REPRESENTATIVES FOR PETITIONER: Benjamin Blair, Brent Auberry, David Suess, Abraham Benson, Faegre, Drinker, Biddle & Reath LLP

REPRESENTATIVES FOR RESPONDENT: Brian Cusimano, Attorney at Law
Marilyn Meighen, Attorney at Law

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Lowe's Home Centers, Inc.,	)	Petition Nos.: 48-003-20-1-4-00822-20
	)	48-003-21-1-4-00071-22
	)	
Petitioner,	)	Parcel Nos.: 48-12-19-401-003.000-003
	)	
	)	County: Madison
v.	)	
	)	Assessment Years: 2020 - 2021
Madison County Assessor,	)	
	)	
Respondent.	)	

Date 2/29/2024

FINAL DETERMINATION

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

I. Introduction

1. Effective March 21, 2022, the Legislature repealed Ind. Code § 6-1.1-15-17.2, which under specified triggering circumstances, created an exception to the general rule that a taxpayer appealing its assessment had the burden of proof. In *Elkhart Cty. Ass'r v. Lexington Square, LLC*, 219 N.E.3d 236, 238-40 (Ind. Tax Ct. 2023), the Tax Court broadly drew a bright line that filed before the effective date the repeal would be governed by the old statute. Lowe's Home Centers, Inc. ("Lowe's") filed appeals of its

2020 and 2021 assessments before the effective date of the repeal. We are therefore constrained to find that Ind. Code § 6-1.1-15-17.2 applies to Lowe's' appeals even though we held our evidentiary hearing after the statute's repeal.

2. The Assessor failed to meet his burden of proof under Ind. Code § 6-1.1-15-17.2's exacting standards, which required him to offer evidence that exactly matched the challenged assessments. The Assessor's expert, Erick Landeen, estimated a different value, and his appraisal was too unreliable to be probative of the property's true tax value in any case. Lowe's did not offer a valuation opinion from its own expert, Laurence Allen, but instead Allen offered corrections to one of the valuation approaches from Landeen's appraisal. Those corrections, which among other things omit elements necessary to determining the property's precise value, similarly fail to prove the correct assessment. Indiana Code § 6-1.1-15-17.2(b) therefore requires the assessment for each year to revert to the prior year's level.

II. Procedural History

3. Lowe's filed Form 130 petitions contesting its 2020 and 2021 assessments on June 5, 2020, and May 24, 2021, respectively. The Madison County Property Tax Assessment Board of Appeals issued Form 115 determinations making no changes to the assessment for either year. Lowe's then timely appealed both determinations to the Board. The values under appeal are the same for both years:

Land	Improvements	Total
$1,538,600	$5,204,200	$6,742,800

4. Beginning on February 13, 2023, our designated administrative law judge, Erik Jones ("ALJ"), held a two-day hearing on the petitions. Neither he nor the Board inspected the property. Landeen, Allen, and Larry Davis testified under oath.

5. The parties offered the following exhibits:

Exhibit P-1:	Appraisal Report of Lowe's, prepared by Erick Landeen and Rachel Price of Terzo & Bologna ("Landeen Appraisal"),
Exhibit P-2:	Appraisal Review Report of Landeen Appraisal, prepared by Allen & Associates Appraisal Group,
Exhibit P-5:	Marshall Valuation Services excerpts,
Exhibit P-6:	Respondent's Responses to Petitioner's Discovery Requests,
Exhibit P-7:	2020-2022 Property Record Cards ("PRC") for 3335 S. Scatterfield Road,
Exhibit P-8:	Sales Disclosure Form and PRC for 5501 S. Scatterfield Road,
Exhibit P-10:	Appraisal of Real Estate, 15th Edition excerpts,
Exhibit P-11:	Excerpts from 2020-2021 Uniform Standards of Professional Appraisal Practice,

Exhibit A:	PRC for subject property,
Exhibit B:	Landeen Appraisal,
Exhibit C:	Marshall Valuation Services documents,

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

III. Objections

7. The Assessor objected to attempts by Lowe's to call two witnesses during its case in chief: Landeen, who the Assessor had identified has his expert, and Allen, who Lowe's previously had identified as a rebuttal expert.

8. The Assessor objected to Landeen testifying in Lowe's' case-in-chief because it did not identify Landeen as its expert by the November 16, 2022, deadline for disclosing the names of experts and exchanging their reports in the agreed appeal management plan that the parties proposed and the ALJ adopted. Lowe's countered that it timely identified Landeen as an adverse witness on January 23, 2023—the appeal management plan's deadline for identifying witnesses. Given that Landeen was the Assessor's own witness, Lowe's argued that he could not claim surprise. *Tr. at 17-22; Pet'r Post-Hr'g Br. at 3-4.*

9. The ALJ sustained the objection to Lowe's calling Landeen as an expert but indicated that he would afford Lowe's wide latitude in cross-examining Landeen, who the Assessor confirmed that he would call during his case-in-chief. The ALJ also allowed Lowe's to call Landeen as a fact witness.

10. We adopt the ALJ's ruling. Lowe's did not make an offer of proof regarding what it expected Landeen to testify to had it been allowed to call him as an expert. In any case, Lowe's had ample opportunity on cross examination to explore both Landeen's valuation opinions and any reasonable conclusions that might be drawn from them. We need not decide if Lowe's could have used the opposing party's expert to elicit an entirely new valuation opinion. The parties do not cite to any case law on that point. Even if that were allowable, Lowe's would have needed to name Landeen as an expert witness and provide a report laying out the basis for that opinion by the appeal management plan's deadline for identifying expert witnesses and exchanging their reports. It also likely would have needed to retain Landeen and compensate him for his time and expertise.

11. The Assessor similarly objected to Lowe's calling Allen during its case-in-chief, on grounds that Lowe's did not identify Allen and exchange his report by the November 16, 2022 deadline. It instead named Allen as a rebuttal expert by the December 23, 2022 deadline for identifying rebuttal experts. Lowe's responded that neither our procedural rules nor the Indiana Rules of Trial Procedure preclude it from calling any of its witnesses at any time during its case-in-chief. Lowe's further argued that the initial deadline for identifying experts applied only to "experts who would be opining on the value of the property." *Tr. at 29-36*; *Pet'r Post-Hr'g Br. at 4*.

12. The ALJ sustained the objection, and Lowe's made an offer of proof showing that Allen would testify to two things: (1) that he was retained to prepare a review appraisal of Landeen's appraisal under standards 3 and 4 of the Uniform Standards of Professional Appraisal Practice ("USPAP"), and (2) that he concluded Landeen's appraisal did not

reliably indicate the subject property's market value-in-use. *Tr. at 29-36*; *Pet'r Post-Hr'g Br. at 4*.

