 2 and 3 had similar demographic characteristics and required no adjustments. He considered Sales 4 and 7 as superior and therefore adjusted them downward 5% and 10%, respectively. *Ex. P-1 at 79-81, P-1(a) at 82-96; Tr. at 106-10, 116-17.*

29. Allen also analyzed supply and demand and economic characteristics in the real estate market where each property was located. To reflect differences in those characteristics, he used a submarket adjustment based on effective asking rent (average asking rent multiplied by the average occupancy rate) in the area surrounding each comparable sale. He concluded that Sales 1-5, and 7 had superior submarkets to the subject property, requiring downward adjustments of between 5% and 20%, while the other two sales had similar submarkets and required no adjustment. *Exs. P-1 at 81, P-1(a) at 82-96; Tr. at 110-11, 116-17.*

30. Finally, Allen adjusted the sale prices to account for differences in land-to-building ratios and the buildings' effective ages. *Exs. P-1 at 81-82, P-1(a) at 82-96; Tr. at 111-13, 116-17.*

31. Allen felt comfortable using all eight sales each year because he could adequately adjust the sale prices to account for differences in market conditions and could emphasize sales from before the valuation date. The adjusted prices differed a little between his valuation dates, but they were all between $23.11/SF and $44.80/SF for the main floor space. *Exs. P-1 at 82-91, P-1(a) at 82-91; Tr. at 87.*

32. To reconcile to an indicated value for each year, Allen emphasized that the sales closest to the valuation date were the most like the subject property in terms of other elements of comparison and had the smallest gross and net adjustments. He also performed a qualitative analysis in which he made the same transactional adjustments from his quantitative analysis and then compared the properties in terms of each property-related

characteristic, assessing whether they were superior, inferior, or equivalent to the subject property. He also assigned each property an overall qualitative rating. For each year, he concluded that the subject property would sell within the range of the transactionally adjusted sale price for the one sale he rated overall inferior (Sale 1) and the average of the transactionally adjusted sale prices for the other seven sales, all of which he rated as superior. *Exs. P-1 at 82-91, P-1(a) at 82-91; Tr. at 122-24.*

33. Allen ultimately settled on unit values for the main-floor space that ranged from $32/SF to $35/SF for the five valuation dates. For the mezzanine area, he used the ratio of building costs for the mezzanine compared to the main-floor space (32.3%), which he then applied to his concluded main-floor values. He settled on the following values under the sales-comparison approach:

Year	**Main Floor**	**Mezzanine**	**Indicated Value**
2018	$32/SF	$10.34/SF	$2,850,000
2019	$33/SF	$10.66/SF	$2,950,000
2020	$34/SF	$10.98/SF	$3,030,000
2021	$34/SF	$10.98/SF	$3,030,000
2022	$35/SF	$11.31/SF	$3,120,000

Exs. P-1 at 82-91, 96-99, P-1(a) at 82-91, 96; Tr. at 122-26.

34. Allen noted that his comparable sales were all within the range shown by the Situs RERC and Harrington studies for big-box stores with more than 50,000 square feet. He also examined 17 additional sales across the Midwest, Missouri, and Tennessee, which he believed showed there was an active market for big-box properties, although he did not consider those sales sufficiently comparable to the subject property to use in his primary analysis. *Ex. P-1 at 92-95; Tr. at 118-22.*

b. Allen's Income-Capitalization Analysis

35. Allen identified seven leases from which to derive market rent for the subject property (identified as Leases 12-13, 15-17, and 19-20): three from Indiana, two from Michigan, and one each from Ohio and Kentucky:

	Subject	Lease 12	Lease 13	Lease 15	Lease 16	Lease 17	Lease 19	Lease 20
Tenant		At Home	Big R.	At Home	Floor & Decor	Big E Super Store	Floor & Decor	Floor & Decor
Location		Bloomfield Hills MI	Elkhart IN	N. Canton OH	Shelby Twp. MI	Evansville IN	Greenwood IN	Lexington KY
Date		Sep-16	Jun-17	Jul-19	Sep-19	Jan-20	Dec-20	Feb-20
Bldg. Size	86,854	120,650	86,581	90,304	91,500	63,119	67,779	82,688
Yr. Built	1995	1993	1990	2009	2000	1967	2006	1979
Rent/sf		$5.60	$2.75	$8.25	$6.25	$3.25	$5.00	$7.50
Population	167,899	159,591	81,890	114,075	252,634	110,393	171,444	210,361
Med. HH Income	$52,387	$73,974	$55,987	$67,484	$80,972	$44,025	$64,421	$56,910
Av. HH Spend.	$45,084	$74,703	$45,820	$54,820	$61,156	$39,624	$48,191	$52,606
Spend. Power	$2,987	$4,713	$1,413	$2,670	$6,123	$1,910	$3,191	$5,138
Pop Δ 2010-20	3.45%	4.05%	3.62%	2.91%	6.09%	-1.07%	15.49%	10.19%
2020-28 Δ	0.31%[2]	0.31%	1.55%	0%	0.37%	129.71%	3.44%	2.19%
Sub Mkt. Eff. Asking Rent	$10.08	$7.67	$8.91	$8.91	$11.49	$9.83	$16.20	$14.81
Traffic	27,994	52,898	48,955	37,311	90,504	13,862	51,943	37,400

Ex. P-1 at 105-17, 126-30.

36. Allen admitted that he did not review all the leases himself but instead relied on lease summaries or briefs provided by other appraisers or brokers familiar with the transactions. He also confirmed that none of the leases were renewals, sale-leasebacks, build-to-suit leases, or otherwise between related parties. He felt it was appropriate to use the two smaller buildings (Leases 17 and 19) as well as the 120,650-square-foot space (Lease 12) because he wanted to bracket the subject property's size. *Ex. P-1 at 103-18; Tr. at 129-133.*

37. All the leases were on a triple-net basis, meaning the tenant was responsible for either paying directly, or reimbursing the landlord for, insurance, real estate taxes, and common area maintenance ("CAM"), which Allen described as the cost of maintaining the parking lot and lighting. One lease (Lease 16) had a tenant-improvement allowance of $4.61/SF, while another had a six-month rent concession which landlords sometimes offer in lieu of a tenant-improvement allowance. Allen also suspected Lease 15 had a tenant-improvement allowance or rent concession, but he was unable to confirm that. *Ex. P-1 at 103-18; Tr. at 134-35, 142.*

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[2] This was the projected five-year population change in the five-mile radius surrounding the subject property. *Ex. P-1 at 80.*

38. Allen adjusted the lease rates along many of the same lines as he adjusted his comparable sales. He also assumed that the subject property would have a tenant improvement allowance, explaining that it is common for leases to contain such allowances, although it is also common for those allowances not to be included. Allen assumed an allowance of \$5.00/SF for the subject property, which amortized to \$0.50/SF over a 10-year holding period. He adjusted the leases that did not have such allowances upward by \$0.50/SF. He also adjusted the lease with a \$4.61/SF allowance upward by \$0.40/SF. He adjusted the lease with the confirmed six-month rent concession downward by 5% for that lease condition. He did not adjust Lease 15 for a tenant improvement allowance or lease conditions. *Ex-P-1 at 119-30; Tr. at 134-38.*

39. For each year, Allen gave the greatest weight to the three Indiana leases as well as to the leases that were the most proximate to the valuation date, with the caveat that the second group included Lease 15 for the last four valuation dates. He considered Lease 15 to be an outlier because its adjusted unit rent was more than \$2.00/SF above the adjusted rent for any of the other properties. He settled on the following rent levels for the subject property:

Year	**Range**	**Indicated Rate**
2018	\$361/SF - \$8.21/SF	\$4.50/SF
2019	\$3.69/SF - \$8.43/SF	\$4.60/SF
2020	\$3.77/SF - \$8.64/SF	\$4.75/SF
2021	\$3.76/SF - \$8.60/SF	\$4.75/SF
2022	\$3.91/SF - \$8.97/SF	\$5.00/SF

To account for the mezzanine area, Allen reduced his market rental rate by the same 32.2% factor he used in his sales-comparison approach. *Ex. P-1 at 126-33; Tr. at 138-40.*

40. Because Allen was positing a triple-net expense structure, he also added tenant reimbursements for CAM and insurance. He did not include real estate taxes as a reimbursable expense, however, explaining that he accounted for those taxes in the loaded capitalization rate that he applied to the property's net operating income ("NOI"). *Ex. P-1 at 131-32; Tr. at 142-43.*

41. Allen added the rent and reimbursable operating expenses to arrive at potential gross income ("PGI") for the property. He then determined effective gross income ("EGI") by subtracting 5% of PGI to account for vacancy and credit loss, which he explained is an allowance investors make to anticipate things like bankruptcy or tenant turnover even after a property has achieved stabilized occupancy. During periods of vacancy, a landlord receives neither rent nor expense reimbursements and therefore must bear those expenses on its own. He distinguished his vacancy allowance from lease-up costs, which must be incurred to bring the property to stabilized occupancy, and which he separately accounted for later in his analysis. *Ex. P-1 at 131; Tr. at 141-42.*

42. To support his estimated vacancy allowance, Allen cited data from CoStar for all types of retail properties in South Bend and throughout Indiana. But he explained that when offered for lease, big-box properties like the subject property typically remain on the market longer than other retail-property types, although their leases normally run for five or 10 years. He therefore chose a vacancy rate of 5%. That was a little higher than the CoStar data, which generally varied between 3% and 4% for the relevant period. *Ex. P-1 at 131; Tr. at 140-41.*

43. To determine NOI, Allen needed to subtract operating expenses from his estimated EGI. In addition to the CAM and insurance expenses, he subtracted a management fee and reserves for periodic capital improvements, such as structural repairs and renovations necessary to re-position the property in the market. He based his estimate for reserves on data from the *PwC Real Estate Investment Survey*, which addressed reserves required by several different investor types. *Ex. P-1 at 131-32; Tr. at 142-44.*

44. Allen next turned his attention to estimating an appropriate capitalization rate. He considered three basic methods: using bands of investment to build a rate, extracting rates from five sales of big-box stores throughout Indiana, and examining data from investment surveys. *Ex. P-1 at 133-37; Tr. at 144-50.*

45. Allen used the data from each survey that he felt was most appropriate to the subject property. In some cases, that meant data for power centers. In others, it was data for net-leased properties or freestanding retail properties. One survey, the *Boulder Group Net Lease Big Box Report*, dealt only with big-box properties and categorized its data by the number of years remaining on leases. Three surveys were national in scope. Allen included them since triple-net-leased big-box stores would be marketed nationally. But in his experience, capitalization rates in the Midwest are generally higher than the national average because there are more risks associated with the region's manufacturing-based economy, which is more cyclical than the east- and west-coast markets. He therefore also consulted the *CBRE Cap Rate Survey*, which breaks its data down into tiers. *Ex. P-1 at 135-37*; *Tr. 147-48.*

46. Based on his analyses using all three methods, Allen settled on overall capitalization rates of 8.5% for 2018, 2021, and 2022; 8.25% for 2019; and 8% for 2020. In doing so, he considered that although he was capitalizing stabilized income, the subject property was a "value-add" investment and was not stabilized. Allen characterized the property as value-add because an investor would need to convert it from an owner-used property into an income-producing asset, which would add value to the property. The CBRE data indicated a premium of between 100 and 150 basis points for value-add properties. *Ex. P-1 at 136-37*; *Tr. at 148-50.*

47. Allen loaded his cap rates to reflect the unreimbursed portion of property taxes the owner would be responsible for during periods of vacancy. To calculate the load, he multiplied the effective tax rate by his 5% estimate for vacancy and credit loss, which Allen indicated was a generally accepted approach in the appraisal profession. Were he to load the full effective tax rate, the capitalized value would understate the property's real value. Allen then divided his NOI estimates by his loaded capitalization rates to determine the property's stabilized value. Ex. P-1 at 138-40; Tr. at 151-53.

