REPRESENTATIVES FOR PETITIONER:
Stephen H. Paul, Brent A. Auberry, Faegre Baker Daniels LLP
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REPRESENTATIVES FOR RESPONDENT:
Marilyn S. Meighen, Attorney
Brian Cusimano, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Meijer Stores LP,	)	Petition:	10-010-08-1-4-10000
	)		10-009-09-1-4-00001
Petitioner,	)		10-009-10-1-4-00033
	)		10-009-11-1-4-00001
	)		10-009-12-1-4-10000
	)		10-009-13-1-4-00042
v.	)		10-009-14-1-4-00011
	)		10-009-15-1-4-00004-16
	)		10-009-16-1-4-01645-16
	)		
Clark County Assessor,	)	Parcel:	No. 10-19-01-200-331.000-009
	)		
Respondent.	)	County:	Clark
	)		
	)	Assessment Years: 2008-2016	

December 1, 2017

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:

INTRODUCTION

1. The parties offered competing appraisals. The appraisers were Laurence Allen for the Petitioner ("Meijer"), and Michael Lady and David Hall for the Clark County Assessor. While both appraisals have flaws, we find the Assessor's appraisal had significant and fundamental errors in its two sales-comparison approaches that ultimately undermine the report's conclusion. Allen presented a reliable opinion of value, which we find sufficient to warrant a reduction in the assessment.

PROCEDURAL HISTORY

2. Meijer timely filed notices for review with the Clark County Property Tax Assessment Board of Appeals ("PTABOA") for the 2008-2016 assessment years. For 2008-2014, the PTABOA issued determinations, which Meijer appealed. For 2015, the PTABOA did not issue a determination and the taxpayer appealed after waiting the required 180 days. For 2016, the parties agreed to forego a PTABOA hearing under Indiana Code § 6-1.1-15-2.5.

3. The parties submitted a joint appeal management plan in which they agreed to try only the 2012 assessment date. They also agreed to stipulated trending factors for the other years under appeal. The PTABOA's determination for the March 1, 2012 assessment date was:

   Land: $5,090,700 **Improvements**: $4,926,300 **Total:** $10,017,000.

4. On November 14-17, 2017, our designated Administrative Law Judge, Andrew Howell, held a hearing on Meijer's petitions. Neither he nor the Board inspected the subject property.

5. Laurence Allen, J. David Hall, Michael Lady, and David Lenhoff, all MAI appraisers, testified under oath.

6. The following exhibits are part of the record:

Petitioner's Ex. P-2:	Revised Appraisal Report of Laurence Allen, MAI,
Petitioner's Ex. P-3:	Excerpt from APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE, (14th ed.),
Petitioner's Ex. P-4:	*A Qualitative Analysis of Big Box Sales Transactions,* Brett A. Harrington, (2016),
Petitioner's Ex. P-8:	Appeal Management Plan,
Petitioner's Ex. P-9:	Aerial photo of Integra Comparable Sale,
Petitioner's Ex. P-12	David C. Lenhoff curriculum vitae,
Petitioner's Ex. P-13:	Summary of Appraisal Conclusions,
Petitioner's Ex. P-14:	Demonstrative Exhibit Illustrating Testimony,
Petitioner's Ex. P-15:	Demonstrative Exhibit Illustrating Testimony,
Petitioner's Ex. P-16:	Demonstrative Exhibit Illustrating Testimony,
Petitioner's Ex. P-17:	Demonstrative Exhibit Illustrating Testimony,
Petitioner's Ex. P-18:	Demonstrative Exhibit Illustrating Testimony,
Petitioner's Ex. P-19:	Demonstrative Exhibit Illustrating Testimony,
Petitioner's Ex. P-20:	Demonstrative Exhibit Illustrating Testimony,
Petitioner's Ex. P-21:	Demonstrative Exhibit Illustrating Testimony,

Respondent's Ex. R-2:	Appraisal report of Integra Realty Resources,
Respondent's Ex. R-3:	Property record cards,
Respondent's Ex. R-4:	Various documents related to Allen Comparable 1,
Respondent's Ex. R-5:	Various documents related to Allen Comparable 3,
Respondent's Ex. R-6:	Various documents related to Allen Comparable 4,
Respondent's Ex. R-7:	Various documents related to Allen Comparable 5,
Respondent's Ex. R-8:	Various documents related to Allen Comparable 6,
Respondent's Ex. R-9:	Various documents related to Allen Comparable 7,
Respondent's Ex. R-10:	Various documents related to Allen Comparable 8,
Respondent's Ex. R-13:	Excerpts from Allen Work File,
Respondent's Ex. R-17:	Excerpt from APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE, (14th ed.),
Respondent's Ex. R-19:	Corrected pages for Integra Report,
Respondent's Ex. R-20:	Additional appraisal calculations prepared by Michael Lady.

7. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals, and (2) all orders and notices issued by the Board or our administrative law judge, and (3) the four-volume hearing transcript.

OBJECTIONS

8. The ALJ ruled on numerous objections during the hearing and we adopt the ALJ's rulings. In particular, we note that during the re-cross examination of Hall, the Assessor made a continuing objection that the re-cross was beyond the scope of the re-direct. While we find Meijer's attorney took a rather circuitous route, he ultimately related his questions back to issues raised in the Assessor's re-direct. Regardless, the Assessor had an opportunity to respond to those questions in a second re-direct examination. The ALJ also took a number of objections under advisement, which we now address.

9. Meijer offered Allen as "an expert appraiser qualified to value real property, specifically including big-box store properties." The Assessor responded that while she did not object to Allen being qualified as an expert witness, she did "have an objection to any sort of creation of some specialty or a special designation for big-box." *Tr. at 212.* We first note that the Board does not create appraisal designations. The subject property contains a big-box store. Thus, for Allen's opinions to be persuasive, he would need to demonstrate expertise in the valuation of big-box stores. We find that his qualifications and experience show that he is an expert in this particular area.

10. The Assessor objected to Petitioner's Ex. P-4, a document titled "Qualitative Analysis of Big Box Sales Transactions," as hearsay. In particular, the Assessor argued: "So I think that with statistical analysis, they're not maybe as simple as they're presented to be. There's a lot of meat here that no one is around to discuss." *Tr. at 267.* Meijer did not argue that any exception to the hearsay rule applied. We admit the evidence pursuant to 52 IAC 2-7-3, which provides that we may admit hearsay that is objected to as long as it is not the sole basis for our determination.

11. Meijer objected to the admission of Respondent's Ex. R-13. This exhibit contained two pages from Allen's work file. Meijer acknowledged that the Assessor identified the work file in her list of exhibits, but argued the Assessor should have provided copies of the specific pages she intended to submit. The Assessor responded that she identified the

entire work file because she could not anticipate exactly what pages would be relevant until Allen testified at the hearing. The Assessor also argued that she was not required to provide a copy of the exhibit to Meijer because Meijer already possessed a copy. *Resp't Ex. R-13; Tr. at 443-46; 481-83; 497.*

12. We agree with the Assessor. She identified the work file as an exhibit, and Meijer had a copy of the work file well in advance of the exchange deadline. While in some cases a blanket identification of a large exhibit may be impermissibly vague, this is not the case here. Allen's work file contains information he relied upon in forming his opinion. It is not unreasonable for counsel to be prepared to address any specific portion of that file, especially when the Assessor identified the file as an exhibit. Nor do we find that the Assessor was required to provide Meijer with a physical copy of a document that Meijer itself originally provided to the Assessor. We overrule Meijer's objection and admit Respondent's Ex. R-13 into evidence.

13. Meijer next objected to the admission of Respondent's Ex. R-19, corrected pages for the Integra Report, because the Assessor did not exchange it until after the exchange deadline from the agreed appeal management plan. The Assessor responded that the corrections were completed only 3-4 days prior to the hearing, and after the exchange deadline. The Assessor further argued that she offered the exhibit in order to simplify the process and avoid having to rely only on oral testimony as to the nature of the corrections. *Resp't Ex. R-19; Tr. at 517-23.*

14. As a general rule, we caution the Assessor that evidence of this nature should be exchanged at the earliest opportunity. In this case, it appears the Assessor could have provided Meijer with copies of the corrected pages at least 1-2 days earlier. The Assessor should have done so. However, we do not find that this failure merits the exclusion of the exhibit. The advantage of having a written version of the corrections, as opposed to relying solely on the testimony, outweighs any potential prejudice. We note that Meijer did not object to any testimony about the corrections.

