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INDIANA BOARD
OF TAX REVIEW

REPRESENTATIVE FOR THE PETITIONER:
Matthew M. Adolay, Wooden McLaughlin, LLP

REPRESENATIVES FOR THE RESPONDENT:
Marilyn S. Meighen
Brian Cusimano

STATE OF INDIANA
INDIANA BOARD OF TAX REVIEW

SOUTHLAKE INDIANA LLC,	)	Petition Nos:	45-046-07-1-4-00001
	)		45-046-08-1-4-00001
Petitioner,	)		45-046-09-1-4-00001
	)		45-046-10-1-4-00002
vs.	)		45-046-11-1-4-00004
	)		45-046-12-1-4-00001
LAKE COUNTY ASSESSOR,	)		45-046-13-1-4-00001
	)		45-046-14-1-4-00151-16
Respondent.	)		
	)	Parcel No.:	45-12-23-301-001.000-046
	)		
	)	County:	Lake
	)		
	)	Assessment Years:	2007, 2008, 2009, 2010, 2011
	)		2012, 2013, 2014
	)		
	)		
	)		

Appeals from Final Determinations of the Lake County Property Tax Assessment Board of Appeals

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May 10, 2018

I. Introduction

1. In litigating the value of the subject property, (the "Southlake Outlot"), the parties, Southlake Indiana, LLC, (the "Taxpayer") and the Lake County Assessor (the "Assessor"), retained four experts. The experts were in agreement that the Assessor over-assessed the Southlake Outlot by millions of dollars, but they disagreed as to how

much the assessments should be reduced. While the parties framed the issues in the context of the larger debate over assessing big box stores, the Southlake Outlot is not a typical big box property. The Southlake Outlot is a leased, income-producing property, with little functional obsolescence, and the experts generally agreed that the property should be valued under the income approach. There were flaws and weaknesses in all of the experts' opinions. Overall, the Assessor's expert presented the most persuasive valuation through his income approach.

II. Procedural History

2. The Taxpayer appealed the subject property's 2007-2014 assessments to the Lake County Property Tax Assessment Board of Appeals ("PTABOA") whose final determinations did not grant the full extent of the Taxpayer's requested reductions. The Taxpayer timely filed Form 131 petitions with the Indiana Board of Tax Review (the "Board"). John J. Thompson, designated as the Board's administrative law judge ("ALJ"), held a hearing on those petitions. That hearing was originally scheduled for, and partially took place on, February 23-26, 2016, in Crown Point. Due to severe weather that week that caused the Lake County government offices to close temporarily, the balance of the hearing was rescheduled and concluded on December 19-21, 2016, in Indianapolis.

3. Four appraisers testified: Sarah Coers, Lawrence Mitchell, Mark Kenney, and Dale Kleszynski. The real estate expenses manager for Kohl's, Kendall Lees, also testified. All were sworn under oath.

4. The Taxpayer offered the following exhibits, all of which were admitted:

Petitioner's Exhibit A:	Form 131 petitions, including all attachments and exhibits as well as courier documents,
Petitioner's Exhibit B:	Property record cards for the subject property,
Petitioner's Exhibit C:	Real Estate Appraisal Report prepared by Sara Coers,
Petitioner's Exhibit D:	Real Estate Appraisal Review prepared by Larry Mitchell,
Petitioner's Exhibit E:	The entire Uniform Standards of Professional Appraisal Practice ("USPAP"), 2014-2015 Edition, including Guidance from the Appraisal Standards

	Board, USPAP Advisory Opinions, and USPAP Frequently Asked Questions (FAQ),
Petitioner's Exhibit F:	The entire USPAP 2016-2017 Edition, including Guidance from the Appraisal Standards Board, USPAP Advisory Opinions, and USPAP Frequently Asked Questions (FAQ),
Petitioner's Exhibit G:	David C. Lennhoff, *You Can't Get the Value Right if You Get the Rights Wrong*, *Appraisal Journal* (Winter 2009),
Petitioner's Exhibit H:	David C. Lennhoff, *Valuation of Big-Box Retail for Assessment Purposes: Right Answer to the Wrong Question*, Real Estate Issues; Volume 39, (November 3, 2014),
Petitioner's Exhibit I:	Richard C. Sorenson, *Appraising the Appraisal*, (1998),
Petitioner's Exhibit J:	Appraisal Institute, THE APPRAISAL OF REAL ESTATE, (14th Ed. 2013),
Petitioner's Exhibit K:	Marshall & Swift Valuation Document,
Petitioner's Exhibit L:	Mark Kenney Work File Document; Rental Comparable 38B,

5. The Respondent offered the following exhibits, all of which were admitted:

Respondent's Exhibit A:	Appraisal Report prepared by Mark Kenney,
Respondent's Exhibit B:	Appraisal Review Report prepared by Dale Kleszynski,
Respondent's Exhibit C:	Marshall & Swift Valuation Document,
Respondent's Exhibit D:	Richard C. Sorenson, *Appraising the Appraisal*, (1998),
Respondent's Exhibit E:	Submitted Correction to Kenney Appraisal Report,
Respondent's Exhibit F:	October 25, 2011 Mitchell Appraisals, Inc. Appraisal of Subject.

6. The Taxpayer objected to Respondent's Exhibit E which is a correction to page 110 of Respondent's Exhibit A, the appraisal report prepared by Kenney. The Taxpayer objected to that last minute introduction of the document because it presented an undue hardship. The ALJ took the objection under advisement. The correction to Kenney's original report is extremely minor in nature and had little effect on the overall adjusted value unit rate for that year. The Board admits Respondent's Exhibit E.

7. During Adolay's questioning of Coers regarding an article by David Lennhoff, Coers stated she had contacted Lennhoff, and Cusimano objected on the grounds of hearsay. Adolay noted that both Lenhoff and Coers are professionals in the appraisal field, and Coers should be able to rely upon information that a person would gather in the course of her professional duties in rendering her services. Because Coers never actually related what Lenhoff may or may not have said, the objection is overruled.

8. During cross-examination, Coers admitted that out of the 200 appraisals she did for tax purposes in the last five years all of them had been performed for taxpayers. When asked if she had done any appraisals for county assessors, Adolay objected on the grounds of relevance. The Board overrules the objection finding that it goes to the issue of bias.