48. But Allen was not ultimately valuing the property at stabilized occupancy. He therefore believed he needed to account for costs associated with bringing the property to stabilization. Those included holding costs, which consist of the lost return to the investor and lost reimbursement for expenses during the lease-up period. CoStar reported that the average months on market for retail space over 50,000 square feet was ± 14 months and the average vacancy was ± 16 months. Allen estimated the lease-up period for the subject property at one year. His stabilization costs also included a leasing commission for a broker to find a tenant, which based on interviews with brokers, he estimated at 6% of annual base rental income over the first five years of the lease term. Although the Appraisal Institute teaches that leasing commissions may be treated as an annual deduction in NOI, Allen explained that treating them as a one-time deduction is both appropriate and typical for the big-box market. Indeed, he had never seen leasing commissions taken as an annual deduction in that market. Finally, Allen included his estimated $5.00/SF tenant-improvement allowance. *Ex. P-1 at 138-39; Tr. at 152-55, 223, 246.*

49. After all his calculations, Allen arrived at the following values under the income approach:

	2018	2019	2020	2021	2022
PGI	$505,300	$517,340	$533,930	$537,247	$562,946
Vacancy & Credit Loss	($25,265)	($25,867)	($26,696)	($26,862)	($28,147)
EGI	$480,035	$491,473	$507,233	$510,385	$534,798
CAM	($86,854)	($89,460)	($92,143)	($94,008)	($97,755)
Ins.	($17,371)	($17,892)	($18,429)	($18,982)	($19,551)
Mgmt. Fee	($14,401)	($14,744)	($15,217)	($15,312)	($16,044)
Repl. Res.	($21,714)	($21,714)	($21,714)	($21,714)	($21,714)
NOI	$339,696	$347,664	$359,731	$359,470	$379,745
Cap Rate	÷8.66938%	÷8.40017%	÷8.17016%	÷8.67019%	÷8.66999%
Capitalized NOI	$3,918,343	4,138,771	$4,402,979	$4,146,046	$4,379,879
Leasing Comm.	($117,253)	($119,859)	($123,167)	($123,767)	($130,281)
TI Allowance	($434,270)	($434,270)	($434,270)	($434,270)	($434,270)
Holding Costs	($371,301)	($380,160)	($392,346)	($394,834)	($413,682)
Value (Rounded)	$3,000,000	$3,200,000	$3,450,000	$3,190,000	$3,400,000

Ex. P-1 at 133, 138-40.

c. Allen's Analysis under the Cost Approach

50. For his cost-approach analysis, Allen began by determining the subject site's value. He searched the South Bend MSA and surrounding MSAs for land sales of properties that were bought for big-box retail development. He identified five sales that were suitable for retail use at the time of sale, and he adjusted their sale prices along many of the same lines as his improved sales. He arrived at the following values for the subject land:

Year	Range (Price/Acre)	Average	Concluded Value
2018	$96,667 - $335,584	$197,815/acre	$1,800,000
2019	$99,567 - $345,651	$203,749/acre	$1,860,000
2020	$102,555 - $356,021	$209,862/acre	$1,910,000
2021	$102,555 - $356,021	$209,862/acre	$1,910,000
2022	$105,631 - $366,701	$216,157/acre	$1,980,000

Ex. P-1 at 141-52; *Tr. at 158-61.*

51. Next, Allen looked to Marshall Valuation Service ("MVS") to estimate the improvements' replacement cost. He found that the store best fits the category of an average-quality Class-C discount store. He did not think it fits the cost model for a retail store, which he explained is for small retail spaces in strip centers. And while he acknowledged that the store had some "nice" finishing, he explained that a buyer would most likely reconfigure the store to its own business model. In any case, the buyer would not pay a premium for the additional finishing, so he felt an average quality store was appropriate to estimate replacement cost. *Ex. P-1 at 153; Tr. at 161-64.*

52. Allen adjusted MVS' unit base cost to account for various factors, such as the subject store's sprinkler system. He also used MVS to estimate the replacement costs for the property's site improvements. He added soft costs related to managing the construction project that are not included in MVS' cost tables, including the leasing commissions he estimated in his analysis under the income-capitalization approach. But he did not include any entrepreneurial incentive, explaining that it is accepted within the appraisal community not to include that cost when valuing an owner-used property. *Ex. P-1 at 153-56*; *Tr. at 163-67.*

53. Allen then considered three elements of depreciation: physical depreciation, functional obsolescence, and external obsolescence. Physical depreciation is a loss in value due to the wear and tear on the building or other improvements; functional obsolescence is a loss in value due to the layout, design or other characteristics within the boundaries of the property; and external obsolescence is a loss in value due to factors outside the property's boundaries. *Ex. P-1 at 156-58*; *Tr. at 167-68.*

54. Allen used the age-life method to quantify the physical depreciation affecting the building. Based on the building's history of renovations and maintenance, he estimated its effective age at 17 years as of January 1, 2018, which increased by one year for each subsequent valuation date. And MVS indicated a useful life of 35 years for average Class-C discount stores. Dividing the effective age for each date by the building's useful life produced depreciation factors ranging from 48.6% (2018) to 60% (2022) of replacement cost. Allen performed a similar age-life analysis for the site improvements. *Ex. P-1 at 156-57; Tr. at 168-70.*

55. Based on his experience in the market, Allen concluded that the property suffered from both functional and external obsolescence. He explained that big-box stores like the subject property are not developed on speculation. They sell for less than their physically depreciated cost because they are large stores that are specifically designed for one user, and buyers will typically need to make significant changes to adapt the space to their own retail needs. Such properties therefore generate limited market demand. To illustrate, Allen pointed to the disparity between build-to-suit rents and market rents. He also explained that e-commerce has decreased the demand for big-box stores, resulting in increased supply and higher external obsolescence for those properties. And between 2020 and 2022, construction costs increased at a higher rate than sale prices. *Ex. P-1 at 157-58; Tr. at 170-74.*

56. Allen therefore turned his attention to quantifying the obsolescence he observed. He acknowledged the possibility that dividing a property's effective age by its economic life could reflect all forms of depreciation. But for the cost approach to reflect market value, it must be tied to the market somehow. According to Allen, comparing age-life depreciation with the market is how one determines if there is additional depreciation. *Tr. at 411.*

57. He therefore used two market-based methods to quantify obsolescence: he capitalized the property's deficient income, and he extracted obsolescence from the market through his sales-comparison analysis. According to Allen, both methods are accepted in the appraisal profession. Indeed, *The Appraisal of Real Estate* 15th Edition recommends capitalizing deficient income to quantify obsolescence, and the Appraisal Institute teaches that method in one of its courses. *Ex. P-1 at 158-59; Tr. at 174-77.*

58. To capitalize deficient income, Allen first determined feasibility NOI, i.e. the NOI that would be necessary to support the property's cost. To do so, he multiplied the property's replacement cost new plus land by the loaded capitalization rate from his analysis under the income-capitalization approach. He then subtracted his estimated NOI for the property (as determined in his income-capitalization analysis) from the feasibility NOI to determine deficient income, which he capitalized using that same rate to arrive at stabilized depreciation. From that stabilized depreciation, Allen subtracted his estimated physical depreciation, which left him with incurable obsolescence. He then added his estimated leasing commission, holding costs, and tenant improvement allowance, which he characterized collectively as curable obsolescence, to arrive at total obsolescence for each year. *Ex. P-1 at 157-59; Tr. at 175-77.*

59. For his second method, Allen estimated total depreciation by subtracting his concluded value for the subject property under the sales-comparison approach for each year from his estimate of replacement cost new of the improvements plus land. He then subtracted his estimated physical depreciation to arrive at total obsolescence. *Ex. P-1 at 159-60.*

60. Allen relied on both methods in settling on an obsolescence estimate for each year. His estimates ranged from a high of 36% of replacement cost new (or 28% of replacement cost new plus land) for 2018 to a low of 25% (and 20%) for 2022. *Ex. P-1 at 160-62.*

61. After accounting for all costs and depreciation, Allen arrived at the following values under the cost approach:

	2018	**2019**	**2020**	**2021**	**2022**
Bldg. Cost	$5,830,379	$6,034,287	$6,109,248	$6,543,956	$7,404,252
Site Imp. Cost	$837,986	$821,650	$840,376	$899,998	$1,174,757
Total Cost	$6,668,265	$6,855,937	$6,949625	$7,443,953	$8,579,009
Bldg. Dep.	($2,831,850)	($3,103,348)	($3,316,449)	($3,739,403)	($4,422,251)
Site Imp. Dep.	($391,060)	($438,213)	($504,226)	($599,998)	($861,488)
Obsolescence	(2,322,569)	($2,097,134)	($1,797,642)	($1,902,965)	($1,994,147)
Depreciated Cost	$1,122,760	$1,217,241	$1,331,298	$1,201,587	$1,280,823
Land Value	$1,800,000	$1,860,000	$1,910,000	$1,910,000	$1,980,000
Rounded Value	$2,920,000	$3,080,000	$3,240,000	$3,110,000	$3,260,000

Ex. P-1 at 162-63.

d. Allen's reconciled values

62. In his final reconciliation, Allen considered his conclusions under the sales-comparison approach to be the primary indicator of value because it directly reflects sales of existing properties bought for similar retail uses. He also gave some weight to his conclusions under the income-capitalization approach. He gave the least weight to his conclusions under the cost approach, given (1) that the property suffered from significant physical depreciation and obsolescence, which is "difficult, if not impossible to estimate without extracting from the other approaches to value," and (2) that buyers and sellers of similar existing properties would not use that approach. Ultimately, Allen settled on the following valuation opinions:

Year	**Value**
2018	$2,900,000
2019	$3,040,000
2020	$3,180,000
2021	$3,090,000
2022	$3,220,000

Ex. P-1 at 51-52, 164-65; Tr. at 178-80.

63. As explained in more detail below, we find Allen's valuation opinion for each year to be both credible and the most persuasive evidence of the property's true tax value. Allen is a highly qualified appraiser with vast experience in appraising big-box properties like the subject property. He certified that he complied with USPAP, and his analyses comported with generally accepted appraisal principles. He generally relied on comparable properties that were appropriate substitutes for the subject property. And he largely supported his adjustments to his comparable sales and leases with relevant market data.