15. Respondent's Ex. R-4 contains various documents related to one of Allen's comparable sales. Meijer objected to one of these documents, a property record card, arguing that it was irrelevant because the card covered assessment years 2013-2016, rather than the 2012 assessment date at issue. We find that the card does contain some information relevant to the assessment date at issue, including sale records of the property and building permits prior to the assessment date. In the interest of admitting a whole document, rather than just a portion, we overrule Meijer's objection. *Resp't Ex. R-4; Tr. at 962-66.*

16. Meijer objected to Respondent's Ex. R-20, written calculations prepared by Lady, on the grounds that it was not exchanged by the "written report" deadline agreed to in the appeal management plan. The Assessor responded that the exhibit was not a "written report" within the meaning of the appeal management plan, but rather a mathematical calculation that Lady prepared after hearing testimony the previous day. The Assessor also argued that Lady could have testified to the contents of the exhibit, but that it was prepared for convenience. We first note that "written report" is not defined in the appeal management plan. While we agree with Meijer that written reports should have been exchanged pursuant to the appeal management plan, Meijer did not object to Lady's testimony. Thus, we admit the exhibit for demonstrative purposes to the extent it illustrates Lady's testimony. *Resp't Ex. R-20; Tr. at 1050-53.*

FINDINGS OF FACT

A. The Subject Property

17. The property is roughly 32.42 acres and contains a "big-box" building of approximately 180,000 sq. ft. that is in good repair. There is also a convenience store/gas station of approximately 2,400 sq. ft. In addition, the property has associated site improvements and parking. It is located at 2750 Allison Lane in Jeffersonville, Indiana. Meijer built the improvements in 1998/1999, and operated the property as a Meijer brand store from the time of construction up to and beyond the 2012 assessment date. The subject

property is located within the Louisville, KY metropolitan statistical area ("MSA"). *Pet'r Ex. P-2 at 1-2, 11; Resp't Ex. R-2 at 1, 20; Tr. at 223-29, 524-25.*

B. Expert Opinions

1. Allen's Appraisal

18. Meijer engaged Laurence Allen, MAI, to appraise the true tax value of the fee simple interest of the subject property as of March 1, 2012. Allen is the president and chief appraiser of Allen & Associates. He holds several appraisal designations in addition to the MAI, and is a member of various professional organizations related to the appraisal practice. In his 43 years of appraisal experience, he has appraised numerous types of properties, including approximately 200 big-box stores. He certified that his appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Pet'r Ex. P-2 at 9-10, 103-04; Tr. at 202-16.*

19. Allen valued the subject property's fee simple interest, which he explained was distinct from the leased fee interest. He explained that the difference in value between these interests would stem from factors such as tenant quality, lease terms, lease-up costs, and risk associated with finding a tenant. *Pet'r Ex. P-2 at 5; Tr. at 218-19, 246-51.*

20. He testified that big-box stores are constructed to a specific user's requirements to fit that user's image and business model. He also stated that typically when a different user purchases a big-box store it makes costly changes to fit its own business model (including branding and merchandising plans). Big-box retail users make such changes based on their company specific branding and merchandising business plans. Allen concluded the subject property's existing use and highest and best use are both retail and that it was not a special purpose property. Finally, he testified that in this case, the market value and the market-value-in-use of the fee simple interest of the subject property were identical. *Tr. at 235-37, 241, 253.*

a. Allen's Research and Market Overview

21. Allen examined a variety of economic indicators from the Louisville MSA. These included population, income, retail sales, employment, and construction. He also compared the Jeffersonville area to the Louisville MSA, noting that it had similar median household income, inferior average consumer spending per household, as well as higher population growth. *Pet'r Ex. P-2 at 11-20; Tr. at 224-33.*

22. Allen identified the primary neighborhood as the half-mile radius around the subject property. He examined the transportation infrastructure, amenities, demographics, and development trends. He concluded that the neighborhood was in the growth stage, supported a variety of uses, and had good access to major highways. Allen noted that the market for big-box stores was significantly more active in recent years than it was previously. *Pet'r Ex. P-2 at 21-24; Tr. at 231-33; 411-12.*

b. Allen's Valuation of the Convenience Store and Excess Land

23. Allen valued the improvements and supporting land of the convenience store. In addition, he determined that the subject property had one acre of excess land beyond what was necessary for the big-box and convenience stores. He determined that he needed to develop a per acre value for the entire property, then apply that value to the excess land as well as to the supporting land of the convenience store. Allen explained that he could not value the land directly because such a valuation "would not reflect what a buyer would pay for this excess property as part of the purchase of the entire property." *Pet'r Ex. P-2 at 92; Tr. at 355-56.*

24. For his land valuation, Allen used five land sales from near the Jeffersonville area. The properties ranged from 8.46 to 18.00 acres and sold for between $169,300 and $239,347 per acre. Because the subject property was significantly larger, he reconciled these sales to $175,000/acre. This resulted in a value of $315,000 for the convenience store land and $175,000 for the excess land. Allen also noted that applying that land value to the entire property yielded a land valuation of $5,673,000. *Pet'r Ex. P-2 at 92-93, Tr. at 355-56.*

25. Allen then developed a cost approach for the convenience store. He considered the sales-comparison approach but did not use it because the sales he identified either contained business value or were bought for demolition and redevelopment. Using cost figures from the Marshall Valuation Service, Allen developed a replacement cost for the convenience store. He then applied a calculation of physical depreciation and came to a value of $382,933. After applying this to the land values and rounding, Allen's total value of the convenience store and supporting land was $700,000. *Pet'r Ex. P-2 at 92-97; Tr. at 355-58.*

c. Allen's Valuation of the Big-Box Store

26. Allen developed both the sales-comparison and income approaches to value. He stated that the cost approach was not reliable because any potential depreciation is best extracted from the sales-comparison and income approaches and there was a "significant amount of obsolescence associated with the subject building improvements." He also stated that buyers and sellers of big-box stores do not typically rely on the cost approach to value. In addition, Allen gave extensive testimony explaining that brand new buildings similar to the subject property typically cost much more to build than they could sell for on the open market. He attributed this discrepancy to functional obsolescence. Allen also testified that a leased building may sell for more than a vacant building because of factors such as the lease term, the credit worthiness of the tenant, and other factors. He also stated that the subject property was not a special purpose property. *Pet'r Ex. P-2 at 98; Tr. at 42, 250-51, 361-70, 402-03.*

i. Allen's Sales-Comparison Approach

27. For his sales-comparison analysis, Allen focused on fee simple sales of retail big-box stores (which he defined as 80,000 sq. ft. or more) in the Midwest that sold between 2006 and 2013. Allen tried to avoid using sales from before 2010, because he believed the recession affected values. He did use one sale from 2006 because it was close in size to the subject property. *Pet'r Ex. P-2 at 55-56; Tr. at 209, 251-58.*

28. Allen's sales are detailed in this chart:

Property	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Development	Meijer	Former Super K	Former Super K	Former Wal-Mart	Former Home Depot	Former Lowe's	Former Target	Former Wal-Mart	Former Menards
Location	Jeffersonville, IN	Dearborn, MI	Portage, IN	Bloomington, IN	Holland Twp., MI	Brown Deer, WI	Cincinnati, OH	Logansport, IN	Schererville, IN
Sale Date		Jan-06	Dec-11	Nov-12	Sep-13	Dec-13	Nov-10	Sep-11	Dec-12
Building Area (SF)	180,859	192,000	192,814	126,004	103,540	139,571	103,240	93,834	160,680
Year Built	1999	1993	1993	1994	2006	2006	1997	1989, 1991	1996
Rights Conveyed		Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Sale Price/SF		$50.26	$37.21	$18.65	$12.07	$28.66	$26.64	$11.99	$38.74

Pet'r Ex. P-2 at 57.

