

REPRESNTATIVE FOR PETITIONER: Paul Jones, Attorney at Law

REPRESENTATIVE FOR RESPONDENT: Brian Cusimano and Zachary Price,
Attorneys at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MERCANTILE OPERATIONS, INC.)	Petition Nos.: 82-027-20-1-4-00431-23
)	82-027-21-1-4-00432-23
)	82-027-22-1-4-00433-23
Petitioner,)	
)	Parcel No.: 82-06-23-017-106.054-027
v.)	
)	County: Vanderburgh
VANDERBURGH COUNTY ASSESSOR,)	
)	Assessment Years: 2020-2022
Respondent.)	

November 24, 2025

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. Mercantile Operations, Inc. (“Mercantile”) contested the 2020, 2021, and 2022 assessments of its anchor department store (“Department Store”) in Evansville. The parties offered competing valuation opinions from their respective appraisers—Bradley Braemer for Mercantile and David Hall¹ for the Vanderburgh County Assessor. After weighing the evidence and considering the legal arguments, we find Braemer failed to offer a credible valuation of the Department Store under either of his approaches. We

¹ Although two additional appraisers, Michael Lady and Joshua Batic, also signed the appraisal offered by the Assessor, Hall was the only one who testified. For simplicity, we will refer to it as Hall’s Appraisal. *Tr. at 268; Resp’t Exs. A, B, & C at 203.*

find that two of Hall's approaches likewise failed to offer a credible valuation of the Department Store. We find Hall's valuation of the Department Store under the sales comparison approach both credible and consistent with generally accepted appraisal practices, though requiring an adjustment for the condition of the roof.

PROCEDURAL HISTORY

2. Mercantile filed Form 130 notices contesting the assessments for 2020 and 2021 on June 15, 2021, and the 2022 assessment on June 15, 2022. The Vanderburgh County Property Tax Assessment Board of Appeals ("PTABOA") held hearings on all three appeals on June 7, 2023, after which it issued final determinations for all years on June 9, 2023, valuing the subject property as follows:

Year	Land	Improvements	Total
2020	\$2,520,600	\$4,233,800	\$6,754,400
2021	\$2,520,600	\$3,901,000	\$6,421,600
2022	\$2,520,600	\$4,322,300	\$6,842,900

The subject property's 2019 assessed value was \$6,754,400 (\$2,520,600 for land and \$4,233,800 for improvements).

3. Mercantile filed Form 131 petitions with the Board for 2020, 2021, and 2022 on July 10, 2023. On October 1, 2024, Mercantile filed its motion for a protective order, and on October 9, 2024, the Board issued a "Protective Order" for certain information contained in Braemer's appraisal. Beginning on October 29, 2024, our designated Administrative Law Judge, David Smith ("ALJ"), held a three-day, in-person hearing on the petitions. Neither he nor the Board inspected the subject property.
4. Appraisers Bradley Braemer and David Hall testified under oath.
5. Mercantile submitted the following exhibits:

Petitioner Ex. 1:	Appraisal Report prepared by Bradley Braemer
Petitioner Ex. 2:	2024 Property Record Card ("PRC") for subject property

- Petitioner Ex. 3: Excerpts from Hall's April 1, 2021 appraisal report for 757 E. Lewis and Clark Parkway in Clarksville.
- Petitioner Ex. 16: 2024 Property Summary for 121 Four Seasons Blvd. in Greensboro, N.C.
- Petitioner Ex. 28: Sale listing for August 28, 2018 sale of 125 Four Seasons Blvd. in Greensboro, N.C.
- Petitioner Ex. 33: October 1, 2021 article, "New National Sales Per Square Foot and Occupancy Costs Figures"

6. The Assessor submitted the following exhibits:

- Respondent Ex. A: 2020 Appraisal Report prepared by David Hall
- Respondent Ex. B: 2021 Appraisal Report prepared by David Hall
- Respondent Ex. C: 2022 Appraisal Report prepared by David Hall
- Respondent Ex. D: Hall appraisal addenda
- Respondent Ex. E: Hall Addenda-Former Dillard's offering memorandum
- Respondent Ex. F: Hall Addenda-Former Sears offering memorandum (Peru, IL)
- Respondent Ex. G: Hall Addenda-Former Sears offering memorandum (Saginaw, MI)
- Respondent Ex. H: Hall Addenda-Former J.C. Penney offering memorandum (Johnstown, PA)
- Respondent Ex. I: Hall Addenda-Former J.C. Penney offering memorandum (Roseville, MI)
- Respondent Ex. J: Hall Addenda-Former At Home offering memorandum
- Respondent Ex. K: Braemer work file-Lease No. 1 backup
- Respondent Ex. L: Braemer work file-Lease No. 2 backup
- Respondent Ex. M: Braemer work file-Lease No. 3 backup
- Respondent Ex. N: Braemer work file-Lease No. 4 backup
- Respondent Ex. O: Braemer work file-Lease No. 5 backup
- Respondent Ex. P: Braemer work file-Lease No. 6 backup
- Respondent Ex. R: Braemer work file-Sale No. 2 backup
- Respondent Ex. S: Braemer work file-Sale No. 3 backup
- Respondent Ex. T: Braemer work file-Sale No. 4 backup
- Respondent Ex. W: Braemer work file-Sale No. 7 backup
- Respondent Ex. X: Braemer work file-Malls, Anchors, and Capitalization Rates: An Excellent Question
- Respondent Ex. A-C: Comparable anchors- retail sales (Confidential)
- Respondent Ex. A-D: IBTR decision-Dillard Department Stores, Inc. v. Clark County Assessor (July 15, 2022)
- Respondent Ex. A-E: Handwritten list of retail sales (Demonstrative)
- Respondent Ex. A-F: LoopNet listing information for 86-750 W. 14 Mile Road (Troy, MI)

7. The record also includes the following: (1) all pleadings, briefs, motions, and documents

filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) a transcript² of the hearing.

FINDINGS OF FACT

A. THE SUBJECT PROPERTY AND ITS MARKET

8. The Department Store is a 184,046 s/f single-tenant department store situated on 10 acres of land adjacent to the Eastland Mall in Evansville. The Department Store was originally built in 1996, and the interior was renovated in 2007 when it was purchased and occupied as a Dillard's. The Department Store is an anchor store connected to the Eastland Mall. The two-story building has escalators and elevators; wood or carpeted floors; papered, paneled or painted drywall walls; suspended acoustical or drywall ceilings; and incandescent and fluorescent lighting. The non-retail space includes several smaller stockrooms; an office area; and an interior dock for loading and unloading stock/merchandise. Site improvements include asphalt-paved parking lots and several light poles. The structure is in average condition and has an adequate electrical service with a roof-mounted heating and air conditioning system. The roof is leaking, nearing the end of its useful life, and will need to be replaced at a cost of no more than \$1,000,000. *Tr. at 2, 21-23 38, 269, 272; Pet'r Ex. 1 at 60, 69, 85-87, Transmittal letter, 1, 3, 12; Resp't Exs. A, B, & C at 4.*
9. The Eastland Mall is a super-regional mall with two other large anchor department stores, J.C. Penney and Macy's. It has 900,000 s/f of retail space with 115 inline stores. The mall is located in a major commercial and retail corridor with strip centers, stand-alone commercial properties, hotels, restaurants, and movie theaters. While the market for malls has declined and many have closed, the U.S. has approximately 700 malls with anchor stores, and the anchor department store remains an important part of the enclosed mall business model. The weakest malls are those within a 30-45-minute drive of a stronger competitor. The nearest competing super-regional malls to the Eastland Mall are

² The transcript is bound in three volumes, but the pages are numbered consecutively from 1 to 529. We will cite to the transcript, without reference to the volume, using the following format: *Tr. at (page number)*. We note that pages 164-182 of the trial transcript are identified as "Confidential Testimony."

more than two hours away. This reflects a large competitive market for the Eastland Mall as it draws customers from a large geographic area. E-commerce with in-person pickup is increasing at anchor department stores. According to Moody's Analytics, these overall changes in mall demand have shifted the negotiating leverage to the tenants, which has resulted in shorter leases, leases based on a percentage of sales in lieu of fixed rent, and early termination provisions. Most anchor department stores are owner-occupied rather than tenants of the mall. *Tr. at 38, 115-116, 170, 263-64; Pet'r Ex. 1 at 60. Resp't Exs. A, B, & C at 43-44.*

10. The decline in anchor department stores has not been uniform. For example, between 2010 and 2019, Dillard's saw a 6% increase in cumulative sales while J.C. Penney saw a 31% drop in sales. Between 2016 and 2021, Dillard's closed only 8% of its locations while J.C. Penney closed 34%. The number of annual closures of all anchor department stores since 2016 reveals a dramatic curve: nearly 100 closings in 2016-2017, peaking at nearly 400 in 2018, with a precipitous drop to 200 in 2020, 30 in 2021, and 12 in 2022. Green Street, a national analytics firm, anticipated that another third of all department stores would close by 2026, but those closures would be "concentrated at weaker malls." As department stores have vacated mall anchor store locations, they have been replaced by a traditional department store only 3% of the time. Thus, despite hundreds of closings and likely sales, Braemer testified that he had not been able to access or confirm the information behind any anchor store sold and replaced by another anchor store since 2011. The most common anchor department store replacements are traditional strip mall big box tenants, followed by entertainment venues and restaurants. This has expanded the definition of an "anchor" at a mall to extend beyond the traditional anchor department store to include cinemas, large restaurants, entertainment, office space, and mixed residential-commercial use. These commercial properties serve the same function as anchor department stores in attracting people to the malls. *Pet'r Ex. 1 at 29, 33-34, 36-37, 52 60; Tr. at 35, 74, 264-65; Resp't Ex. A at 34-35.*
11. The Evansville real estate market reflected lower vacancy rates, stronger absorption, and stronger retail job growth, and greater construction activity than the national market, but

lagged behind in sales and price growth, and cap rates were higher than nationally. The area is approaching a stable life cycle and there is little land available for development. *Tr. at 281-284, 290; Resp't Exs. A, B, & C at 27-32; Pet'r Ex. 1 at 56.*

12. The Department Store's current use, as described by both expert appraisers, is a "Department Store / Mall Anchor." The Department Store has an open floor plan with minimal partitions and could accommodate a wide range of retail uses. There is no dispute that the highest and best use of the Department Store is continued use as a "large anchor department store." We also credit Hall's opinion that the Department Store's "conversion to an alternative use (retail, office, institutional)" would result in similar productivity in terms of rent or sale price. *Tr. at 326; Pet'r Ex. 1 at 90, 99; Resp't Exs. A, B, & C at 36, 39, 119.*