2. Byrnes' Review Appraisal

64. The Assessor hired Kevin Byrnes to prepare a review appraisal of Allen's work. Like Allen, Byrnes is licensed in Indiana and other states and is an MAI. He has appraised a wide range of commercial property types, including office, hotel, industrial, and retail properties. He has also completed roughly 500 review assignments. But he has never performed a market-value-in-use appraisal for Indiana property tax purposes, and this was the first review appraisal he had done for an Indiana property. Byrnes certified that he performed his review appraisal in conformity with the USPAP standards governing review appraisals. *Ex. R-A at 1, 25-34; Tr. at 257-61, 322.*

65. Byrnes reviewed Allen's appraisal report, but not his work file. Although Byrnes did not prepare his own independent appraisal report, he inspected the subject property in connection with the assignment. He did not inspect any of the properties from Allen's comparable sales and leases, however. And he acknowledged that physically inspecting properties informs an appraiser about things like the condition of improvements, access and exposure, and traffic patterns. He likewise did not speak to anyone involved in the sale or lease transactions from Allen's appraisal, although he agreed that those conversations help an appraiser understand such transactions. *Ex. R-A at 2; Tr. at 343-44, 351.*

66. Byrnes first took issue with Allen's market analysis. Among other things, Byrnes felt that Allen painted a misleading picture because he did not include enough information about the Indiana, St. Joseph County, and South Bend-Mishawaka markets, which Byrnes viewed as thriving. Byrnes' research indicated that vacancy rates in the South Bend MSA hovered between 2.2% and 3.2% during the years on appeal. In his opinion, the subject property likely would remain occupied, and if hypothetically vacant, there would be demand to re-occupy the space. *Ex. R-A at 2-4; Tr. at 263-65.*

67. Turning to Allen's sales-comparison analysis, Byrnes believed that Allen's separation of vacant properties from those with leases created a dichotomy that was unsupported within his report. Byrnes considered Allen's approach "self-contradictory" because Allen claimed to need only vacant properties to value the subject property under the sales-comparison approach, yet he valued the property's leased-fee interest under the income approach. *Ex. R-A at 5-6*; *Tr. at 265-71.*

68. Byrnes would not categorically rule out using leased-fee sales. Even with leased properties, developers are not solely concerned with rent; they still care about many of the same things owner-occupiers do, like a property's location and physical characteristics. In Byrnes' opinion, lease terms are simply another thing to investigate. But he acknowledged that appraisers should not simply presume, without investigating, that a leased property's rent is consistent with market rent. And he further agreed that when using leased-fee sales to value the fee-simple interest in a property, an appraiser must consider adjustments to account (1) for any difference between contract rent and market rent, and (2) for the quality of the tenant and the remaining lease term. *Tr. at 265-69, 336, 367-68.*

69. Although Byrnes noted that Sales 2 and 8 had deed restrictions and that Sale 8 was also a subdivided condominium unit, he acknowledged he did not have any proof to show those issues affected the sale price of either property. Byrnes also criticized Allen for not

exploring whether the fact that Menards built a new store down the road from Sale 5 affected demand in the area, and he pointed out that Sears Holdings, the owner of Kmart (Sales 3 and 6), was in financial distress. Once again, however, Byrnes did not have any proof that either of those things affected the sale prices of the properties. *Ex. R-A at 7-10; Tr. at 375-79.*

70. In any case, Byrnes noted that several of the properties were vacant for more than two years before they sold. He was familiar with the store from Sale 1, and he had spoken to the broker involved in that sale as well as to the broker involved in Sale 3. Target and Lowe's, respectively, closed those stores for underperformance. Similarly, Target stated that it closed the store from Sale 7 based on several years of declining productivity. And Walmart closed the store from Sale 8 after less than seven years, with local reporting indicating that Walmart had opened the store too close to another one of its stores in an area with low population density. *Ex. R-A at 7-9; Tr. at 274-83.*

71. According to Byrnes, Allen should have more robustly investigated and discussed those issues. But Byrnes did not know whether the performance of those stores or of other stores in their areas affected the sale prices. He likewise had no proof that the circumstances surrounding the stores' vacancies affected their sale prices. Indeed, Byrnes acknowledged that his first thought upon hearing a store has gone vacant is that there was an issue with the retailer—not that there was a problem with the physical space. Provided that another retailer moves in within a reasonable time, the vacancy does not really say anything about the retail location. And Byrnes acknowledged that a reasonable time could be several years. *Ex. R-A at 7-9; Tr. at 274-83, 347-51, 372-75.*

72. The issues Byrnes identified made him question whether Allen's comparable properties were good substitutes for the subject property. Although Allen did not include any information about how the subject or other stores in the area were performing, both Princess City Plaza and the South Bend-Mishawaka retail market had high occupancy rates. While Byrnes acknowledged that the former Gordman store next to the subject

property sat vacant until Dick's Sporting Goods moved into the space, he did not know when the developer secured Dick's for the space. While he speculated that the developer might have waited to move Dick's into the Gordman space until it had tenancy for the space Dick's would be vacating, he did not know if that was true. In any case, Byrnes felt that Allen's comparable sales did not offer the same kind of utility and occupancy potential as the subject property. *R-A at 7-9; Tr. at 274-83, 348-49.*

73. Byrnes also questioned why Allen resorted to using sales outside Indiana and the Chicago metropolitan market. Byrnes found 256 sales of single-tenant stores with at least 50,000 square feet from Indiana, as well as additional stores from the Chicago metropolitan market. He limited his search to stores of that size because unit prices and rental rates are typically higher for smaller properties compared to larger ones. He looked at some of those sales, including 11 that he summarized in his report. Some were well occupied and some were vacant, but they sold for much higher unit prices than Allen's comparable sales. From that, Byrnes concluded there were probably enough Indiana sales to use as comparators for the subject property. *Ex. R-A at 6-7, 12; Tr. at 272-73, 288, 327-28.*

74. But Byrnes acknowledged that the big-box market can be regional or even national, and that an appraiser could use out-of-state sales. He did not know whether Allen had considered any of the sales from Byrnes' research. And he did not find that Allen should have used any of those sales. Indeed, Byrnes did not confirm any of the sales beyond pulling disclosure forms and checking parcel data viewers online. Several were leased-fee sales, and Byrnes relied exclusively on CoStar for the lease data. Of those leased-fee sales, some had build-to-suit leases, although he did not know which ones. Several were former Marsh grocery stores that were sold after Marsh filed for bankruptcy protection, one of which was converted to a church. *Tr. at 345, 369-72, 382-84.*

75. Turning to Allen's adjustments, Byrnes found that in considering whether to adjust for differences in conditions of sale, Allen should have at least raised and discussed Kmart's business distress and Target's perception that the locations from Sales 1 and 7 could not

support the intended economic performance. But Byrnes admitted he had no evidence that the performance of the businesses at any of Allen's comparable sales' locations affected the properties' sale prices, nor did he indicate what type of adjustment might be needed. He similarly had no evidence that Sears' or Kmart's business viability affected the sale prices of the two former Kmart stores. *Ex. R-A at 9-10; Tr. at 375-79, 385-86.*

76. Byrnes also pointed to issues with Allen's adjustments for property characteristics. Allen did not appear to apply the straight-line size adjustment of 0.16% per square foot that Byrnes felt was implied by Allen's matched pair analysis. Had Allen done so, he would have adjusted Sale 1 upward by 13.71%. Instead, he made no adjustment, without explaining why. But Byrnes agreed he had no market evidence to suggest Allen should have applied a different adjustment. *Ex. R-A at 10*; *Tr. at 271-89, 380-81.*

77. While Allen expressed his adjustments for arterial attributes, demographics, and retail submarkets numerically, Byrnes criticized him for not providing any market-extraction analysis or other methodology to explain his quantification. But Byrnes again conceded he did not have any market evidence to show Allen's adjustments were incorrect or insufficient. Byrnes also criticized Allen for carrying over his 2018 submarket adjustment to all the later valuation dates, which Byrnes felt clouded over the fact that real estate markets are dynamic. But Byrnes agreed that occupancy rates in St. Joseph County and Mishawaka remained steady across the valuation dates, and he had no evidence that occupancy rates from any of the retail submarkets for Allen's comparable sales appreciably changed during that period either. *Ex. R-A at 10*; *Tr. at 271-89, 359-60, 381-82, 385-86.*

78. Turning to the income-capitalization approach, Byrnes noted that CoStar disclosed many leases of large retail space in Indiana, so it was unclear to him why Allen found it necessary to use leases from other states. Byrnes pointed out that the property tax regime in other states might differ from Indiana's regime. In his view, that could be especially relevant when positing a triple-net lease, where the tenant is responsible for those taxes.

Although Byrnes testified that the tax regime in Cook County, Illinois was substantially more burdensome than Indiana's regime, he only speculated that regimes in Ohio, Michigan, and Missouri might differ. *Ex. R-A at 13; Tr. at 293-95.*

79. Byrnes also criticized some of Allen's adjustments. He found that Allen did not support using a "fairly minimal" uniform 5% size adjustment. To Byrnes, such an adjustment suggests that size does not closely correlate to value, and it contradicts the RERC study, where segmentation by size seemed to be a significant issue. Byrnes also noted that Allen's arterial and demographics adjustments did not closely align with the percentage differences in traffic and demographic attributes between the subject property and the comparable properties. And Allen again carried over his 2018 submarket adjustment to later years. But Byrnes had no evidence to show that Allen's location-related adjustments were incorrect or insufficient, or that the retail submarkets from the comparable leases had experienced material changes. *Ex. R-A at 13-15*; *Tr. at 290-306, 389-90.*

80. As for Allen's choice of a capitalization rate, Byrnes disagreed with Allen's characterization of the subject property as a "value add" property. According to Byrnes, a value add property is a distressed property, with low occupancy or physical deficiencies, and buyers who specialize in those properties fix them and lease them up. Byrnes did not see how that concept applied to the subject property, which had good demand as evidenced by its continuous occupancy and by the low vacancy rates in the local market and Princess City Plaza. *Ex. R-A at 14-15; Tr. at 302-304, 398.*

81. Byrnes also took issue with Allen's deduction of reserves as an expense in determining NOI as well as with Allen's below-the-line deduction for leasing commissions, tenant improvements, and holding costs. As for reserves, Byrnes indicated that most PwC survey participants do not deduct reserves, and that brokers from the South Bend-Mishawaka market do not do so either. But he acknowledged that the PwC data is not

specific to big-box stores and that he had no market evidence as to how investors in the big-box market accounted for reserves. *Ex. R-A at 14; Tr. at 392.*

82. As for Allen's below-the-line deductions, Byrnes believed they "diverg[ed] into the realm of discounted cash flow analysis." Allen valued the property as if the lease-up period began on the valuation date. According to Byrnes, however, that runs counter to the standard definition of market value, which assumes a property has been adequately exposed to the market before the valuation date. That is the assumption under the sales-comparison approach, although Byrnes has not found any appraisal text or treatise indicating the same assumption also applies to the income approach. *Ex. R-A at 14-15; Tr. at 296-302, 396.*

83. In any case, because the subject property was fully occupied, Byrnes found no indication that it would require any lease-up period if it were sold. But he recognized that when leasing-up a vacant property, a landlord typically would incur a leasing commission, would have foregone rent and reimbursable expenses, and would provide some form of tenant-improvement allowance to attract a tenant. *Ex. R-A at 14-15; Tr. at 296-302, 341-42, 395.*

84. Moving on to the cost approach, Byrnes agreed that participants in the big-box market generally do not give that approach much weight. Indeed, when appraising big-box stores, Byrnes himself typically does not develop an analysis under the cost approach. As for the specifics of Allen's analysis, Byrnes found that Allen provided little detail to explain why he viewed the property as a Class-C discount store. Byrnes believed that the building's interior elements and quality were more indicative of a Class-C retail store. *Ex. R-A at 17; Tr. at 324-26, 398-99.*

85. Byrnes also disagreed with how Allen quantified obsolescence. According to Byrnes, appraisal theory holds that a calculation dividing an improvement's effective age by its economic life reflects total accrued depreciation, and nothing else is required. Allen,

however, treated his age-life calculation as applying only to physical depreciation. *Ex. R-A at 17-19*; *Tr. at 313-17.*

86. In any case, Byrnes described Allen's methods for quantifying obsolescence as circular. In extracting obsolescence from sales, Allen used his own value conclusions under the sales-comparison approach rather than individual sales. And to capitalize deficient income, he used his estimated NOI for the property from his income-capitalization approach. Algebraically, each methodology leads to a conclusion under the cost approach that matches Allen's corresponding conclusion under another approach. Also, Allen's methodology depreciated both land and improvements, which Byrnes found improper because land is not a wasting asset and therefore does not depreciate. Finally, as with Allen's analysis under the income-capitalization approach, Byrnes found no support for subtracting lease-up costs that would be incurred after the valuation date. *Ex. R-A at 17-19*; *Tr. at 313-16.*

87. We find Byrnes generally credible. He is a highly qualified expert, and he prepared his review appraisal in conformity with USPAP. He offered useful insights into Allen's appraisal report. But he did not offer his own valuation opinion for any of the years at issue. And as explained in more detail below, while he raised some legitimate questions about Allen's choice of comparable properties for his sales-comparison and income-capitalization analyses, Byrnes did not convince us that Allen relied largely on inappropriate substitutes for the subject property. Similarly, while Byrnes raised questions about the support for some of Allen's adjustments to his comparable sales and leases, he did not show that any of those adjustments were improper, or that different adjustments should have been applied.