29. All of the comparables were used as single tenant retail stores prior to sale. All were purchased for retail use. Sales #1, #2, #3, #5, and #7 were occupied by single tenants after sale while Sales #6 and 8# were converted to multi-tenant use. Sale #4 was purchased by Rural King, who subsequently decided not to use the building and instead sold it to a developer. *Pet'r Ex. P-2 at 50-66; Tr. at 271-95.*

30. Allen considered adjustments to the sales comparables for "property rights transferred, financing terms, conditions of sale, market conditions, size, location, and age/condition." He concluded that no adjustments were necessary for financing terms, or conditions of sale. Sales #6 and #8 were sold with deed restrictions that prevented certain future retail uses. After speaking with brokers, as well as buyers and sellers of big-box stores, he determined that these restrictions did not affect the sale price of the properties.[1] Thus, he also made no adjustments for property rights. Allen also noted that many of the buyers significantly modified the properties after purchase to suit their respective needs. Allen did not adjust for these modifications because "anyone purchasing the subject property

[1] Meijer pointed out that in Resp't Ex. R-8, a different branch of Integra concluded that the deed restriction on Sale #6 "has no impact on the potential users of the property and has no impact on market value." In addition, the Integra Report for the subject property used Sale #8 with no adjustment for property rights. *Resp't Ex. R-2 at 140; Resp't Ex. R-8 at 1; Tr. at 1130-32.*

would also modify it for their own business model." *Pet'r Ex. P-2 at 67; Tr. at 289, 295-300.*

31. In determining his adjustments for market conditions, Allen considered sale prices, the opinions of brokers, unemployment figures, as well as a variety of market data from the Louisville MSA. He adjusted Sale #1 (the sale from January 2006) downward by 9%. Allen concluded the sale dates for the other sales had very similar market conditions to the valuation date. He adjusted five down by 1% and did not adjust the remaining two. *Pet'r Ex. P-2 at 67-75; Tr. at 301-06.*

32. Allen also adjusted the comparables for location. To determine the appropriate location adjustments, he compared various factors, including population, number of households, median household income, traffic counts, and average rental rates. This resulted in adjustments ranging from -20% to +30%. In particular, Allen adjusted Sale #1 down by 15% because it had superior expressway access and population density as compared to the subject, as well as high purchasing power. *Pet'r Ex. P-2 at 75-76; Tr. at 306-16.*

33. Finally, Allen made adjustments for age and condition to account for the physical age of the comparables as compared to the subject, as well as "any renovations and overall maintenance." After applying all the adjustments, Allen arrived at adjusted sale prices ranging from $14.61/sq. ft. to $38.88/sq. ft. *Pet'r Ex. P-2 at 75-76; Tr. at 307-317.*

34. As a supplement to his sales-comparison analysis, Allen reported listing and sale prices of three Meijer stores from Ohio. He also reported sales of three Walmart stores and one Kroger store. He made no adjustments to this data, but provided it as additional support for his reconciliation. None of the sales or listings exceeded the dollar per square foot of his reconciliation. *Pet'r Ex. P-2 at 77-79; Tr. at 318-24.*

35. In his reconciliation, Allen considered the comparable sales analysis, as well as the additional sales and listings. He came to a value of $37.00/sq. ft., which was "towards the upper end of [his] range, giving more weight to the superstore purchases." When

added to the contributory value of the convenience store and excess land, this yielded a value of $7,570,000. *Pet'r Ex. P-2 at 80; Tr. at 324-25.*

ii. Allen's Income Approach

36. Allen also developed an income direct capitalization approach. He began by estimating market rent. He first explained that many big-box stores are rented on a built-to-suit basis, meaning the lease is negotiated before the building is constructed. Allen testified that this was a separate market from the lease market for existing buildings. He also found that built-to-suit rents were typically higher, because they were for brand new buildings. He also explained that because a built-to-suit building is made to a particular tenant's specifications, that building offers higher utility to that user than an existing building that was not designed for that tenant. In support of this opinion, he pointed to the difference in lease rates between 4 built-to-suit leases and his 11 lease comparables. Because the subject property was an existing building, Allen did not ultimately rely on the built-to-suit data. *Pet'r Ex. P-2 at 81-82; Tr. at 333-38.*

37. Allen considered several factors when selecting his lease comparables, including age, size, and lease commencement dates. He reported that most of the comparable buildings were significantly older and smaller than the subject property. He found these differences were offsetting because while older buildings generally command lower rents, there is also an inverse relationship between size and rent. He specifically noted that while he did not find data to support a downward adjustment for large buildings in his sales-comparison analysis, he did find that there was sufficient data showing the inverse relationship in the rental market. *Pet'r Ex. P-2 at 82; Tr. at 338-45.*

38. His 11 "market" lease comparables were all from Indiana. The leases commenced between April 2003 and November 2009. While Allen would have preferred data closer to the assessment date, he could not find leases closer to 2012. The properties were between 60,000 and 108,000 sq. ft., and were built between 1965 and 1994. Some were freestanding buildings, while many were part of shopping centers. Allen adjusted the

lease rate/sq. ft. for time using rental and asking rate trends from the area.[2] He arrived at a range of $1.40-$5.68/sq. ft. with an average of $4.09. In his reconciliation, he considered the physical comparability of the leased buildings, the age of the leases, and the locations of the leased buildings. He then concluded to a market rent of $5/sq. ft. *Pet'r Ex. P-2 at 82-85; Tr. at 331-45.*

39. Allen estimated vacancy and collection loss of 10% based on his review of the subject market. He noted that because of its size, shape, and location, buildings like the subject have increased vacancy risk as compared to the average retail property. Based on a survey of community shopping centers in the Midwest, he estimated common area maintenance expense of $1.50/sq. ft., which he stated would cover expenses such as parking lot lighting/maintenance, landscaping, and snow removal. He also estimated insurance expenses, management fees, and reserves. After applying the reimbursements, accounting for vacancy and credit loss, and deducting expenses, he arrived at a net operating income of $722,125. *Pet'r Ex. P-2 at 85-88; Tr. at 345-54.*

40. Allen used the band-of-investment technique to develop a capitalization rate. He also considered investor surveys as well as rates derived from market sales.[3] Based on this information, he chose a capitalization rate of 10.00%. After loading this rate with the landlord's share of property taxes, and applying the loaded rate to his net operating income, he arrived at a value of $7,010,929. He then subtracted a leasing commission, and added in the contributory value of the convenience stores and excess land, which resulted in a value of $7,610,000 under the income approach. *Tr. at 351-55; Ex. P2 at 89-91.*

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[2] Allen also noted that normally he would make a negative adjustment to lease rates to account for landlord provided tenant improvements. But, he did not have any data about tenant improvements for these leases, so he did not make an adjustment. He testified that if there were any tenant improvements made as part of these leases, his market rent conclusion would be overstated. *Tr. at 332-45; Pet'r Ex. P-2 at 85.*

[3] One of Allen's sales from which he derived a capitalization rate was a former Walmart that sold in October 2006. He testified that this property sold with a lease in place. In her brief, the Assessor points out that in *Meijer Stores LP v. Marion County Assessor* (IBTR December 1, 2014) Allen testified that he confirmed this sale was fee simple. *Id.* at 19. Lady also testified that it was a fee simple sale. *Resp't Ex. R-2 at 90, Tr. at 459-460, 983.*

c. Allen's Reconciliation

41. In his reconciliation, Allen relied on the sales-comparison and income approaches to value. As discussed above, Allen did not develop a cost approach. Between his sales-comparison and income approaches, Allen gave the greatest weight to the sales-comparison approach because he found there were adequate sales of fee simple properties and he thought the income approach was not as reliable when valuing a property without a lease in place. He also noted that there was a lack of current leases for properties similar in size to the subject property. He reconciled these to a value of $7,600,000 for the subject property. He compared this figure to his land valuation of $5,673,000, and testified that in his experience it was not unusual for the land to be such a high percentage of total value. *Pet'r Ex. P-2 at 98-99; Tr. at 358-63.*

2. Integra Appraisal

42. The Assessor engaged Michael C. Lady, MAI, and J. David Hall, MAI, of Integra Realty Resources to appraise the true tax value of the fee simple interest of the subject property as of March 1, 2012. Lady began working in the appraisal field in 1972 and has appraised numerous types of properties including retail, office, industrial, and mixed-use properties. He holds numerous designations, licenses, and certifications in addition to the MAI. Hall has been appraising property since 2005, and was previously a city planner. He has appraised over a hundred retail properties including several dozen big-box stores. He has several designations and certifications in addition to the MAI. Hall had "primary responsibility for most of the analysis and content." *Resp't Ex. R-2 Add. A; Tr. at 509-13; 524-25.*

43. Hall performed a market segmentation analysis in which he found that the primary features that characterized the subject property were its "occupancy, construction quality and customer base." He did not consider the subject property to be a special-purpose property. Hall noted that on the assessment date the subject property was 100% occupied and that to the best of his knowledge there were no vacant big-box retail stores in the local market. He noted that occupancy was a distinct consideration from the presence of

a lease, and that in some cases a property could be fully leased but only partially occupied. Hall would have preferred to use fee simple sales of fully occupied properties, but he did not believe those sales existed. *Resp't Ex. R-2 at 13-15; Tr. at 42, 529-42, 649.*