13. We again adopt the ALJ's ruling. In its offer of proof, Lowe's highlighted only Allen's opinion about the reliability of Landeen's appraisal, which fits squarely within the definition of rebuttal evidence. *See McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993) (*quoting Watkins v. State*, 528 N.E.2d 456, 459 (Ind. 1988) ("Rebuttal evidence is evidence which tends to explain, contradict, or disprove an adversary's evidence."). Lowe's did not point to any other opinion of Allen's, nor did it claim that it was calling him as a fact witness.

14. In briefing, however, Lowe's identifies aspects of Allen's review appraisal and testimony that stretch beyond mere rebuttal. In those instances, Allen described what the conclusion for each year would be if various errors that Allen identified in Landeen's cost approach were corrected. *Ex. P-2 at 5; Tr. at 422*. And Lowe's argues that those corrected values represent the subject property's true tax value. Even if that might have justified allowing Lowe's to call Allen in its case-in-chief, Lowe's suffered no prejudice. It was still able to elicit that evidence during rebuttal.

IV. FINDINGS OF FACT

A. The Subject Property

15. The subject property is a big-box retail store situated on 18.58 acres of land. It is located on Scatterfield Road, a busy commercial corridor in Anderson. The property includes an approximately 140,429-square-foot building that was constructed in 2000 and that has continually operated as a Lowe's Home Improvement Center. It was assessed for $5,989,400 in 2019. The assessment then increased to $6,742,800 for the years under appeal. *Ex. A*; *Ex. B at 11, 14, 17; Tr. at 61-64*.

B. Landeen's Appraisal[1]

16. The Assessor hired Terzo & Bologna, Inc. to appraise the market value-in-use of the fee simple interest in the subject property. Landeen, an MAI appraiser with nearly 30 years' experience appraising thousands of properties, and Rachel Price, a trainee appraiser, then prepared an appraisal. They certified that they developed their analyses and opinions and prepared their report in conformity with USPAP. For ease of reference we will refer to the appraisal report and the valuation opinions as Landeen's. *Ex. B; Tr. at 58-59; 148-49; 151-55.*

1. Property inspection

17. Landeen inspected the property on November 15, 2022. He spent a total of 15 minutes at the property. He did not take any interior photographs. Nor did he inspect any non-public areas, such as mechanical rooms, HVAC systems, storage areas, loading docks, office space, or the roof. He similarly did not ask for any building or site plans or for maintenance or capital-expenditure reports. *Ex. A*; *Tr. at 143-44.*

2. Valuation approaches

18. Landeen considered, developed, and applied the cost, income, and sales-comparison approaches in valuing the property.

a. Land valuation

19. To estimate the land's value, Landeen looked for sites that were similar to the subject site in terms of size, zoning, and location. For 2020, he selected five sales: two from Pendleton, and one each from Greensburg, Greenwood, and Muncie. They sold between April 2017 and March 2020. For 2021, Landeen used the same sales from Pendleton and

[1] Landeen's appraisal included analysis and conclusions for the 2020, 2021, and 2022 tax years. Because Lowe's did not appeal 2022 to the Board, we have omitted those portions of his analysis, except where relevant to the assessments on appeal.

Greensburg, plus one each from West Lafayette and Mooresville. The sites sold between March 2019 and November 2020. *Ex. B at 39-40, 48; Tr. at 76-79.*

20. Landeen then considered adjusting the sale prices to account for transactional differences between the sales of his comparable sites and the posited sale of the subject site, as well as for differences in the sites' locational, legal, economic, and physical characteristics. For both 2020 and 2021, he adjusted the sale prices upward to reflect 3% annual appreciation in market conditions. He arrived at that adjustment by observing market conditions and analyzing the comparable sales. *Ex. B at 37-43; Tr. at 72-73, 79-80.*

21. Landeen made significant location adjustments for both years, ranging from negative 30% to 10% for 2020, and from negative 25% to 10% for 2021. But he did not explain what he based those adjustments on beyond saying that he "considered the location of the comparables versus the subject." He adjusted one sale price by negative 25% to account for its smaller size (6.04 acres) and made smaller adjustments to the sale prices for several other sites for 2020. His size adjustments for 2021 were all between negative 5% and 2.5%. He also made a couple of relatively minor adjustments for other physical characteristics and legal characteristics (zoning) for 2021. *Ex. B at 37-43; Tr. at 71-75, 112.*

22. Based on the adjusted sale prices, Landeen estimated the subject site's value at $50,000/acre or $930,000 (rounded) for 2020, and $51,500/acre or $960,000 (rounded) for 2021. *Ex. B at 39-40, 43-44; Tr. at 75-76, 82.*

b. Cost approach

23. To estimate replacement costs for the improvements, Landeen used data from Marshall Valuation Service ("MVS") and applied the calculator method. In classifying the building, Landeen looked at several alternative categories, such as discount warehouse and similar retail-related stores. MVS describes "discount stores" as "typically large open shells with some partitioning for offices and storage areas," and indicates that costs

for the best ones approach low-quality department stores. This category includes "the large off-price center and furniture- and home-improvement-type shell outlets." MVS describes a "warehouse discount store" as having warehouse construction with minimal interior partitioning and indicates that membership stores typically fall into that category. And it describes "mega warehouse stores" as "the very large discount and food outlets, typically over 200,000 square feet." *Ex. P-5 at 2; Ex. B at 49; Tr. at 84, 288.*

24. Landeen recognized that the base unit cost for a mega warehouse store was lower than for the alternative classifications, and that larger buildings typically have lower unit costs. Considering that the subject property is a relatively large home-improvement store, he felt that MVS' costs for a class C average mega warehouse store were the best ones to use. MVS reported May 2022 base costs of $64.50/SF for a mega warehouse. Landeen then adjusted those costs using annual inflation rates he derived from MVS reports that ran from October to October each year. *Ex. B at 49; Ex. C at 1-3, 5; Tr. at 83-85.*

25. Next, Landeen applied local- and current-cost multipliers. For the local multiplier, he used a multiplier from MVS for Anderson, Indiana. He took his current-cost multiplier from MVS' October 2022 supplement, which indicated a factor of 1.07 for costs taken from its May 2022 report. Landeen explained that he applied that factor to determine what costs would be for the assessment dates. But he did not explain why that adjustment was necessary, given that he had already used MVS-derived inflation factors to adjust the May 2022 base costs to the assessment dates. Landeen also adjusted for sprinklers and floor area/perimeter. And he added costs for site improvements, which according to his appraisal included parking areas and associated lighting and landscaping. *Ex. B at 50, 53; Ex. C at 8-9; Tr. at 91-92, 97-98, 105.*

26. Because MVS' "hard" costs do not include all costs related to construction, Landeen added indirect, or "soft," costs equal to 5% of the hard costs. He also added 10% for entrepreneurial incentive. He described that as a "modest" number because single-user, owner-oriented buildings typically are not built with a profit motive. But he explained

that Lowe's would have internal costs for manpower in undertaking such a project and that those type of projects sometimes produce a property with a value beyond just the costs of the building and land. Nonetheless, he acknowledged that he did not have any specific data points to support his estimate of 10%. *Ex. B at 50-54; Tr. at 93-94, 98, 103, 290, 293-94.*

27. After applying the various adjustments to his base costs and adding indirect costs and entrepreneurial incentive, Landeen arrived at the following replacement costs:

	2020	**2021**
Building	$7,233,900	$7,371,800
Site Improvements	$737,400	$723,000
Total	$7,971,300	$8,095,800

Ex. B at 51-54.