9. During cross-examination, Coers was asked whether certain investors "would care if they were paying above market rates for these types of properties?" Adolay objected on the grounds that the response would call for speculation. The Board finds an expert may speculate as to the motivations of prospective buyers.

10. During cross-examination, Lees was asked if his employment performance reviews consider his efforts to reduce property tax liabilities. Adolay objected on the grounds that the question fell outside of the scope of direct examination. Lees nonetheless answered the question and stated that his performance reviews do not consider property tax savings. The Board finds that the issue is relevant to bias and appropriate during cross-examination.

11. Cusimano objected to the admission of a "graphical or tabular representation" of certain "issues" created by Mitchell relating to the comparable sales used in Kenney's report. The document had been edited for a final time that morning, and it contained information that likely did not originally appear in Mitchell's review report of the Kenney appraisal. In their appeal management plan, the parties agreed to abide by the Board's procedural rules for the exchange of evidence. The relevant procedural rule, 52 IAC 2-7-1(b), requires the parties to exchange witness and exhibit lists fifteen business days before a

hearing and copies of their documentary evidence five days before the hearing. In light of this provision, the Board affirms the ALJ's exclusion of the exhibit.

12. The record also includes the following: (1) all pleadings, briefs, and documents filed in the appeals, including the parties' post hearing briefs and proposed findings of fact and conclusions of law; (2) all orders and notices issued by the Board or our ALJ; and (3) the hearing transcript.

13. The original assessment, PTABOA determination, and proposed values are as follows:

Year	Assessment	PTABOA	Kenney	Coers
2007	$16,775,300	$11,600,000	$11,600,000	$6,360,000
2008	$16,775,300	$12,500,000	$12,500,000	$6,150,000
2009	$16,775,300	$15,200,000	$15,200,000	$5,560,000
2010	$16,775,300	$11,500,000	$11,500,000	$5,090,000
2011	$16,775,300	$12,000,000	$12,000,000	$5,970,000
2012	$16,775,300	$12,700,000	$12,700,000	$6,500,000
2013	$13,700,000	$13,700,000	$13,700,000	$7,050,000
2014	$13,700,000	$13,700,000	$13,900,000	$7,160,000

III. Findings of Fact and Conclusions of Law

A. Description of the Southlake Outlot and its Market

14. The Southlake Outlot is a 7.22 acre parcel with a roughly 90,000 s/f, two-story, free-standing retail building constructed in 1992 and renovated in 2002 and 2011. The property is owned and controlled by the owners of the Southlake Mall. It is an outlot of the Southlake Mall in Merrillville, which is a "super-regional mall" in the Chicago Metropolitan Statistical Area ("MSA"). Chicago is the nation's third largest MSA by population. Kohl's, a discount department store chain, leases the Southlake Outlot and operates it as one of its stores. It is described as a retail mall anchor or "shadow anchor." In 2013 and 2015, the mall averaged 7.6M visitors per year, and it averaged sales of $398

per s/f for non-anchor space. *Pet'r Ex. C at 10, 19, 21, 23, 46; Resp't Ex. A at vi, 48, App. F.*

15. The Southlake Outlot's street address is 1601 Southlake Mall, but the property is a corner lot with frontage on US 30 (also known as Lincoln Highway or 81st Street) and a major cross street, Mississippi Street. The property has access directly from Mississippi Street and the Southlake Mall entrances on US 30. US 30 intersects with Interstate 65, and Mississippi Street is the first stoplight upon exiting I-65 and turning east. Traffic counts have been reported on I-65 at 90,000 vehicles per day, and on US 30 at 60,000 vehicles per day. *Pet'r Ex. C at 21; Resp't Ex. A at 36-37.*

16. The corner of Mississippi Street and US 30 is an intense retail hub. It is roughly a mile long and follows US 30 from the end of the I-65 exit ramp to Colorado Street. The mall's anchors include Carson Pirie Scott, J.C. Penney, Macy's, and Sears, and outlots include Gander Mountain and an AMC theater. The crossroads includes major retailers such as Costco, Target, Lowe's, Home Depot, Walmart Supercenter, and Sam's Club, and other competing retailers such as TJ Maxx, DSW, Old Navy, and Burlington Coat Factory. Other retailers include Officemax, Toys'R'Us, Michael's, Office Depot, Petco, Shoe Carnival, Bed Bath & Beyond, Best Buy, Value City Furniture, The Roomplace, and The Guitar Center. The Southlake Outlot is one of three Kohl's stores in a 10-mile radius, which indicates the retail demand created by the mall and neighboring shopping centers. *Tr. at 1100*; *Resp't Ex. A at 36, 40.*

17. The Southlake Outlot is located in a "premier retail location in the trade area" and is expected to remain so "over the foreseeable future." The corner lot appears more desirable than the lots of competing retailers: none of them have frontage on both Mississippi Street and US 30, and all are further away from the I-65 exit. Beyond the retail hub at US 30 and Mississippi Street, the land is "primarily agricultural/undeveloped land with some residential and industrial development." To the west of I-65 is a mix of retail, office, and residential. *Pet'r Ex. C at 21; Resp't Ex. A at 36, 39-40.*

18. In 2007, the Southlake Outlot (and mall) was owned by an affiliate of Westfield Group, LLC, an Australian-based international shopping mall owner and developer. In 2013 Westfield Group sold the Southlake Outlot and the Southlake Mall in a transaction with seven other malls to Starwood Capital Group. It is owned by Starwood as a part of its real estate portfolio of nineteen high-quality regional malls. The market of likely buyers includes department store operators, shopping mall owners, large retail developers, and investors. The Southlake Outlot "competes in the national commercial real estate market for investment-grade retail property." *Resp't Ex. A at 14, 67, App. B.*

19. The Southlake Outlot does not suffer from significant functional obsolescence as the store's size and layout are typical. While the Southlake Outlot was originally built as a Kohl's, neither expert identified any "features that the general market was unwilling to pay for" which might be considered "superadequacies." While there was testimony that its two-story design was less desirable, other testimony suggested that the two-story design may reflect high demand and limited available land. *Pet'r Ex. C at 81, Resp't Ex. A at 55.*