44. Instead, Hall and Lady presented two sets of sales, one set of fully occupied leased sales, and one set of vacant mostly fee simple sales. From this data as well as his experience, Hall concluded that vacancy had a significant impact on value. In support of this opinion, he explained that a vacant property could be an indicator of excess supply, have higher insurance costs, and incur additional expenses for utilities and maintenance. According to Hall, *The Appraisal of Real Estate* does not require a fee simple appraisal to presume that the subject property is vacant. He noted that according to *The Appraisal of Real Estate*, the cost approach provides a fee simple value of the property at stabilized occupancy and leased at market rent. For these reasons, he believed it was acceptable to adjust vacant sales for occupancy when appraising an occupied property such as the subject property. Hall also testified that he assumed the property was at stabilized occupancy and leased at market rent under all his valuation approaches. *Resp't Ex. R-2 at 13-15; Tr. at 42, 529-42, 649.*

a. Integra's Research and Market Overview

45. For his market research, Hall examined both Clark County and the Louisville MSA. He noted that between 2010 and 2013, Clark County's population increased at about twice the rate of Indiana as a whole. He also found that employment began increasing in 2012 as the economy was coming out of the recession. In addition, Clark County had a higher median household income than the state as a whole. Hall concluded that in 2012 Clark County was outperforming the State of Indiana by most measures. He described the market as generally healthy with adequate demand for retail sales. Hall also performed a highest and best use analysis in which he determined that the property's highest and best use was consistent with its current use. *Resp't Ex. R-2 at 20-40, 99-100; Tr. at 572-85, 614-16.*

b. Integra's Valuation Approaches

46. Hall developed several approaches to appraise the subject property. These included a sales-comparison analysis of the land, the convenience store, and two separate analyses for the big-box store (which he referred to as "occupied" and "vacant"). He also developed a cost approach for the subject property's improvements, as well as an income approach for the big-box store. *Resp't Ex R-2 at 101, 164-65; Tr. at 633-34*

i. Integra's Convenience Store Valuation

47. To value the convenience store and its 1.8 acres of supporting land, Hall used a sales-comparison approach. He selected sales of five convenience store/gas stations, all from Indiana. The stores were built between 1965 and 1999 and sold for between $150.76/sq. ft. and $288.46/sq. ft. He performed a qualitative analysis in which he considered market conditions, location, site size, and age/condition. He reconciled to a value of $200.00/sq. ft., which came to a total rounded value of $490,000 for the convenience store and supporting land. *Resp't Ex. R-2 at 158-163; Tr. at 733-39.*

ii. Integra's Land Valuation

48. Hall valued the subject land using the sales-comparison method. He found "an abundance of good comparable land sales data." Hall looked specifically for sites large enough to support a big-box store, which he considered to be at least eight acres in size. He also limited his search to sales no earlier than five years prior to the assessment date. Hall ultimately chose seven sales from Clark County. The properties were between 8.86 and 32.81 acres, and sold between January 2007 and August 2015 for between $105,625/acre and $239,639/acre. *Resp't Ex. R-2 at 102-05, Tr. at 617-19; 622-26.*

49. Hall then adjusted the sale prices for market conditions, location, and physical characteristics. This resulted in a range of adjusted sale prices per acre between $156,111 and $182,786, with an average of $168,597. Hall reconciled these to a value of $165,000/acre, or $5,350,000 for the land supporting the big-box store. *Resp't Ex. R-2 at 106-10; Tr. at 626-633.*

iii. Integra's Cost Approach

50. Hall testified that the land was the primary contributor to the value of the property. He believed that the improvements were depreciating at a rate consistent with their physical age and did not suffer from functional or external obsolescence. Thus, he found that the cost valuation of the improvements to be reliable even though the property was approximately 14 years old as of the assessment date. *Tr. at 619-21.*

51. In estimating replacement cost, Hall relied on cost tables from Marshall Valuation Service. He used the cost figures for an average quality "mega-warehouse" store and an average quality convenience store. Hall used multipliers to adjust the building costs for sprinklers and story height. In addition, he included costs for site improvements. He estimated indirect costs of 3%. He also included a 10% adjustment for entrepreneurial profit, which he based on his discussions with market participants. As additional support, he noted that all of the big-box stores in the local market were 100% occupied and that a new store big-box store was constructed in the local market a few years after the assessment date. These calculations yielded a total replacement cost new of $10,194,789. *Resp't Ex. R-2 at 111-14; Tr. at 633-43.*

52. Hall also considered whether the property suffered from any obsolescence–either functional or external. He found the property did not suffer any functional obsolescence because "the subject has been continuously occupied since completion of construction, and…the buildings are consistent with market norms in construction quality, size, utility, and design…." Hall also found there was no external obsolescence. In support of this conclusion, he pointed to greater population increase and higher median household income in Clark County as compared to the Louisville MSA. In addition, he noted that as of the assessment date, retail sales were increasing, capitalization rates were decreasing, and there were no vacant competitive properties in Clark County. *Resp't Ex. R-2 at 115-16; Tr. at 647-48.*

53. Hall estimated depreciation using the age-life method. He found the building had an economic life of 35 years and an effective age of 14 years. He also calculated depreciation for the site improvements, which had a shorter economic life. After applying this depreciation to his replacement cost new, he arrived at a depreciated cost for the improvements of $5,970,000. After adding this to his land value, Hall arrived at his conclusion under the cost approach of $11,300,000. *Resp't Ex. R-2 at 115-16; Tr. at 643-48.*

iv. Integra's Sales-Comparison Approaches

54. Based on his market segmentation analysis, Hall looked for sales of big-box stores of 50,000 sq. ft. or more that were located in Indiana. He limited his search to Indiana because he found that it was a distinct market, and that there was sufficient data available. He looked first for occupied properties with a regional/national chain user. He also considered quality of construction, property rights conveyed, and conditions of sale. Hall was unable to find any fee simple sales of occupied properties, so he chose to do two sales-comparison analyses. One analysis contained leased fee sales of occupied properties. The other included primarily fee simple sales of vacant properties. Hall further explained that he was able to isolate the difference in value between the leased fee and fee simple sales by determining whether the leased fee sales were at market rent. *Resp't Ex. R-2 at 13-15; Tr. at 551-60, 649-53.*

55. In his occupied sales analysis, Hall selected the following properties:

Property	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6
Development	Meijer	Walmart Supercenter	Garden Ridge (Former K-mart)	Kohl's	Home Depot	Lowe's	Kohl's
Location	Jeffersonville, IN	Noblesville, IN	Noblesville, IN	Warsaw, IN	Fort Wayne, IN	Terre Haute, IN	Columbus, IN
Sale Date		Dec-13	Jun-12	Feb-12	Jan-06	May-05	May-03
Building Area (SF)	180,859	200,607	115,504	68,339	109,800	111,948	95,120
Year Built	1999	1997	1995	2005	1993	1993	1994
Rights Conveyed		Leased Fee (Sale leaseback)	Leased Fee	Leased Fee	Leased Fee	Leased Fee	Leased Fee
Sale Price/SF		$91.63	$41.98	$95.12	$74.59	$69.97	$55.51
Lease Rate/SF		$5.87	Unknown	$6.39	$6.90	Unknown	$5.13
Approximate Remaining Lease Term		5 years[4]	Unknown	13 years	>10 years	Unknown	18 years

Resp't Ex. R-2 at 120-21.

56. Hall adjusted the sale prices for a variety of factors. He first considered property rights conveyed. As discussed above, all of the properties were leased when sold. Because Hall purported to value the fee simple interest, he analyzed whether the sales required adjustments for property rights. He testified that according to *The Appraisal of Real Estate*, if the sales were leased at market rent, no adjustments were necessary to arrive at a fee simple value. Hall determined that all of sales were leased at market rent. For those sales where Hall knew the rental rate, he testified that he analyzed whether the leases were at market rent. He concluded that they were. Although questioned extensively on cross-examination, the only specific support that he could point to was the data and conclusions from his own income approach. Even where Hall did not know the rent, he determined that the leases were at market rent. For Sale #2, he stated:

> "Given that this sale falls at the low end of the range, you would expect that, based upon the type of user or tenant occupying the property. So there's no indication that it was leased at anything other than market rent.
> *Tr. at 659.*

For Sale #5, he concluded that because (1) the sale price per square foot fell near the middle of the range, and (2) he determined the other sales were leased at market rent,

[4] The report states that "it is not known if the lease was renewed or renegotiated prior to this 2013 sale." *Resp't Ex. R-2 at 120*

"there's no indication that this [Sale #5] would be leased at anything other than market rent." *Tr. at 662.* Thus, he made no adjustment for property rights to any of his occupied and leased sales. *Resp't Ex. R-2 at 14-18, 123. Tr. at 654-65.*

57. Hall did make other adjustments. He considered population growth, traffic counts, median household income, and market size. Based on these factors, he adjusted the sales between -30% to +10% for location and access. Hall also adjusted for size (for the smallest property), physical characteristics (based on the quality of construction), and age and condition. Hall concluded Sale #4 was "low cost" construction. On cross-examination, Hall admitted that in a different appraisal he had performed, he treated that same comparable as "average cost." In that appraisal he was also working for a governmental unit, and that decision resulted in a higher concluded value than if he had treated the property as low cost. *Resp't Ex. R-2 at 124-28; Tr. at 665-72, 794-801.*