B. EXPERT OPINIONS

1. Braemer's Appraisal

13. Mercantile offered an appraisal report from Bradley Braemer, who possesses MAI and AI-GRS designations. Braemer has been employed as an appraiser with Real Estate Analysis Corporation since 2000 and served as President of the company since 2022. He is a Certified General Real Estate Appraiser in Indiana, Illinois, Michigan, Iowa, and Nebraska. Braemer has a Bachelor of Business Administration Degree from the University of Wisconsin. He has been a professional real estate appraiser for nearly 25 years. Braemer has appraised regional malls, super-regional malls, and anchor department stores. His firm appraises only commercial properties, typically office, industrial, nursing home, and retail properties. He has appraised over 100 anchor department stores and approximately 25 regional and super-regional malls. The anchor stores Braemer has appraised include Dillard's, Von Maur, J.C. Penney's, Neimann Marcus, Nordstrom, Saks, Sears, and Marshall Fields. Braemer estimated that 95% of his appraisal work is for tax appeals. *Tr. at 17-19, 26, 110; Pet'r. Ex 1 at 217.*
14. Braemer performed both interior and exterior inspections of the subject property on January 30 and 31, 2024. He developed an opinion of the retrospective market value-in-

use of the subject property's fee simple interest and true tax value as of January 1, 2020, January 1, 2021, and January 1, 2022, using only the sales comparison and the income capitalization approaches. Braemer certified that he prepared his report in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Tr. at 15-17, 27; Pet'r Ex. 1 at 2, 4, 6, 8-9, 10-11, 21.*

a. Braemer's Approaches

15. Braemer stated it was his intention to value the Department Store under the premise of "a continued use as an anchor department store," which he noted has a different market than a power center or strip center. Though he also acknowledged that property with a different retail use, like a furniture store, might provide relevant data for an appraisal of the Department Store. Braemer considered the income capitalization and sales approaches in valuing the Department Store. He did not use the cost approach because he felt adjustments for obsolescence would require a degree of subjective judgment that would weaken the credibility of his analysis. *Pet'r Ex. 1 at 100; Tr. at 86, 93.*

b. Braemer's Income Capitalization Approach

16. Braemer commenced his income appraisal approach by developing a market rent. The theory undergirding Braemer's estimate of market rent is the concept of a "natural breakpoint," which he described as a "meeting of the minds" between the landlord and tenant as to the anticipated retail sales at the property. This is based on each party's independent research of the market. They then "apply a percentage" to the agreed upon retail sales to determine the base rate for rent. He believed that these rates have been in the range of 2% to 3% consistently over several decades. Braemer admitted that he had not been able to review a lease for an anchor department store executed in the last five to ten years, and his insight into the current real estate market for anchor department stores consisted solely of "conversations." Without more recent data, he considered several sources in choosing his "natural breakpoint" or percentage rent for the Department Store. *Tr. at 46-47, 114; Pet'r. Ex 1 at 102-28.*
17. In the "Harvard Study," evidently snipped from a 1924 textbook, the rent for a few

surveyed department stores ranged from 2.1%-2.9% of retail sales. As this source pre-dates the modern shopping mall, Braemer admitted it was not offered to establish current market rent but to demonstrate the general acceptance of using a percentage of retail sales as a metric for rent in department stores. In the "Appraiser Article," by Ramsland, et. al., which dated to 2010, the authors calculated rent in the range of 2%-3% of retail sales based on a presumed fact pattern of \$180.00 s/f in annual sales and rents of \$3.00 to \$6.00. Another article, authored by Braemer himself, reached a similar conclusion. *Pet'r Ex. 1 at 105, 111.*

18. Two of Braemer's other sources were based on a single study. "The Score" surveyed national chain department stores "(Owned)" at "U.S. Super Regional Shopping Centers," with the data related to 2008 establishing a 2%-2.7% rate. The "Shopping Center Appraisal" textbook is redundant because it merely recites the same survey data compiled in "The Score." *Pet'r Ex. 1 at 107-8.*
19. Turning to data from a specific anchor department chain, Braemer's "Actual Company-Wide Data" from 2009-2011 indicated a range of "minimum"³ rent of 3.1% to 3.2% of retail sales. Braemer also cited to an aggregate of 25 leases for anchor department stores, dating from 1988 to 2009, that ranged from 1.9% to 3.0% and averaged 2.45%. Additionally, Braemer pointed to six property tax appeals cases in Illinois and Minnesota where appraisers offered a range of 2%-3% rates, in tax years dating from 1997 to 2012. *Pet'r Ex. 1 at 109-10, 112.*
20. Braemer's most detailed source for his range of percentage rents was his list of six "Recent Anchor Leases" (dating from 2002 to 2012), though only four disclosed a breakpoint in terms of sales per s/f. He placed the most reliance on this source and used these leases to consider a range of rent on a flat, per square foot, basis. Braemer admitted that the tenants in these leases likely paid additional rent beyond the amounts listed, including rent over breakpoint. He also conceded that he had no actual retail sales data

³ Braemer clarified that this range reflects an average for each year of data, but he does not explain whether "minimum" rent is the same as base rent. *Tr. at 156, 158.*

for any of these lease comparables. Accordingly, Braemer could not calculate the actual rent paid under these leases. *Tr. at 139-40, 149. Pet'r Ex. 1 at 106.*

21. After reviewing all sources, Braemer believed a percentage rent for the Department Store should be in the range of 2.0% to 3.0%. As for picking a specific rate, Braemer chose the average of the range of 2% to 3%, which amounted to 2.5%, though he does not expressly disclose that he chose 2.5% as the percentage rent metric for all three years. He instead applied 2% and 3% to his estimated retail sales and concluded to the average between the two. Braemer offered no explanation as to why the Department Store could achieve no more than average percentage rents (2.5% of retail sales), a rate significantly lower than the range of 3.1% to 3.2% *average* for his Actual Company-Wide source (indicating the range true percentages likely ranged even higher). *Tr. at 184-86; Pet'r Ex. 1 at 124-27.*
22. Braemer next estimated retail sales for the Department Store, starting with the subject property's recent historical retail sales per square foot, which were \$95.70, \$94.38, \$66.73, \$90.72, and \$96.83 for 2022 through 2018, respectively. He noted that the low value for 2020 primarily reflected the sudden influence of the pandemic with store closures and fewer in-person shoppers. The weighted average of stabilized retail sales for anchors (Dillard's and Macy's) at the Eastland Mall for 2018-2022 ranged from \$103.66 per s/f to \$62.40 per s/f. Measuring the same values for ten comparable anchors at other Indiana regional and super-regional shopping centers for 2018-2022 resulted in a range of rents \$73.25 per s/f (2020) to \$116.70 per s/f (2018). From all of this, Braemer settled on retail sales of \$105 per s/f for 2020, \$95 per s/f for 2021, and \$100 per s/f for 2022. *Tr. at 55-65; Pet'r Ex. 1 at 116-128.*
23. Braemer applied his estimates of retail sales to percentage rents at both 2% and 3%, which revealed a range of market rent of \$2.10 per s/f to \$3.15 per s/f for 2020, \$1.90 per s/f to \$2.85 per s/f for 2021, and \$2.10 per s/f to \$3.15 per s/f for 2022. He selected the average for each year: of \$2.63 per s/f for 2020; \$2.38 per s/f for 2021; and \$2.50 per s/f for 2022. As mentioned before, this had the same effect as a lease set at 2.5% of

breakpoint retail sales (base rent). In addition to the percentage rent, Braemer also considered a “pre-set square foot rental rate” where he examined the actual lease rates in his “Recent Anchor Leases,” which ranged from \$2.33 per s/f to \$5.50 per s/f. *Tr. at 47-54; Pet’r Ex. 1 at 105-115, 124-27.*

24. Braemer’s market rent conclusions were significantly lower than the rates in the “Recent Anchor Leases” and his other sources that identified rental rates on a square foot basis, as reflected in the chart below:

<u>Recent Anchor Leases</u>		<u>Braemer</u>	
Lease 1 2017 Renewal	\$4.33	Concluded 2020	\$2.50
Lease 2 2009	\$5.50	Concluded 2021	\$2.38
Lease 3 2010 (Sears)	\$2.33	Concluded 2022	\$2.60
Lease 4 2017 (Renewal)	\$5.55		
Lease 5 2003	\$5.19		
Lease 6 2002	\$3.91		
<u>The Score Survey</u>			
Super Regional	\$3.32		
Regional	\$3.30		
<u>Shopping Center Text</u>			
Traditional Dept. Store	\$3.35		
<u>25 Anchor Leases</u>			
Low	\$3.00		
High	\$9.13		

We find that every data point from Braemer’s lease comparables dating back to 1988, as expressed on an unadjusted square foot basis, was higher than his market rent conclusions for the Department Store, with one exception. Lease 3 in the “Recent Anchor Lease” source was a 2010 renegotiation for a significantly smaller Sears store. We find that Lease 3 was likely an outlier and reflected unique market factors at that property causing

lease renegotiations, and not general market conditions for anchor department stores. *Tr. at 55-65; Pet'r Ex. 1 at 116-128.*

25. Continuing with his income approach, Braemer analyzed vacancy rates, management fees, and collection loss in relation to the subject property and market. He consulted the *NAR Commercial Real Estate Metro Market Report* for the first quarter of 2022 which he believed applicable to all three years under appeal: 5.0% for the first quarter of 2021, 4.2% for the fourth quarter of 2021, and 4.0% for the first quarter of 2022. After also considering the CoStar Report retail vacancy rates for the first quarter of each year, he determined final vacancy rates of 5.0% for 2020 and 2022, and 6.5% for 2021. Braemer's selections were influenced by the large size and age of the Department Store. *Tr. at 65-66; Pet'r Ex. 1 at 129-132.*
26. Braemer consulted PwC Investor Survey data for regional malls and power centers for all three years in developing his management fee estimates. Based on the available data he chose a management fee expense of 1.0% for each of the three appeal years. He then assigned a collection loss value of 1.0% for all three years taking into consideration the increased loss potential associated with high-risk tenants. Braemer's totaled vacancy rates, management fees and collection loss percentages were 7.0% for 2020 and 2022, and 8.5% for 2021. He then multiplied his average net rental rate by total square footage to arrive at potential net income and then subtracted the various loss totals for each year to reach net operating income of \$453,481 for 2020, \$404,165 for 2021, and \$427,907 for 2022. *Tr. at 67-69; Pet'r Ex. 1 at 133-138.*
27. Braemer began his capitalization rate analysis by comparing the sale prices and net incomes of Sales 5-7 from his sales comparison approach. Braemer had access to the actual net income for Sales 5 & 6, which he gave the most weight, and he imputed income for Sale 7. This resulted in capitalization rates of 8.8%, 11.7%, and 11.8% for sales in 2011, 2005, and 2006. He anticipated higher rates for the Department Store due to the risk associated with large, single-tenant stores with far less demand due to a limited population of potential lessors. *Tr. at 69-70; Pet'r Ex. 1 at 139-144, 148.*

28. Braemer next researched *PwC Investor Survey*'s capitalization rates for Institutional Grade Retail Properties including regional malls, national power centers, and strip shopping centers. Rates for 2020-2022 ranged from 6.92% to 7.06% for national power centers, and 6.81% to 7.15% for national strip shopping centers. He also reviewed National Overall Capitalization Rates for Institutional Grade National Retail Malls and found Quarter 1 rates of 6.23%, 7.35%, and 7.23% for 2020, 2021, and 2022 respectively. Braemer also considered the negative impact of the pandemic which led to increased e-commerce, and the fact that the subject property was closed for 47 days in 2020 amounting to 12.9% of the year. Given the continued negative shift of consumer attention from brick and mortar stores, he determined that a capitalization rate of 8.5% was appropriate for all three years under appeal. *Tr. at 71-72; Pet'r Ex. 1 at 145-153.*
29. Braemer divided his calculated net income for each year by the 8.5% capitalization rate to arrive at indicated valuations under income capitalization approach of \$5,335,000 (rounded) for 2020; \$4,755,000 (rounded) for 2021; and \$5,035,000 (rounded) as of 2022. *Tr. at 73; Pet'r Ex. 1 at 154-155.*
30. Overall, we find Braemer's income approach to be unreliable because his estimate of market rent is not credible. We reject his premise that the "natural breakpoint" captures total market rent because it fails to include overage rent. Braemer defines the "natural breakpoint" as a hypothetical "meeting of the minds" between the landlord and tenant in regard to anticipated sales. The Appraisal of Real Estate describes the "natural breakpoint" as simply "the level of sales at which percentage rent exactly equals rent." If sales exceed the breakpoint, the additional rent due is called "overage rent." Braemer bases his market rent on base rent alone. This is contrary to The Appraisal of Real Estate, which states that under the "income capitalization approach to value, an appraiser must forecast the **base rent and overage rent** under a percentage lease." The Appraisal of Real Estate expressly cautions that "[o]verage rent should not be confused with excess rent." We find that is precisely what Braemer has done here. *Appraisal Institute, THE APPRAISAL OF REAL ESTATE 15TH EDITION, pp. 88, 423-24 (2020) (emphasis added).*