28. He then used the age-life method to calculate depreciation. Under that method, Landeen divided the improvements' effectives ages by their life expectancies. To determine the building's life expectancy, he considered MVS' life expectancies for various building types, and chose 45 years, which matched the expectancy for a class C retail store of average quality. By contrast, the life expectancies for warehouse discount stores and mega warehouse stores ranged from 30 to 35 years depending on class and construction quality. While Landeen considered those MVS life expectancies, his choice of 45 years was an adjustment based on what he had observed in the marketplace. He did not see buildings like the subject building having life expectancies that were less than or equal to what the MVS numbers indicate. *Ex. B at 50-54; Ex. C at 12; Tr. at 94-97.*

29. But Landeen agreed that MVS' life expectancy guidelines are not based on how long improvements could continue to exist or remain standing. Instead, they are based on the improvements' economic life—the point at which either reconstruction or a change in occupancy is anticipated to occur. Landeen further acknowledged that according to MVS, one should use effective age as a sliding scale to account for a structure's extended life, rather than continually lengthening the structure's life expectancy as it continues to

age chronologically. And a structure's effective age is its actual age minus the age that has been taken off by things like facelifting, reconstruction, removal of functional inadequacies, and modernization of equipment. *Tr. at 296-300.*

30. Landeen estimated the building's effective age as 13.5 years in 2020 and 14.25 years in 2021. When asked where those estimates came from, he responded, "[f]rom my analysis of what I believe the effective age to be." Elsewhere in his appraisal report, however, Landeen concluded that the property was in average condition with average functionality. And he acknowledged that he neither asked for any deferred maintenance or capital expenditure reports, nor had any data showing that the building had undergone any facelifting, structural reconstruction, or removal of functional inadequacies. Indeed, he had no data to show that market participants would view the property as being effectively 13.5 years old as of 2020. *Ex. 5*; *Ex. B at 18, 50-54; Tr. at 104-05, 300-303.*

31. Landeen did not account for any functional or external obsolescence. His investigation of functional obsolescence—which he agreed is a loss in market value caused by factors within the property—was limited to his visual inspection. *Ex. B at 50-54; Tr. at 302-05.*

32. Based on his analysis, Landeen concluded the following values under the cost approach:

	2020	**2021**
Depreciated Bldg. Cost	$5,063,700	$5,037,200
Depreciated Site Imp. Cost	$491,600	$451,900
Land Value	$930,000	$960,000
Total Value	$6,485,300	$6,449,100
Total Value (Rounded)	$6,490,000	$6,450,000

Ex. B at 51-54; Tr. at 99-101; 105-06.

c. *Sales-comparison approach*

33. For his sales-comparison analysis, Landeen looked for properties used as home improvement stores owned by regional or national chains. For 2020, he selected six

comparable sales, each of which involved an existing or former Lowe's or Home Depot store:

	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6
Location	Hillard, OH	Youngstown, OH	Winchester, KY	Wheelersburg, OH	Chalmette, LA	Concord, NC
Sale Price	$14,140,591	$14,700,000	$7,646,000	$12,100,000	$4,200,000	$15,150,000
Price/SF	$108.48	$103.87	$48.96	$90.68	$30.00	$112.00
Prop. Rights	Leased Fee	Leased Fee	Leased Fee	Leased Fee	Fee Simple	Leased Fee
Date	Dec.-19	July-17	Sep.-17	Jan.-18	Aug.-19	Nov.-19
Yr. Built	1994	1996	1995	1996	2007	1999

Ex. B at 59, Annex; Tr. at 107-08; 156-60.

34. For 2021, Landeen used the sales from his 2020 analysis, other than the sale from Winchester Kentucky, plus the following additional sales:

	Sale 7	Sale 8	Sale 9	Sale 10	Sale 11
Location	Jacksonville, NC	Mason, OH	Ft. Wayne, IN	Kingstown, RI	Geneva, NY
Sale Price	$14,050,000	$17,900,000	$10,200,000	$7,700,000	$6,350,000
Price/SF	$107.77	$135.04	$88.52	$53.14	$45.55
Prop. Rights	Leased Fee	Leased Fee	Leased Fee	Fee Simple	Leased Fee
Date	Oct.-20	Oct.-20	Oct.-20	Jan.-21	Feb.-21
Yr. Built	1998	1997	1994	2008	2009

Once again, they all involved existing or former Lowe's or Home Depot stores. *Ex. B at 62, Annex; Tr. at 115-17; 156-60; 165-72.*

35. According to Landeen, those were the best sales he could find. All but two of the sales were leased-fee transactions, meaning that each property was encumbered by an existing lease when it sold. They were most likely build-to-suit leases, although Landeen was not 100% sure because he did not interview any of the participants to the sales. Landeen did not know when any of the leases were signed, but he agreed that they likely were entered into before construction of the stores began. *Ex. B at 56-62; Ex. P-2 at 6; Tr. at 109-10, 116-17, 156-5, 180-81.*

36. Landeen considered adjusting each sale price to account for transactional and property-related differences with the subject property. As with his land valuation, he first

considered transactional adjustments. Because he was valuing the fee-simple interest in the subject property, he adjusted all of the leased-fee sales downward by 15% because they were leased to national retailers. *Ex. B at 59 at 57-62; Tr. at 117-18.*

37. But Landeen acknowledged that several factors might affect the sale price of a leased property, including the strength of the tenant, the rent level, and the years remaining of the lease. And he agreed that because sale prices can be influenced by those lease-specific factors, a property-rights adjustment must be based on an analysis of each individual lease and sale transaction. *Tr. at 170-74.*

38. Yet Landeen had not seen any of the leases and did not know any of their stated rental rates. He instead backed into most of those rates through multiplying the property's sale price by its reported capitalization rate. But that reflected the property's net operating income ("NOI"), not necessarily its stated rental rate. While Landeen indicated the leases were all "triple-net," meaning the tenant would have been responsible for operating expenses, he acknowledged that tenants would not pay those expenses during periods when the property was vacant. He also acknowledged that if a lease had only a year or two left, an investor would potentially consider vacancy as a factor in setting a sale price. Landeen further admitted that he had not compared the rent from any of the leases to market rent in the areas where the properties were located. Indeed, he had no opinion as to market rent for any of those areas. *Tr. at 177-81.*

39. Instead, the only market data Landeen used to quantify his property-rights adjustment was to compare the two fee-simple sales from his analysis to the nine leased-fee sales. He also relied on his general knowledge that overall capitalization rates are higher for sales that do not have as strong a tenant as a store like Lowe's, for example. *Tr. at 177-78, 181.*