20. Kendall Lees, a Kohl's executive for twelve years, testified regarding the real estate markets where Kohl's is active. He previously worked for Sears for twelve years where he handled real estate development for regional malls. His duties included being knowledgeable of the big box real estate market and the rental rates for competing anchor stores at regional malls and competitors like Target, Walmart, K-Mart, Lowes, Home Depot, J.C. Penney, and Macy's. *Tr. 259-60, 276.*

21. Kohl's owns some buildings and leases others. It leases a mix of build-to-suit, reverse build-to-suit (where Kohl's handles some of the construction management), and pre-existing buildings. The rent for most build-to-suit leases is based on a mortgage constant applied to the cost to build plus a reasonable rate of return on the owner's investment with flat payments over a twenty year term. When Lees was asked if Kohl's, in its build-to-suit leases, makes a "conscious decision to incur an obligation for a rate of rent that it knows is above the market rate," he testified: "No. We certainly don't want to incur a rate

incur a rate above market rent . . . ." He explained that sometimes Kohl's will "pay a premium" to "create a presence in the market in the right places." He also stated that Kohl's may turn down a location with "market rent" in order to "make a reasonable profit on our operations side." This indicates that Kohl's might enter into an above market lease based on Kohl's' business strategy, not due to the mechanics of a build-to-suit lease. Although counsel suggested several times in his questioning that Kohl's leases are above market due to being build-to-suit, Lees never expressed that opinion. *Tr. at 261-67.*

22. While Lees testified that build-to-suit leases are financing transactions, he stated that Kohl's used them to "minimize some of our borrowings." He did not testify that Kohl's used build-to-suit leases to raise capital or to finance personal property. He also stated that Kohl's is very "cost conscientious" in regard to construction costs, and he was not aware of any situations where a contractor inflated or overcharged costs to Kohl's. *Tr. at 266-68, 276, 284.*

23. The original build-to-suit lease for the Southlake Outlot commenced in 1992 and expired in 2012. The lease was renewed in 2012.

Pet'r Ex. C at 125-26.

B. Expert Opinions

1. Coers Appraisal

24. The Taxpayer retained Sara Coers to appraise the property in accordance with USPAP. She is an Indiana certified general appraiser and designated by the Appraisal Institute as an MAI. She is certified as a Level II assessor/appraiser. Coers is senior vice president at Pillar Valuation Group, Inc., and has significant experience appraising retail properties. In the last five years she has completed just over 200 market value-in-use appraisals, about half of which were freestanding retail in nature and included a significant number of big-box properties. *Tr. at 27-30; Pet'r Ex. C at ii-iii; 179.*

25. Coers and Lawrence Mitchell, the Taxpayer's review appraiser, were previously principals at Mitchell Appraisers, Inc. They jointly appraised the Southlake Outlot on October 25, 2011, offering market value-in-use opinions of value for the tax years 2007-2011. The Board will refer to the 2011 appraisal as the Mitchell-Coers appraisal. The Coers appraisal mirrors the Mitchell-Coers appraisal in its analysis, and its language is often verbatim. *Resp't Ex. F.*

a. Coers' Market Overview and Approaches

26. Coers inspected the property on multiple occasions. She performed a market overview and analysis. She stated that the subject property is located in an area of growing population with median household income above the state and national medians. She noted that the Southlake Outlot was affected by the housing market downturn in 2007, predating a national recession that began in earnest with the collapse of the financial and commercial real estate markets in 2008, and reaching bottom in 2011. *Pet'r Ex. C at 28-31.*

27. Coers stated that market participants would give little consideration to the cost approach due to the age of the building. It particularly lacks relevance during recession and recovery years when the value derived from the sales and income approaches best measure external obsolescence. She used the cost approach primarily to develop market rent. She considered it a secondary approach that essentially set the upper limit of value. *Tr. at 37-38; Pet'r Ex. C at 170.*

28. Coers stated that the sales comparison approach reflects what owner-users consider when buying a property. She noted that her avoidance of leased-fee sales resulted in comps that were less similar in terms of structure and location. She noted that the property's proximity to and ownership by the Southlake Mall make it unlikely it would ever be owned by an owner-user, as the mall ownership would want to control the property.

While she afforded the sales comparison approach some consideration in her analysis, she gave it less weight than her income approach. *Tr. at 37-38; Pet'r Ex. C at 170.*

29. Coers stated that the income approach reflects what investors and speculators consider when buying a property. She considered the quantity and quality of data for the income approach to be good. She also believed her income approach is based on the best quantity and quality of data. *Tr. at 37-38; Pet'r Ex. C at 170.*

b. Coers' Cost Approach

30. Coers developed her land value based on nine purportedly comparable sales. She applied market condition adjustments using the Real Estate Research Corporation's ("RERC") first-tier capitalizations. She did not make adjustments for property rights, financing, or conditions of sale. She made adjustments for frontage and visibility on five of her nine comparable land sales. She did not make adjustments for location or economic factors. She made adjustments for buyer expenditures using actual demolition costs or estimates based on data from the Marshall Valuation Service ("MVS"). MVS is a comprehensive appraisal guide for estimating replacement costs. *Tr. at 39-41; Pet'r Ex. C at 51-63.*

31. Coers valued the land as follows:

2007: $2,500,000 ($345,000 per acre)
2008: $2,530,000 ($350,000 per acre)
2009: $2,320,000 ($320,000 per acre)
2010: $2,170,000 ($300,000 per acre)
2011: $2,900,000 ($400,000 per acre)
2012: $2,970,000 ($410,000 per acre)
2013: $3,180,000 ($440,000 per acre)
2014: $3,110,000 ($430,000 per acre)

Pet'r Ex. C at 63.