31. Based on his conception of the “natural breakpoint,” Braemer did not investigate the actual rent (base and overage, if any) in his comparable lease sources. Because of the prevalence of overage clauses in anchor department store leases, we find Braemer should have reviewed overage rents and considered the total actual rents in his comparable leases. This required Braemer to obtain the actual retail sales at each of his comparable leases—data he did not present in his appraisal. Thus, Braemer failed to include actual rent (base and overage, if any) for any of his comparable leases. He merely presumed that base rent is market rent, which we reject. Without data from comparable leases establishing market rent based on actual total rents, we find Braemer’s estimate of market rent to be unreliable.
32. Even were we to conclude that Braemer’s omission of overage rent was justified, we must still reject his estimate of market rent because it is well below the range of market rent from his source data. As reflected in the table above, Braemer’s conclusions of market rent for the Department Store were all below \$3.00 per s/f. Of Braemer’s source leases and survey data dating to 1988, only one lease indicated base rent below \$3.00 per s/f, and that was a clear outlier resulting from a renegotiated lease. In contrast, the most recent lease renewals, both in 2017, reflected base rents of \$4.33 per s/f for a Macy’s in Wisconsin and \$5.55 per s/f for a J.C. Penney in Minnesota. While those were in major metropolitan markets, the lease for a Boston Store in more isolated Beaver Dam, Wisconsin, reflected a similar base rent of \$5.50 per s/f. We do not find that the Department Store, which is located at a mall supported by three anchor department stores, could command rent consistent with a renegotiated lease of a Sears store (\$2.35 per s/f at the Lease 3 Sears vs. \$2.38 per s/f at the Department Store for Braemer’s 2021). Braemer’s selection of the Department Store’s market rent in 2020-2022 reflected the actual rent of one outlier, and that conclusion placed the Department Store well below the range of Braemer’s other comparable lease datapoints dating back to 1988. We find that Braemer has failed to select a market rent within the range of his own comparable lease data, and we reject his selection as not credible.
33. We understand Braemer applied a methodology to extrapolate a valuation based on older

leases due to his inability to procure more current comparable leases. While Braemer's methodology may be justifiable, his conclusions are not. It is possible that anchor department store leases have dropped into the \$1.90 per s/f to \$3.15 per s/f range in the era of 2020-2022. But Braemer has not presented us with comparable leases from any era supporting that range. Without more, we find his conclusion of market rent unsupported by the evidence, which renders his income approach unreliable.

34. Because we reject Braemer's estimate of market rent as unreliable, we find that Braemer's approach under income capitalization approach does not offer a credible valuation of the Department Store.

c. Braemer's Sales Comparison Approach

35. For his sales comparison approach, Braemer chose seven Midwest comparable sales falling into two unique sets. Sales 1-4 were more recent sales of former anchor department store buildings that either remained vacant or were converted to retail but not anchor department store uses. Sales 5-7 were older sales of anchor department store buildings where the properties continued to be used as anchor department stores. Braemer reasoned that these two datasets would provide an overall representative true tax value as envisioned by the Manual definition. *Tr. at 73-75; Pet'r Ex. 1 at 155-158.*

36. Braemer's comparable sales were all single-tenant anchor department stores from the Midwest:

- Sale 1 (Dayton, Ohio) – a 227,070 s/f former Elder Beerman built in 1969 and renovated in 1998 on a 680,364 s/f site with an effective age of 30 years sold in November 2019 for \$15.89 per s/f. The property was sold out of bankruptcy proceedings. The purchaser was the mall and remained vacant in 2024.
- Sale 2 (Eau Claire, Wisconsin) - a 101,000 s/f structure built in 1986 and renovated in 2002 on 356,739 s/f of land with an effective age of 25 years sold in January 2019 for \$19.80 per s/f. The property was sold out of bankruptcy proceedings. The purchaser was a furniture store.
- Sale 3 (Coralville, Iowa) - a 98,016 s/f structure built in 1998 on 396,832 s/f of land with an effective age of 21 years sold in January 2019 for \$20.40 per s/f.

Retail sales of other anchors in the Coral Ridge Mall produced indicated retail sales of \$95.00 per square foot. The property was sold out of bankruptcy proceedings. The purchaser was a furniture store.

- Sale 4 (Peoria, Illinois) - a 165,265 s/f Northwood Mall structure built in 1973 and renovated and rebranded in 2006 to house Macy's on 352,400 s/f of land with an effective age of 35 years sold in January 2017 for \$10.89 per s/f. The purchaser was the mall who leased a portion to a bowling entertainment center and the rest to a furniture store.
- Sale 5 (Oak Brook, Illinois) - a 112,099 s/f structure in Oakbrook Center (former Neimann Marcus) built on a 49,658 s/f-pad with an effective age of 29 years sold in January 2011 for \$92.24 per s/f. This property was a leased-fee sale subject to a ground lease and included no parking except by right of an easement with the mall. The property was occupied by a Nieman Marcus at the time of sale.
- Sale 6 (Bloomington, Illinois) - a 153,368 s/f structure in Stratford Square Mall (former J.C. Penney) built on 441,955 s/f of land with an effective age of 25 years sold in April 2006 for \$43.36 per s/f. This property was a leased-fee sale. The property was occupied by a J.C. Penney at the time of sale.
- Sale 7 (Columbus, Ohio) - a 140,000 s/f structure built in 1998 in the Polaris Fashion Place (former Lord & Taylor) on 348,480 s/f of land with an effective age of 4 years sold in May 2005 for \$37.50 per s/f. The property was formerly a Lord & Taylor and purchased for use by Von Maur.

Tr. at 76-84; Pet'r Ex. 1 at 159-182.

37. Braemer made qualitative adjustments to his comparable sales for date of sale; location, rent (stabilized retail sales per square foot); land to building ratio; age of building; price per square foot; and overall compatibility. Braemer found no adjustments necessary to Sales 1-4 for any year for date of sale; positive adjustments for inferior sale dates were required for Sales 5-7; positive adjustments were necessary for Sales 1-4 and negative adjustments for sales 5-7 were needed for overall comparability; and that Sales 1-3, 5 & 6 required no adjustment for building age for any year while Sales 4 & 7 required positive and negative adjustments respectively. He determined that none of the comparable sales required adjustment for unusual financing; conditions of sale; and expenditures required after sale. Overall he found that each of Sales 1-4 was inferior to the subject property and each of Sales 5-7 was superior. *Tr. at 84-87, 96-100; Pet'r Ex. 1 at 162, 165, 168, 171,*

38. However, Braemer made no mathematical (quantitative) adjustments related to the unit sale prices for any of his qualitative adjustments.⁴ Rather than applying a traditional qualitative sales comparison analysis, Braemer applied a “retail sales multiplier method.” This looked solely at the ratio between sale prices per s/f and stabilized annual retail sales per s/f. Braemer believes that the sale price to retail sales ratio is “an all-encompassing adjustment” that applies to “everything,” including date, size, age, and business model. But he admitted there is no authoritative text or article supporting the use of a retail sales multiplier approach as a substitute for identifying and adjusting comparable sales in the sales comparison approach. *Tr. at 233-34, 237; Pet'r Ex. 1 at 197-207*.
39. Braemer was unable to confirm the actual annual sales for Sales 1-5.⁵ As for estimating retail sales, Braemer described a slightly different process for each comparable sale based on the data available. For Sale 1 (2019), Braemer estimated retail sales based on an analysis of 2019 sales for the other anchors at that mall and two other national anchors. For Sale 2 (2019), Braemer estimated retail sales based on an analysis of 2019 sales for the other anchors at that mall and two other national anchors for the years 2010-2012. For Sale 3 (2019), Braemer estimated retail sales based on an analysis of 2019 sales for the other anchors at that mall and in other Midwest markets. For Sale 4 (2017), Braemer looked at the sales at Sale 4 in 2008 and a J.C. Penney and two other anchors at the mall in 2012-2015. For Sale 5 (2011), Braemer estimated retail sales based on sales at Sale 5 for 2010, and the sales for two other anchors at that mall for 2007-2008. For Sale 6 (2006), Braemer estimated retail sales based on a weighted average of the anchors at that mall in 2005. For Sale 7 (2005), Braemer estimated retail sales based on a weighted average of the anchors at that mall in 2004.

⁴ Braemer did make a property rights adjustment to the sale price for Sale 5. This was a sale of only the building for \$8,200,000 (\$73 per s/f). Braemer capitalized the ground lease to adjust the value to \$13,575,000 (\$121.10 per s/f) as if it had sold in fee simple. But then he made another deduction because the property sold with a lease in place, resulting in a final adjusted sale price of \$92.24 per s/f (or \$10,340,000). This was based on his conclusion that the contract rent (due to the inclusion of ground rent) was higher than market rent. Braemer considered a similar adjustment for Sale 6 but decided it was unnecessary. *Pet'r Ex. 1 at 173-78*.

⁵ Braemer admitted that the stores in Sales 1-4 had closed on the transaction date and technically had zero sales. *Tr. at 100*.

40. By dividing the sale prices by his estimates of retail sales, Braemer reached a range of multipliers from .15 to .19. From this he selected the multiplier of .25 for valuing the Department Store. Braemer justified the selection of .25 as being “bracketed” between the Sales 1-4 and Sales 5-7 datasets. We find the multiplier of .25 is actually well above the range of Sales 1-4 and more within the range of the Sales 5-7 dataset.

<u>Sale Comp.</u>	<u>Sale Price</u>	<u>Estimated Sales</u>	<u>Retail Sales Multiplier</u>
1	\$15.89 s/f	\$100	.16
2	\$19.80 s/f	\$100	.20
3	\$20.40 s/f	\$95	.21
4	\$10.89 s/f	\$75	.15
5	\$92.24 s/f	\$315	.29
6	\$43.36 s/f	\$170	.26
7	\$37.50 s/f	\$170	.22

Pet'r Ex. 1 at 162-180, 197.

41. Applying the multiplier to his retail sales estimates, Braemer reached a value per square foot for the subject property at \$26.25 for 2020, \$23.75 for 2021, and \$25.00 for 2022, which he rounded to \$26.00, \$24.00, and \$25.00, respectively. Braemer's indicated values using the sales comparison approach were \$4,785,000 for 2020, \$4,415,000 for 2021, and \$4,600,000 for 2022. *Tr. at 87-92; Pet'r Ex. 1 at 186-188, 191, 197-206.*
42. In considering Braemer's underlying theory of the sale price to retail sales ratio, we reject his premise that this ratio constitutes an all-encompassing adjustment. We find it is better described as a relevant unit of comparison that can be analyzed as an income multiplier. Under basic appraisal theory, these multipliers do not automatically adjust for differences. Appraisers must still “consider the range of multipliers and rates and the similarities and differences between the subject and comparable sale properties that causes the multipliers and rates to vary.” Braemer offered very little explanation to establish why he chose the multiplier of .25—i.e. what attributes made the Department

Store more similar to the comparables nearest that multiplier. We find that Braemer failed to adequately explain the similarities and differences between the comparable sales that caused the variance in rates and why the multiplier he chose is appropriate for the Department Store. For this reason, we reject Braemer's selection of a multiplier as unreliable. *THE APPRAISAL OF REAL ESTATE* p. 361, 473.

43. Even if Braemer had better supported his choice of multiplier with an explanation of comparability, we would still find Braemer's data to be substantially flawed. Because Sales 1-4 were vacant on the date of sale, there is no actual data for retail sales at the time of sale—in fact three of the comps were sold out of bankruptcy. Without evidence of retail sales, there can be no determination of a sale price to retail sales ratio. To remedy this, Braemer offered his own estimates of market retail sales for Sales 1-4 based on actual data from similar anchor department stores. We find Braemer's estimates of anchor department store retail sales credible and quite compelling. But these estimates would only be relevant to a property where the sale price reflected an intention to continue as an anchor department store. That was not the case in Sales 1-4 where the properties were purchased on a speculative basis or for conversions to a non-department store use like a furniture store.
44. We find that the transactions in Sales 1-4 do not necessarily reflect the expectations for anchor department store retail sales. Rather, the sale prices in Sales 1-4 reflect the expectations of the buyer and seller for speculative or non-department store retail use. In other words, Braemer's ratios erroneously presume the parties anticipated that these properties could achieve anchor department store retail sales instead of the rates achieved by furniture stores. Had Braemer instead presented an analysis of actual or estimated retail sales at the furniture stores or similar conversion uses of former anchor department stores, he would have provided an apples-to-apples ratio of sales price to retail sales. Instead, we find that this grafting of an expectation of continued anchor department store retail sales onto speculative and furniture store comparable sales renders Braemer's ratios from Sales 1-4 unreliable.