40. Turning to market conditions, Landeen considered the market to be improving overall, and he therefore applied an adjustment based on 3% annual appreciation. Once again, the

data from his comparable sales themselves was the market data that he used for his adjustment. But he also referred to "market observations," and to "a little bit of common sense" that sales from November and December 2019, for example, would not require an adjustment for the January 1, 2020 valuation date. *Ex. B at 54, 59; Tr. at 107-109, 128-30, 160-61, 172-77, 184-87.*

41. Next, Landeen adjusted the sale prices to account for several areas of property-specific differences between his comparable properties and the subject property, including differences in: location; land-to-building ratio; size, age, construction quality, condition, and functional utility of improvements; and economic characteristics. Once again, he relied on the comparable sales themselves for his market data. *Ex. B at 59-60.*

42. While most of Landeen's adjustments were small, his location adjustments ranged from negative 30% to 20%. He had aerial photographs of the comparable properties showing surrounding development and access characteristics. But he did not have any information about demographic factors for the areas surrounding the properties, such as population, population growth, and household income. Nor did he have any information about nearby traffic counts. Landeen also made a 25% adjustment to account for the inferior functional utility of the two non-leased properties, both of which changed use following their sale. *Ex. B at 59-60; Tr. at 110-112, 130, 134-35, 233-34.*

43. Overall, Landeen's adjusted sale prices for 2020 ranged from $42.92/SF to $72.04/SF. He decided that a unit value of $60/SF was reasonable for the subject property, which translated to a rounded value of $8,425,000. For 2021, the adjusted sale prices ranged from $42.28/SF to $88.27/SF. He settled on a unit value of $65/SF, which translated to a rounded value of $9,125,000. *Ex. B 59-63; Tr. at 113-15, 120-21.*

d. Income approach

44. Landeen began his analysis under the income approach by determining rent for the subject property. He found similar challenges in selecting comparable leases as he faced

finding comparable sales: it was difficult to find 20-year-old home-improvement stores with recent leases. He ended up using leases for properties from his sales-comparison approach. For his 2020 analysis, he used only the leases from the two properties that sold before the January 1, 2020 valuation date. For 2021, he used those two leases plus four more. With the exception of one store from his 2021 analysis, which was built in 2009, the stores from which he derived his rent were all built in the 1990s. *Ex. B at 67-68.*

45. As explained above, Landeen backed into the rent for most of those leases by multiplying the sale prices by the reported capitalization rates. Nonetheless, he said that the rent he used was his best estimate of the rate it would be worth to Lowe's or a similar user to occupy the properties, so it was "similar to a market rent." *Tr. at 122, 206-07.*

46. In any case, Landeen agreed that to understand a property's contract rent, the lease agreement itself is the best source and that secondarily, an appraiser could talk to the parties to the lease or to the broker. He did not have the lease documents for any of the properties, nor did he discuss the leases with the parties. Absent renegotiation, the rent at the time the properties were sold would have been the same as what the tenants were paying when they signed the leases, and Landeen did not know whether any of the leases had been renegotiated. Indeed, he had no data to suggest that the lease rates he used differed from the rates at signing, which again, was likely before the stores were built. *Tr. at 202-06, 226-28.*

47. Landeen acknowledged that many factors affect the rent a tenant is willing to pay, including the following: supply and demand; location; the size of the leased space; the building's age and condition; economic conditions when the lease is signed; and whether the lease is part of a sale-leaseback transaction or is for a build-to-suit property. Landeen also agreed that there are various reasons a business might choose to do a build-to-suit lease rather than operate out of an owner-occupied store. For example, there may be tax advantages. Similarly, many build-to-suit leases are financing vehicles. A business may want to free up capital it would otherwise need to spend to buy land and construct a

building to its specifications; so it instead enters into a build-to-suit lease and pays the landlord to incur those expenses. The lease rate is then determined by the amount necessary to repay those costs plus built-in profit. And the lease is for a new building. *Tr. 218-23.*

48. Next, Landeen adjusted the rent using the same property-characteristic adjustments he applied in his sales-comparison approach, although he acknowledged that he did not have any data showing that differences in physical characteristics affect lease rates in the exact same way they affect sale prices. He did not adjust the rental rates to account for differences in market conditions between the dates the leases were signed and the valuation dates. Also, his age and condition adjustments compared the subject store's age and condition as of the valuation dates to the comparable stores' age and condition as of the sale dates rather than to their age and condition when the leases were signed. *Ex. B at 67-68; Tr. at 123-24, 224-48.*

49. The adjusted rents for the two comparable leases that Landeen used for 2020 were \$4.87/SF and \$5.04/SF, which he considered to be "somewhat high." Recognizing that his data was limited, Landeen used "insight" from his sales-comparison approach and settled on rent of \$4.50/SF for the subject property. For 2021, Landeen considered all six adjusted leases, which ranged from \$2.74/SF to \$6.98/SF. He gave the most weight to the two in the middle, with "upward adjustments considered for improving market conditions," and settled on a rate of \$4.65/SF. *Ex. B at 66-68; Tr. at 120-24.*

50. Landeen then multiplied those unit rates by the subject property's total area to arrive at NOI of \$631,931 for 2020 and \$652,995 for 2021. He did not project any vacancy rate, which would have reduced the rental income and required deducting some operating expenses during the projected vacancy. *Ex. B at 66-70; Tr. at 120-26, 179-80.*

51. Landeen then turned his attention to developing a capitalization rate. He considered data from PwC for the national net-lease market. In his view, the survey data supported a rate

of 6.2% for Lowe's as an investor, which was within the predominant range of the rates from the Lowe's sales in his sales-comparison analysis. But those sales reflected Lowe's strength as a tenant, and he thought that it was more appropriate to select a rate that would apply to a non-credit tenant. With that in mind, he concluded to a rate of 7.5%. According to Landeen, that rate reflected 17.3% "downward pressure" on value, which he viewed as similar to the 15% adjustment he applied to the build-to-suit leases in his sales-comparison analysis. *Ex. B at 69-70; Tr. at 120-27, 240-44.*

52. Based on his analysis, Landeen arrived at the following values under the income approach:

	2020	**2021**
Market Rent/SF	$4.50	$4.65
Market Rent	$631,931	$652,995
Overall Rate	7.50%	7.50%
Rounded Value	$8,425,000	$8,710,000

Ex. B at 70; Tr. at 125-27.

e. Valuation conclusions

53. Landeen believed there was sufficient data to support credible opinions under each valuation approach, although he characterized the available local data for his analyses under the sales-comparison and income approaches as limited. Because of that limitation and "due to the value in use definition," Landeen gave significantly more weight (70%) to his conclusions under the cost approach than he gave to his conclusions under the other two approaches (15% each):

	2020	**2021**
Cost	$6,490,000	$6,450,000
Sales-Comparison	$8,425,000	$9,125,000
Income	$8,425,000	$8,710,000
Weighted Indicator	$7,070,500	$7,190,250
Rounded Value	$7,070,000	$7,190,000

Ex. B at 70; Tr. at 126-27.