32. Coers used MVS data to calculate the improvements' replacement cost new. She applied a comprehensive unit method to estimate cost in terms of dollars per unit. The base unit cost for the building was based on the data for mall anchor stores. These are defined as

"the modern regional anchors that are a transition between the pure discount/big box store and the old full line department store." She selected the low cost base type which she considered appropriate for the typical big box or junior department store. *Tr. at 42; Pet'r Ex. C at 64-65.*

33. Coers used the base costs multiplier for the Hammond-Gary area. She accounted for soft costs of 10% which are associated with items such as appraisal fees, excessive engineering and architectural costs, and leasing commissions. She believed they typically range from 5% to 15% of hard costs for similar projects. She accounted for a 2011 light interior remodel and branding modification by resetting short-lived depreciation for floor covering to zero beginning in 2012. She also reset short-lived HVAC depreciation in 2009 to account for installation of a new HVAC system. *Tr. at 36, 43-44; Pet'r Ex. C at 65-81.*

34. Coers did not include a cost component for entrepreneurial incentive. She reasoned that entrepreneurial incentive is not always applicable for buildings specifically constructed for owner-users or build-to-suit tenants. She also noted it is not contemplated in the Indiana Real Property Assessment Manual and Guidelines. Because the replacement cost of improvements with similar utility were estimated in her approach, she did not believe that an adjustment for functional obsolescence was necessary. She noted the existence of some external obsolescence during the recession and recovery years, but she opted against an adjustment. *Pet'r Ex. C at 65-83; Tr. at 36, 43-46.*

35. Coers came to the following values based upon the cost approach:

2007: $6,510,000
2008: $6,440,000
2009: $6,930,000
2010: $6,260,000
2011: $7,060,000
2012: $7,680,000
2013: $7,830,000
2014: $7,680,000

Pet'r Ex. C at 84-91, 169.

36. The Assessor criticized Coers' land comps because they were distant from the Southlake Outlot and not adjacent to a similar super-regional mall. Furthermore, she did not adjust for location. Coers testified that she thought the Shererville location was "potentially superior" despite the differences in location. Coers' Comp 1, a car dealership, sold at $65,000 per acre, which she used in support of land she valued at $345,000 per acre. Coers did not make an inverse adjustment for size for her much larger Comp 9. The Assessor also emphasized that Coers' land values failed to capture the value of the Southlake Outlot's prime location beside a mall. *Resp't Post-Hearing Br. at 38-39.*

c. Coers' Sales Comparison Approach

37. In identifying comparable sales, Coers sought only comps that were vacant at the time of sale. This is based on her belief that leased-fee sales cannot be used to determine fee simple value. She contended that leased fee sales are inapplicable because they represent motivations of income stream and return on investment in a submarket dominated by high quality tenants on long-term, above-market leases. For investment grade properties like a leased Kohl's, once the property is rented, she claimed the real property is often sold from investor to investor and the price reflects a function of the lease rather than the real estate. She focused on buyers motivated to acquire the fee simple interest to either occupy the property or lease it at market levels. *Tr. at 37-38, 46-47; Pet'r Ex. C at 49, 93-124.*

38. Coers looked for single-tenant, freestanding retail buildings of at least 40,000 s/f in the Midwest, and preferably in Northern Indiana. She ultimately chose nine comps. The properties all sold for continued retail use. Five were in Indiana (Bloomington, Fort Wayne, Indianapolis, and South Bend), three were in Ohio (Dublin, Akron, and Columbus), and one was in Illinois (Crystal Lake). The sizes ranged from 81,668 s/f to 225,000 s/f. They included former Walmart and K-Mart stores. Some buyers were owner-occupants, such as J.C. Penney and Kohl's, while others were investors. The sale dates ranged from 2003 to 2014. The prices ranged from $5.13 per s/f to $69.63 per s/f. *Tr. at 1023; Pet'r Ex. C at 93-112.*

39. Coers adjusted her comps for market conditions to reflect differences related to inflation or deflation, changes in income tax laws, or changes in supply and demand. She measured market conditions by analyzing capitalization rates for Midwestern Tier-1 retail properties from *The Real Estate Report*, a publication of RERC. *Tr. at 47; Pet'r Ex. C at 123-24.*

40. Coers adjusted for physical condition based on a forty year economic life and a presumption of 60% of the overall property value attributed to the building. She considered adjustments for location based on a combination of traffic exposure, proximity to major retail nodes or major travel corridors, access, population, household income, and surrounding development. But in the final analysis, only three of her comps received a location adjustment, each at 10%. She made no adjustments for property rights, financing, conditions of sale, buyer expenditures, or economic factors. *Tr. at 48; Pet'r Ex. C at 123-24.*

41. Coers selected a price per s/f at the high end of her adjusted comps and valued the property as follows:

2007: $4,070,000
2008: $4,970,000
2009: $4,970,000
2010: $4,520,000
2011: $4,970,000
2012: $5,420,000
2013: $5,870,000
2014: $5,870,000

Pet'r Ex. C at 24.

42. The Assessor criticized Coers for excluding leased-fee sales. Coers admitted leased-fee sales could be used as comps if properly adjusted, but she claimed that adjustments would be too difficult. The Assessor noted that Kenney, Mitchell, and Kleszynski testified that leased-fee comps were used without controversy in valuing the fee simple interest in other income-producing properties like apartments and office buildings. It was

unclear why leased-fee comps should be excluded in valuing big box stores but not other properties. *Tr. at 172-73, 398, 694, 1306; Resp't Post-Hearing Br. at 41.*

43. The Assessor noted that the Coers appraisal had significant inconsistencies with the Mitchell-Coers appraisal. In multiple instances, Coers adjusted her comps differently in the two reports. Comps with adjustments as high as 59% in the Mitchell-Coers appraisal had 0% adjustments in the Coers appraisal. In explaining the discrepancy, she stated that she was "using a different methodology" and that she had "refined" her understanding. However, the explanations of methodology in the Coers and Mitchell-Coers appraisals revealed no differences in methodology or understanding. *Tr. at 177-78; Resp't Post-Hearing Br. at 41-45.*

44. The Assessor noted that Coers made no size adjustment to reflect the inverse relation of size to unit price for a building twice as large as the Southlake Outlot. Other comps appeared to have been subdivided and put to multi-tenant use, in conflict with her single-tenant selection criteria. Coers made very few adjustments at all. The Assessor noted that Coers was vague or ignorant in regard to specific knowledge of market exposure, demographics, post-purchase renovations, and deed restrictions. For eight valuation dates across eight years, Coers only identified nine comps. This reflected either the shallowness of her investigation or the limitations resulting from Coers' refusal to either use or adjust leased-fee sales. *Tr. at 177-85; Resp't Post-Hearing Br. at 41-45.*