45. Because Sales 5-7 were intended for anchor department store use following the sale, the sale prices were clearly premised on anchor department store retail sales. However, Sales 5-7 suffer from a different infirmity. These transactions occurred in 2011, 2006, and 2005. Thus, the ratios of sale price to retail sales reflect the market conditions existing ten to fifteen years prior to the assessment dates. Subsequent to these sale dates, malls faced dramatic changes in the real estate and retail market. We do not find credible Braemer's claim that "adjustment for time" should be "considered to be minimal." This is especially true in the rapidly changing market for anchor stores and an era including the Great Recession, the Pandemic, and the wide-spread closures of weak malls and their anchor department stores. *Pet'r Ex. 1 at 193-94.*
46. Because we find Braemer's sale price to retail sales multiplier is substantially flawed and based on unreliable data, we find that he has not offered a credible estimate of the Department Store's value under the sales comparison approach.

d. Braemer's Reconciliation

47. Braemer gave substantial consideration to the income approach which he believed provided a reasonable value. He concluded that the data he gathered was reliable and the available data was sufficient to support his market adjustments for multiple important factors that impact the accuracy of the capitalization rate. The sales comparison approach results were given moderate consideration because he was able to obtain reliable retail and property sale data from which to complete the approach. Based on his analyses of the property based on its existing use, Braemer reconciled to final value conclusions of \$5,150,000 as of January 1, 2020, \$4,600,000 for January 1, 2021, and \$4,900,000 as of January 1, 2022. *Tr. at 89-91; Pet'r Ex. 1 at 208-211.*
48. For the reasons indicated above, we find that Braemer has failed to offer a reliable estimate of the Department Store's value, and we reject his reconciled values.

2. Hall's Appraisals

49. The Assessor offered appraisal reports from David Hall, MAI, AICP, and Managing Director of Integra Realty Resources-Indianapolis. He has a bachelor's degree in landscape architecture from Ball State University and an MBA from Ohio State University. Hall is a licensed Indiana Certified General Real Estate Appraiser, and he has been a commercial real estate appraiser for 20 years. Hall has appraised 5 regional malls in the past 10 years and a total of approximately 10 anchor department stores including appraisals for Saks, Macy's, Burlington, Dillard's, Kohl's, and Targets, mostly in Indiana. His work has not been limited to property tax appeals, but also for lenders in financing appraisals. Hall performed an internal, informal inspection of the structure's public areas on July 9, 2024, and a comprehensive interior and exterior inspection of the property on August 9, 2024. He performed appraisals of the retrospective market value-in-use of the subject property's fee simple interest as of January 1, 2020, January 1, 2021, and January 1, 2022, and certified that he prepared them in conformity with USPAP. *Tr. at 257-258, 274, 401-404; Resp't Exs. A, B, & C at Transmittal letter, 8; Addenda A at 2-3.*

a. Hall's Market Overview

50. Hall testified that recent data was important in his analysis. He opined that "ten years is a really, really long time in retail" and that the retail sector has probably been the most dynamic and volatile. The recent shift to new nontraditional mall anchors has affected the supply and demand for department stores and their rental rates and sale prices. Hall believed the cost approach would be the most reliable because of the lack of data available for the other two approaches. Quoting *The Appraisal of Real Estate*, Hall noted:

If sale and rental data for comparable properties is not available, current market indications of the depreciated cost of an existing building (or the cost to acquire and refurbish the building) would be the best reflections of market thinking, and thus, of market value.

Hall's research indicated anchor department stores do not sell very often, which offers

little data for the sales comparison approach. Likewise, as anchor department stores are mostly owner-occupied, it is difficult to obtain lease data for the income approach. Hall also testified that anchor store owners, when they do enter a new space, will make renovations for their brand, which makes them familiar with construction costs. Overall, Hall found sufficient data to value the Department Store under the sales and income approaches as well. Looking to the overall Midwest market for department stores, Hall found decreasing store sales, increasing rent, and stable sales prices. *Tr. at 259-60, 265 270, 275-77, 310-14; Resp't Exs. A, B, & C at 120-121.*

51. Hall rated the property's actual age and effective age to be identical (24-26 years) and he classified it as an average Class C mall anchor store using Marshall Valuation Service ("MVS") with an estimated life of 45 years. He found no indication that the structure suffered from any functional obsolescence. He found no evidence of deferred maintenance but noted that the roof, which he assumed was the same age as the structure, was nearing the end of its life and leaks were appearing which would probably require repair. He expected the replacement cost for the roof would not exceed \$1,000,000, with one type of roof as high as "\$800,000+/-." Hall believed a buyer would consider the roof condition in negotiating a price. To account for the roof in the income approach, he selected a \$0.75 per s/f for replacement reserves, which was higher than typical replacement reserves (\$0.33 per s/f-\$0.40 per s/f). Capitalized with rates of 8.00% and 8.25%, Hall's adjustment resulted in a deduction of \$1,680,000 or \$1,630,000 from the total valuation as a replacement reserve which he believed accounted for the roof. In the cost approach, Hall believed the application of the obsolescence adjustment from his income approach was sufficient to account for the condition of the roof. For the sales comparison approach, he did not make any adjustments specific to the roof in terms of physical characteristics or age/condition. *Tr. at 315-327, 405-406; Resp't Exs. A, B, & C at 81-87, 109, 117-119, 161, 191-192.*

b. Hall's Sales Comparison Approaches

52. In identifying comparable sales, Hall searched for fee simple regional mall anchor store sales of 100,000 s/f to 300,000 s/f between January 2015 and December 2021. He chose properties that were vacant at the time of sale. Hall identified three similar sales in Indiana but concluded that they would not be suitable as comparable sales because one was in a mall in which all of the anchors had closed; one was part of a multi-parcel and multi-structure property; and one was part of a bankruptcy auction portfolio. He expanded his search to the Midwest and then to more southern states. Hall identified six suitable comparable sales:

- Sale 1 (614 Brookwood Village, Birmingham, Alabama) - a 231,500 s/f former Macy's built in 1974 on a 2.98-acre site purchased in September 2021 for \$43.20 per s/f. This property was speculatively purchased subject to a short-term lease with the previous owner. No specific plan for the property existed at the time of transfer and redevelopment of the entire mall was anticipated.
- Sale 2 (7401 Market Street, Youngstown, Ohio) - a 182,362 s/f two-story former Dillard's department store built in 1975 on a 11.44-acre site purchased in February 2019 for \$48.91 per s/f. No tenant was identified at the time of purchase, the property was later marketed for leasehold tenancy, and redevelopment of the entire mall was anticipated
- Sale 3 (2100 Pleasant Hill Road, Duluth, Georgia) - a 185,512 s/f former Sears department store built in 1984 on a 11.55-acre site purchased in May 2018 for \$59.30 per s/f. Sears remained in the building for a few months after the sale. Plans for the property were not disclosed at the time of sale. The purchaser was a developer of luxury apartments.
- Sale 4 (2068 Sam Rittenberg Boulevard, Charleston, SC) - a 132,030 s/f former Sears department store built in 1980 on a 14.25-acre site purchased in April 2018 for \$57.18 per s/f. The property was leased to HBO for use as an entertainment/production facility and the owner had long-term redevelopment plans. A ten-year plan suggested eventual redevelopment of the mall.
- Sale 5 (2060 Sam Rittenberg Boulevard, Charleston, SC) a 128,740 s/f former J.C. Penney two-story department store built in 1981 on a 10.65-acre site purchased in August 2017 for \$39.81 per s/f. The building was subsequently leased to the Medical University of South Carolina that used it for medical office space and various patient services.

- Sale 6 (125 Four Seasons Boulevard, Greensboro, NC) - a 212,047 s/f three-story former Dillard's department store built in 1974 and renovated in 2002 on a 2.64-acre site purchased by the mall's owner in January 2016 for \$70.74 per s/f. Simultaneously, Dillard's purchased another property from the mall. The Sale 6 property was intended to be occupied by a Cabela's, but it fell through and 60,000 s/f was subsequently leased to Round 1 Bowling & Amusement. Hall could not confirm the property was marketed to the public prior to the sale.

Hall did not visit, inspect, or appraise Sales 1-4 or 6. *Tr. at 346-352, 435-436, 439-441, 447-453, 455, 460, 474-475; Resp't Exs. A, B, and C at 146-153; Pet' Ex. 3 at 149-151.*

53. Hall evaluated the properties for several factors. Hall ultimately made no adjustments for property rights, financing terms, conditions of sale, expenditures after purchase, or physical characteristics. Hall adjusted for market conditions at an average annual rate of 3% based on his analysis of national market data. He made no market condition adjustment to Sale 1 and adjustments of -3.00%, -5.00%, -5.00%, -7.00%, and -12.00% to Sales 2-6 respectively. He made no location adjustment to Sales 2 & 6, and adjustments of -5%, -15%, -10%, and -10% to Sales 1 & 3-5, respectively, after considering population, annual population growth, and average household income for each comparable sale. Hall made negative access/exposure adjustments to all of the Sales, which included -10% to Sales 1-3, & 5; -20% to Sale 4; and -30% to Sale 6. He also adjusted for economic characteristics based on mall retail drawing power. That resulted in +5% adjustments to Sales 1-3, and no adjustments to Sales 4-6. He also applied effective age/condition adjustments calculated by applying 1% per year. He made positive 11.00% adjustments to Sales 1-2 & 4-5; 10.00% to Sale 3; and 1% to Sale 6. *Tr. at 352-359; Resp't Exs. A, B, C at 154-162.*
54. For 2020, Hall's comparable sales had final adjusted prices ranging from \$33.69 per s/f to \$50.70 per s/f, with an average price of \$44.42 per s/f. Hall gave less weight to Sale 1 due to its 2021 date of sale, and he considered Sale 5 the least indicative of price due to the extensive renovations it required. Hall ultimately selected an indicated value of \$44.00 per s/f (rounded) for 2020 resulting in an indicated value of \$7,880,000 (rounded). *Tr. at 359-360; Resp't Exs. A, B, and C at 162-163.*

55. Hall made similar adjustments for his 2021 and 2022 appraisals. Based on Hall's rounded conclusion of \$43.00 per s/f, his final indication of value for 2021 using the sales approach was \$7,700,000. For 2022, he reached an indicated value of \$42.00 per s/f and a final value indication of \$7,520,000 for 2022 using the sales comparison approach. *Tr. at 392-393, 399; Resp't Ex. B at 162-163.*
56. Mercantile criticized Hall for looking beyond the Midwest, which was the parameter for Hall's market segmentation analysis, and selecting comparable sales predominantly from the South. While closer comparables would be ideal, we note that both appraisers had great difficulties in identifying comparable sales and leasing data. It is not patently obvious that Hall's data from the Carolinas would be less relevant to an anchor store in a small Indiana town than Braemer's two comparable sales from the west suburbs of metropolitan Chicago. Additionally, the data from the anchor store in Youngstown, Ohio (Sale 3) yielded the second highest adjusted sale price. There is no evidence that Hall's valuation was inflated due to selecting comparable sales from the South, nor is there any reason to suspect that Hall extended his search in an effort to cherry pick comparables sales with inflated sale prices. *Tr. at 435-36*
57. Mercantile also took exception to Sales 1 & 3 because the tenants retained occupancy on a short-term lease, causing the sale to be a sale-leaseback. The sale prices of typical sale-leasebacks are inappropriate as comparable sale data because they function as long-term loans, and the sale prices reflect the owner's finances rather than the value of the real estate. But we find these short-term leases likely had the purpose of winding down the anchor stores rather than functioning as a long-term loan. We find these sale-leasebacks do not cloud the reliability of Sales 1 & 3 as comparable sale data. *Tr. at 448-49.*
58. Mercantile's largest criticism is that none of Hall's comparable sales were purchased by the buyer with express intentions for continued use as an anchor department store. Sale 4 was later put to use as a production studio and Sale 5 was purchased for use as medical offices. Hall agreed that a movie production facility and a medical office facility were both different uses than a department store. These criticisms have merit, but we are not

persuaded it was a breach of generally accepted appraisal practices for Hall to consider these sales. We have noted that only 3% of sales of anchor department stores will be occupied by an anchor department store. The definition of a mall “anchor” has expanded beyond the traditional anchor department store, and it is entirely appropriate for Hall to select sales reflecting the changing real estate market and model for malls. Were the Department Store to be sold on the relevant assessment dates, it would most likely be purchased for a use other than as a traditional anchor department store. Whether these sales should be disregarded under Indiana’s standard of valuation is addressed as a legal issue in the analysis later in this determination. *Tr. at 449-52, 458-59, 474.*

59. Mercantile raises similar concerns with Sales 2 & 4, arguing that because the buyers had no express intentions to use the properties for anchor department stores, the sales should not be considered comparable. Additionally, Mercantile argues Sales 1 & 3 suffer the same issue of comparability because the buyer had no clear intention of anchor department store use following the short-term leases. Along the same lines, the mall owners may have anticipated redevelopment of the properties, another indicator that the properties might not continue as retail anchor department stores. We find there is no appraisal principle that prohibits considering comparable sales on the grounds that the buyer purchased the property on a speculative basis. Nor is there any principle that suggests that a vacant building has a different “use” than an occupied building. Indeed, Braemer also relied on comparable sales of vacant anchor stores purchased on a speculative basis. Whether these sales should be disregarded under Indiana’s standard of valuation is addressed as a legal issue in the analysis later in this determination.