3. Farrington's Appraisal

88. The Assessor also offered an appraisal report from Farrington. Farrington has a bachelor's degree from Indiana University at South Bend. She is an Indiana certified general appraiser with over 35 years of experience. She attempted to qualify as an MAI,

but she did not pass the required comprehensive exam on the income module. *Ex. R-B, addendum*; *Tr. at 423, 540.*

89. Farrington focuses her practice largely in St. Joseph, Elkhart, and Marshall counties. She has appraised a broad range of real estate types, including retail shopping centers, industrial, office, medical, and apartments. In the five years leading up to the hearing, she had appraised only two freestanding big-box stores. *Tr. at 422-24.*

90. Farrington estimated the retrospective value of the fee simple interest in the property for January 1 of each assessment year. She also certified that she performed her appraisal in conformity with USPAP. She inspected the property in November 2023. She had also inspected the property for an appraisal she completed in connection with an earlier tax appeal. *Ex. R-B at 2, 4, 6*; *Tr. at 428, 432-33.*

91. Like Allen, Farrington examined both the statewide and St. Joseph County markets. Based on its population and the level of retail sales, Farrington believes St. Joseph County is a strong retail market. Vacancy rates for retail property have averaged roughly 10% over time. Within the county, Farrington found that the University Park trade area was the strongest commercial location. *Ex. R-B at 23-26, 30-34; Tr. at 438, 441-42.*

92. Turning to the national real estate market, Farrington focused on data for power centers, the category from the International Council of Shopping Centers she believed best describes Princess City Plaza. She acknowledged, however, that big-box properties can include different types of risk than power centers. Power centers typically range between 250,000 and 600,000 square feet, with individual spaces ranging from a few thousand square feet up to larger anchors of 90,000 square feet or more. And as Farrington noted, the subject property does not readily compare to multi-tenant shopping centers, which have demising walls and separate metering, restrooms, and HVAC systems. Farrington therefore recognized that freestanding big-box properties can have different risks, and

therefore different capitalization rates, than power centers. *Ex. R-B at 27-30; Tr. at 441-42, 549-52, 565.*

93. Farrington described challenges to the power-center market that largely mirrored those that Allen described as affecting the big-box and retail markets in general, such as increasing online retail sales, market-rent declines, and rising interest rates, all of which were exacerbated by the COVID pandemic. And she agreed that reduced demand for big-box space has put downward pressure on sale prices and rental rates, to a degree. While the power-center market showed small decreases in capitalization rates leading up to the pandemic, Farrington noted that the portion of the *PwC Real Estate Investor Survey* addressing the national power-center market was based on data mostly from larger markets to which the South Bend MSA does not readily compare. According to Farrington, smaller markets like the South Bend MSA tend to have capitalization rates between 50 and 100 basis points higher than those reflected by the PwC data. *Ex. R-B at 27-32, 556.*

a. Farrington's cost approach analysis

94. To determine the subject land's value, Farrington selected sales of seven sites from St. Joseph County, although she acknowledged that two of the sites could not support a big-box store like the subject property. For most of the sales, Farrington acknowledged that she did not confirm the terms with the parties or broker involved in the transactions. After adjusting the sale prices, she arrived at the following values for the subject site:

Year	**Reconciled Unit Value**
2018	$250,000/acre
2019	$300,000/acre
2020	$300,000/acre
2021	$325,000/acre
2018	$350,000/acre

Ex. R-B at 36-45; Tr. 442-52, 576-81.

95. Farrington looked at data from Marshall & Swift[3] to estimate the improvements' replacement cost. Like Allen, she believed that the Class-C discount store model best reflected the subject store and that the store did not fit the description of a retail store. *Ex. R-B at 46; Tr. at 454-55, 594.*

96. Unlike Allen, however, Farrington classified the building as a "good" quality store. She based her quality rating on the store's ceiling tiles, lighting, partitions, and bathroom quality. In her view, those finishes are much better than the finishes from the model for an average quality discount store, which she described as being almost industrial in nature. Aside from choosing a different quality rating, Farrington proceeded much as Allen did in estimating replacement costs for both the building and site improvements. And like Allen, she did not include any entrepreneurial incentive. But she departed from Allen's approach in that she did not add additional soft costs or a leasing commission. Farrington then used Marshall & Swift's depreciation tables to estimate physical depreciation for each year. She made similar calculations for the site improvements. *Ex. R-B at 46-58; Ex. P-13; Tr. at 454-64, 590-93, 600, 613.*

97. While Farrington noted that the improvements likely suffered from some incurable functional obsolescence stemming from the market's preference for online sales and smaller brick-and-mortar stores, she thought it was best to measure that obsolescence together with external obsolescence, which she separated into locational and economic obsolescence. She did not believe that the property suffered from locational obsolescence. But given the worsening economic conditions over the valuation dates—such as slowing rent increases, declining sale prices, and increasing marketing times, exposure times, vacancy rates, and capitalization rates—she found that the property suffered from economic obsolescence. *Ex. R-B at 49-50; Tr. at 461-64, 602-06, 608-11.*

98. To quantify obsolescence, Farrington first determined the building's market value. She did so by apportioning the NOI from her analysis under the income-capitalization

[3] The record is unclear how, if at all, Marshall & Swift differs from MVS.

approach between the land, building, and site improvements. To isolate the rent necessary to provide a return to the land, she applied a yield rate derived from national composite PwC survey data, which was not specific to retail properties. Farrington, however, admitted she did not know if the PwC yield rates were identical between land and improvements. And for the site improvements, she applied the same yield rate to their physically depreciated cost. She then subtracted those two required returns to get the NOI required for a return on the building, which she capitalized using what she incorrectly described as the loaded overall rate from her analysis under the income approach.[4] She subtracted the resulting value from the building's replacement cost new to arrive at total depreciation for the building. To isolate obsolescence, she then subtracted her estimated physical depreciation. *Ex. R-B at 48-55; Tr. at 464, 555-56, 604-08.*

99. Farrington has taken coursework on valuing convenience stores. Partitioning returns between land and improvements is important in that context, and it makes sense to her. But she could not confirm which (if any) editions of *The Appraisal of Real Estate* supported her calculus. And she conceded that she had not seen another appraiser calculate obsolescence in the way she did. *Tr. at 462-64, 605-11.*

100. After applying all depreciation, Farrington arrived at the following values under the cost approach:

	2018	2019	2020	2021	2022
Bldg. Cost	$7,090,000	$7,380,000	$7,390,000	$7,770,000	$8,980,000
Phys. Dep	($2,623,300)	($2,952,000)	($3,177,700)	($3,574,200)	($4,400,200)
Obsolescence	($686,707)	($639,496)	($549,569)	($794,258)	($1,068,150)
Dep. Bldg. Value	$3,779,993	$3,788,504	$3,662,731	$3,401,542	$3,511,650
Dep. Site Imp. Cost	$144,786	$150,783	$150,783	$158,688	$183,369
Site Value	$2,070,000	$2,480,000	$2,480,000	$2,690,000	$2,890,000
Rounded Value	$5,990,000	$6,420,000	$6,290,000	$6,250,000	$6,590,000

[4] Farrington did not actually use the same loaded rate from her analysis under the income approach. In that analysis, she had added 100 basis points to the overall rate she had derived from the PwC data and then loaded it with the property's effective tax rate. In her obsolescence calculation, she loaded the PwC-based overall rate with the property's effective tax rate, without adding 100 basis points. *See Ex. R-B at 53-55, 84-85.*

Ex. R-B at 56-58; Tr. at 465-67.

b. Farrington's sales-comparison approach

101. For her sales-comparison analysis, Farrington looked for sales of single-occupant retail properties. In her view, location is probably the most important aspect of comparability. All things being equal, she prefers properties that are geographically close to the property being appraised and that are subject to similar locational influences and a similar economic climate. Because she considers larger markets like Chicago incomparable to South Bend, she limited her selection of sales to only those within smaller MSAs. Nonetheless, she viewed the subject property as a "regional property," so she did not limit her search to properties within driving distance of it. *Ex. R-B at 59-60; Tr. at 468-71, 492-93, 567, 706-07.*

102. Because she views vacancy as indicating some level of distress in a property's location or functionality, Farrington prefers not to use sales of vacant properties when appraising an occupied one. The vacant properties she saw in the market were distressed and had been vacant for a while, whereas the subject property was in the University Park Trade area, with little vacancy and strong surrounding economics. But Farrington acknowledged that the three-year period between when Gordman vacated the space next to the subject store and Dick's Sporting Goods re-leased that space could mean that a portion of Princess City Plaza was distressed. *Ex. R-B at 59-60; Tr. at 468-71, 492-93, 567, 616.*

103. Farrington consulted three sources to identify comparable sales: she looked at her own database that she had developed over the years, she consulted with brokers and other appraisers to ask if they had any comparable data, and she looked at the Gateway online site for sales disclosures. She ultimately identified nine comparable sales: seven from Indiana and one each from Michigan and Ohio:

Details	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8	Sale 9
Development	Kroger	Strack Van Til	Harley Davidson	Gabe's	Big R	Ollie's	Jo Ann Fabrics	Levin Furniture	Strack & Van Til
Location	Indianapolis, IN	Valparaiso, IN	Fort Wayne, IN	Mishawaka, IN	Warsaw, IN	Mishawaka, IN	Roseville, MI	Bedford, OH	Chesterton, IN

Property Rights	Leased Fee	Fee Simple	Leased Fee	Leased Fee	Leased Fee	Leased Fee	Leased Fee	Leased Fee	Leased Fee
Sale Date	Jun-18	Oct-17	May-16	Sep-18	Aug-18	Mar-20	Oct-22	Jun-22	Mar-21
Bldg. Area (SF)	61,466	59,958	51,822	41,467	110,109	46,850	33,143	90,000	62,261
Year Built	1994	1972	1994	1987	1990	1985	1996	1991	2005
Land Size (Acre)	6.43	6.05	8.42	3.77	8.47	1.26	2.65	7.9	5.685
LTB Ratio	4.56	4.40	7.08	3.96	3.35	1.17	3.48	3.82	3.98
Sale Price	$4,797,000	$3,700,000	$3,445,000	$5,382,000	$7,341,081	$5,375,309	$4,030,000	$6,646,148	$8,530,000
Sale Price/SF	$78.04	$61.71	$66.48	$129.79	$66.67	$114.73	$121.59	73.85	$137.00

Ex. R-B at 61-69; *Tr. at 471-86, 709-11.*

104. Although Farrington had been inside some of the stores previously, she did not inspect any of the properties in connection with the appraisal assignment. But she explained that many were national retailers, and individual stores throughout those chains are all configured approximately the same and are of roughly the same quality. Unlike Allen, Farrington did not verify any of her sales with the parties or brokers involved in the transactions, although she looked at sales disclosure forms, which are signed under penalties of perjury and on which assessors routinely rely. *Tr. at 623, 707, 709-11.*