C. Allen's Review Appraisal

54. Lowe's hired Allen, an MAI appraiser, to prepare a review appraisal of Landeen's work. Allen has appraised a wide range of commercial property types, including many big-box stores. He has also worked as a broker to find potential sites for big box stores. *Ex. P-2 at 20-21; Tr. at 315-25.*

55. Allen certified that he performed his review appraisal in conformity with USPAP standards 3 and 4, which govern review appraisals. He did not prepare his own, independent appraisal report. Nor did he inspect the property. Rather than commenting on each section or aspect of Landeen's appraisal in his review report, Allen included only the sections and factors of Landeen's appraisal that Allen considered the most relevant and with which he had the most disagreement. *Ex. P-2 at cover letter, 2; Tr. at 36-37; 329.*

56. He found a myriad of problems with Landeen's analyses under all three approaches and determined that Landeen's conclusions under the cost approach were not credible and that his conclusions under the sales-comparison and income approaches were misleading. *Ex. P-2 at cover letter.*

57. Allen criticized most aspects of Landeen's analysis under the sales-comparison approach. Among other things, he criticized Landeen's reliance on almost exclusively leased-fee sales when there were fee-simple sales he could have relied on. Allen explained that big-box stores encumbered by leases compete in a different market segment than stores that are unencumbered. *Ex. P-2 at 6; Tr. at 339-42.*

58. He also claimed that it is difficult to determine an appropriate property-rights adjustment when using a leased-fee sale. Among other things, an appraiser must understand the contract rights being sold along with the real estate, which is difficult to do without a copy of the lease or interviews with the buyer, seller, or broker. And an appraiser must know information such as the lease terms, whether the income stream is above or below

market, and whether that income stream changes in the future. It did not appear from Landeen's report that he verified any of those things. *Ex. P-2 at 6-7; Tr. at 345-47, 351, 357-63.*

59. In any case, Allen found that it was inappropriate for Landeen to use the same 15% adjustment for all the leased-fee sales. It appeared that Landeen considered only the tenants' creditworthiness. But Allen believed that Landeen's report itself seemed to support a much higher adjustment. If one compared the average prices of the leased-fee sales for 2020 to the lone fee-simple sale for that year, the difference was 58%. Similarly, a national big-box study by Situs RERC showed that average fee-simple unit sale prices were 68% less than the average unit price for leased-fee sales and that the median was 65% less. *Ex. P-2 at 6-8; Tr. at 362-70.*

60. Beyond those issues, Allen found that Landeen failed to support most, if not all, of his adjustments. For example, Allen emphasized that Landeen made large location adjustments without offering any support. Typically, appraisers will look at demographic factors in the areas surrounding the property being appraised and comparable properties, such as population density and growth, household spending, and income levels. They also look at traffic counts and access and visibility. Allen similarly criticized the lack of data or analysis supporting Landeen's adjustment for differences in market conditions. He particularly took issue with Landeen using the same 3% annual appreciation rate both before and after the COVID-19 pandemic, asserting that "[a]ny real estate practitioner knows that the pandemic was a major disruption to all real estate sectors of the economy." *Ex. P-2 at 6-8; Tr. at 172-74.*

61. Turning to the income approach, Allen concluded that Landeen's comparable leases did not reflect market rent. They were negotiated before the properties were built, mostly in the 1990s, without any attempt to translate them to the current market. The properties were not offered for lease in a competitive open market, and according to Allen, the parties were not typically motivated: the lessors were motivated by profit on the

construction and the lessees were motivated by having stores built to their specifications. Allen also reiterated that Landeen had used NOI, rather than market rent, for his comparable leases. *Ex. P-2 at 9; see also, Tr. at 387-96.*

62. As explained above, Landeen used the same adjustments for his comparable leases as he used in his sales-comparison analysis, and Allen found a similar lack of support. Allen also criticized Landeen's treatment of the property as if it would be leased on an absolute-net basis with no vacancy. That is how build-to-suit leases are designed, because they are financing vehicles that are sold on the market like bonds. By contrast, in the real-estate market, leases are typically triple-net, with some exposure to vacancy over the typical 10- or 20-year term of the lease. Thus, Allen explained that Landeen should have included a vacancy allowance and some exposure to expenses, including property taxes, during that time. He should also have included a management fee and replacement reserves. *Ex. P-2 at 9-10; Tr. at 401-03, 407.*

63. Allen similarly took issue with Landeen's capitalization rate. Allen explained that the fee-simple market is riskier than the leased-fee market, so there should be a risk premium reflected in the capitalization rate. Although Landeen included a risk premium when he increased his rate to 7.5%, Allen found no data or analysis in Landeen's appraisal to support that particular rate. And Landeen only addressed Lowe's creditworthiness versus typical tenant creditworthiness. He did not account for other risks that Allen believes are inherent when buying the fee-simple interest in a property, such as stabilization costs the buyer would incur to find a tenant and negotiate a lease. In short, Allen concluded that Landeen valued a hypothetical leased-fee interest in the property instead of the fee-simple interest. *Ex. P-2 at 9-10; Tr. at 403-08.*

64. Turning to the cost approach, Allen said nothing in his report about Landeen's land valuation. At hearing, however, Allen testified that like the other approaches in Landeen's appraisal, there was no data supporting his adjustments. Although Allen also

testified that Landeen's conclusions for land value "did not look unreasonable," he did not explain the basis for that opinion. *Tr. at 409.*

65. Allen had various issues with how Landeen arrived at replacement costs. Landeen used a cost-per-parking-space to account for the parking lot, lighting, and landscaping. But as Allen explained, that cost does not include other site improvements, such as concrete areas around the loading docks, access roads, and turnaround areas. Nor did Landeen include costs for the building's canopies. Allen also found that, based on its size, the store should have been classified as a class C warehouse discount store with an MVS base cost of $69.50 instead of as a mega warehouse store. Allen further believed that Landeen used the wrong current-cost adjustments. Allen provided MVS cost multipliers for Indianapolis, which adjusted October 2022 costs to the valuation dates. *Ex. P-2 at 4-5; Tr. at 410-11.*

66. Allen similarly took issue with Landeen including entrepreneurial incentive despite truthfully acknowledging that properties like the subject property are owner-oriented and therefore not typically built with a profit motive. According to Allen, the owner-user market would not factor-in entrepreneurial profit. In any case, he did not see any data in Landeen's appraisal to support quantifying entrepreneurial incentive at 10% of hard costs. *Ex. P-2 at 4; Tr. at 413-14.*