60. We find more merit in Mercantile’s concerns that Sales 4 & 6 might not have been marketed to the public. Any sale not exposed to market forces should be considered with caution. However, as reflected in both appraisals, one of the most likely purchasers of a former anchor department store is the mall’s owner. Due to the unique circumstances of the market for anchor department stores, and a presumption of sophisticated participants on both sides, we do not find that the lack of exposure to the market should deprive Sales 4 & 6 of any value. Nor do we find that Hall’s reliance on these sales casts substantial

doubt on the credibility of his valuation. *Tr. at 456, 474.*

61. We do find that the least weight should be placed on Sale 6, as it was a swap or property exchange. We find this comparable sale likely reflects atypical market forces where a department store agrees to sell and vacate its current location to purchase and occupy another location at the same mall. While it weakens the credibility of his valuation, it does not impair the reliability of Hall's sales comparison approach.
62. Overall, we find that Sales 1-3 provide reliable data for Hall's sales comparison approach, and especially Sale 2, a 2-story Dillard's in Youngstown, Ohio, sold in 2019. The Midwest location, size, sale date, and sale price indicate that Sale 2 is representative and lends credence to the similar sale prices and market forces reflected in Hall's more distant comparable sales. We find that Hall's sales comparison approach offers a reliable and credible valuation of the Department Store.

c. Hall's Income Capitalization Approaches

63. Hall offered an income capitalization approach using the direct capitalization method. His approach considered two methods for calculating market rent: occupancy cost and market rent analysis. However, he chose his income solely under the occupancy cost and considered his market rent analysis only as a check on reasonableness. *Tr. at 360-362; Resp't Exs. A, B, & C at 188.*

1. Occupancy cost analysis

64. Hall's first method of estimating a market rent relied on an occupancy cost analysis. It requires determining an occupancy cost percentage and then multiplying it by an estimate of annual retail sales revenue. Hall considered the costs of base rent, real estate taxes and insurance, common area maintenance, and administrative expenses. He gathered general information on occupancy cost percentages for 2020-2022 from Moody's (<10%), Korpacz Realty Advisors (ranging from (<8.5-9.0%), and NewMark Merrill/Datex⁶

⁶ Hall testified that the NewMark data only included rent, not total opportunity costs such as taxes, utilities, etc. *Tr. at 367.*

(ranging from 3.3-6.4%). Hall determined that NewMark's data was the most relevant to the subject and concluded to an occupancy cost of 5.25% for all three appeal years. Hall noted the opposite movement of retail sales down in relation to an increasing percentage of rent. Hall's data on occupancy cost percentages did not include the actual opportunity costs for a comparable anchor department store. *Tr. at 362-367, 476-479; Resp't Exs. A, B, & C at 164-169; Pet'r Ex. 33.*

65. In estimating revenue, Hall looked to annual retail sales data ranging from 2018-2023 at 10 big box and retail department stores including Dillard's, Kohls, Ross, Burlington, Target, Macy's, Nordstrom, Marmaxx, Homegoods/Homesense, and J.C. Penney. Based on available data, Hall found that the midpoint annual average for per square foot retail sales ranged from \$245-\$256. He then calculated the average retail sales per square foot from Dillard's, Kohls, Ross, and Burlington, arriving at \$245 for 2018, \$253 for 2019, \$195 for 2020, \$258 for 2021, \$249 for 2022, and \$256 for 2023, arriving at a market retail sales estimate of \$250. Hall then created "location" multipliers to adjust the national data, looking to personal consumption and personal income per capita between the nation, state, and Vanderburgh County. After applying his multipliers, the concluded retail sales ranged from \$224 per s/f to \$226 per s/f. This was more than double the actual sales at the Department Store, as disclosed by Braemer which ranged from \$69 per s/f to \$100 per s/f from 2018 through 2022. It was also roughly double the actual weighted retail sales averages for Indiana anchor department stores disclosed by Braemer, which ranged from \$73.25 per s/f to \$116.70 per s/f during those same years. *Tr. at 368-372, 484-486, 496-497; Resp't Exs. A, B, & C at 169-174; Resp't Ex. A-C.*
66. Hall multiplied his estimated income per square foot of \$250 by his opportunity cost rate of 5.25% to arrive at rent and reimbursable expenses of \$11.24 for 2020, \$11.86 for 2021, and \$11.60 for 2022. He multiplied those results by the 179,042 retail square footage of the subject property and found potential gross income of \$2,012,657 for 2020, \$2,123,122 for 2021, and \$2,076,187 for 2022. *Tr. at 372-374; Resp't Exs. A, B, & C at 173-174.*

2. Market rent analysis

67. In his market rent analysis, Hall searched for department stores and mall anchors in the Midwest and southern U.S. with 100,000 s/f to 300,000 s/f with lease commencement dates ranging from 2015 to 2021. Hall selected six leases fitting his search criteria, with a variety of lease expense provisions:

- Comparable Lease 1 (3140 Kirkwood Highway, Wilmington, DE) - a 195,000 s/f former Sears built in 1964 and with 113,572 s/f leased to Target beginning in December 2020 for a 120-month term at a rental rate of \$6.75 per s/f for years 1-5 and an increase of 10% for years 6-10 in a triple net agreement. This shopping center is not in an enclosed mall.
- Comparable Lease 2 (2201 Zeier Road, Madison, WI) - a 94,105 s/f former Shopko built in 1987 leased "as is" to At Home in October 2019 for a 120-month term at a rental rate of \$6.95 per s/f as a triple net lease. The lease includes three 5-year renewal options. This building is located across the street from the mall. Hall did not have access to the full lease, only the abstract.
- Comparable Lease 3 (28582 Dequindre, Warren, MI) - a 410,359 s/f former Value City part of the Universal Mall built in 1965 with mall renovations in 1991, 2008, and 2009 with 102,400 s/f triple net leased to G4 Complete Entertainment beginning in June 2018 for a 118-month term at a rental rate of \$4.72 per s/f. Hall had access to the rent roll but not the lease.
- Comparable Lease 4 (200 W. John R. Road, Troy MI) a 192,000 s/f gross Sears regional mall anchor built in 1966 of which 91,086 s/f was modified gross leased to At Home in November 2017 for a 120-month term at a rental rate of \$6.75 per s/f after Sears voluntarily downsized. At Home pays pro rata taxes and insurance and the landlord pays common area maintenance and other expenses. The remainder of the building was subsequently leased to Hobby Lobby after Sears vacated the building in 2018.
- Comparable Lease 5 (1901 Northwest Expressway, Oklahoma City, OK) - a 170,609 s/f Dillard's part of the Penn Square Mall built in 1960 and renovated in 1988 triple net leased to Dillard's beginning in 1984 which lease expired in 2017. The current renewal/renegotiated triple net lease began in January 2017 for a 61-month term at a rental rate of \$5.11 per s/f. Hall did not review the full lease.
- Comparable Lease 6 (1510 Polaris Parkway, Columbus, OH) - a 134,473 s/f former Great Indoors part of the Polaris Fashion Place built in 2001 triple net leased to Dick's Field and Stream beginning in September 2015 for a 185-month term at a rental rate of \$8.08 s/f (amortized). The original lease base rate was

\$14.72 per s/f, increasing to \$15.13 per s/f in February 2021 and \$15.54 per s/f in February 2031. The tenant received an allowance of \$13,750,000 (\$102.25 per s/f) which was amortized to arrive at the effective lease rate. The building is physically attached to the mall but it and its parking areas are separately platted. Hall did not review the full lease.

Hall did not receive or review the leases for any of the six lease comparables, and he did not obtain retail sales data for any of the properties. *Tr. at 374-376, 498-505, 514; Resp't Exs. A, B, & C at 175-179.*

68. Hall considered the following adjustment factors: expense structure, conditions of lease, market conditions, location, access/exposure, economic characteristics, physical characteristics, and effective age/condition for all years. He drew data from publications, CoStar, Loopnet, INDOT, county websites, maps and photographs, market participants, market collateral, and data from previous assignments. No adjustments were necessary for conditions of lease, economic characteristics, and physical characteristics. Only Lease 4 with a modified gross lease required an expense structure adjustment of -\$1.25 per s/f. Hall made market condition adjustments for 2020 using a 1% growth rate resulting in adjustments to Leases 1-6 of 0%, 0%, 2%, 2%, 3%, and 4%, respectively. He then made location adjustments based on average household income, population density, and population growth of -10% to Leases 1-2 & 4; -15% to Leases 3 & 6; and -5% to Lease 5. Hall made -10% access/exposure adjustments to 2-3 & 6, and -20% to Leases 1, 4 & 5. Finally, Hall made effective age/condition adjustments based on an effective age difference at the rate of +1% per year as follows: +11.00% to Leases 1 & 3-5; +8.00% to Lease 2; and -19.00% to Lease 6. Hall's analysis suggested a range of market rent of \$4.53 per s/f to \$6.12 per s/f. Hall made similar adjustments for 2021 and 2022. *Tr. at 376-377; Resp't Exs. A, B, & C at 180-188.*
69. In order to compare the conclusions of his two methods of estimating income on a rent per square foot basis, Hall adjusted his occupancy cost conclusion by deducting taxes, insurance, CAM, and general/administrative expenses to arrive at annual rent of \$880,647 or \$4.92 per s/f for 2020. This placed it at the low end of the range of his market rent analysis estimate: \$4.53 per s/f to \$6.12 per s/f. Hall made similar adjustments and

reached similar conclusions for 2021 and 2022. Hall relied solely on his occupancy cost analysis for estimating market rent in his income approach calculation. *Resp't Exs. A, B, & C at 188.*

70. Overall, we find that Hall's opportunity cost estimate of income is not credible. Hall had access to the actual retail sales at the Department Store which were less than half his projected retail sales. We find this disparity should have caused Hall to reconsider his estimate of retail sales. Moreover, with the aid of Braemer's data from comparable anchor department stores throughout Indiana, we find that anchor department stores in Indiana reach retail sales nowhere near the data relied upon by Hall. Because Hall's estimates of retail sales are not supported by the evidence, we reject Hall's estimate of market rent as unreliable.