58. After applying all his adjustments, Hall arrived at a range of adjusted sale prices of $51.64/sq. ft. to $66.38/sq. ft., with an average of $61.21/sq. ft., a median of $63.46/sq. ft., and a midpoint of $59.01/sq. ft. Because all of the comparables required significant adjustment, he gave greatest weight to those measures of central tendency. He concluded to a reconciled value of $60.00/sq. ft. After multiplying this value by the big-box store's square footage, and adding in the contributory value of the convenience store, Hall reconciled to a total rounded value of $11,200,000 under the occupied sales analysis. *Resp't Ex. R-2 at 128-29; Tr. at 672-75.*

59. Hall also analyzed vacant property sales. He relied on the following sales:

Property	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Development	Meijer	Former Menards	Former K-mart	Former Home Depot	Former Walmart	Former AutoNation
Location	Jeffersonville, IN	Schererville, IN	Portage, IN	Marion, IN	Bloomington, IN	Fishers, IN
Sale Date		Dec-12	Dec-11	Dex-09	Nov-06	Jun-04
Building Area (SF)	180,859	167,774	188,907	94,496	125,592	170,393
Year Built	1999	1996	1993	2003	1993	1992
Rights Conveyed		Fee Simple	Fee Simple	Leased Fee	Fee Simple	Fee Simple
Sale Price/SF		$38.74	$41.42	$29.02	$39.41	$37.12

Hall testified that Sale #3 was leased at the time of sale. He did not provide the lease rate. He found that all of the comparables were "Warehouse Discount Stores" as opposed to the subject property, which was a "Mega Warehouse." None of the comparables contained grocery space. On cross-examination, Hall admitted that he had never seen a fee simple sale of an Indiana big-box store for more than $42/sq. ft.
Resp't Ex. R-2 at 130-39; Tr. at 156, 675-86.

60. Hall testified that because he believed there was a difference in value between vacant properties and occupied properties, the vacant sales required adjustment to value the occupied subject property. He offered two possible reasons for the difference. First, he speculated that the vacant properties might indicate oversupplied or distressed markets. Second, he thought the sellers could have been under duress because vacant properties still have expenses and increased risks of theft and vandalism. *Resp't Ex. R-2 at 15-18; 133-36; Resp't Ex. R-19; Tr. at 558-61, 655-56, 686-97.*

61. In an attempt to quantify what he called a "conditions of sale" adjustment, Hall performed a paired sales analysis of vacant and occupied sales. All of the occupied properties were leased at the time of sale, but Hall determined no adjustment was necessary for property rights conveyed because a property leased at market rent was a "perfect proxy for a fee simple 100 percent occupied," and he concluded they were leased at market rent. This analysis contained three sets of paired sales. Sales #1 and #2 were of the same property, a former Jumbo Sports from Fishers, Indiana. The sales were six

years apart with the property vacant for Sale #1 and occupied and leased for Sale #2. Sale #3 was a sale of a vacant former Menards from Schererville, IN, which he compared to Sale #4, an occupied and leased Lowe's from Terre Haute, IN. These sales were 7 years apart. Sale #5 was a Former Walmart from Bloomington, IN. It was compared to Sale #6, an occupied and leased Kohl's from Columbus, IN, that sold three years earlier. He adjusted these sales only for market conditions and age/condition. The three sets of sales had an average difference in sale price of 44% more for the occupied and leased properties. *Resp't Ex. R-2 at 15-18; 133-36; Resp't Ex. R-19; Tr. at 558-61, 655-56, 686-97.*

62. Based on this analysis Hall concluded that sales of vacant properties should receive a 45% upward adjustment to make up for the lack of occupancy. He further justified applying this adjustment to his sales because "there were some significant external forces, factors, market conditions in play that ultimately impacted the seller's level of motivation and willingness to accept a low sale price, a price that we believe is below market." He applied the 45% adjustment to four of the sales, and a 35% adjustment to Sale #3 because it was leased at the time of sale. *Resp't Ex. R-2 at 15-18; 133-36; Resp't Ex. R-19;* Tr. *at 558-61, 655-56, 686-97.*

63. Hall also adjusted for market conditions, location/access, physical characteristics and age/condition. After applying all his adjustments, Hall's adjusted sale prices ranged from $54.13/sq. ft. to $69.15/sq. ft. These adjusted sales had an average of $58.96/sq. ft., a median of $56.79/sq. ft., and a midpoint of $61.64/sq. ft. Hall gave the greatest weight to these measures of central tendency, concluding to a value of $58.00/sq. ft. After multiplying this value by the big-box store's square footage, and adding in the contributory value of the convenience store, Hall concluded to a total rounded value of $10,900,000 under the vacant sales analysis. *Resp't Ex. R-2 at 133-42; Resp't Ex. R-19; Tr. at 688-99.*

v. Integra's Income Approach

64. Hall also developed an income direct capitalization approach. He considered a number of factors, noting specifically that the property was 100% occupied. He also found that the subject property was built-to-suit for the current occupant, Meijer, and that most competitive properties were built-to-suit for their occupants. For this reason, he considered built-to-suit leases relevant to his valuation. He also considered leases to subsequent users, which he considered relevant because the subject property was not a new building on March 1, 2012. He believed that a building leased to a subsequent user would likely have lower utility to that user because it was not specifically designed for them. *Resp't Ex. R-2 at 143-44; Tr. at 699-702.*

65. Hall limited his search to buildings of at least 50,000 square feet. He ultimately settled on six comparables, five from Indiana and one from Ohio. The leases commenced between October 2004 and November 2007. The buildings ranged from 56,100 to 130,000 sq. ft., and were built between 1963 and 2007. Hall noted that while the comparables were generally newer than the subject as of the date of the lease commencement, the leases were in worse market conditions than the conditions prevailing as of the assessment date. The rents ranged from $4.50/sq. ft. to $8.10/sq. ft. with an average of $6.10/sq. ft., a median of $5.76/sq. ft. and a midpoint of $6.30/sq. ft. Hall also considered three additional comparables of built-to-suit Lowe's stores that leased in the 1990s. Based on this information Hall reconciled to a market rent of $5.50/sq. ft. *Resp't Ex. R-2 at 143-50; Tr. at 699-712.*

66. Hall also performed a feasibility rent analysis as a check for reasonableness. In this analysis he estimated what rent would be needed to support new construction. Because the subject property was not new as of the assessment date, he concluded that his market rent estimate should be lower. Based on different rates of return, Hall estimated feasibility rents ranging from $6.06/sq. ft. to $7.70/sq. ft. He found this analysis confirmed that his market rent estimate of $5.50/sq. ft. was reasonable. *Resp't Ex. R-2 at 151; Tr. at 713-15.*

67. Hall then estimated expenses. He determined reimbursements were necessary because he was assuming a triple net lease. He applied a management fee of 2% and reserves of $0.20/sq. ft. He found that vacancy for properties like the subject property ranged from 0-10% in Clark County. He settled on 5% because the subject property has been 100% occupied since construction and "the credit strength and market profile that would be expected for a similar user." After applying these expenses, he arrived at a stabilized net operating income of $880,770. *Resp't Ex. R-2 at 152; Tr. at 715-21.*

68. To develop his cap rate, Hall relied on a leased sales analysis, investor surveys, and a band of investment technique. In the leased sales analysis, some of the sales were the same sales he used in the occupied sales analysis. The average of all 10 of the sales was 8.49%. The average of the five most recent sales was 7.55%. Hall examined investor surveys that ranged from 7.25%-9.15% for March 1, 2012, with an average of 7.93%. Finally, he performed a band-of-investment technique, from which he derived an 8.10% capitalization rate. *Resp't Ex. R-2 at 154-56; Tr. at 721-28.*

69. Hall reconciled these to a capitalization rate of 8.20%. He testified that this rate implicitly reflected what a buyer's assumptions would be regarding future risk and expense. After applying this rate to his net operating income, and adding in the contributory value of the convenience store, he arrived at a rounded value conclusion of $11,200,000 under the direct capitalization approach. *Resp't Ex. R-2 at 157; Tr. at 730-32*

c. Integra's reconciliation

70. In his reconciliation, Hall gave the least weight to the sales-comparison analysis of vacant properties. Instead, he gave the "greatest weight" to the cost approach, the occupied sales analysis, and the income approach. He arrived at a rounded value conclusion of $11,200,000. *Resp't Ex. R-2 at 164-65; Tr. at 739-40.*