105. Most of the properties were single-occupant retail properties at the time of sale, although the property from Sale 3 was leased to two tenants: a Harley Davidson shop and a banquet center. Farrington didn't know if that building was demised. In any case, she did not consider a banquet hall to be similar to a big-box store. Six of the sales were from counties within 100 miles of St. Joseph County. One property (Sale 2) was vacant when it sold, although Farrington did not know how long. The property from Sale 6 was vacant for two years before selling, although a lease was put in place concurrent with the sale. The remaining seven properties sold with leases in place. The store from Sale 4 was substantially remodeled for the tenant, Gabe's, before the property was sold. *Ex. R-B at 60-70; Tr. at 471-88, 624-49.*

106. Farrington acknowledged (1) that when using a leased-fee sale, an appraiser ideally should know the terms of the lease, including how the rent level compares to market rent, and (2) that any rent that is above market level represents intangible value. But she didn't know most of the terms for the leases from her comparable properties; instead, she presumed the rent from each lease was at market level. According to Farrington, there is

no reason to think that in active markets with high occupancy, parties would enter non-market leases. And while she testified that she excluded build-to-suit leases because the sales could reflect more than just the value of the real estate, she acknowledged that Sale 1 had a build-to-suit lease. *Tr. at 491-92, 546, 616, 624-49, 669-70, 707.*

107. Farrington also tried to avoid using sales that were part of portfolio transactions because they tend to have lower risk and corresponding capitalization rates than transactions for individual properties. Portfolio sales also involve different types of buyers, and they have allocated sale prices that may not reflect the value of any individual property. Although Farrington did not know it when she prepared her appraisal, three of her comparable sales (Sales 1, 5, and 6) were part of portfolio transactions. *Ex. R-B at 61, 65-66; P-10, P-11; Tr. at 562-63, 626-27, 634-36, 669-70.*

108. Although Farrington identified nine comparable sales, she did not use every sale for each valuation date. Instead, she used the sales that were closest to the valuation date: Sales 1-3 for 2018; Sales 1-5 for 2019; Sales 1 and 4-6 for 2020 and 2021; and Sales 6-9 for 2022. *Ex. R-B at 76-80.*

109. After choosing her sales, Farrington considered several categories of adjustments. She first considered adjusting for differences in property rights conveyed. She did not adjust any of the sale prices for that element, however, even though most of her sales involved leased properties. She justified her decision by pointing to her assumption that the leases were all at market-level rent with market terms. But she acknowledged that a long-term lease with a triple-A-rated tenant guarantees stable cash flow and can add to a property's value beyond the fee-simple interest, even where a property is leased at market rent. In her previous appraisal of the subject property, she adjusted leased-fee sales between 20% and 30% based on conversations with two brokers. But she did not talk to those brokers in connection with this assignment. *Ex. R-B at 70; Tr. at 492, 647-53.*

110. Farrington, however, did adjust all her comparable properties' sale prices to account for differences in market conditions between the sale dates and each valuation date at issue. Based on the PwC survey of the national power center market, she found that the average six-year value change was -3.35% annually, or -0.28% per month. *Ex. R-B at 71-72; Tr. at 489, 496-97.*

111. Farrington next considered adjustments for property characteristics. She found that no adjustments were necessary for location or land-to-building ratio. Although two of the sales were located out of state, she did not make any adjustment to account for that difference either, explaining that the properties had similar surrounding influences and were in a similar commercial market to the subject property. But she did not consider any demographic data or traffic counts in reaching that conclusion. Indeed, she had almost no data in her report to show how any of the locations compared to the subject property's location. *Ex. R-B at 75-80; Tr. at 497-98, 654-55.*

112. Turning to construction type and quality, Sales 1, 2, and 9 were grocery stores, which are more expensive to build. She therefore adjusted those sale prices downward by 29% based on the cost difference from Marshall & Swift. She also considered Sale 5, a warehouse discount store, to be of inferior quality, and she applied a 16% upward adjustment to that sale price, again based on Marshall & Swift cost data. *Ex. R-B at 72-73; Tr. at 490-91, 495-98.*

113. For her size adjustments, Farrington noted there was a "definite downward trendline" between building size and unit price. To isolate the impact of size as a variable, Farrington relied on three sets of paired-sales from Indiana and Ohio. In each pair, the larger building was between 62,261 and 90,000 square feet, while the smaller building was between 17,913 and 60,000 square feet. Although Farrington adjusted the sale prices in each pair to account for differences in market conditions, she did not adjust for differences in any other element of comparison, indicating that the buildings were similar in terms of location, construction type/use, and age. She found that the paired sales

indicated that smaller buildings sold for 5% to 23% more per square foot than larger buildings, with an average of 15%. Based on that information, she adjusted the sale prices of all the properties with stores smaller than 50,000 square feet downward by 15% but did not adjust any of the other sales. *Ex. R-B at 74-75; Tr. at 498, 662-65.*

114. Farrington considered most of the stores to be like the subject store in terms of age/condition. The two exceptions were Sales 2 and 9. Sale 2 was built in 1972, and Farrington adjusted its sale price upward by $10/SF, while Sale 9 was built in 2005, and she adjusted its sale price downward by the same amount. *Ex. R-B at 75; Tr. at 499-500.*

115. After making her adjustments, Farrington settled on the following values for the subject property:

Year	**Rounded Value**
2018	$5,470,000
2019	$5,210,000
2020	$6,170,000
2021	$6,170,000
2022	$6,510,000

Ex. R-B at 75-80; Tr. at 500-504.

c. *Farrington's income-capitalization approach*

116. To develop her income-capitalization analysis, Farrington chose seven leased properties from her files, which she identified through research for previous appraisal assignments. All seven properties were from the South Bend MSA and were leased on a triple net basis:

	Lease 1	Lease 2	Lease 3	Lease 4	Lease 5	Lease 6	Lease 7
Tenant	Martin's Supermarket	Waypoint Arcade	St. Claire's Butcher	Four Winds Casino	Pet Smart	TJ Maxx	Fresh Thyme Grocery
Location	South Bend	Mishawaka	South Bend	South Bend	South Bend	South Bend	Mishawaka
Lease Date	Apr-19	Oct-19	Dec-20	Sep't-22	March-16	Nov-16	Aug-15
Renewal	Yes	No	No	No	Yes	Yes	No
Bldg. Area (SF)	75,457	15,000	15,000	28,000	20,087	28,000	29,619
Year Built	1965	1991	2002	2005	2005	2005	1989
Rate/SF	$6.33	$6.23	$5.79	$5.25	$12.00	$8.50	$8.77

Ex. R-B at 81-83; Tr. at 511, 669, 671.

117. Those were the only leases Farrington reviewed and considered for her appraisal. Leases 2, 3, and 7 were located within, or on the edge of, the University Parke Trade area, while Leases 4-6 were in a power center housing another Kohl's store. Most of the spaces were leased to retail stores, but Lease 2 was occupied by an arcade for recreational use, and Lease 3 was occupied by a casino for use as a training facility, which Farrington acknowledged is not a specific retail use. *Ex. R-B at 81-83; Tr. at 507-08, 511, 669, 691.*

118. Farrington also acknowledged that retail buildings with less than 20,000 square feet have different markets for potential buyers. They require more significant adjustment and may not be as comparable to the subject property. Yet two of Farrington's comparable leases were for spaces of only 15,000 square feet, and a third was barely more than 20,000 square feet. *Ex. R-B at 81-83; Tr. at 690.*

119. Farrington agreed that if any of the leases included a tenant-improvement allowance, that allowance would need to be removed to reflect market rent. She confirmed there was no allowance for Lease 3, and she accounted for buildout in Lease 7. She assumed no tenant improvement allowance for the other leases, although she did not confirm her assumption with the brokers or parties to the leases. And to the extent any of the leases included rent concessions, she did not confirm that with the broker or parties to the transaction. *Tr. at 671-72, 687.*

120. For the three leases that were renewals (Leases 1, 5, and 6), Farrington acknowledged that the properties would not have been available on the market. She also acknowledged that she did not know how the renewal rental rates were determined. In two of the three instances involving renewals, the properties had been occupied by the same tenant since the date of construction, and Farrington could not say whether the leases were build-to-suit. Yet she had claimed in her report that all the leases were second-generation and

therefore did not include any additional return for buildout, which in her view made them more comparable to the subject property. *Ex. R-B at 83; Tr. at 669-73.*

121. Farrington then considered adjusting the leases based on differences in property characteristics. She rated each property as superior, comparable, or inferior to the subject property in terms of location, age, quality, and size. But she did not explain how she weighed those qualitative comparisons to arrive at her upward adjustments. For example, she rated Lease 1 as inferior in age, superior in quality, and comparable in size and location, and she adjusted the rent upward from \$6.33/SF to \$6.65/SF. She did a similar thing with Lease 2, rating that property as smaller than the subject property (and therefore superior in size), and inferior in construction, but comparable in terms of the other two elements. She again adjusted the rent upward, this time from \$6.23/SF up to \$7.48/SF, an increase of 20%. *Ex. R-B at 82-83; Tr. at 509-21.*

122. As with her sales-comparison analysis, Farrington did not analyze traffic counts or demographics. Nor did she rely on any other objective data in comparing the properties' locations. She instead based her adjustments on her experience "with those markets, with those locations." Indeed, she did not point to market data for any of her adjustments, which she agreed were subjective. *Ex. R-B at 83; Tr. at 509-21, 688-94.*

123. The adjusted rates ranged from \$4.73/SF to \$10.80/SF, with an average of \$7.18/SF and a median of \$7.45/SF. Farrington reconciled the adjusted rates to \$7.50/SF for the subject property. According to Farrington, her reconciled rent reflects the January 1, 2018 valuation date. She did not explain how she reached that conclusion, however. The leases spanned six years, and she did not expressly adjust them for differences in market conditions between the lease dates and the January 1, 2018 valuation date. Also, in estimating NOI for that valuation date, Farrington used rent of \$7.63/SF, which apparently reflected her reconciled rent as adjusted for changes in market conditions between the January 1, 2018 valuation date and the following year. She justified the adjustment on grounds that a buyer would be looking at a future income stream for the 12

months following the valuation date. She then used the PwC national power-center data to adjust her reconciled rent for each subsequent valuation date. *Ex. R-B at 82-83; Tr. at 521.*

124. Unlike Allen, Farrington did not include reimbursement for insurance or CAM in computing PGI. Like Allen, however, she deducted vacancy and collection loss, which she estimated at 7.5%, to arrive at EGI for each year. *Ex. R-B at 85; Tr. at 527.*

125. Turning to operating expenses, Farrington deducted the landlord's insurance expense during vacancy. Like Allen, she estimated a 3% management fee. Because she believed that those fees are typically passed through to tenants as part of CAM, however, she only deducted the portion of that fee attributable to vacancy. For replacement reserves, she relied on PwC's national power-center data. *Ex. R-B at 84; Tr. at 528-29.*

126. Farrington did not deduct a leasing commission or tenant-improvement allowance, explaining that they are normally "below the line" expenses and that direct capitalization "typically would not include those things for a large retail user." But she recognized that landlords often provide a tenant improvement allowance, and she explained that if she were appraising a multi-tenant shopping center, those two expense categories would be a factor. *Ex. R-B at 84; Tr. at 529-30, 564.*

127. For her capitalization rate, Farrington again relied on PwC's survey data for the national power-center market. But she tempered the PwC data with her knowledge of the local market. She also extracted rates from five Midwestern sales, which ranged from 6.74% to 8.23% and averaged 7.73%. She ultimately concluded that local rates were generally 100 basis points higher than national rates. She therefore settled on a rate for each year that was 100 basis points higher than the average first quarter rate from the PwC survey. She then loaded those overall rates with the entire effective tax rate for the subject property rather than just the share of the tax rate that the landlord would bear when the property was vacant. *Ex. R-B at 29-31, 84-85; Tr. at 522-24, 553-55, 557-59.*