45. The Assessor noted that Comp 6 is the former Macy's at the Washington Square Mall in Indianapolis. It sold for only $5 per s/f and yet Coers found it relevant in valuing the Southlake Outlot at $45-$65 per s/f. A property nine times below the Southlake Outlot's value is not very comparable. It strained credibility to accept that Comp 6 was relevant and easily adjusted, but a more similar leased-fee sale was not. Based on demographics and median household income, Coers believed that Washington Square Mall was very similar to the Southlake Outlot location. This reflected how misleading some indicators of comparable location could be. *Tr. at 196-97; Resp't Post-Hearing Br. at 41-45.*

46. The Assessor noted that Coers chose valuations at the very high end of her range of adjusted comps, and typically only one of the comps for each year came near her concluded values. Coers' valuation seemed to reflect a conclusion that her comps were not very comparable, and she more or less chose a number she believed was reasonable based on her knowledge and experience. In other words, her comparable sales approach was too conclusory in nature to be credible. *Resp't Post-Hearing Br. at 47.*

d. Coers' Income Approach

47. Coers' income approach was strongly influenced by her belief that build-to-suit leases do not reflect market rent. She supported this belief primarily on her legal interpretation of case law from Wisconsin, Kansas, and Indiana. She also relied on an article by an appraiser, David Lennhoff, published in the Appraisal Journal in 2009. In her testimony, she stated that she reviewed many build-to-suit leases and had discussions with the parties who negotiate and execute them, and concluded that build-to-suit leases: (1) are not exposed to the market, (2) may be based on costs that are intended to be high to prevent the developer from cost overruns, (3) often include above market profit, and (4) may include fixtures, furniture, and equipment ("turnkey" items) and (5) may also include specialized features that equate to functionally obsolete superadequacies. They are also essentially financing mechanisms. *Tr. at 50-51, 58, 99, 114; Pet'r Ex. C at 126-27.*

48. Much of Coers' concern with build-to-suit leases reflected her personal knowledge and experience regarding how contractors exploit build-to-suit lease arrangements for above-market charges. She premised this on the fact that relationships often exist between retailers and their preferred developers, and as a result, the retailers will pay for exactly what they want delivered. With preferred developers, there is no public bidding process and costs might not reflect the market. Moreover, she posited that build-to-suit leases are typically negotiated before construction begins, and their appurtenant rates often include a considerable allowance for protection to guard against overruns. She claimed to have been exposed to well over a hundred build-to-suit leases in Indiana, and it was not

uncommon for there to be deviations of 30%-75% above market rent due to the contractors' charges. *Tr. at 51-52, 1034-38.*

49. Coers emphasized that even with her concerns, she did not altogether ignore build-to-suit transactions in her analysis. She claimed that her exclusion of several build-to-suit leases came from "a great deal of analysis as opposed to none at all." She claimed she only disregarded those transactions if rental rates did not coincide with the market, or if she could not confirm that the parties were motivated by ordinary market terms. However, because this market was "dominated by built-to-suit rental rates," she noted the limited availability of comparable lease data. *Tr. at 50-56; 1037-38.*

50. Coers considered three methods to determine market rent: extracted market rent, cost-based rent, and rent as a percentage of gross sales. For her market extraction method, she looked at leases in place for two similar Kohl's locations. She considered these leases less relevant because of the dates they were executed and the fact that they were build-to-suit. She looked at fourteen other leases that were negotiated at arm's-length and exposed to the market. She noted an average rental rate of $5.00 per s/f, but she did not establish which leases were applicable to each year nor offer a rental rate for each year. *Tr. at 51; Pet'r Ex. C at 128.*

51. To calculate rent based on cost, Coers applied a rate of return to the depreciated replacement costs (to account for the age and condition of the building) based on her analysis under the cost approach. She chose her rate of return based on market surveys, typical return rates reported by developers, and her own experience and judgment. *Tr. at 51-53; Pet'r Ex. C at 127-39.*

52. Finally, Coers calculated rent using a percentage of gross sales. She examined retail sales from the Census Bureau and from *Dollars & Cents of Shopping Centers/The SCORE* ("*Dollars and Cents*") which is an industry publication reporting national data that was last issued in 2008. She used Census Bureau and Kohl's data to trend the numbers to the years on appeal. She considered the Kohl's public financial data as a "proxy for the market" and noted that it mirrored the direction of discount department

stores generally. She then applied those retail sales to the range of percentage clause rents from *Dollars and Cents* (1.5% to 3% of sales), which she found to be fairly common. Given Lake County's median household income ranking in Indiana, Coers placed the property between the middle and upper ranges presented. *Tr. at 53-57; Pet'r Ex. C at 139-45.*

53. Despite the absence of data as to the Southlake Outlot's total rent, Coers concluded its contract rent was below the market rate. Her values reflected the fact that she considered the property a less-desirable two-story structure. Nonetheless, based on all three of the techniques she employed, Coers arrived at market rent rates ranging from $5.75 per s/f to $7.00 per s/f over the years on appeal. *Tr. at 57-58; Pet'r Ex. C at 144-45.*

54. She next considered expenses, which included accounting for expense reimbursement under market lease terms (where the tenant would reimburse or directly pay its shares of taxes and insurance, while management, administrative, and reserve expenses would be the responsibility of the ownership). She used CoStar, a publisher of real estate market data, to determine the most applicable market vacancy rate, with the intention of staying as close as possible to the subject property in order to reflect retail performance in the relevant area. After applying a typical 0.5% collection loss, she estimated vacancy and collection losses as follows:

2007: 4.8%
2008: 2.8%
2009: 8.5%
2010: 5.0%
2011: 3.1%
2012: 8.7%
2013: 7.6%
2014: 6.8%

Tr. at 58-59; Pet'r Ex. C at 144-46.