B. Other Testimony

1. Michael C. Lady Testimony

71. Michael C. Lady, the senior managing director of Integra Realty Resources co-signed the Integra Appraisal. He holds numerous professional designations including the MAI, which he received in 1989. He has extensive experience appraising commercial properties, including retail and big-box properties. *Resp't Ex. R-2 Add. A; Tr. at 958-61.*

72. He testified that Allen's first sale comparable, a former K-mart that sold to Walmart, was extensively renovated by Walmart at an approximate cost of $5.6 million. He further testified that this cost could have impacted the buyer's motivations and he would have wanted more information. *Tr. at 967-68, 971-75.*

73. Lady also testified extensively about Allen's other sales comparables. In particular, he testified that several of the buyers substantially renovated the properties after purchase. Lady testified that the buyers would have considered the cost of these expenditures when they determined what they were willing to pay. He also testified that some of the properties sold with deed restrictions that would have limited the pool of potential buyers. *Tr. at 975-1016.*

74. Turning to Allen's income approach, Lady testified that several of Allen's market extracted capitalization rates were incorrect. He also testified that some of Allen's rent comparables were from areas where retail use was declining. He also characterized one of Allen's rent comparables as an "outlier." *Tr. at 1018-39.*

75. Lady also offered some testimony as to what he and Hall's conclusions would have been had they not included entrepreneurial profit. Finally, he compared the amount of depreciation in their cost approach to a hypothetical cost approach he derived by extracting Allen's land and convenience store values from his reconciliation. He concluded that the Integra cost approach indicated depreciation to the big-box store and site improvements of 42.1% while the hypothetical Allen cost approach would have yielded 84.2% depreciation. He further testified that because the subject property had

never been vacant, had required no major capital improvements, and was "nice," he did not believe it had 84.2% depreciation. *Tr. at 1053-68.*

2. David C. Lenhoff Testimony

76. David C. Lenhoff, MAI, an appraiser with the Altus Group, testified on behalf of Meijer. Lenhoff has extensive experience in real estate valuation, including teachings courses in USPAP, and helping to develop certain sections of the 11th, 12th, 13th, and 14th editions of *The Appraisal of Real Estate*. Lenhoff primarily testified that a fee simple valuation of a property would necessarily presume a vacant property. He further testified that a "fee simple interest subject to a market rent lease" would actually be a valuation of the leased fee interest. Finally, he testified that leased fee sales can be used to value a fee simple interest, but they would require adjustment for a variety of factors such as lease-up costs, risk, and tenant improvements. *Pet'r Ex. P-12; Tr. at 1166-83.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

77. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

78. Here, the parties agreed that Meijer had the burden of proof for the 2012 assessment year. However, in a case like this, where both sides offer appraisals from qualified experts, the question of who has the burden is largely theoretical. We must weigh the evidence to determine what most persuasively shows the true tax value for each year under appeal.

B. Buyer Modifications and the Market Value-in-Use Standard

79. Before addressing the particulars of each appraisal, we will consider an underlying disagreement between the appraisers and the parties regarding what value is taxable under Indiana law. All of the witnesses agree that big-box stores are built-to-suit for a first generation user to its exact specifications. They are never built on a "speculative" basis to be sold on the open market. Thus, every big-box store has some utility to the first generation user that it will not have to any subsequent user. In addition, buyers of existing big-box stores will make extensive modifications to suit their particular business models. For these reasons, Allen believes that big-box stores suffer immediate functional obsolescence upon construction, because no buyer is willing to pay cost for a brand new store that was not constructed specifically to its needs. In contrast, Hall and Lady found that the subject property, for which Meijer was the first generation user, did not suffer from any obsolescence.

80. This issue comes into particular focus with Allen's sales-comparison approach. The Assessor points out that the buyers of several of Allen's comparables significantly renovated the buildings after purchase. The Assessor argued that the buyers would have considered the cost of those expenditures. For that reason, she argued Allen should have provided more analysis. She also suggests that adjustments may have been appropriate. Meijer argued that no adjustment was necessary because Indiana law provides that when a "property's existing use is the same as its highest and best use, then the property's market value is equal to its market value-in-use." *Pet'r Br. at 15.*

81. Meijer is correct that this has been the consistent interpretation of the market value-in-use standard. When a non-special-purpose property is put to its highest and best use and is of a type that regularly exchanges for the same general use, the property's true tax value will

equal its market value. *See Meijer Stores Ltd. P'ship v. Smith*, 926 N.E.2d 1134 (Ind. Tax Ct. 2010) (holding that the Board must consider sales of former big-box stores to secondary users and finding a two year old Meijer was entitled to 65% obsolescence adjustment); *see also Howard Cnty. Assessor v. Kohl's Indiana LP,* 57 N.E.3d 913, 917 (Ind. Tax Ct. Sept. 7, 2016) (holding that when a property's current use is consistent with its highest and best 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.)

82. We acknowledge that the Indiana legislature has passed recent legislation that may be relevant. Ind. Code § 6-1.1-31-6 now provides:

> (d) With respect to the assessment of an improved property, a valuation does not reflect the true tax value of the improved property if the purportedly comparable sale properties supporting the valuation have a different market or submarket than the current use of the improved property, based on a market segmentation analysis. Any market segmentation analysis must be conducted in conformity with generally accepted appraisal principles and is not limited to the categories of markets and submarkets enumerated in the rules or guidance materials adopted by the department of local government finance.
>
> (e) True tax value does not mean the value of the property to the user.

83. This statute provides a way to impeach a valuation by showing that the comparable sales used in that valuation were not from appropriate markets. Thus, if the Assessor had wished to argue that Allen's sales-comparison analysis ran afoul of the new statute, she should have provided a market segmentation analysis showing that his sales fell within a different market or submarket than the current use of the property. Instead, the Assessor merely argued: "In light of the recent legislation, more is expected of a market analysis than what Allen has delivered here." *Resp't Br. at 8.* This is insufficient because the burden is on the party challenging the choice of comparable sales. Although the Hall and Lady's appraisal includes a "Market Segmentation Analysis," the Assessor did not attempt to apply this analysis to Allen's appraisal. Rather, Hall used the analysis in support of his adjustments to vacant sales. We interpret the statute to require a showing

that the market or submarket is so different that the properties are not comparable and any adjustments would be too speculative for a reliable valuation.

84. Absent a showing that Allen's sales came from a different market or sub-market than the current use of the subject property, we interpret the market value-in-use standard in the same way the Tax Court has consistently interpreted it. Both appraisers agree the subject property is not a special purpose property. We credit Allen's conclusion that the property's current use and highest and best use are both retail. We also find that Allen has shown sufficient sales to demonstrate regular exchanges on the market. Thus, the market value is identical to the market value-in-use and any value only realized by Meijer is not taxable.

C. Appraisals

1. Allen Report

85. Allen completed the sales-comparison and income approaches to value. The Assessor criticizes Allen for not also performing a cost approach. Allen explained that he did not do a cost approach because any obsolescence would have been best extracted from the sales-comparison and income approaches, which would have made the cost approach redundant. While deriving an obsolescence adjustment from the sales and income approaches may be an appropriate way to estimate obsolescence, it is not the only way. A cost approach developed with an independent obsolescence adjustment would have been helpful. While the Assessor points out some significant issues with Allen's appraisal, we ultimately find it to be a reliable indication of the market value-in-use of the subject property as of the March 1, 2012 assessment date.

86. As discussed above, Allen estimated the value of the convenience store and excess land. The Assessor makes no significant criticisms of his conclusions for these two items. We also note that Allen's convenience store value was higher than the value found by the Assessor's appraisers, who also found no excess land. We find Allen's conclusions for the convenience store and excess land to be reliable.

a. Allen's Sales-Comparison Approach

87. The Assessor criticizes Allen for "ignoring" leased fee sales in his sales-comparison approach. While we acknowledge that leased fee sales can be used, we agree with Allen and Lenhoff that they typically require adjustment. If sufficient comparable fee simple sales can be found, it is not necessary to resort to leased fee sales. We find that Allen presented both sufficient quantity and quality of data in his sales-comparison analysis. Thus, it was not an error for him to omit leased fee sales.

88. The Assessor also argued that Allen's Comparable #1, a former K-mart that sold to Walmart for $50.26/sq. ft. unadjusted, was the most comparable sale and indicates that Allen's conclusion of $37.00/sq. ft. was too low. Allen adjusted this sale downward for market conditions and location. The adjusted sale price was $38.88/sq. ft., close to Allen's conclusion and to the high end of his range of adjusted sale prices. We find Allen adequately supported these adjustments through his testimony and that the sale supports his conclusions.