128. Applying her loaded capitalization rates to the property's NOI for each year, Farrington reached the following value conclusions:

	2018	2019	2020	2021	2022
PGI	$662,349	$674,801	$684,923	$684,923	$688,347
Vacancy & Collection Loss	($49,676)	($50,610)	($58,218)	($58,218)	($58,510)
EGI	$612,672	$624,191	$626,704	$626,704	$629,838
Insurance	($1,341)	($1,379)	($1,607)	($1,648)	($1,694)
Repl. Res.	($23,885)	($23,885)	($30,399)	($30,399	($30,399)
Management Fee	($1,346)	($1,442)	($1,705)	($1,705)	($1,606)
NOI	$586,100	$597,485	$592,994	$592,952	$596,138
Cap Rate	11.05%	10.56%	10.85%	11.08%	10.53%
Value (Rounded)	$5,310,000	$5,660,000	$5,460,000	$5,350,000	$5,660,000

Ex. R-B at 85-90; Tr. at 527-34.

d. Reconciliation

129. In her reconciliation, Farrington found that her conclusions under all three approaches to value were based on reliable information, although she acknowledged that the cost approach is typically disfavored for older properties and that market participants probably would not use it to value a big-box property. In fact, she doesn't always develop the cost approach when appraising big-box stores. But when she completed her last two appraisal assignments for property tax appeals, she was told that a statute required her to reconcile to the lowest market value for the property. She did not identify the statute, but she indicated that one of the assignments was for an apartment property. She concluded the following values for the subject property:

Year	Reconciled Value	Approach
2018	$5,310,000	Income Capitalization
2019	$5,210,000	Sales-Comparison
2020	$5,460,000	Income Capitalization
2021	$5,350,000	Income Capitalization
2022	$5,660,000	Income Capitalization

Ex. R-B at 90-91; Tr. at 535-37, 566, 571, 700-01.

130. As explained in more detail below, because Farrington based her reconciled valuation opinion for each year on the lowest of the values from the three approaches, we do not find those reconciled opinions to be credible. But we do find her conclusions under each

valuation approach minimally credible, albeit less persuasive than Allen's valuation opinions. Farrington is a qualified expert, and she certified that she complied with USPAP. She applied generally accepted valuation approaches, even if some of her methodologies within those approaches were not generally accepted.

IV. Conclusions of Law and Analysis

A. Burden of proof

131. These appeals span several years during which different statutory regimes governed the burden of proof in assessment appeals. *See* Ind. Code. § 6-1.1-15-17.2 (repealed by 2022 Ind. Acts 174, § 32 effective on passage); I.C. § 6-1.1-15-20.[5] Both statutes remove the normal presumption that an assessment is correct and shift the burden of proof to the assessor in cases where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, as last corrected by an assessing official, stipulated to or settled by the taxpayer and the assessing official, or determined by a reviewing authority. I.C. § 6-1.1-15-17.2 (a)-(b); I.C. § 6-1.1-15-20(a)-(b), (f). And where there is a failure of proof, both statutes require the assessment to revert to the level last determined for the prior year. I.C. § 6-1.1-15-17.2(b); I.C. § 6-1.1-15-20(f). Under the first statute, that reversion occurs where the assessor fails to offer probative evidence of the property's true tax value that "exactly and precisely conclude[s]" to the challenged assessment, and the taxpayer fails to show that its proffered assessment is correct. I.C. § 6-1.1-15- 17.2(b); *Southlake Ind., LLC v. Lake Cty. Ass'r ("Southlake II")*, 174 N.E.3d 177, 179-80 (Ind. 2021); *Southlake Ind. LLC v. Lake Cty. Ass'r ("Southlake III")*, 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). Under the second statute, the reversion is triggered where the totality of the evidence does not suffice to prove the property's true tax value. I.C. § 6-1.1-15-20(f).

[5] The first statute applies to appeals that were filed before its March 21, 2022, repeal, and that remained pending after the repeal, while the second applies to appeals filed after March 21, 2022. *Elkhart Cty. Ass'r v. Lexington Sq., LLC*, 219 N.E.3d 236, 244 (Ind. Tax Ct. 2023); I.C. § 6-1.1-15-20(h).

132. Aside from noting that the assessment did not increase by more than 5% between 2017 and 2018, the parties did not present or analyze their cases under the burden-shifting statutes.[6] And based on our evaluation of the evidence, we need not offer a detailed analysis under those statutes either. We conclude that Allen's valuation opinions, as proffered by Kohl's, are probative of the property's true tax value, and therefore of its correct assessment, for each year. We further conclude that Allen's opinions are more persuasive than Farrington's opinions. Those conclusions lead to the same result under either statute: the assessments must be reduced to the amounts reflected in Allen's appraisal.

B. Both parties offered expert opinions that sufficed to make a prima facie showing of the property's true tax value.

133. Before launching into our analysis in earnest, it is helpful to understand both the parameters of Indiana's true tax value standard and the types of evidence that are probative under that standard. True tax value does not mean fair market value. I.C. § 6-1.1-31-6(c). Nor does it mean the value of the property to the user. I.C. § 6-1.1-31-6(e). Subject to these somewhat tautological directives, the Legislature relies on the Indiana Department of Local Government Finance ("DLGF") to define true tax value. I.C. § 6-1.1-31-6(f). In its 2021 Real Property Assessment Manual, the DLGF defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2021 REAL PROPERTY ASSESSMENT MANUAL at 2. The Manual offers further guidance, defining "market value-in-use," "value-in-use," and "use value," as being synonymous. MANUAL at 6, 8. But it also states that where properties are regularly exchanged for their current use, market value-in-use contains a value-in-exchange component. MANUAL at 2; *see also, Millenium Real Estate Inv., LLC v. Benton Cty. Ass'r*, 979 N.E.2d 192, 196 (Ind. Tax Ct. 2012) ("[W]hen a property's current use is consistent with its highest and best

[6] While the percentage increase between 2017 and 2018 addresses the burden of proof for Kohl's 2018 appeal, it does not address later years. The burden-shifting provisions of both statutes are triggered where there is an increase of more than 5% over the prior year's assessment as last determined by a reviewing authority, in this case, the Board. So our determination for 2018 affects the analysis for 2019, and so on.

use, and there are regular exchanges within its market so that ask and offer prices converge, a property's market value-in-use will equal its market value because the sales price fully captures the property's utility.")

134. Thus, true tax value is something other than purely market value or value-in-use. Given mandates from the Indiana Supreme Court and Legislature, the DLGF created a valuation standard that relies heavily on what it terms as objectively verifiable data from the market, but that still maintains the notion of property wealth gained through utility and therefore recognizes situations where true tax value will differ from market value.

135. Historically, the Tax Court has interpreted what constitutes a property's current use or a similar user broadly. For example, it reversed our determination rejecting an appraiser's sales-comparison analysis where the appraiser relied on sales to "secondary users" such as Big Lots or Hobby Lobby to value a Meijer store. We had reasoned that those secondary users were not truly comparable to Meijer. In our view, comparable users were instead entities like Lowe's or Walmart that built their own stores using their specific marketing schemes and layouts. *Meijer Stores Ltd. P'ship v. Smith,* 926 N.E.2d 1134, 1136-37 (Ind. Tax Ct. 2010). The Court, however, explained that an appraiser need only locate sales "'of comparable *properties*'" and adjust their selling prices. *Id.* at 1137 (emphasis in original) (quoting 2002 REAL PROPERTY ASSESSMENT MANUAL at 13). The Court held that it was therefore improper to discount the appraiser's sales-comparison analysis on grounds that he used sales to secondary users instead of sales to entities like Walmart. *Id.*

136. These well-worn guideposts for determining true tax value may be in flux. As recently announced in *Majestic Props., LLC v. Tippecanoe Cty. Ass'r,* applying the "regulation" requires an analysis of the "utility received" by the owner. *Majestic Props., LLC v. Tippecanoe Cty. Ass'r,* 241 N.E.3d 642, 645 (Ind. Tax Ct. 2024). It may be too broad to define a use as simply residential, because a landlord and a homeowner might derive different utility. *Id.* Applied here, defining the use as "retail" may similarly be too broad

because a first-generation owner derives much more utility than purchasers on the secondary market. But until a more decisive precedent is issued by the Tax Court, we will hew closely to the well-established body of law in valuing big-box stores.

137. As a threshold issue, we must determine whether the parties have made a prima facie showing of the subject property's true tax value. *Wigwam Holdings, LLC v. Madison Cty. Ass'r*, 125 N.E.3d 7, 12 (Ind. Tax Ct. 2019) (holding that the Board's "statutory duty as the finder of fact," is to review "the probative value" of the evidence); *see also Madison Cty. Ass'r v. Sedd Realty*, 125 N.E.3d 676, 680 (Ind. Ct. App. 2019). There are two prongs for making that showing: (1) a party must offer objectively verifiable, market-based evidence, and (2) the valuation must comport with generally accepted appraisal principles. *See, e.g., Piotrowski v. Shelby Cty. Ass'r,* 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006); *Grabbe v. Duff*, 1 N.E.3d 226, 229 (Ind. Tax Ct. 2013).

138. The first prong may be satisfied with "relevant market data[,]" including "data compiled in accordance with generally accepted appraisal principles." *Howard Cty. Ass'r v. Kokomo Mall*, 14 N.E.3d 895, 899 (Ind. Tax Ct. 2014); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2-3. As for the second prong, valuation evidence is considered consistent with "generally accepted appraisal principles" if it conforms to practices "recognized in the appraisal community as authoritative." *Meijer Stores v. Boone Cty. Ass'r*, 162 N.E.3d 26, 32 (Ind. Tax Ct. 2020) (citing 50 IAC 30-2-4).

139. A USPAP-compliant appraisal normally will satisfy both prongs. Indeed, the Tax Court has long held that such appraisals are one of the most effective methods for rebutting an assessment's presumption of correctness. *E.g. Meijer Stores,* 926 N.E.2d at 1139. An appraisal, however, is not reliable if it substantially departs from the standards and assumptions underlying Indiana's assessment guidelines. Likewise, an appraiser's valuation opinion "must be based upon facts." *Marion Cty. Ass'r v. Wash. Square Mall,* 46 N.E.3d 1, 12 (Ind. Tax Ct. 2015).

140. Here, the parties offered valuation opinions from qualified licensed experts who certified that they completed their appraisal reports and formed their valuation opinions in conformity with USPAP. Both experts applied the cost, sales-comparison, and income-capitalization approaches to value, which are generally accepted methodologies in the appraisal profession. In doing so, they broadly relied on market data, and they used their professional expertise in analyzing that data to reach their opinions of value.

141. The two experts also generally complied with the valuation standards and assumptions underlying Indiana's true tax value system. They both estimated the market value-in-use of the fee-simple interest in the subject property. The one instance where one of the expert's opinions blatantly diverged from Indiana's valuation standards was Farrington's decision to adopt as her final opinion the lowest conclusion from the three valuation approaches, which she believed was mandated by statute. There are limited instances where Indiana law requires that approach. For example, I.C. § 6-1.1-4-39—the statute Farrington was likely referring to—provides that for certain residential rental properties, true tax value is the lowest value determined by applying the three accepted valuation approaches. I.C. § 6-1.1-4-39(a). But there are no similar statutory or regulatory provisions for commercial properties generally, or retail properties specifically.

142. We therefore find that Allen's reconciled value opinions, as well as his conclusions under each of the three approaches, suffice to prima facie establish the subject property's true tax value for each year at issue. Similarly, while Farrington's methodology for reconciling her conclusions under the three valuation approaches does not comply with Indiana's true tax value standard, her separate conclusions under those approaches do.