55. Coers based her expenses on data from the Institute for Real Estate Management's ("IREM") *Income/Expense Analysis: Shopping Centers for 2007-2015* (2006-2014 data), which provides data for neighborhood and community retail. She used a $0.15 per s/f for

insurance expense, \$0.75 per s/f for common area maintenance expense, and a 5% management fee. Utility, janitorial, and maintenance and repair expenses were presumed paid by the tenant and excluded. *Tr. at 59-62; Pet'r Ex. C at 147-50.*

56. Coers also considered a replacement reserve. Based on the RERC *Investor Survey*, the majority of surveyed investors preferred a capitalization before reserves for all years except 2012. She added a reserve of \$0.50 per s/f for 2012. *Tr. at 61-62; Pet'r Ex. C at 149-50.*

57. Coers offered pro forma net operating statements for the years at issue and her concluded net operating income ranged from \$4.88 per s/f to \$6.09 per s/f. *Tr. at 62-63; Pet'r Ex. C at 150-59.*

58. In selecting a capitalization rate, Coers reviewed RERC market surveys for neighborhood community retail and power center retail for both the Midwest and Chicago region, and free-standing national capitalization rates from Realtyrates.com. She stated that the extracted rates included sales to real estate investment trusts, tenant-in-common transactions, as well as Section 1031 exchanges which can result in buyers paying premiums of 15%-20% due to atypical buyer motivations. *Tr. at 63-64; Pet'r Ex. C at 160-65.*

59. Ultimately, Coers selected capitalization rates as follows:

2007: 7.0%
2008: 7.5%
2009: 8.0%
2010: 8.5%
2011: 8.5%
2012: 7.0%
2013: 7.5%
2014: 7.5%

Pet'r Ex. C at 166-167.

60. Coers loaded her rates with the landlord's share of the effective tax rate and arrived at the following values under the income approach:

2007: $6,460,000
2008: $6,240,000
2009: $5,350,000
2010: $5,090,000
2011: $5,970,000
2012: $6,500,000
2013: $7,050,000
2014: $7,160,000

Tr. at 64-65; Pet'r Ex. C at 165-70.

61. The Assessor noted that Coers did not adjust any of her leases for her market extraction analysis. She admitted that she only reviewed four of the leases, and relied on summary sheets from other appraisers for the remainder. Data on another lease came from a broker who she described as "a little cagey" in his discussion of the lease. Only three of the comps were for department stores, some were grocery stores, and none were near a super-regional mall. *Tr. at 225-27; Resp't Post-Hearing Br. at 48.*

62. The Assessor criticized Coers' reliance on a month-to-month lease for a fireworks store that occupied a former furniture store "until it was torn down." It strained credibility to find that a month-to-month lease for a fly-by-night fireworks store would be more susceptible to adjustment for the Southlake Outlot than a build-to-suit lease at a nearby power center. As with Coers' sales comps, her conclusions of market rent were at the high end of her lease comps, and suggested that her comps were not very comparable. *Tr. at 228-29; Resp't Post-Hearing Br. at 48-49.*

63. The Assessor noted that Coers' three approaches to market rent resulted in a broad range of possibilities. Coers did not relate a range of rent to each market year under her market extraction approach, but the leases ranged from $1.99 per s/f to $8.50 per s/f. Her cost-based rent estimates ranged from $4.85 per s/f to $7.80 per s/f. Her percentage sales rent estimates ranged from $2.93 per s/f to $6.60 per s/f. Coers provided little explanation as to how she settled on her actual numbers for market rent. The Assessor also noted that Coers' income capitalization analysis included sales of an HH Gregg in Merrillville, and two Best Buys in Richmond and Indianapolis, with reported net operating income of $11.81 per s/f, $11.91 per s/f, and $12.44 per s/f. It was reasonable to consider whether

this should have caused Coers to reconsider her comps. *Resp't Post-Hearing Br. at 51-52.*

e. Coers' Reconciliation

64. Coers gave the cost approach little weight due to the age of the building and its irrelevance to most market participants. She gave the sales comparison method less consideration because the proximity to the mall made it less likely to ever be owner-occupied, as the mall ownership would likely want to control the property. She considered the data used in her income approach to be of the best quantity and quality, and the most representative of how market participants would view the subject property. *Tr. at 66; Pet'r Ex. C at 170.*

65. After trending some of the years on appeal pursuant to statute, Coers reconciled the values as follows:

2007: $6,360,000
2008: $6,150,000
2009: $5,560,000
2010: $5,090,000
2011: $5,970,000
2012: $6,500,000
2013: $7,050,000
2014: $7,160,000

Pet'r Ex. 1 at 173-74.

2. Kleszynski's Review Appraisal

66. Dale Kleszynski reviewed Coers' appraisal. Kleszynski has designations as an MAI and SRA and is a certified general appraiser licensed in Indiana, Illinois, and Michigan. He has approximately forty years of appraising experience. He has taught numerous appraisal and USPAP courses and served as part of the development team that authored courses for the Appraisal Institute. He has served as a qualified instructor for the Appraisal Institute and is a certified USPAP instructor for the Appraisal Foundation. *Tr. at 829-30, 941-42; Resp't Ex. B at 38-39.*

67. Kleszynski conducted a technical desk review of Coers' appraisal in accordance with Standard 3 of USPAP. The review involved an analysis of the appraisal in order to form an opinion about the completeness of the work, the apparent adequacy and relevance of the data and adjustments, the appropriateness of the methods and techniques, and the overall analyses and conclusions rendered. In addition to the review, Kleszynski also offered opinions of value as a test of the reasonableness of Coers' conclusions. *Tr. at 986, Resp't Ex. at 1.*

68. Kleszynski disagreed with Coers as to the meaning of "similar user" as contemplated in Indiana's definition of "market value-in-use." He interpreted it to require a comparison of users of "similar economic strength" or "similar profile." A similar user would include "equal combatants" of a Kohl's and those in the "top tier" of retail. He considered the Southlake Outlot as a "built-to-suit, anchor type store that's located in a regional mall," and intended for the sale of retail products without any significant limitation. *Tr. at 948-56.*

69. Kleszynski suggested that Coers knew "the improvements were built-to-suit for Kohl's" and that "the property has always been and remains occupied by Kohl's," but that she skewed her conclusions by evaluating the subject "as something it is not." He faulted the Coers appraisal for including "no discussion or reference to the differences between generic retail applications and the property as designed for use and occupancy by Kohl's Department Stores." In this regard, Kleszynski argued that two properties cannot be comparable if their likely users are not of "similar strength." *Tr. at 956-57, 980; Resp't Ex. B at 11, 13.*

70. Kleszynki stated that Coers' opinion failed to capture the value of the property's proximity to Southlake Mall and mischaracterized its physical and economic attributes. Coers' decision to ignore leased-fee and build-to-suit properties resulted in comparisons to inferior properties without proper adjustment. He argued that there was no possibility that if Kohl's moved out of the Southlake Outlot that the owners would sell or lease it to an occupant like Krazy Kaplan's. The Southlake Outlot was constructed as a Kohl's and

Coers' sales comps 3 and 5 were originally built as Wal-Marts, which Kleszynki stated were both inferior in construction and inferior in location. He believed Coers appraised the property as though it were inferior in design and location, and her conclusions were not reasonable. *Tr. at 850-907*; *Resp't Ex. B at 10, 17; Resp't Post-Hearing Br. at 56-58.*

71. Kleszynski's cost approach differed from Coers in his selections of comps for land value and his selection of cost schedules. His valuation also included adjustments for entrepreneurial profit. His valuations under the cost approach were:

2007: $11,020,000
2008: $11,285,000
2009: $10,900,000
2010: $11,015,000
2011: $11,300,000
2012: $11,885,000
2013: $12,265,000
2014: $12,175,000

Resp't Ex. B at 19-21.