67. Turning to Landeen's calculation of depreciation, Allen criticized his estimate of the building's life expectancy as 45 years, noting the much shorter life expectancy reported by MVS. Allen similarly criticized Landeen's estimate of the building's effective age given (1) Landeen's conclusion that the building had been adequately maintained and was in average condition, and (2) his failure to mention any capital improvements that would have reduced its effective age. Without any reconstruction, Allen would expect the building's effective age to equal its actual age. Landeen also increased the effective ages of the building and site improvements by ¾ year and ½ year, respectively between

2020 and 2021. Absent capital improvements, however, Allen explained that the effective ages should have increased by one year. *Ex. P-2 at 4-5; Tr. at 415-20.*

68. Allen also took issue with Landeen's failure to discuss functional or external obsolescence. According to Allen, analyzing obsolescence is an essential part of the cost approach: it tests costs against the market. Without that analysis, any conclusions under the cost approach do not reflect market value-in-use. *Ex. P-2 at 4; Tr. at 421-22, 429-30.*

69. After listing his various criticisms, Allen prepared a revised version of Landeen's cost approach in which Allen corrected all the problems he identified, except for the omitted costs of site improvements and building canopies and the addition of obsolescence. More precisely, he used the base cost for an average class C discount warehouse with the same adjustments Landeen made, except Allen adjusted his costs to the valuation dates using MVS' Indianapolis cost multiplier. Allen included soft costs but omitted entrepreneurial incentive. He then applied age-life depreciation using the improvements' actual ages and MVS' 30-year economic life for his chosen building classification. Finally, he added those depreciated costs to Landeen's estimated land value:

	2021	**2022**
Depreciated Cost	$2,604,857	$2,428,187
Land Value	$930,000	$960,000
Total Value	$3,534,857	$3,388,187

Allen, however, acknowledged that those amounts were not his opinion of the property's market value-in-use. While an appraiser may develop an opinion of value as part of a review assignment, that opinion would be subject to USPAP Standard 2. And Allen did not conduct his review under that standard. *Ex. P-2 at 5; Tr. at 326-27, 422, 426.*

V. Conclusions of Law and Analysis

A. Under Ind. Code § 6-1.1-15-17.2, which continues to apply to appeals filed before it was repealed, the Assessor had the burden of proving the 2020 assessment was exactly and precisely correct.

70. At the time Lowe's filed its appeals, an assessment determined by an assessing official was generally presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. A taxpayer challenging the assessment had the burden of showing that the assessment was incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2021).

71. Indiana Code § 6-1.1-15-17.2 created an exception to that general rule, however. That statute identified two circumstances under which an assessor had the burden of proving the assessment was "correct": (1) where the assessment under appeal represented an increase of more than 5% over the prior year's assessment, as last determined corrected by an assessing official, stipulated to between the taxpayer and assessing official, or determined by a reviewing authority, or (2) where it was above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-l.1-15-l7.2(a)-(b), (d). But the burden remained with the taxpayer if the assessment that was the subject of the appeal was based on "substantial renovations or new improvements," zoning, or uses that were not considered in the prior year's assessment. I.C. § 6-l.1-15-l7.2(c). If the assessor had the burden and failed to meet it, the taxpayer could introduce evidence "to prove the correct assessment." If neither party met its burden, the assessment reverted to the prior year's level. I.C. § 6-l.1-15-l7.2(b); *Southlake Ind., LLC, v. Lake Cty. Ass'r ("Southlake I")*,174 N.E.3d 177, 179 (Ind. 2021).

72. In light of the interpretation of the statute by the Indiana Supreme Court in *Southlake I*, the Tax Court held that the term "correct" mirrored the dictionary definition of the word, and that the term "correct assessment" referred to "an accurate, exact, precise assessment." *Southlake II,* 181 N.E.3d at 489. Thus, in *Southlake II*, the Court found that the Assessor failed to meet her burden of proof because the appraisals she offered,

which valued a shopping mall at $258,990,000 and $241,690,000, respectively for the years under appeal, did not "exactly and precisely conclude to" the $242,890,500 assessment the Assessor had assigned to the mall for each year. *Id.*

73. Effective March 21, 2022, the Legislature passed an act that simultaneously repealed Ind. Code § 6-1.1-15-17.2 and enacted a new burden-of-proof statute—Ind. Code § 6-1.1-15-20. 2022 Ind. Acts 174, §§ 32, 34.[2] The new statute also assigns the burden of proof to assessors in appeals where the assessment represents an increase of more than 5% over the prior year. I.C. § 6-1.1-15-20(b). But it no longer requires the evidence to "exactly and precisely conclude" to the assessment, and it calls for us, as the trier of fact, to determine a value based on the totality of the evidence. Only where the totality of the evidence is insufficient to determine a property's true tax value does the assessment revert to the prior year's level. *See* I.C. § 6-1.1-15-20(f).

74. Although the act repealing Ind. Code § 6-1.1-15-17.2 did not contain an express savings clause, the new burden-of-proof statue explicitly applies only to appeals filed after its March 21, 2022 effective date. I.C. § 6-1.1-15-20(h). Following the Legislature's action, we were faced with a series of appeals that were filed before the repealing act's effective date. In some of those cases, we had held our evidentiary hearing before the repeal's effective date but issued our determination after that date. In other cases we both held our hearing and issued our determination after the repeal. In the first set of cases, we found that Ind. Code § 6-1.1-15-17.2 applied. In the second set, we found that it did not. *Compare, e.g. Cabela's Wholesale, LLC v. Lake Cty. Ass'r,* pet. nos. 45-023-18-1-4-00230-20 etc., slip op. (IBTR Sep't 26, 2022) and *Hotka v. Brown Cty. Ass'r,* pet. no. 07-003-21-1-5-00874-21, slip op. (IBTR Sep't 19, 2022).

75. In reaching those conclusions, we started with two principles: (1) that we must apply the law as it existed at the time of the hearing, and (2) that both new statutes and acts

[2] Both sections were effective on passage. 2022 Ind. Acts 174, §§ 32, 34. They became law on March 21, 2022 when the Governor signed House Enrolled Act 1260. *Lexington Square*, 219 N.E3d at 242 n. 4 (*citing* https://iga.in.gov/legislative/2022/bills/house/1260/actions (last visited Aug. 30, 2023)).

repealing existing statutes apply only prospectively unless the Legislature "unequivocally and unambiguously" intended retroactive application, or "strong and compelling" reasons dictate such application. *Cabela's*, slip op. at 39 (*quoting State v. Pelly*, 828 N.E.2d 915, 919 (Ind. 2005)). We also found compelling direction in the Indiana Supreme Court's decision in *Church v. State* for determining whether applying Ind. Code § 6-1.1-15-17.2's repeal in cases where we had not yet held a hearing would be a prospective or retroactive application. *Id.* (*citing Church v. State*, 189 N.E.3d 580, 587-88 (Ind. 2022)). As the Court explained, a statute "operates prospectively when it is applied to the operative event of the statute, and that event occurs after the statute took effect." *Id.* at 39 (*quoting Church,* 189 N.E.2d at 587-88. By contrast, a statute operates retroactively only when "its adverse effects" are activated by events that occurred before its effective date. *Id.* at 39-40.[3]

76. We concluded that the operative event, both of Ind. Code § 6-1.1-15-17.2 and its repeal, was when a hearing on the merits is convened. *Id.* at 40. Where we had held our hearing before the repeal, we concluded that applying that repeal would have been an impermissible retroactive application. *Id.* at 40-42. By contrast, where we held our hearing after the repeal, we found that applying the repeal was prospective and had the effect of returning cases that Ind. Code § 6-1.1-15-17.2 had carved out for special treatment back to the default rule governing the burden of proof, at least until the new burden-of-proof statute kicked in. *Hotka*, slip op. at 6.