C. Based on the totality of the evidence, we find that Allen's valuation opinions are the most persuasive evidence of the property's true tax value for each year.

143. Because we have competing probative valuation opinions, we must weigh those opinions to determine what the preponderance of the evidence shows is the property's true tax

value.

144. We find Allen's valuation opinion for each year to be the most persuasive evidence of the property's value. He is the most qualified and experienced appraiser relative to the assignment: appraising the true tax value of a big-box retail property. Not only has he completed far more appraisals of this property type than Farrington, but he has additional experience as a broker working with big-box retailers to locate sites for new stores, which gives him additional insight into the concerns of participants in the big-box market. And Allen is an MAI, a significant designation of expertise from the Appraisal Institute. Farrington, by contrast, failed to pass the module of the comprehensive MAI exam dealing with the income-capitalization approach. That is particularly relevant, given the problems with her analysis under the income-capitalization approach that we detail below.

145. We also have greater confidence in the breadth, relevance, and accuracy of the data underlying Allen's valuation opinions. He used at least some survey data that was more tailored to the risk profiles of the big-box real estate market and the Midwest region than the national survey data for power centers on which Farrington relied so heavily throughout her appraisal. More importantly, Allen looked at a broader array of sources to identify potentially comparable sales and leases of big-box properties for use in his analyses under the sales-comparison and income-capitalization approaches than Farrington did. Farrington relied largely on her own files compiled through completing other appraisal assignments and conversations with local brokers. And unlike Farrington, Allen verified the underlying data from his chosen comparable sales and leases with people involved in those transactions.

146. Indeed, Allen's more robust research and more careful vetting of data contributed to him choosing sales and leases that were better substitutes for the subject property than Farrington. For example, had Farrington confirmed her comparable sales with the parties or brokers to the transactions, she might not have unwittingly included portfolio sales in

her analysis. And unlike Farrington, Allen largely supported his adjustments to his comparable sales and leases by pointing to relevant market data.

147. With those general observations in mind, we turn to a more detailed analysis of each appraiser's valuation opinions.

1. <u>Allen's conclusions under the sales-comparison and income-capitalization approaches are generally reliable, and he did not give much weight to his conclusions under the cost approach.</u>

148. We begin with Allen. As already discussed, Allen's valuation opinions were generally reliable. He based his conclusions under the sales-comparison and income-capitalization approaches mostly on properties that are appropriate substitutes for the subject property, and he largely supported his adjustments to their sale prices and lease rates. Allen also largely supported his other judgments in applying the income-capitalization approach. While his conclusions under the cost approach rely too directly on data developed under the other two approaches to offer a reliable independent value indication, he ultimately placed little weight on his conclusions under the cost approach in forming his valuation opinions.

a. In his sales-comparison analyses, Allen generally used appropriate substitute properties and supported his adjustments to their sale prices.

149. For his sales-comparison analyses, Allen relied on eight sales of large single-user properties that were devoted to retail use both pre- and post-sale. And except for Sale 3, they remained as single-user properties after sale. The buyer of Sale 3 later offered a 30,000-square-foot portion of the property for lease. But it devoted the lion's share of the property to large-format retail use. In any case, the Assessor did not criticize Allen's use of that sale on grounds that it was converted to multi-tenant use.

150. Instead, the Assessor criticized Allen's choice of comparable sales primarily along two fronts: (1) that none of the sales were from the South Bend MSA or nearby markets, with

only one being from Indiana, and (2) that the properties were all vacant before being sold, in several cases for more than two years.

151. The Assessor's first criticism does not trouble us much. All else being equal, sales of properties from the South Bend MSA would have been ideal substitutes for the subject property. But all else was not equal. Allen did not find any sales from that area that met his other criteria. While Farrington used two sales from Mishawaka, both involved leased stores that were less than 50,000 square feet, and one was a portfolio sale. Farrington herself agrees that portfolio sales tend to have lower risk profiles, different types of buyers, and allocated prices that may not reflect the values of the individual properties composing the portfolio.

152. Allen would have preferred to use only sales from Indiana. But again, he found only one such sale that met his other criteria. Although the Assessor criticizes Allen for not using three Indiana sales he had used in an earlier appraisal of an Anderson Kohl's store, Allen credibly justified his decision against using those sales here. And we give little weight to Byrnes' claim that he had identified hundreds of sales of large single-tenant stores from Indiana and the Chicago metropolitan market. Byrnes did not investigate whether any of those sales were comparable to the subject property. Moreover, Byrnes did not appraise the subject property based on any of these properties, and we can only speculate as to whether an analysis from those sales would have reached a different value. These criticisms by Byrnes would also apply to the Assessor's appraiser, Farrington.

153. Given the lack of Indiana sales that met his selection criteria, Allen reasonably expanded his search to nearby states. Indeed, all three experts agree that the market for big-box retail properties is regional, or even national. And Allen examined each location's relevant demographic and submarket data to assure that the properties were from sufficiently comparable locations as the subject property.

154. In fact, that demographic and submarket data largely belies one criticism leveled by the Assessor and both his experts: that out-of-state sales don't reflect the high occupancy rates and strong demand of the South Bend MSA. While Allen acknowledged there were some significant differences in the submarkets, he was able to adjust the sale prices to account for those differences. If anything, most of the submarkets Allen chose reflected superior supply-and-demand characteristics for retail properties, as shown by their higher effective asking rents. While four of the trade areas for Allen's comparable sales had population declines, the rest had growing populations. And they bracketed the growth from the subject property's trade area. That said, Sales 6 and 8 were from much less populous areas with significantly lower spending power than the subject property's market area. We therefore have some doubts about the suitability of those two sales as substitutes for the subject property.

155. As for the Assessor's other primary complaint, he does not take issue with Allen's use of vacant sales per se. His own experts agree that appraisers may use sales of properties that were vacant at the time of sale. And the Indiana Tax Court has held that because property taxes apply only to real property and not to intangible business value, investment value, or contractual rights, "the use of vacant comparables can be appropriate." *Meijer Stores,* 162 N.E.3d at 33 (citing *Switzerland Cty. Ass'r v. Belterra Resort Indiana, LLC*, 101 N.E.3d 895, 905 (Ind. Tax Ct. 2018) and *Stinson v. Trimas Fasteners, Inc.* 923 N.E.2d 496, 501 (Ind. Tax Ct. 2010)).

156. Instead, the Assessor and Byrnes largely criticize Allen for not investigating the reasons why the stores from his comparable sales were vacant, in some cases for several years before the sale. They believe the stores' vacancies might be attributable to deficiencies that make the locations less suitable for retail use. Byrnes, however, admitted that his first instinct is that a property's vacancy stems from a problem with the vacating retailer rather than with the property's location. And he did little to tie the vacancies for any of Allen's comparable stores to their locations. For example, Byrnes speculated about how Walmart and Menards moving their stores to nearby locations might have affected supply

and demand in the markets surrounding Sales 5 and 8. We agree that this may suggest that those markets, compared to the subject property, might have a surplus supply of big box space and lower demand due to those relocations. But this does not persuade us that these sales must be rejected.

157. Likewise we note Byrnes' claim that he spoke to brokers involved with Sales 1 and 3, who indicated that Target and Lowe's, respectively, closed those stores for underperformance and that Target reported having closed the store from Sale 7 based on years of declining productivity. While that underperformance might be related to the stores' locations, it might also be related to other issues. And underperformance is a relative concept. What matters is not whether the locations supported whatever performance Target and Lowe's demanded under their business plans, but whether those locations would support retail sales comparable to the sales that the subject property's location would support.

158. In any case, Allen's experience in appraising big-box properties and his work as a broker in locating potential sites for big-box stores has given him detailed knowledge of the demographic and other locational characteristics that big-box retailers desire. He investigated those characteristics for the subject property and for each comparable property. Thus, while Byrnes' claims about the performance of the Lowe's and Target stores give us some pause, they do not cause grave doubts about Allen's overall analysis.

159. Pointing to the high occupancy rates in the South Bend MSA and Princess City Plaza, the Assessor and Byrnes also claim that, unlike Allen's comparable properties, the subject property would not remain vacant for years if Kohl's were to leave. But the areas surrounding each of Allen's comparable sales have similar occupancy rates. Also, while two large stores near the subject property were quickly reoccupied after becoming vacant, Byrnes and the Assessor ignore the fact that the store immediately adjacent to the subject property sat vacant for roughly three years between when Gordman vacated the space and Dick's Sporting Goods re-occupied it. Byrnes' speculation that the lengthy vacancy

might have been attributable to the developer wanting to line up tenants for the space Dick's would be vacating to move into the former Gordman space is just that: speculation. Even if Byrnes is right, that only means it took the developer three years to place tenants into another large space in the shopping center. Either way, there was a lengthy vacancy in the subject property's immediate vicinity.

160. Thus, although we have concerns about how long some of Allen's comparable properties were vacant leading up to sale, we are unconvinced that those vacancies were attributable to differences in locational characteristics or utility that would make those properties inappropriate to use as substitutes for the subject property.

161. In addition to their main criticisms about Allen using out-of-state sales of vacant stores, the Assessor and Byrnes took issue with the fact that three of Allen's comparable properties had restrictive covenants in their deeds, with the covenant from Sale 8 prohibiting the property from being used in the same manner as the subject property. Even though Allen adjusted Sale 8 upward by 5% to account for the difference in property rights between that sale and the posited unrestricted sale of the subject property, we agree with the Assessor and find that Sale 8 is a poor substitute for the subject property.

162. We are less troubled by Allen's use of the other two sales with deed restrictions (Sales 2 and 4). The covenants for those properties were less restrictive and lasted for only five and four years, respectively. So the restrictions would have had a more muted effect on the buyers' ability to subsequently market the properties if, and when, they chose to do so. And Allen confirmed with the brokers and sellers that the restrictions were negotiated after the sale prices had been established.

163. Byrnes also criticized several aspects of Allen's process in adjusting his comparable properties' sale prices: (1) Allen's purported failure to address the business distress of Kmart's parent company and Target's perception that two of the locations could not

support the stores' intended economic performance; (2) his size adjustment for Sale 1; and (3) his decision to carry over his 2018 submarket adjustment to later years. But Byrnes had no evidence that the performance of the businesses at any of the locations affected the properties' sale prices, that Allen should have applied a different size adjustment, or that the relative performance of the comparable properties' submarkets changed relative to the performance of the subject property's submarket in later years. We therefore give his critiques of Allen's adjustments little weight.

164. That said, we recognize that Allen failed to explain how he quantified many of his adjustments. Nonetheless, he largely identified the data on which they were based, as opposed to Farrington, who acknowledged that most of her adjustments were not based on objective data. Allen also performed a qualitative analysis for each assessment date that broadly supported his conclusions.

165. In sum, we find that Allen's sales-comparison analyses were reliable. Allen mostly chose appropriate substitutes for the subject property, and he largely supported his adjustments to their sale prices to arrive at credible value conclusions.

b. Allen's conclusions under the income-capitalization approach were generally reliable.

166. Turning to the income-capitalization approach, we find that Allen once again reached reliable value conclusions. He chose leases for properties that were generally good substitutes for the subject property, and he largely supported his adjustments to their rents. He similarly supported the other components of his analyses, including his estimates of operating expenses, and of vacancy and capitalization rates.

167. Once again, the Assessor criticizes Allen's selection of leases on grounds that the properties were too distant from the South Bend MSA to be comparable. As with his comparable sales, however, Allen investigated the demographics, access and exposure, and submarkets for the properties from which he drew his comparable leases to ensure

that they shared sufficiently similar locational characteristics as the subject property and that he could adjust for any relevant differences.