3. Income Capitalization

71. Starting with the 2020 potential gross income of \$2,012,657 from his occupancy cost analysis, Hall applied a 5% adjustment for vacancy and collection loss and calculated an effective gross income of \$1,912,025. He calculated expenses using seven comparable properties' expenses, and he found a range of \$4.90 per s/f to \$9.48 per s/f with an average of \$7.02 per s/f. Hall used the PwC Real Estate Investor Survey which estimated management fees of 2.72% for 2020 and 2.68% for 2021 and 2022. The same source estimated replacement reserves per square foot of \$0.33 for 2020, \$0.40 for 2021, and \$0.35 for 2022. Hall concluded to replacement reserve allowances of \$0.75 per s/f for all three appeal years. This was higher than the indicated range to adjust for the condition of the roof at the Department Store. He assumed a net tax rate of 3.2% and applied these factors to his \$2,012,657 projected income for 2020 to arrive at net operating income ("NOI") of \$593,726. *Tr. at 377-378, 381-384; 485-486; Resp't Exs. A, B, & C at 187-193.*
72. Hall chose three sources from which to derive his direct capitalization rates: comparable sales, surveys, and band of investment ("BOI"). Hall identified five sales of anchor inline and freestanding department stores with sale dates ranging from January 2016 to

June 2022 that were not used previously in the appraisal. The sales were from Florida, Texas, Michigan, Ohio, and Connecticut. The capitalization rates for the sales were 7.13%, 7.50%, 5.75%, 7.24%, and 8.21%. He relied on Sales 3, & 4-5, whose rates averaged 7.07%. Hall's comparable sales included smaller properties (88,000 s/f and 91,000 s/f) and a free-standing J.C. Penney. He then reviewed three CoStar surveys for regional malls, department stores, and Vanderburgh County retail, as well as surveys from PwC Real Estate Investor, and the 2020 IRR Viewpoint. The rates from these publications showed a high of 8.89% and a low of 6.23% with an average of 7.87%. Hall then conducted a band of investment review using RealtyRates.com for retail freestanding structures. He determined a 70% mortgage requirement of 6.93% and 30% equity requirement of 11.79% which resulted in an indicated capitalization rate of 8.39%. Hall averaged the results of all his methods which resulted in 7.83%, from which he concluded to a capitalization rate of 8.00%. *Tr. at 384-387, 506-507; Resp't Exs. A, B, & C at 194-198.*

73. Hall applied his 8.00% capitalization rate to NOI of \$593,726 and reached an indicated value of \$7,421,575. He calculated a leasing commission using market rent of \$880,647 for a term of 10 years and applied a market commission rate from PwC of 2.72% and subtracted a leasing commission of \$239,536. His indicated value using the income capitalization approach for 2020 resulted in a rounded valuation of \$7,180,000. *Tr. at 387; Resp't Ex. A at 199.*
74. Hall's 2021 income approach used the same methodology, and he calculated an NOI of \$683,819 and applied a capitalization rate of 8.25%. After adjustments for leasing commissions, Hall reached a final indicated value for 2021 rounded to \$8,030,000. *Tr. at 393-395; Resp't Ex. B at 187, 193, 198-199.*
75. Hall's 2022 income approach used the same methodology, and he calculated an NOI of \$648,427 and an indicated capitalization rate of 8.25%. After adjustments for leasing commissions, Hall reached a final indicated value for 2022 rounded to \$7,610,000. *Tr. at 399-400; Resp't Ex. C at 187-188, 193, 198-199.*

76. Because we find Hall's estimate of income is unreliable, we reject his income approach entirely as failing to credibly value the Department Store. *Tr. at 369-72.*

d. Hall's Cost Approach

77. Hall began his cost approach with a calculation of the value of the land. He searched the Vanderburgh County area for vacant land for redevelopment with 2.5 acres to 15 acres in areas zoned for retail use with fee simple sales from 2014-2022. He selected the following five Evansville land sales for his analysis:

- Land Sale 1 (1021 Hirschland Road) - an 8.97-acre commercial site purchased in November 2019 for \$6.40 per s/f which was later merged with another parcel and zoned C-2 for potential retail development.
- Land Sale 2 (6410 E. Morgan Avenue) - a 3.57-acre commercial redevelopment site purchased in July 2018 for \$4.50 per s/f for development of a used car dealership. At the time of sale, a 1,400 s/f office building existed that was scheduled for demolition to which no value was attached. However, it was retained after the sale and an 8,000 s/f addition to it was built.
- Land Sale 3 (1121 Hirschland Road) - a 2.49-acre commercial site purchased in May 2017 for \$7.00 per s/f for development of a freestanding Fresh Thyme retail store.
- Land Sale 4 (2500 N. First Avenue) - an 11.33-acre commercial site purchased in April 2015 for \$3.55 per s/f for development of a Walmart Neighborhood Market.
- Land Sale 5 (6700 E. Columbia Street) - an 8.61-acre commercial site purchased in January 2014 for \$4.75 per s/f. The land was subsequently developed with a 75,000 s/f structure for an Academy Sports + Outdoors store.

Tr. at 327-330; Resp't Exs. A, B, & C at 122-126.

78. Hall used the same five comparable Land Sales for all assessment years, and except for market conditions/age which were adjusted for 2022, his adjustments were the same for all three years. He considered adjustments for property rights; financing terms; conditions of sale; market conditions; location; access/exposure; size; physical characteristics; zoning; and utilities. Hall ultimately made no adjustments for property rights, financing terms, conditions of sale, market conditions, physical characteristics,

zoning, and utilities. He made -20% adjustments to Sales 1, 3, & 5 and +10% to Sale 4 for location; -5% adjustments to Sales 1 & 5 and -10% to Sales 2-4 for access/exposure; and -5% to Sales 2 & 3 for size. His final adjustments were -25% to Sale 1; -15% to Sale 2; -35% to Sale 3; no adjustment to Sale 4; and -25% to Sale 5. *Tr. at 330-334; Resp't Exs. A, B, and C at 127-132.*

79. Hall's 2020 comparable Land Sales had adjusted prices ranging from \$154,471 to \$208,984 per acre, with an average price of \$176,704. Hall gave the primary weight to Sales 1 & 4-5 based on their similar size to the subject property. This resulted in a rounded indicated value per acre of \$175,000. Applying his reconciled value to the subject property's 10.05-acres of subject land resulted in an indicated value of \$1,760,000 (rounded) for 2020, 2021, and 2022. *Tr. at 334-335; Resp't Exs. A, B, and C at 132-133.*
80. Hall used MVS to estimate the replacement cost new of the improvements. He based his estimate for the subject property's building on the unit cost for a Class C mall anchor (Department/Big box) store of "average" quality and a low-cost mechanical penthouse. This resulted in adjusted values of \$81.62 per s/f or \$14,613,408 for the retail section and \$33.41 per s/f or \$167,184 for the mechanical penthouse. Hall estimated total indirect costs of 25% of which he stated MVS already accounted for 20%. That left 5% unaccounted for which adjustment was then made. His total building cost, including 5% for indirect costs, was \$15,519,621. Hall calculated site improvements for 400,000 square feet of paving at adjusted average site improvement costs of \$3.95 per s/f and added 5% for indirect costs for a total of \$1,659,000. Hall's total replacement cost new was \$17,178,621. Hall chose to exclude entrepreneurial profit as this type of business is generally owner-occupied. *Tr. at 337-340; Resp't Exs. A, B, & C at 134-139.*
81. Hall used the modified economic age-life method to calculate depreciation. He believed the actual and effective ages of the structure were the same with January 1, 2020 at 24 years; January 1, 2021 at 25 years and January 1, 2022 at 26 years. Hall estimated the actual age of concrete paving at 13 years total and attributed effective age at 7, 8, and 9

years for 2020, 2021, and 2022 respectively. Hall calculated actual depreciation for the structure and site improvements at 53.3% and 53.8% respectively; applied those factors to the replacement cost new values for building and site improvements of \$15,519,621 and \$1,659,000 and arrived at a depreciated replacement cost of \$8,010,000 (rounded) for 2020. *Resp't Exs. A, B, & C at 139-141.*

82. Hall found no functional or locational obsolescence but did find market obsolescence due to a decline in the number for mall anchor retail properties. The size of the subject would likely draw fewer interested, potential buyers. To account for economic obsolescence, Hall used his replacement cost of \$17,178,621, subtracted depreciation \$9,170,439, and added the land value of \$1,760,000 to arrive at total depreciated cost of \$9,768,182. He then determined equilibrium rent of \$781,455 less net market rent of \$593,726; applied a capitalization rate of 8% and arrived at external obsolescence of \$2,350,000 (rounded) for 2020. *Tr. at 340-344, 428-433; Resp't Exs A, B, & C at 139-145.*
83. Hall rounded his total indicated property value to \$9,770,000 and subtracted his obsolescence of \$2,350,000 and a leasing commission of \$239,536 based on PwC data of a 2.72% commission rate to arrive at an indicated value through the cost approach for 2020 of \$7,180,000 (rounded). *Tr. at 344-346; Resp't Exs. A, B, & C at 144-145.*
84. Applying the same methodology in later years, Hall's final opinion of value under the cost approach for 2021 was \$8,030,000 (rounded). Hall reached a final value indication for 2022 using the cost approach of \$7,610,000 (rounded). *Tr. at 389-392; Resp't Ex. B & C at 132-133, 141-145.*
85. Because Hall relied on his income approach to calculate economic obsolescence, his cost approach is only as reliable as his income approach. We have already found that Hall's estimates of market income were unreliable and unpersuasive based on Braemer's credible analysis of anchor department store rents in Indiana. Accordingly, we reject Hall's cost approach entirely.

e. Hall's Reconciliations

86. Hall developed all three approaches, found them all to be applicable to the subject property, and assigned similar weight to all three approaches. He admitted weaknesses in the lack of Indiana sales for the sales comparison approach and lease transactions for the income capitalization approach. Hall also noted the age of the subject property in trying to determine reasonable estimates of depreciation. He ultimately reconciled to final values of \$7,400,000 for 2020, \$7,800,000 for 2021, and \$7,550,000 for 2022. *Tr. at 387-388, 395, 408-409; Resp't Exs. A, B, & C at 200-201.*
87. As noted above, we reject Hall's valuations under the income capitalization and cost approaches. We find Hall's sales comparison approach to be credible and reliable as a valuation consistent with generally accepted appraisal practices. However, we note that Hall testified that the roof was leaking, nearing the end of its life, and would soon require replacement. He opined that the replacement cost would not exceed \$1,000,000. We credit Hall's testimony that a buyer would consider the condition of the roof and effectively reduce the sale price by approximately \$1,600,000 through a higher than typical replacement reserve in the income capitalization approach. Hall also expressly noted that an adjustment for the roof was also effected in his cost approach through his economic obsolescence adjustment. We are not persuaded that Hall made a sufficient adjustment in his sales comparison approach through his effective age/condition adjustments to account for the condition of the leaky roof. We find that Hall's valuations under his sales comparison approach should be reduced by \$1,000,000—Hall's upper end replacement cost estimate—to account for the condition of the roof of the Department Store. *Tr. at 318, 321-22, 383; Resp't Exs. A, B, & C at 86-87, 161-162, 191-92.*
88. As finder of fact, we find that the preponderance of the evidence supports Hall's valuation of the Department Store under his sales comparison approach, after adjustment for the cost of the roof replacement, in the amounts of \$6,880,000 for 2020, \$6,700,000 for 2021, and \$6,520,000 for 2022.

CONCLUSIONS OF LAW AND ANALYSIS

A. OBJECTIONS

89. During the hearing our ALJ ruled on several objections. We see no need to revisit those objections, and we adopt our ALJ's rulings. However, our ALJ took one objection under advisement. We now turn to that objection.
90. The Assessor objected to pages 1, 4, and 5 of Mercantile's Exhibit 28, a Co-Star property report, on the basis of relevance. The Assessor argued that only pages 2, 3, 6, and 7 related to Sale 6 from Hall's appraisal report. While Mercantile submitted and used the exhibit in relation to the 2016 sale, the information provided for the 2018 sale does pertain to the same property. Therefore, we find it minimally relevant and admit all seven pages of the exhibit into the record. *Pet'r Ex. 28; Tr. at 467-469.*

B. BURDEN OF PROOF AND VALUATION STANDARD

91. Mercantile has admitted that it has the burden of proof.⁷
92. The "overarching goal" of Indiana's property tax appeal system "is to measure a property's value using objectively verifiable data." *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007).
93. Generally, an assessment issued by an assessing official is presumed to be correct for purposes of an appeal. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. The taxpayer has the burden to prove "that the assessment was incorrect" with evidence of "what the correct assessment should be." *Abraytis v. Porter Cnty. Assessor*, 220 N.E.3d 77, 80 (Ind. Tax Ct. 2023).
94. "To rebut the presumption that an assessment is correct, a taxpayer must make a prima facie case by presenting probative evidence to the Indiana Board." *Wigwam Holdings LLC v. Madison Cnty. Assessor*, 125 N.E.3d 7, 12 (Ind. Tax Ct. 2019) (emphasis added).