77. Following those determinations, however, the Indiana Tax Court decided *Lexington Square*. In that case, we had held our evidentiary hearing well before the Legislature repealed Ind. Code § 6-1.1-15-17.2, but we issued our determination just three days after the repeal's effective date. *Lexington Square,* 219 N.E3d at 238-40. We applied the statute, although we did not discuss the fact that it had been repealed. We similarly did not discuss *Church*, which had not yet been decided. The Elkhart County Assessor

[3] In *Church*, the operative event for a statute applicable to depositions in a criminal case was the time of the deposition, not the date of the crime or the filing of charges, which both occurred before the statute's effective date.

sought judicial review, arguing that because the new burden-of-proof statute applied only to cases filed after March 21, 2022, and did not have a savings clause authorizing Ind. Code § 6-1.1-15-17.2 to remain in effect, the repeal eliminated Ind. Code § 6-1.1-15-17.2 "as though it never existed." *Id.* at 243. According to the Assessor, no statutory burden-shifting provisions applied to appeals pending before us or county boards as of March 21, 2022. *Id.*

78. The Tax Court disagreed and held that Ind. Code § 6-1.1-15-17.2 applied to the taxpayer's appeals. The Court noted a line of cases explaining that an express savings clause "is <u>not</u> required to prevent the destruction of rights existing under a repealed statute if the Legislature's intention to preserve and continue those rights is otherwise clearly apparent." *Id.* at 243-44 (emphasis in original). And the Court found it "clearly apparent" that the Legislature "simply intended that Indiana Code § 6-1.1-15-17.2 would not apply to appeals <u>filed after</u> its repeal date of March 21, 2022," or stated differently, that the statute was "terminated only for all <u>future</u> cases, i.e., cases filed after" its repeal. *Id.* (emphasis in original). The statute's provisions therefore continued to apply to appeals, like the one before the Court, that had been filed before the repeal and that were still pending. *Id.*

79. The Court also rejected the assessor's argument that the repeal was remedial. Even if the repeal were remedial, the Court found no compelling reason to justify applying it retroactively to pending appeals. *Id.* at 244-45. Finally, the Court reasoned that the Legislature could not reasonably have intended the repeal to apply retroactively. According to the Court, doing so would unfairly change the "rules of play" midstream and require a "re-do" in all pending appeals to allow taxpayers to develop and implement new litigation strategies aligned with the new burden of proof. *Id.* at 246. The Court, however, did not explain why a "re-do" would be necessary if the repeal were applied to

appeals where the *de novo* hearing before us had not yet occurred.[4] The Court did not discuss *Church* in its analysis.

80. While we had Lowe's' appeals under advisement following our evidentiary hearing, Lowe's filed a notice of supplemental authority regarding *Lexington Square*. We then invited the parties to brief how, if at all, that decision applies to these appeals. Lowe's points to what it characterizes as *Lexington Square's* holding that Ind. Code § 6-1.1-15-17.2 applies to all appeals that were filed before the effective date of the statute's repeal and that remained pending after that date. Lowe's therefore argues that the statute applies because it filed its appeals before the repeal's effective date. The Assessor, by contrast, argues alternatively that *Lexington Square* was wrongly decided and that it is distinguishable on its facts.

81. We find that *Lexington Square* controls these appeals. To the extent the Assessor believes that case was wrongly decided, he is free to ask the Tax Court to reconsider its decision. But we are bound by it. And the Court squarely indicated that Ind. Code § 6-1.1-15-17.2 applies to all appeals, like the ones before us, that were filed before the effective date of the statute's repeal and that remain pending after that date.

82. We recognize that we are dealing with different facts: in *Lexington Square* we had already held our hearing, and the parties had proceeded on the assumption that the Assessor had the burden of proof under Ind. Code § 6-1.1-15-17.2, whereas here, we held our hearing after the parties were on notice that the statute had been repealed. Indeed, that was a key distinction in our determinations predating the Tax Court's decision. But the Tax Court's language brooks no such a distinction. Whether characterized as dictum or holding, we must follow the Court's directive. We therefore find that Ind. Code § 6-1.1-15-17.2 applies to these appeals.

[4] In fact, the interpretation in *Lexington Square* would require a "re-do" for cases we decided under *Church* that are still pending or that are on appeal to the Tax Court.

83. The subject property's 2020 assessment increased by more than 5% over the prior year's assessment of $5,989,400. None of the exceptions under Ind. Code § 6-1.1-15-17.2(c) were raised. The Assessor therefore had the burden of offering evidence that precisely and exactly concludes to the 2020 assessment. If she failed to meet that burden, and if Lowe's failed to offer evidence showing that its proffered assessment is correct, the assessment must revert to its 2019 level.

B. The parties did not meet their respective burdens under Ind. Code § 6-1.1-15-17.2. The 2020 assessment therefore must revert to its 2019 level.

1. Landeen's appraisal did not exactly match the challenged assessment and was otherwise too unreliable to be probative of the property's true tax value.

84. The Assessor relied solely on Landeen's appraisal to show what the property's correct assessment was. And Landeen's valuation opinion of $7,070,000 did not "exactly and precisely conclude to" the challenged assessment of $6,742,800.[5]

85. Even without the statutory requirement for the Assessor's evidence to exactly match the challenged assessment, we would still conclude that he failed to meet his burden. Landeen's appraisal was far too unreliable to be probative of the subject property's true tax value.[6]

86. First, his analyses had serious methodological flaws. For example, he did not estimate market rent for the subject property, but instead estimated something "similar to a market rent" by extracting NOI from his purportedly comparable properties. Worse, his extracted NOI was from properties with leases that were signed more than 10 years

[5] We pause to note that appraisers are ethically forbidden from reaching a pre-determined value. THE APPRAISAL FOUNDATION, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, Ethics Rule (2020-2021 ed.). Thus, the Supreme Court's interpretation in *Southlake I* rendered it impossible for an assessor to meet its burden of proof.
[6] The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC § 2.4-1-l(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-l.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C.§ 6-l.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value in use," which it in tum defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.

before the valuation date, with most having been signed more than 20 years before that date. Landeen also failed to account for any potential vacancy in determining NOI for the subject property.