168. The Assessor argues otherwise, pointing to the fact that the average asking rent for the subject property's submarket hovered around $10.00/SF between 2013 and 2021. By contrast, none of Allen's comparable leases approached that level, and he settled on rents between $4.50/SF and $5.00/SF for the subject property. The Assessor, however, misinterprets the point of that data. It shows rent levels and vacancy rates for all retail properties within the submarkets—not rent levels for big-box properties. The data is skewed by smaller properties, which all the experts agree command comparatively higher unit values. Indeed, while the Assessor's own expert, Farrington, used leases exclusively from the South Bend MSA, only one exceeded $10.00/SF, with the others mostly falling well below that threshold. And that was true even though she relied on leases for properties as small as 15,000 square feet.

169. As with Allen's sales-comparison analysis, Byrnes criticized a few aspects of Allen's adjustments to his comparable lease rates. But Byrnes again acknowledged he had no evidence that the adjustments were incorrect or insufficient. We therefore give those criticisms little weight.

170. We likewise give little weight to most of Byrnes' other criticisms of Allen's analysis under the income-capitalization approach. Although Byrnes questioned Allen's deduction for replacement reserves, Byrnes had no market evidence to show how investors in the big-box market treated anticipated capital expenses. We instead credit Allen and his experience in appraising big-box properties. In any case, Farrington also deducted replacement reserves, so that is not a way to differentiate the two appraisers' valuation opinions.

171. Similarly, we are largely unpersuaded by Byrnes' attack on Allen's decision to deduct lease-up costs necessary to bring the property to the stabilized occupancy level upon which he premised his NOI estimate. Byrnes grounded his criticism, in part, on the

principle under the sales-comparison approach that a property is presumed to have been adequately exposed to the market before it sells. But he has not found any appraisal text or treatise applying that concept under the income approach. Indeed, he did not explain whether, or how, potential buyers are expected to market a property for lease before purchasing it. And Byrnes recognized that when leasing-up a property, landlords typically incur the types of costs Allen deducted. We also note that Allen's deduction for a tenant-improvement allowance was largely offset by the fact that he adjusted most of his comparable leases upward to account for his assumption that a buyer of the subject property would offer such an allowance to secure a tenant.

172. Finally, as for the Assessor's and Byrnes' argument that Allen's appraisal was inconsistent because his sales-comparison analysis treated the property as if it were vacant while his income approach presuming occupancy, we find that Allen's decision to exclude occupied sales due to concerns of market rent and creditworthy tenant issues did not arbitrarily limit his comparable sales analysis to vacant sales. While another appraiser may have presented an appraisal with more persuasive analysis of occupied sales, that is not before us.

c. Although Allen's conclusions under the cost approach were not a reliable independent indicator of the subject property's value, he did not give them much weight.

173. We give little weight to Allen's conclusions under the cost approach. But our hesitancy has nothing to do with Allen's view on the existence of obsolescence in the retail market generally or the big-box market specifically. Indeed, Farrington echoed many of Allen's general concerns. Nor are we troubled by Allen's choice of MVS' model for an average-quality discount store instead of the model for a good-quality store that Farrington chose. Either choice was supportable. In any case, had Allen used the good-quality model, the increased replacement cost would have led Allen to calculate more obsolescence.

174. Instead, it is Allen's methodology for quantifying obsolescence that we find problematic. His methodology was so dependent on his data and analyses under the other two

valuation approaches that it renders his conclusions under the cost approach largely useless as an independent indicator of the subject property's value. Indeed, Allen himself gave little weight to his conclusions under the cost approach in reaching his final valuation opinion for each year.

2. Farrington's conclusions under the three approaches are less reliable than Allen's valuation opinions.

175. While Farrington's conclusions under the three valuation approaches are minimally probative, they are less reliable than Allen's valuation opinions.

a. In her sales-comparison analyses, Farrington chose poorer substitutes for the subject property than Allen, and she did less to support her adjustments to their sale prices.

176. Overall, the sales Farrington chose for her sales-comparison analyses were poorer substitutes for the subject property than the sales Allen used. Due to weak vetting of her sales comparables, Farrington unwittingly used three sales that were part of portfolio transactions. And those sales permeated her analyses, constituting between 25% and 75% of her comparable sales for each year.

177. Several of Farrington's sales involved buildings that were less than 50,000 square feet, with one building being only 33,143 square feet. We therefore have significant doubt about whether those properties would compete for the same types of buyers as the subject property. And Sale 3, which was barely over 50,000 square feet, was leased to two tenants, one of which, a banquet center, Farrington did not consider to be a big-box use.

178. Because Farrington wanted to avoid relying on sales of vacant stores where possible, she relied mostly on properties that sold with leases in place. By itself, that is not problematic. But Farrington did not know whether the leases reflected market terms, which she acknowledged is important. She instead simply assumed they did, reasoning that parties would not enter non-market leases in high-occupancy markets. We agree it is unlikely that national chain retailers are often snookered into above market leases. But

this general supposition is not a substitute for market analysis. Nor did Kohl's offer any evidence to negate Farrington's assumption about the leases being for market terms. So we are not as troubled by Farrington's use of leased-fee sales as we are by her use of portfolio sales.

179. Farrington's analysis regarding whether to adjust her comparable properties' sale prices was similarly less persuasive than Allen's analysis. While both appraisers relied on their experience in deciding whether adjustments were merited, and if so, quantifying those adjustments, Allen also largely relied on objective data to support his decisions. Farrington, by contrast, pointed to little objective data. For example, she offered no support for her conclusion that all her comparable properties were from similar locations as the subject property and therefore required no adjustment for that element. Unlike Allen, she didn't analyze data relevant to the desirability of a location for retail use, such as trade-area demographics and traffic counts along the arteries providing exposure to potential customers.

180. While Farrington did offer some objective evidence to support her adjustments for size differences between the subject building and the buildings from several of her comparable sales, we agree with Kohl's that the matched-pair analysis on which she primarily relied was unpersuasive. When used properly, a paired-data analysis isolates the effect of an independent variable, in this case building size, on a dependent variable, such as price. To isolate the independent variable's effect, however, the appraiser must negate the potential effect of any other relevant elements of comparison. She can do so either by choosing properties that are so similar in those other respects that any differences are unlikely to have affected the sale prices, or by adjusting the sale prices for differences in those elements. Yet Farrington adjusted for only one difference: market conditions. She merely asserted, without any support, that the properties were otherwise similar in terms of building age, construction type, use, and location.

181. As explained above, we are already concerned about whether the large size disparities between the subject store and several of Farrington's comparable stores make those properties too dissimilar to serve as substitutes for the subject property. Our questions about the reliability of Farrington's adjustments to adequately account for the effect of those size disparities only magnify our concerns.

182. We are similarly unconvinced by Farrington's justification for her decision not to adjust her leased-fee sales to account for differences in property rights. As explained above, she offered little to support her assumption that all the leases were on market terms. And she acknowledged that some long-term leases add to a property's value, even if those leases reflect market terms. More importantly, in a previous appraisal of another Kohl's store, Farrington adjusted for differences in property rights based on conversations with brokers who indicated that the difference between the sale of a leased-fee interest and fee-simple interest merited an adjustment between 20% and 30%. She did not give any reason why that would no longer be true.

b. Farrington's income-capitalization analyses suffered from multiple shortcomings that made her value conclusions far less persuasive than Allen's valuation opinions.

183. Turning to Farrington's analyses under the income-capitalization approach, her comparable leases were even poorer substitutes for the subject property than her comparable sales. Six of her seven leases involved properties that were less than 30,000 square feet, with two being only 15,000 square feet. Farrington herself admitted that stores under 20,000 square feet do not seem as comparable to the subject store. Similarly, while she recognized that leases to second-generation tenants better represented her posited lease of the subject store, Leases 5 and 6 were built-to-suit for the tenant.

184. And those two leases, as well as Lease 1, were renewals. It is not necessarily inappropriate for an appraiser to use renewed or renegotiated leases in estimating market rent. But appraisers should use them with caution. The parties may have atypical

motivations. *See Archway Mktg. Servs. v. County of Hennepin,* 882 N.W.2d 890, 897 (Minn. 2016) (quoting THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 466 (14th ed.) ("'[L]ease renewals or extensions negotiated with existing tenants should be used with caution' because existing tenants may be willing to pay higher rents to avoid relocating or may be offered lower rents to avoid vacancies[.]"). And the space may not have been exposed to the market prior to the renewal or extension. Indeed, Farrington admitted that was the case with her three lease renewals. Yet despite the need for extra caution, Farrington did nothing to investigate the circumstances surrounding the renewals.

185. Farrington's adjustments to the rent from her comparable leases were even more problematic than the adjustments from her sales-comparison analysis. Once again, she pointed to no objective data to support her adjustments. And they were difficult to follow. For example, for Leases 1 and 2, Farrington rated the properties as superior to the subject property in one of the four characteristics she considered, inferior in another, and comparable in the other two. Yet in both instances she adjusted the leases upward, by 20% in one instance.

186. Turning to Farrington's capitalization rates, we have few qualms with her choice of an overall rate for each year. Although she relied on national survey data for power centers, she also looked at market-extracted rates from the Midwest. But as Kohl's points out, Farrington made a fundamental error in loading her overall rate to account for real estate taxes: she used the total effective tax rate instead of the portion reflecting only her anticipated vacancy period. We agree that the error detracts significantly from Farrington's credibility.

c. Given the shortcomings in Farrington's quantification of obsolescence, we give little or no weight to her conclusions under the cost approach.

187. Just as we have no qualms with Allen's choice of the model for an average quality store, we take no issue with Farrington's decision to use the model for a good quality discount

store. In any case, had Farrington used the model for an average store, the lower replacement cost would have led her to calculate less obsolescence. So her choice of model did not greatly affect her value opinions.

188. But we do find merit in Kohl's' criticism of how Farrington quantified obsolescence. Farrington herself could not confirm which, if any, editions of *The Appraisal of Real Estate* supported her methodology, and she had never seen another appraiser measure obsolescence in that way. And as part of her complex procedure for isolating the building's fully depreciated value, Farrington used yield rates from a national PwC survey that was not specific to retail properties.

189. We are also troubled by Farrington's capitalization of the returns attributable to the property's different components. She used the PwC data for the national power center market to determine her overall rates. But she did not adjust those rates by 100 basis points to account for the greater risk in the South Bend MSA as she had done in her analysis under the income approach. Farrington did not explain why such an adjustment was necessary in one instance but not in the other. In addition, Farrington's obsolescence quantifications ultimately depend heavily on her estimated NOI for the subject property. So all the shortcomings we discussed regarding her NOI estimates also affect the reliability of her obsolescence quantifications.

190. We understand that obsolescence, which Allen and Farrington agree was present in the big-box retail market, can be difficult to measure. That difficulty can limit the usefulness of the cost approach as a primary measure of value for properties like the subject property, particularly where there is sufficient reliable data on which to develop an opinion under the other two approaches. Indeed, all three experts agree that participants in the big-box market typically disfavor the cost approach, and Farrington does not always develop it when appraising big-box properties. We therefore give Farrington's conclusions under the cost approach little or no weight.

V. Conclusion

191. After weighing the evidence, we find that Allen's probative value opinions are the most persuasive evidence of the property's true tax value, and therefore, of its correct assessment, for each valuation date. We consequently find for Kohl's and order the assessments changed as follows:

Assessment Date	Assessment
January 1, 2018	$2,900,000
January 1, 2019	$3,040,000
January 1, 2020	$3,180,000
January 1, 2021	$3,090,000
January 1, 2022	$3,220,000

DATE: JUNE 16, 2025

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

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