72. Kleszynski's sales comparison approach differed from Coers due to his inclusion of leased-fee sales. He looked to 37 sales of Kohl's stores from 2007-2015. He also examined 178 other sales involving similar properties with sale dates ranging from 2003 through 2015. When only sales in the Midwest were considered, there were 44 transactions with prices ranging from $775,000 to $30,000,000. The average sales price was $130 per s/f compared to Coers' range of $50-$60 per s/f. His valuations under the sales comparison approach were:

2007: $10,800,000
2008: $11,025,000
2009: $10,120,000
2010: $10,800,000
2011: $11,385,000
2012: $11,385,000
2013: $11,750,000
2014: $11,750,000

Tr. at 908-12; Resp't Ex. 6 at 22-24.

73. Kleszynski's income approach differed from Coers' approach due to his inclusion of build-to-suit leases. His estimate of market rent was substantially higher than Coers' estimate. He also chose a vacancy rate more typical of big box, build-to-suit, and department store properties. He valued the property under the income approach as follows:

    2007: $10,710,000
    2008: $10,880,000
    2009: $10,110,000
    2010: $10,575,000
    2011: $11,500,000
    2012: $11,200,000
    2013: $11,470,000
    2014: $11,735,000

    Tr. at 930; Resp't Ex. C at 29-30.

74. Based on his analysis, Kleszynski came to these overall conclusions of value:

    2007: $10,800,000
    2008: $11,000,000
    2009: $10,150,000
    2010: $10,800,000
    2011: $11,400,000
    2012: $11,400,000
    2013: $11,750,000
    2014: $11,750,000

    Resp't Ex. C at 31.

75. The Taxpayer criticized Kleszynski for failing to take steps to ensure the lease rates he employed were not valuing contractual or other non-real property rights. He also did not disclose the lease comps from which he derived his market rent. *Tr. at 987-88, 1056-57.*

3. Kenney's Appraisal

76. The Assessor engaged Mark Kenney of American Valuation Group, Inc. to appraise the property in accordance with USPAP. He holds designations as an MAI and SRPA from the Appraisal Institute and MRICS from the Royal Institute of Chartered Surveyors. He is a certified general appraiser in Pennsylvania, New Jersey, New York, Virginia, and Iowa, and was also issued a temporary Indiana permit. He has significant experience appraising shopping centers, shopping malls, mega-malls, department stores, retail stores, and big box stores. *Tr. at 298-99*; *Resp't Ex. A at App. M.*

a. Kenney's Research and Overview

77. Kenney performed an area analysis. He believed the property's location adjacent to Southlake Mall, a super-regional mall, has a significant impact on value. Kenney contended that the property is located in the premier retail location in the trade area and will be an excellent location for retail use over the foreseeable future. He further contended that the Southlake Outlot is situated on the best corner of the entire mall property. *Resp't Ex. A at 39.*

78. Kenney stated that leased-fee sales are the most relevant comparable sales for appraising and assessing the Southlake Outlot in accordance with his highest and best use conclusion. He testified that adjusting build-to-suit lease rates to market levels is a simple process of equalizing the rate of one build-to-suit lease with the universe of other build-to-suit leases. He exercised caution to determine whether the rates were too high or too low by comparison, even if those rates included contractual consideration paid by the lessee for items such as financing. *Tr. at 773-77; Resp't Ex. A at 14.*

79. Kenney stated in his report that his highest and best use conclusion was specific to the Southlake Outlot, as opposed to a general retail or commercial use which is often utilized when dark store comparables are relied upon in the sales comparison approach. He agreed with the position that a property does not need to be vacant and available to be leased to obtain a fee simple value as long as the full bundle of rights is included. The

rationale of requiring a property to be vacant and available to be leased (i.e. "dark"), is primarily based on the premise that a property should be unencumbered. But the reason why a property is vacant must also be considered, as it may suggest that something adverse occurred. Adverse conditions affecting a dark sale comp, if not present in the subject property, should be considered in the valuation. *Resp't Ex. A at 62, App. H.*

b. Kenney's Cost Approach

80. Kenney chose six sales located near the Southlake Mall in developing his land value. Because some portions of the mall area were originally developed decades ago, land sales that fully account for the proximity to the mall were difficult to find. What remained in the years on appeal consisted of properties that were significantly smaller than the Southlake Outlot. Though not included in his report, he also testified regarding the sale of a property nearby that was developed into an Ashley Home Furnishing store. He used a qualitative analysis to arrive at the following values for the land:

2007: $4,300,000 ($600,000 per acre)
2008: $4,700,000 ($650,000 per acre)
2009: $4,300,000 ($600,000 per acre)
2010: $4,500,000 ($620,000 per acre)
2011: $4,600,000 ($640,000 per acre)
2012: $4,800,000 ($660,000 per acre)
2013: $4,900,000 ($680,000 per acre)
2014: $4,900,000 ($680,000 per acre)

Resp't Ex. at 185-86.