87. Landeen's methodological errors were not confined to the income approach. For example, in his cost-approach analysis, Landeen both determined an effective age that was below the store's actual age and estimated an economic life that was much longer than what MVS showed for his chosen cost model. But that conflicts with how MVS explains that its economic life data should be used.

88. In addition to his methodological errors, Landeen offered little or no support for many key judgments underlying his value conclusions. For example, he did not have any demographic data for the areas surrounding the comparable properties he used in his land valuation and in his analyses under the sales-comparison and income approaches. Nor did he have any data showing traffic counts near those properties. Yet he made large location adjustments in all his analyses.

89. Landeen similarly failed to support his uniform 15% property-rights adjustment in his sales-comparison analysis. He acknowledged—and Allen confirmed—that various factors beyond the tenant's credit strength affect the price a leased property will sell for, including rent levels and the time remaining on the lease. An appraiser therefore must analyze each individual lease to make a property-rights adjustment. Yet Landeen had not seen any of the leases and did not know how much time remained on the lease terms or what the stated rental rates were.

90. He likewise failed to support his conclusion that the store had an effective age of 13.5 years. He spent only 15 minutes inspecting the store, and he did not view any of its non-public areas. Nor did he take any photographs to show the condition of the areas he did inspect. Despite his cursory inspection and the lack of any information about deferred maintenance or whether the building had undergone any capital improvements,

facelifting, structural reconstruction, or removal of functional inadequacies, Landeen concluded that the store's effective age was roughly 6.5 years less than its actual age.

91. In short, major problems pervaded Landeen's analyses under all three valuation approaches, making his valuation opinion too unreliable to carry probative weight.

2. Allen's corrections to Landeen's cost-approach analysis do not prove the correct assessment.

92. Because the Assessor failed to carry his burden of proof, we must determine whether Lowe's offered sufficient evidence to show that its proffered value was the "correct assessment." As explained above, Lowe's did not offer an expert opinion to establish the property's true tax value. Instead, it relied on Allen's purported corrections to Landeen's analysis of the improvements' depreciated costs plus Landeen's land value, which Lowe's argues was unrebutted. According to Lowe's, the cost approach "is essentially a 'calculator method'" (*Pet'r Post-Hearing Br. at 27*) that allows line-item edits, and the errors in Landeen's analysis under that approach are easily corrected by objective market data in the record. Lowe's therefore argues that Allen's corrections to Landeen's analysis serve as probative evidence of the subject property's value.

93. We disagree. First, contrary to Lowe's' claims, there is evidence rebutting Landeen's estimated land value. As Allen testified, Landeen did not support his adjustments to the sale prices of his comparable land sales any more than he supported the adjustments to the prices of his comparable improved properties in his sales-comparison analysis. Indeed, Allen pointedly criticized the lack of support for Landeen's location adjustments in his sales-comparison analysis, which Allen emphasized ranged from negative 30% to 20%. Allen similarly criticized the lack of support for Landeen's market-conditions adjustment, particularly given his use of the same appreciation rate both pre- and post-pandemic. Yet Landeen made similarly large unsupported location adjustments to his comparable land sales, and he used the same market-conditions adjustment. Allen

inexplicably brushed aside those concerns and testified that Landeen's land value "did not look unreasonable," without offering any support for that statement.

94. Second, we disagree with Lowe's' characterization of the cost approach as being merely a calculator method allowing line-item edits. Appraisers must exercise judgment when applying virtually every component of that approach. Given how thoroughly Lowe's and Allen criticized the judgments that Landeen made throughout his appraisal, we give no weight to their decision to conveniently accept a few of Landeen's judgments from his cost-approach analysis to facilitate cobbling together a value that no expert proffered as his opinion.

95. Allen's corrections go beyond inputting objectively verified data in place of what he found to be Landeen's unsupported or incorrect data. For example, Allen used the subject property's actual age, rather than a different effective age, in estimating age-life depreciation. Yet there is no evidence to support his choice. Lowe's points to the fact that Landeen described the property as being in average condition and having average functional utility. But Landeen also viewed the property's effective age as being substantially lower than its actual age. In reality, there is no support for either judgement. Landeen's cursory 15-minute inspection of the property was limited to areas open to the public. And his appraisal does not include any photographs of the store's interior. Allen did not inspect the property and had only the information from Landeen's appraisal report. He was therefore in no position to reconcile Landeen's contradictory representations or to make his own judgment about the store's effective age.

96. Third, like Landeen, Allen did not include replacement costs for some site improvements or for the store's canopies. Without more information, we cannot determine the extent to which those items contributed to the property's value. Even if their contribution was modest, Lowe's' burden was to introduce evidence to prove the "correct assessment." And as explained above, that term refers to an "accurate, exact, precise assessment."

Southlake II, 181 N.E.3d at 489. Thus, by leaving out elements of the property's replacement costs, Allen's corrections necessarily fail to prove the correct assessment.[7]

97. Finally, Allen himself said that without an analysis of obsolescence, which tests cost against the market, any conclusions under the cost approach do not reflect market value-in-use. Yet he did not analyze whether the property suffered from obsolescence, or if so, how much. If Ind. Code § 6-1.1-15-17.2 and its exacting burden of proof did not apply, one might argue that an otherwise probative analysis under the cost approach that did not consider obsolescence would still set a ceiling on the property's value, and that the taxpayer would be entitled to have its assessment reduced to that ceiling. Of course, we have explained why Allen's corrections to Landeen's cost-approach analysis are not otherwise probative. And Ind. Code § 6-1.1-15-17.2 does apply.

98. Because neither side met its burden under Ind. Code § 6-1.1-15-17.2, we find that the subject property's assessment must revert to its 2019 level of $5,989,400.

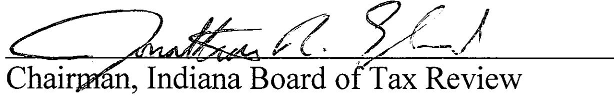
C. The 2021 assessment must revert to the level we have determined for 2020.

99. The 2021 assessment of $6,742,800 represents an increase over what we, as the last reviewing authority, determined as the value in Lowe's successful appeal of its 2020 assessment. Indiana Code § 6-1.1-15-17.2's burden-shifting provisions therefore apply once again. For the same reasons discussed above, the Assessor failed to meet his burden of proving that the assessment was correct, and Lowe's failed to prove that Allen's revisions to Landeen's cost-approach analysis established the correct assessment. So the 2021 assessment must revert to the level we determined for 2020—$5,989,400.

[7] *Southlake I*, the repeal of the old statute, and the enactment of the new statute all go the heart of the Board's ability to weigh the evidence. Even if the case were not decided under the old statute, we could not find a probative value from Allen's testimony.

VI. Conclusion

100. Because neither party met its burden of proof under Ind. Code § 6-1.1-15-17.2, that statute's reversionary provision applies, and the assessment must be changed to $5,989,400 for 2020 and 2021.


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>.