⁷ Because Mercantile conceded it has the burden of proof, we will not further address this issue or the potential applicability of Indiana Code § 6-1.1-15-17.2 (repealed 2022). *Pet'r Br. at 3 fn.1; Tr. at 7-8.*

A party may achieve this evidentiary standard by presenting “relevant market data, such as evidence of actual construction costs, certain sales or assessment data, or any other data compiled in accordance with generally accepted appraisal principles.” *Howard County Assessor v. Kokomo Mall*, 14 N.E.3d 895, 899 (Ind. Tax Ct. 2014); MANUAL at 2-3.

95. A party must present “objectively verifiable, market-based evidence” of the property’s value. *Piotrowski v. Shelby Cty. Assessor*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). The taxpayer must also show that the valuation analysis has comported with “generally accepted appraisal principles.” *Grabbe v. Duff*, 1 N.E.3d 226, 229 (Ind. Tax Ct. 2013).
96. Market-based evidence may include “sales data, appraisals, or other information.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). “Taxpayers and assessing officials alike must rely on objectively verifiable data to support their valuation positions.” *DuSablon v. Kaufman*, 160 N.E.3d 587, 595 (Ind. Tax Ct. 2020).
97. Evidence is considered consistent with “generally accepted appraisal principles” if it conforms to practices “recognized in the appraisal community as authoritative.” *Meijer Stores Ltd. P’ship v. Boone Cnty. Assessor*, 162 N.E.3d 26, 32 (Ind. Tax Ct. 2020) (citing the definition in 50 IAC 30-2-4). “Conclusory statements” are insufficient to establish that an estimate of value is based on accepted appraisal principles. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005); *Marinov v. Tippecanoe County Ass’r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019) (holding that arguments that “another property is ‘similar’ or ‘comparable’ simply because it is on the same street are nothing more than conclusions [and] do not constitute probative evidence”).
98. For most real property types, neither party may rely on the mass appraisal “methodology” of the “assessment regulations” to establish a prima facie case. *P/A Builders & Developers, LLC v. Jennings County Ass’r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). This is because the “formalistic application of the procedures and schedules” from the Department of Local Government Finance’s (“DLGF”) assessment guidelines lacks the

market-based evidence necessary to be establish a specific property's market value-in-use. *Piotrowski*, 177 N.E.3d at 133.

99. The Tax Court has long held that “the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).” *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 fn. 6 (Ind. Tax Ct. 2005). However, an appraisal must be rejected if it is “inconsistent with the evidence or the requirements of the law.” *Marion Cty. Assessor v. Kohl's Ind., LP*, 179 N.E.3d 1, 15 (Ind. Ct. App. 2021). An appraiser's opinion “must be based upon facts.” *Marion County Assessor v. Wash. Square Mall, LLC*, 46 N.E.3d 1, 12 (Ind. Tax Ct. 2015). An appraisal is not reliable if there are “wide-ranging disparities” between the appraisal and “the valuation standards and assumptions underlying Indiana's assessment guidelines.” *Wigwam Holdings LLC*, 125 N.E.3d at 12.
100. The Board must determine as a threshold issue whether a party has established a prima facie case. *Wigwam Holdings LLC*, 115 N.E.3d at 536 (holding that the Board's “statutory duty, as the finder of fact,” is to review “the probative value” of the evidence); *Madison Cnty. Assessor v. Sedd Realty Co.*, 125 N.E.3d 676, 680 (Ind. Ct. App. 2019).
101. If a party succeeds in making a prima facie case, then the Board proceeds to “weigh the evidence before it and determine the market value-in-use of the subject property.” *Marion Cnty. Assessor v. Square 74 Assocs., LLC*, (Ind. Tax Ct. 2024).
102. The Board must “identify the preponderance of evidence that supports its ultimate finding and state why it supports that finding.” *Madison Cnty. Assessor v. Kohl's Ind., LP*, 2024 WL 5002114 (citing I.C. § 6-1.1-15-4(j)). The Supreme Court has described the “preponderance-of-the-evidence standard” as simply “more likely than not.” *Geels v. Flottemesch*, 243 N.E.3d 1069, 1071 (Ind. 2024).
103. Like any trier of fact, the Board “must weigh the evidence, draw any reasonable inferences, resolve conflicts in the evidence, determine the credibility of witnesses and

decide in whose favor the evidence preponderates.” *Ferdinand Furniture Co. v. Anderson*, 399 N.E.2d 799, 805 (Ind. Ct. App. 1980). It is not uncommon for a trier of fact in real estate disputes to be “faced with two qualified experts who presented diametrically opposed opinions, supported by extensive reports and reasoning.” *Crider v. Crider*, 15 N.E.3d 1042, 1059 (Ind. Ct. App. 2014). It is up to the trier of fact to “judge the credibility of the battling expert witnesses.” *Id.* at 1059 (quoting *Goodwine v. Goodwine*, 819 N.E.2d 824, 830 (Ind. Ct. App. 2004)).

104. The Tax Court has held that the “valuation of property is an opinion and not an exact science.” *Monroe Cty. Ass’r v. SCP 2007-C-26-002, LLC*, 62 N.E.3d 478, 482 (Ind. Tax Ct. 2016). If “parts of an appraisal are not probative,” the Board “should not then accept those parts of the appraisal to value the property.” *Wash. Square Mall, LLC*, 46 N.E.3d at 14. The Board is not required “to choose one appraisal report’s opinion of value over another’s opinion of value” and may adjust a value “based on other evidence in the record.” *CVS Corp. v. Monroe Cnty. Assessor*, 83 N.E.3d 1286, 1291, (Ind. Tax Ct. 2017).

C. PRIMA FACIE EVIDENCE

1. Mercantile’s Case

105. In our findings of fact, we find that Mercantile failed to present a credible valuation of the Department Store. We must likewise conclude that Mercantile has failed to establish a prima facie case to rebut the presumption that the assessment is correct. To recap, Braemer’s income capitalization approach relies on an estimate of rent that is below the range of his own evidence. In order to accept Braemer’s opinion, we would be required to find that the Department Store would command less rent than any other comparable property cited by Braemer dating back to 1988, with the exception of a renegotiated Sears lease. Based on the undisputed premise that the business model of the traditional anchor department store remains viable at Eastland Mall for the Department Store and its two competing anchor department stores, we reject a market rent below the range reflected in Braemer’s own lease data. Because we find that Braemer’s estimate of market rent is

“inconsistent with the evidence,” his income approach fails to offer probative evidence of the Department Store’s value. *See Kohl’s Ind.*, 179 N.E.3d at 15.

106. Additionally, we find that Braemer’s income analysis is flawed because he limits market rent to “base rent” under his presumption that market rent is reflected in the natural breakpoint. We find this inconsistent with appraisal theory, and that Braemer has confused overage rent with excess rent. Based on the unequivocal explanation of percentage rents in *The Appraisal of Real Estate*, Braemer should have identified the actual rent paid by the anchor department stores under his comparable lease sources. Because Braemer failed to explain why he deviated from a text considered “authoritative” among appraisers, we reject his income approach as insufficient to rebut the presumption of correctness as well. *Meijer Stores Ltd. P’ship*, 162 N.E.3d at 32.
107. Turning to Braemer’s sales comparison approach, we concluded that Braemer’s income multiplier engrafted an estimate of market retail sales for anchor department stores in transactions where the participants did not clearly anticipate retail sales consistent with speculative or furniture store use. Thus we rejected four of Braemer’s comparable sales as mixing apples and oranges. The remaining three comparable sales did have participants that anticipated anchor department store retail sales following the sale, but these dated to 2011, 2006, and 2005. We found this data too remote to reliably establish sale price to retail sales ratios for the assessment years 2020, 2021, and 2022. An appraiser’s opinion “must be based upon facts,” and Braemer failed to cite to timely factual data to credibly establish, by a preponderance of the evidence, the likely sale price to retail sale ratios for the Department Store as of the assessment dates. *Wash. Square Mall*, 46 N.E.3d at 12.
108. In a recurring theme, Mercantile argues that because Braemer uses the same analysis and methodology he offered in a prior property tax appeal for a similar property in Southern Indiana, we should reach a similar result here—and adopt Braemer’s opinions of value just as before. *Clark Cnty. Assessor v. Dillard’s Dep’t. Stores, Inc.*, 236 N.E.3d 771 (Ind. Tax Ct. 2024). Mercantile offers no authority for its premise that *findings of fact*

regarding the credibility an expert's opinion have a precedential weight, under principles of stare decisis, in a completely unrelated property tax appeal. Mercantile fails to cite to any holding in *Dillard's Dep't. Stores* that compels us, as a *matter of law*, to adopt Braemer's methodology in this appeal. We find no error in reaching different conclusions here based on a different record and different testimony.

109. As we find that Mercantile has failed to rebut the presumption of the correctness of the assessment by a preponderance of the evidence, we now turn to the Assessor's evidence, which seeks to increase the assessments.

2. The Assessor's Case

110. In our findings of fact, we reject two of Hall's approaches based on his reliance on retail sales that were more than double the retail sales at comparable Indiana anchor department stores as established by Braemer. Because Hall's estimate of retail sales was essential to determining income under his income capitalization approach, we reject the valuation under that approach as unreliable. Likewise, because Hall's cost approach included an estimate of economic obsolescence developed based on the same estimate of retail sales from his income capitalization approach, we reject his valuation under that approach as unreliable. Thus, neither of those approaches established a prima facie case for the Assessor, and the presumption of correctness was not rebutted under these approaches. We need not address any of Mercantile's further criticisms of these two approaches.
111. We reach a different conclusion in regard to Hall's sales comparison approach. We find, as finder of fact and by a preponderance of the evidence, that Hall established a credible valuation of the Department Store. In particular, we find that Sales 1-3 offered compelling evidence of what an anchor department store would sell for if it went out of business on the assessment dates. However, we find that Hall's sales comparison approach failed to meaningfully address the condition of the roof, and we determined, from the totality of the evidence, that Hall's valuations should be reduced by \$1,000,000 for each assessment year, based on Hall's estimates of costs of repair and his express adjustments for the roof under his income capitalization approach. We turn now to

Mercantile's challenges, some of which have been addressed above.

a. Mercantile's Challenges to Hall's Appraisal Based on Appraisal Theory

112. First, Mercantile insists that Braemer's experience as an appraiser should cause us to find his valuation more credible than Hall's. While Braemer has specialized in malls and shopping centers over the course of decades, Hall also has a wide range of experience in appraising commercial retail properties, including super-regional malls. Far from being a novice or unqualified, Hall is clearly an accomplished appraiser with broad relevant experience. Moreover, both experts largely agreed with each other in their descriptions of the market for anchor department stores and the primacy of retail sales in estimating a market rent. We find as a matter of fact that Braemer's experience is insufficient to overcome the technical and evidentiary infirmities in his appraisal.
113. Second, Mercantile argues that Hall failed to establish the feasibility of converting the Department Store into an alternative use. The record is clear that only 3% of anchor department stores that close are being replaced with anchor department stores. Braemer too relied on three comparable sales where the properties were converted to alternative uses as furniture stores⁸ or conversion to a bowling alley. As both appraisers presumed the feasibility of conversions by selecting comparable sales with alternative uses, we find no error in Hall's opinion on this issue as a matter of generally accepted appraisal practices.
114. Third, Mercantile challenged the lack of exposure to the market in Hall's Sales 4 & 6. We have already declined to place weight on Sale 6 due to it being part of an atypical swap of buildings. As for Sale 4, we found that mall owners are among the most likely purchasers of an anchor department store, and it seems reasonable these sales might be negotiated at market rates without the expense of a broker. Under these circumstances, Sale 4 should be accorded less weight due to its lack of exposure to the market, but we do not find it was an error, as a matter of generally accepted appraisal practices, for Hall to

⁸ Mercantile states that Braemer testified that it is unlikely that the Department Store could successfully be converted to another use. *Pet'r Br. at 9*. The portions of the record cited in the brief do not contain such testimony.

include it as a comparable sale in his appraisal.