89. As discussed above, Lady testified that several of Allen's comparables were significantly renovated after purchase. Adjustments for tenant improvements may be necessary if the tenant improvements bring the comparable to the same or similar condition to the subject property. Allen testified that these modifications were largely to make the buildings suitable for each buyer's specific business plan. He also testified that the subject property, if it were sold, would have been similarly modified. We acknowledge that in addition to renovating the buildings to the buyers' business models, it is possible that some of the modifications could have improved deficiencies in the comparables as compared to the subject big-box store. If that were the case, Allen should have adjusted for those modifications. More analysis from Allen regarding these modifications would have been helpful. But, the Assessor failed to present convincing evidence on this point. Thus, we credit Allen's conclusion that by not adjusting for the modifications, he correctly appraised the market value of the subject property.

90. Lady also testified that Allen's comparables #6 and #8 were sold with deed restrictions that could have impacted the purchase price. In his analysis of Comparable #6, Lady relied on a "Retail Sale Profile" prepared by a different office of his appraisal firm, Integra. This profile states:

> The seller included a 10-year restriction on the property that prohibited it from being used for a "discount department store" of more than 50,000 square feet in size. Given that discount department stores include Kmart, Target, Kohl's, Walmart and Meijer and that Kmart has not been opening new stores, Target is not a potential user and that Kohl's Walmart and Meijer are completely different store size users and only use their own store prototypes, this restriction has no impact on the potential users of the property and thus no impact on market value.

Resp't Ex. R-8 at 1-2. Lady did not explain why his affiliate firm's conclusion as to the deed restrictions' impact was incorrect. Lady and Hall used Comparable #8 in their own appraisal without adjusting for deed restrictions. Thus, while we acknowledge that deed restrictions might have an impact on value, we find Lady's criticisms about their impact on these specific comparable sales entirely unjustified.

91. Finally, Lady and the Assessor made several additional criticisms of Allen's sales-comparison approach. The majority of these criticisms related to subjective adjustments made by Allen. None of these calls into question the overall credibility of Allen's opinions. Instead, they reflect the fundamental disagreement between the experts on how the property should be valued. In addition, because of the fundamental flaws in the Integra appraisal as discussed below, we find Allen considerably more credible than Lady. Thus, we credit Allen's judgements and find his sales-comparison approach a reliable indicator of the market value-in-use of the subject property.

c. Allen's Income Approach

92. The Assessor criticizes Allen's income approach for his market rent conclusions, his expense calculations, and his choice of capitalization rate. We find several of these criticisms have merit and detract from the reliability of Allen's conclusions.

93. Many of the leases in Allen's market rent analysis were from buildings that were part of shopping centers instead of freestanding retail. In addition, Lady testified as to the lack of comparability of the locations of some of the leased buildings. We agree with the Assessor that several of Allen's leases were not particularly comparable to the subject. Allen himself recognized many of these issues. The Assessor also criticized Allen for not adjusting his comparable leases for location, though he did consider location in his market rent reconciliation. We find Allen's explanation of how he considered location sufficient.

94. Allen found that vacancy and collection loss equaling 10% of potential gross income was appropriate. The Assessor argued that Allen did not sufficiently support this conclusion because he relied on general retail data rather than data specific to big-box stores. But her own appraisers found that "For a property of the subject's type in Clark County, a market range of 0% to 10% for vacancy & collection loss would be reasonable to conclude." *Resp't Ex. R-2 at 152.* We agree with this conclusion. The Assessor also criticizes Allen for including a reimbursed common area maintenance expense of $1.50/sq. ft. The Assessor wrongly claimed that Allen did not explain this expense. Allen explained that it covered parking lot lights/maintenance, landscaping, and snow removal. The Assessor also took issue with Allen's use of shopping center data to support this expense. We agree with the Assessor that shopping center data is not an ideal comparison to freestanding retail and find this somewhat detracts from the reliability of Allen's income approach. Nevertheless we note that the impact of this expense was somewhat mitigated because it was reimbursed. Thus, only the landlord's share of the expense affected Allen's conclusions.

95. The Assessor also finds fault with Allen's choice of capitalization rate. Allen based his rate on a band-of-investment technique, investor surveys, and market derived capitalization rates. The Assessor argued much of the data shows rates lower than Allen's concluded 10%, while Allen explained that he concluded higher because he found that the Indiana market was riskier than the average property, but Allen provided scant support for this conclusion. For Allen's market-derived capitalization rates, the

Assessor showed that for one of Allen's sales, the 2006 sale of a former Walmart in Bloomington, Allen had previously testified that the sale was fee simple. In this case, Allen testified that the sale was leased fee. Lady also testified that the sale was fee simple. We find this discrepancy undermines Allen's conclusions and reflects on his credibility.

96. We agree with the Assessor that many of the components of Allen's income approach were not well supported. We also find Allen's error regarding the market extracted capitalization rate to be particularly troubling. Overall, we find Allen's income approach to be somewhat probative evidence of the subject property's value.

d. Allen's Conclusions

97. As discussed above, there are significant problems with Allen's income approach. But these do not render it entirely devoid of probative value. We also note that in his reconciliation, Allen gave less weight to the income approach. We agree with Allen's conclusion that his sales-comparison approach was more reliable, and find his reconciled value of $7,600,000 for the convenience store, excess land, and big-box store to be reliable evidence of the subject property's true tax value for the March 1, 2012 assessment date.

2. Integra Report

98. We now turn to the Integra appraisal report. Similar to Allen's appraisal, Meijer took no particular issue with Integra's convenience store valuation. Thus, we will focus on the four approaches with which Hall and Lady valued the big-box store. We ultimately find the two sales-comparison approaches so fundamentally flawed that they render Hall and Lady's conclusions unreliable.

a. Integra's Cost Approach

99. Hall testified that according to *The Appraisal of Real Estate* the cost approach provides a fee simple value of the property at stabilized occupancy and leased at market rent. Meijer argued that a fee simple valuation requires a presumption that the property is vacant

because the right to occupy is one of the bundle of rights contained in the fee simple interest. It then argued that because Hall and Lady valued the property as leased at market rent, they failed to value the fee simple interest. But Meijer failed to directly address Hall's claims that *The Appraisal of Real Estate* supported his position. Regardless, it is not clear that this assumption had any impact on Hall and Lady's conclusions under the cost approach, so we will focus on other issues.

100. Meijer makes no significant criticisms of Hall and Lady's land valuation or their cost calculations. Instead, Meijer argued that the cost approach is not the best way to value the subject property and is not used by buyers in sellers in the market. It also argued that the subject property suffers from significant obsolescence and that Hall and Lady erred by including entrepreneurial profit. In support of this, Meijer points to Allen's testimony that if he had done a cost approach, he would have made an obsolescence adjustment to account for the difference between the cost approach and his sales-comparison and income approaches. Hall did present probative evidence of the value of the land and the depreciated replacement cost of the improvements. But this does not end our analysis. Because we find Allen's conclusions were reliable, and because we find him considerably more credible than Hall and Lady, we conclude that Hall and Lady's cost approach should have accounted for some obsolescence. We also note that the evidence shows that buildings like the subject are never built on a speculative basis. We find this at least raises the question that entrepreneurial profit may not have been appropriate.

101. As discussed above, we recognize that this obsolescence would to some extent represent the difference in value to the first generation user (Meijer) and the market value of the subject property. Because the Assessor failed to present a market segmentation analysis showing that Allen's sales-comparison approach in unreliable based on the new statute, we are confined to follow the Tax Court's rejection of the Board's concerns regarding secondary sales and obsolescence as found in *Meijer Stores Ltd. P'ship v. Smith*, 926 N.E.2d 1134 (Ind. Tax Ct. 2010).

b. Integra's Income Approach

102. As with the cost approach, Meijer criticizes the Integra report for valuing the subject property as if it was subject to a lease. It argued that this decision led to a capitalization rate that did not properly account for the risk of a fee simple purchase. In addition, they argue that if Hall and Lady had correctly valued the fee simple interest, they would have included a leasing commission as Allen did. Similar to the cost approach, Meijer did not directly address Hall's claim that *The Appraisal of Real Estate* supported his position. Similarly, neither Hall nor Lady provided a reliable justification for why they could apply language from the cost approach section of *The Appraisal of Real Estate* to the income approach. For that reason, we will focus on other aspects of their income approach.

103. Meijer also argued that the market rent data presented in Hall and Lady's income approach was insufficient. It points out that several of the leases were built-to-suit leases that were negotiated before the properties were built. Meijer also noted that all of the leases were from 2007 and one was the product of a sale-leaseback transaction. While we agree that these points have merit, we find they largely stem from a lack of available data, which Hall conceded. Meijer also criticized Hall for failing to include expenses that would have fallen on the landlord during vacancy, though Hall testified that it was implicitly accounted for in his capitalization rate.

104. Overall, we find the Integra income approach to be relatively free of glaring errors, although it suffers from a lack of reliable data. While this may have been the only data available, that fact does not make the approach more reliable than other approaches.

c. Integra's Sales-Comparison Approaches

105. As discussed above, Hall and Lady performed both a "vacant" and an "occupied" sales analysis premised on their conclusion that occupancy was a significant feature of the subject property, and that *The Appraisal of Real Estate* does not require an appraiser to assume the property is vacant in a fee simple valuation. In support of this, Hall again cited to a line from the cost approach section of *The Appraisal of Real Estate*, which

states that the cost approach provides a fee simple value of a property at stabilized occupancy, and leased at market rent. As discussed above, Meijer did not specifically address this point. However, Hall and Lady do not offer any reliable justification that this same principle applies to the sales-comparison approach. Regardless, even were we to accept that Hall and Lady are correct that the subject property should be treated as occupied, they have entirely failed to support their concluded values with reliable evidence. In their occupied sales analysis, we find that they actually measured the leased fee value of the subject property. In the vacant sales analysis, we find their vacancy adjustment entirely unsupported. These two errors render their sales-comparison approaches entirely unreliable and drastically undercut their credibility to the point where we are unable to rely on their overall conclusions.

106. For their occupied sales analysis, Hall and Lady presented six sales of "occupied" stores. These stores all sold as leased fee. Hall testified that if the stores were leased at market rent, no adjustment was necessary for a fee simple valuation. Although there is some support for this conclusion in *The Appraisal of Real Estate*, we are skeptical that the rental rate is the only factor that requires consideration. As Meijer points out, both the time remaining on the lease and the credit quality of the tenant may significantly impact the value of a leased property.

107. Even were we to accept that the only relevant factor is the lease rate, Hall and Lady entirely failed to prove that the properties in their analysis were leased at market rent. Hall gave largely conclusory answers to justify his conclusion that they were. When pressed on cross-examination, the only specific data he pointed to were the leases and the conclusions from his income approach.[5] He admitted that he did not have local data for most of the sales and provided no analysis linking the data he did have to the local market of any particular sale. In addition, for two of the six properties, Hall admitted that he did not know the lease rates. Despite not knowing what the rent of those properties was, he still concluded that they were leased at market rent. He justified this conclusion by

[5] Two of the leases from the Integra income approach were for the properties that were also used in the occupied sales analysis.

stating that the sale prices were in line with the other sales. Thus, he determined that the sale prices did not require adjustment because they were leased at market rent. He then justifies this conclusion with those same sale prices for which he was purportedly considering adjustments. We find this reasoning patently circular and devoid of probative value. It seriously impeaches Hall and Lady's overall credibility.

108. In her brief, the Assessor argued at length about why the Board should not ignore leased fee sales. But her own appraisers failed to meet even their own criteria for the use of leased fee sales (i.e. proving that they are leased at market rent). For that reason, we find their "occupied" sales analysis unreliable. As Meijer argued, by failing to properly account for the leased fee nature of the sales, Hall and Lady actually provide a leased fee value for the subject property rather than a fee simple value as they claim.

109. Turning to the vacant sales analysis, Hall testified that vacant properties may suffer various problems such as vandalism, deferred maintenance, an oversupplied market, and expensive maintenance. We agree that these issues might affect sale prices and require adjustment. Rather than research whether their comparable sales suffered from these deficiencies and develop appropriate adjustments, Hall and Lady attempted to create a blanket adjustment for "vacancy." Their support for this adjustment, a paired sales analysis, is woefully inadequate. They purported to isolate the difference in value between vacant and occupied properties. But two of the three sets of paired sales were sales of different properties in different cities. Hall and Lady provided only cursory explanations for why these properties were otherwise sufficiently comparable to isolate the effect of occupancy on sale price. Thus, their paired sale analysis has similar flaws as their occupied sales analysis. As Meijer points out, Hall and Lady actually developed an adjustment for the difference in value between leased fee sales and fee simple sales, though we do not find it particularly reliable even for that purpose.

110. Based on this analysis they adjusted four of their vacant sales upwards by 45%, and one by 35%. Because of the massive impact this unsubstantiated adjustment had on their conclusions, we find Hall and Lady's "vacant" sales-comparison approach of little worth.

In addition, we note that without this adjustment, their vacant sales-comparison analysis would yield a result similar to Allen's concluded value.

111. Meijer also challenges Hall and Lady's physical characteristics adjustments. While we find this point has some merit, it is ultimately superfluous to the significant problems we found above. However, we do note that Meijer did point out that in a previous appraisal Hall had treated one of the comparables, a Home Depot, as average when he was appraising that property. In this case, when using it as a comparable sale, he found it to be low quality. In each case, the different choices for quality had the effect of supporting higher values for the respective properties he was appraising. Moreover, in both cases he was hired by a government unit. We find this discrepancy undermines his overall credibility.

D. Conclusions

112. Allen's conclusions represent reliable evidence of the market value of the property. Hall and Lady's cost approach gave a good indication of replacement cost (with the possible exception of entrepreneurial profit), absent any adjustment for obsolescence.[6] The key dispute in this case is which result represents true tax value and which does not. The Tax Court has been clear that vacancy alone is insufficient to disregard comparable sales: *See Meijer Stores* at 1134 (holding that the Board must consider sales of former "big box" stores to secondary users and finding a two year old Meijer was entitled to 65% obsolescence adjustment); *Stinson v. Trimas Fasteners*, 923 N.E.2d 496, 497 (Ind. Tax Ct. 2010) (rejecting assessor's "theory that vacant properties are not comparable to occupied properties"); *Millenium Real Estate Investment, LLC v. Benton County Ass'r*, 979 N.E.2d 192 (Ind. Tax Ct. 2012) ("[W]hile Indiana assesses real property on the basis of its market value-in-use, this does not mean that a subject property's assessed value and its market value will never coincide."); *Shelby County Ass'r v. CVS Pharmacy, Inc. #6637-02*, 994 N.E.2d 350, 354 n.5 (Ind. Tax Ct. 2013) (rejecting assessor's argument that the Tax Court "is impermissibly attempting to convert Indiana's market value-in-use

[6] The Assessor makes an extensive argument that because of the health of the local market, there could not have been any external obsolescence. But Allen never claimed that there was external obsolescence, only functional.

system into a fair market value system"); and *Marion County Ass'r v. Washington Square Mall*, 46 N.E.3d 1 (Ind. Tax Ct. Dec. 30, 2015) ("[T]he Court has repeatedly rejected the contention that the Assessor makes in this case: that a property's market value-in-use can only be measured in relation to other identical users and not in relation to participants within the commercial/retail market generally.")

113. Based on our discussion above, we find Meijer has demonstrated that the Tax Court's precedent requires us to find that the market value represents the true tax value of the subject property. The Assessor did not make any serious attempt to show that Allen's comparable sales fell outside the market or submarket of the current use of the property such that they ran afoul of I.C. § 6-1.1-31-6 (the market segmentation statute).

114. Based on Allen's testimony, as well as the large discrepancy between Allen's sales-comparison approach and Hall and Lady's cost approach, we are convinced that the property suffered from some functional obsolescence. Because Hall and Lady failed to account for this, their cost approach is unreliable. We now turn to whether their sales and income approaches are more reliable than Allen's conclusion. As previously discussed, we find their sales-comparison approaches entirely unreliable. While their income approach is not as flawed on its face, it has less reliable underlying data than Allen's conclusions (and particularly his sales-comparison approach). We also find Hall's and Lady's credibility so undermined by their unreliable sales-comparison approaches that we do not find their conclusions under the income approach, or their overall conclusions, at all persuasive.

115. Thus, we adopt Allen's concluded value of $7,600,000 for the 2012 assessment year. Under the appeal management plan, the parties agreed to try only the 2012 year and that the results for the other years would be determined by agreed trending factors. Applying those factors yields the following results:

Year	Value
2008	$6,706,300
2009	$6,993,300
2010	$7,210,300
2011	$7,403,700
2012(Base)	$7,600,000

Year	Value
2013	$7,712,000
2014	$7,828,600
2015	$7,822,900
2016	$7,849,300[7]

The Assessments are changed accordingly. This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

[7] There are two charts in the appeal management plan, the first contains agreed trending factors for each assessment year, and the second contains trending factors applied to an example assessed value. For all of the years except 2016, the factors are the same. For 2016, the first chart shows 103.28% while the second shows 103.8101%. But the 2016 example assessed value shown in the second chart is the result of a calculation using the 103.28% trending factor from the first chart. We use that trending factor to determine the 2016 assessed value.

- APPEAL RIGHTS -

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