115. Fourth, Mercantile criticizes Hall for not visiting his sales comparison properties or researching their retail sales before or after the sale. Mercantile has failed to establish what might have changed in Hall's analysis with the benefit of those inquiries. And Mercantile's expert, Braemer, did not obtain actual retail sales data for his comparable sales. Mercantile has not caused us to have substantial doubts regarding Hall's valuation on these grounds. We now turn from matters of fact and appraisal theory to the fundamental legal dispute.

b. Mercantile's Challenges to Hall's Appraisal Based on "Current Use"

116. Mercantile argues that because true tax value in Indiana measures "market value-in-use for its current use," and valuations must be based on the premise of a "a continuation of use of the property for its current use," Hall's sales comparison approach does not offer a valuation consistent with Indiana law. Mercantile asserts that Hall's appraisal is based on sales of properties that did not sell for the Department Store's current use as an anchor department store. *Pet'r Br. at 12.*
117. Indiana assesses real property based on its "true tax value." Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). "True tax value" does **not** mean either "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6(c) and (e). Subject to these two directives, the Legislature delegated the crafting of the definition of true tax value to the DLGF. The DLGF defined "true tax value" 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 (emphasis added).
118. In our reading of this definition, the first clause ("market value-in-use") is the object of the third clause ("as reflected by the utility received by the owner"). The DLGF regulation simply states that the true tax value of a property is measured by the utility received from it. This is a boilerplate notion of value: the DLGF defines "Property

Wealth” as “the abundance of economic *utility* realized from property rights.” *Id.* at 6 (emphasis added).

119. The second clause in the DLGF regulation, (“for its current use”), is an independent clause that prohibits valuing a *potential use* that is inconsistent with the property’s *actual use*. This construction is premised on our understanding of the Legislature’s prohibition of “fair market value” as a rejection of “highest and best use.” Ind. Code § 6-1.1-31-6(c) and (e). In accordance with that directive, the DLGF included the phrase “for its current use” as a *rejection of highest and best use*. This is also expressed in DLGF’s description of utility as “the price at which the buyer would purchase the real property for a *continuation of use* of the property for its current use.” MANUAL at 2 (emphasis added).
120. Under basic appraisal theory, the incorporation of the term “use” is what distinguishes Indiana’s valuation system from a true fair market value system. This choice was alluded to by the Indiana Supreme Court in its seminal *Town of St. John* decision:

Focusing upon the taxpayer’s *actual use* of land and improvements, rather than the possible uses which potential purchasers may choose, is an altogether appropriate way to evaluate property wealth for the purpose of assessment and taxation under the Property Taxation Clause. We find that property valuation for assessment based upon *value in use* is a reasonable measure of property wealth.

State Bd. of Tax Comm’rs v. Town of St. John, 702 N.E.2d 1034, 1042 (Ind. 1998) (emphasis added). The DLGF defines market value-in-use in precisely the same language used in *Town of St. John*: “Value-in-Use” and as “Synonymous with Use Value.” MANUAL at 6. And in turn, DLGF has defined both “use value” and “value-in-use,” as “The value of property for a specified use,” “The value a specific property has for a specific use” and “Synonymous with Use Value and Market Value-in-Use.” *Id.* at 8.

121. Whether or not a value represents a “continuation of use” has usually been addressed by the Tax Court in the context of highest and best use. “[W]hen 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.'" *Howard Cnty. Assessor v. Kohl's Indiana*, 57 N.E.3d 913, 916 (Ind. Tax Ct. 2016) (emphasis added). Conversely, "'when a property's current use is inconsistent with its highest and best use, then market value-in-use will not equal market value because the sales price will not reflect the property's utility.'" *Id.* (emphasis added); see also *Millennium Real Estate Inv. v. Assessor Benton Cnty.*, 979 N.E.2d 192, 196 (Ind. Tax Ct. 2012).

122. Over the decades, the Tax Court "has repeatedly interpreted the meaning of 'current use' broadly." *Kohl's Indiana LP*, 57 N.E.3d at 918. Properties used for "the same general purpose," will reflect the same "utility" and "market value-in-use will equal value-in-exchange." *Kerasotes Showplace Theatres*, 955 N.E.2d at 878 n.3 (emphasis added). Consequently, the Tax Court "has repeatedly rejected the contention . . . 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." *Marion County Assessor v. Wash. Square Mall*, 2015 46 N.E.3d 1, 9-10 (Ind. Tax Ct. 2015) (emphasis added).
123. In appeals to the Tax Court, taxpayers have more frequently argued the Board erred in *too narrowly* construing comparable uses. And the Tax Court has long upheld the admissibility of comparable sales reflecting second-generation users of big box stores as long as both uses are generally "retail." See *Meijer Stores Ltd. P'ship v. Smith*, 926 N.E.2d 1134 (Ind. Tax Ct. 2010).⁹ Here we will hold steadfast to the Tax Court precedent in *Washington Square Mall* and determine whether Hall's appraisal relies on transactions by participants within the commercial/retail market generally.
124. Mercantile's arguments regarding current and continued use ring hollow because Mercantile's own appraiser considered four comparable sales where the buyer had not

⁹ Mercantile acknowledges that this line of cases may be in flux due to the Tax Court's holding in *Majestic Properties v. Tippecanoe Cnty. Assessor*, 241 N.E.3d 642 (Ind. Tax Ct. 2024), and asks us to await a more decisive precedent before applying its holding. *Pet'r Br. at 13-14*. The holding in *Majestic* would offer better support for Mercantile's argument for a narrower range of comparable properties than the holdings found in the *Meijer* line of cases. But as Mercantile fails to make that argument, we will not develop it either.

identified an anchor department store intended use at the time of closing. Two were speculative buyers (one of which later became a furniture store), and the other two were sold to furniture store owners. A portion of one of these sales was also converted into a bowling alley. Likewise, as reflected in Braemer's comparable sales, speculative buyers, including the mall owners, are common participants in the commercial/retail market for anchor departments store buildings. Thus, if Mercantile's arguments prevailed, Braemer's valuation would be equally prohibited on the grounds of violating Indiana's current use standard.

125. At a technical level, two of Hall's comparable sales continued as anchor department stores under short term leases at the time of sale (Sales 1 & 3). While this does not reflect a long-term expectation of continued anchor department store use at the time of sale, the facts clearly establish continued anchor department store use in Sales 1 & 3 beyond the sale date.
126. We note that all six of Hall's sales were anchor department store buildings. Only one was sold with the expectation of a non-retail use (Sale 5, medical office).¹⁰ The remaining five sales were simply vacant on the sale date. Like two of Braemer's comparable sales, the buyers purchased them on a speculative basis. That simply means that the buyer did not have a tenant or other occupant lined up at the time of sale. There is nothing in the record to suggest that any of the buyers in Hall's comparable sales had ruled out continued tenancy or occupancy by an anchor department store. There is no evidence that Sales 1-3 were ever put to a use inconsistent with anchor department store. The mere fact of vacancy does not establish an alternative or conversion use. Thus, Mercantile has failed to show that Hall's most compelling comparable sales reflect the value of an

¹⁰ In its briefs, Mercantile makes repeated generalizations that Hall's comparable sales were all intended for redevelopment to a non-department store use. This is not supported by the record. Sale 3 was purchased by an apartment developer, but no plans were announced for redevelopment as apartments or any other use. Three years later redevelopment plans were announced by the county after it purchased the remainder of the mall, but none specific to the property. Likewise, Sale 1 had no specific plans at the time of transfer, though redevelopment was anticipated. Sale 2 was marketed for tenants after its sale, though it appears redevelopment was also considered. For each of these three sales, the record does not establish any particular intended redevelopment or conversion use at the time of sale or anytime afterwards. Mercantile merely speculates that any redevelopment would be conversion to an alternative use inconsistent with Indiana's current use requirement.

alternative or conversion use.

127. We agree with Mercantile that Hall's Sale 4 (production studio) and Sale 5 (medical office) do not reflect a continued use as an anchor department store. Likewise, Sale 6 was originally intended for retail use as a Cabela's, which fell through, and a portion was subdivided for use as a bowling alley. Each of these properties remained, physically, anchor department stores on the sale date—none had been converted into medical offices, production studios, or bowling alleys prior to sale. All three of these uses are consistent with the *Washington Square Mall* requirement that the buyers be "participants within the **commercial/retail** market generally." 46 N.E.3d at 9-10. It is well established in the record that anchor department store owners are no longer the most common participants in the market for purchasing vacant anchor department stores, and other commercial users are forming a growing segment of the participants in the mall anchor market. Thus mall anchors, whether traditional department stores or alternatives, are used for "the same general purpose" in capitalizing on and increasing the mall's ability to draw consumers for commercial and retail purposes. *Kerasotes Showplace Theatres*, 955 N.E.2d at 878 n.3. We do not find that Hall was required to reject these comparable sales entirely under Indiana's current use standard. Rather, we place less reliance on Sales 4-6 and more on Sales 1-3. Based on the strength of Sales 1-3, we find Hall has credibly established a valuation of the Department Store based on its current and continued use as an anchor department store.
128. Most importantly, we find that the purpose and policy behind Indiana's current use standard is to ensure a property is assessed at its current use rather than an alternative and more valuable highest and best use. *See Town of St. John*, 702 N.E.2d at 1042. Mercantile has failed to present any evidence that an anchor department store purchased for speculative or conversion uses would fetch a premium over a purchase for continued use as an anchor department store. Rather, we find it more likely, if not patently obvious, that properties purchased for speculative or conversion purposes tend to command lower prices due to the anticipated construction costs necessary for an alternative use. We find no reason to believe this basic concept would not apply to the market for anchor

department stores. The burden is on Mercantile to establish that Hall's opinion values the Department Store based on an alternative, *more valuable use*, and it has failed to do so here.

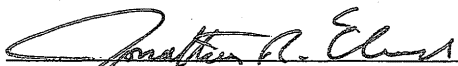
129. In the final analysis, we find Hall's Sales 1-3 offer solid evidence of a likely sales price for the Department Store if it were sold on the assessment dates, and the relatively tight range of sale prices per square foot among Hall's Sales 1-5 reveal similar market dynamics across all five sales. We find that Sales 4-6 should be given less weight, and Sales 1-3 provide robust and substantial evidence in support of Hall's conclusions of value under the sales comparison approach.
130. Mercantile also cites to I.C. § 6-1.1-1-31-6(d) to argue that Hall's appraisal contravenes the rule that "a valuation does not reflect the true tax value of the improved property if the purportedly comparable sales properties supporting the valuation have a different market or submarket than the current use of the improved property, based on a market segmentation analysis."
131. First, we note that Mercantile did not offer a review appraisal or a market segmentation analysis establishing the market or submarket of Hall's Sales 1-6. Without a market segmentation analysis of both the disputed comparable sales and the Department Store, this statute does not compel us to reject Hall's opinion. Second, we find that Sales 1-3 reflect the market for anchor department stores, and that if the Department Store were to close tomorrow, it would be in the same market or submarket as the properties considered in Hall's Sales 1-3. Again, none of these sales were put to non-department store use.
132. Having rejected Mercantile's criticisms related to appraisal theory and Indiana's valuation standard of current use, we restate that we find, by a preponderance of the evidence, that Hall's sales comparison approach is the only valuation that offers a credible and reliable value of the Department Store consistent with generally accepted appraisal practices and Indiana's valuation standard. Likewise, we find that Braemer's approaches are unreliable based on our review of the totality of the evidence and our determination of the preponderance of the evidence. As only the Assessor has provided a

prima facie case for the value of the Department Store, our analysis ends here.

FINAL DETERMINATION

133. In accordance with the above findings of fact and conclusions of law, we order the assessments changed to \$6,880,000 for 2020, \$6,700,000 for 2021, and \$6,520,000 for 2022.

ISSUED: NOVEMBER 24, 2025


Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days 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>>.