81. Kenney used MVS to estimate the building's cost. He applied the base scale for "Mall Anchor Store," "Class C, Good." The "good" construction quality was selected because it incorporates features such as ceramic tile finish that are not included in the categories of "average" or "low." He arrived at estimated hard costs of around $10,000,000 for each year. Soft costs, contractor, architectural, engineering, and other legal and compliance fees, were applied at 10%. He also included 25% for entrepreneurial profit based on the potential for profit in the lucrative development of a discount department store. Depreciation ranged from 30-45% in any given year and, because of the financial crisis,

he applied a one-time 10% economic obsolescence adjustment for 2009. *Resp't Ex. A at 192-99.*

82. Kenney came to the following values based upon the cost approach:

2007: $12,700,000
2008: $13,100,000
2009: $11,700,000
2010: $12,900,000
2011: $13,100,000
2012: $14,800,000
2013: $14,900,000
2014: $15,000,000

Resp't Ex. A at 191.

c. Kenney's Sales Comparison Approach

83. Kenney's sales comps were mostly leased-fee. He explained that a property leased at market rent represents a fee simple sale because the contract value does not add or detract from the sale price. He noted that most of the sales of comparable properties were leased-fee sales, and conversely, fee simple sales that were vacant often sell during adverse periods for the owner, or at a location that has become no longer viable. He argued that the Southlake Outlot should not be compared to just any big box store located anywhere just because it was vacant when it sold. Moreover, the investment grade properties that are most comparable to the Southlake Outlot typically sell with leases in place. Consequently, he argued that sales of properties leased at market rent should be considered the most relevant sales data. However, he also considered vacant properties in his analysis. *Tr. at 342.*

84. Kenney identified the sales of 36 properties from around the country in his sales comparison analysis. Four of the sales were in Indiana (Lake, Clark, and Marion counties). He identified sales comps from a wide geographic range because the Southlake Outlot exists in a national investment market. Adjustments were made for each year for ownership interest, market conditions, location, building size, age and

condition, construction quality, access and visibility, parking, present use and proposed use, economic characteristics, and building coverage ratio. *Tr. at 789; Resp't Ex. A at 69-97, 98-113.*

85. Kenney applied upward adjustments to fee simple properties because they were vacant and, thus, worth less than an occupied building. He applied upward adjustments of 5% or 10% to account for some of his leased-fee comps, but he applied no adjustment to comps he believed were leased at market rates. While he was unclear about his familiarity with the leases, he explained that he knew many of the leases were at market rates simply because "they were brand new leases." *Tr. at 778-79; 784-85.*

86. In light of these considerations, Kenney came to the following values based upon the sales comparison approach:

2007: $12,800,000
2008: $12,800,000
2009: $11,900,000
2010: $10,500,000
2011: $11,400,000
2012: $12,800,000
2013: $14,100,000
2014: $14,600,000

Resp't Ex. A at 99-113.

87. The Taxpayer argued that Kenney's adjustments were careless, inconsistent, or in error. For example, Kenney used the same property for Comps 29 and 44, but applied a 10% upward adjustment for 2012 and a 5% upward adjustment for 2013. In other instances, he applied different location and size adjustments for identical properties in different years. *Tr. at 796-97; Resp't Ex. A at 86-110.*

88. The Taxpayer argued that the fundamental flaw in Kenney's sales comparison approach was that Kenney did not review the lease terms of his leased-fee sales, and thus could not know if the sales were fee simple. Similarly, the Taxpayer argued that Kenney's belief

that occupied properties are per se more valuable than vacant buildings is not supported by case law or appraisal theory.

d. Kenney's Income Approach

89. Kenney's income approach differed from Coers' due to his inclusion of build-to-suit leases. He also looked nationally to identify comparable leases. For each year, he listed the leases he identified as most relevant, and included information regarding size, rent, lease date, lease term, a summary of the location, and aggregated data. His estimated market rent ranged from $9.00 per s/f to $10.50 per s/f. *Resp't Ex. A at 116-31.*

90. Kenney estimated vacancy and collection losses. He noted that the market was characterized by very low vacancy and the Southlake Outlot has been 100% occupied since its construction. He also reviewed the *PwC/Korpacz Real Estate Investor Survey* which indicated rates of vacancy between 4% and 7%. As a result, he concluded to a 4% vacancy and 1% collection loss. *Resp't Ex. A at 134.*

91. Kenney estimated expenses by taking a $2.50 per square foot expense rate multiplied by 5% of the building area based on IREM income and expense data. He applied management fee expenses of 2.5% to 4.5% based on what was typical in his experience, and in line with the *PwC/Korpacz Real Estate Investor Survey* for power centers. Based on his conclusions, he calculated net operating income that ranged from $9.00 per s/f to $9.59 per s/f. *Resp't Ex. A at 135-44.*

92. Kenney reviewed multiple sources of data to determine capitalization rates for the subject. He started with a band of investment technique which considers a mortgage lender's return on a loan and the investor's return on the equity invested in property. He reviewed data from the American Council of Life Insurance for all loans and investor surveys of capitalization rates from the *PwC/Korpacz Real Estate Investor Survey.* He also reviewed the RERC survey of capitalization rates. This survey included 1st Tier Chicago retail and 1st Tier Midwest properties and had similar ranges. Finally he looked

at the capitalization rates calculated from comparable sales. His capitalization rates ranged from 6.5% to 7.5%. *Resp't Ex. A at 145-79.*

93. After loading the capitalization rates, Kenney came to the following values based upon the income approach:

2007: $11,700,000
2008: $11,800,000
2009: $10,900,000
2010: $12,100,000
2011: $12,100,000
2012: $11,000,000
2013: $12,300,000
2014: $13,000,000

Resp't Ex. A at 177-79.

e. Kenney's Reconciliation

94. In his final valuations, Kenney relied most heavily on the sales comparison and income approaches, and to a lesser degree on the cost approach. He valued the property as follows:

2007: $11,600,000
2008: $12,500,000
2009: $15,200,000
2010: $11,500,000
2011: $12,000,000
2012: $12,700,000
2013: $13,700,000
2014: $13,900,000

Resp't Ex. A at 201-5.

4. Mitchell's and Coers' Reviews of Kenney's Appraisal

95. The Taxpayer engaged Lawrence Mitchell of Valbridge Property Advisors to review Kenney's appraisal. He is designated as an MAI and licensed as a certified general appraiser in Indiana, Ohio, and Illinois. He is also a Level III certified assessor-appraiser

and a licensed broker in Indiana. He has over 20 years of experience and performed market value-in-use appraisals over 400 times. He estimated that in the last five years he appraised around 80 big-box retail properties. *Tr. at 1123-25; Pet'r Ex. D at 25.*

96. Mitchell believed that Indiana's market value-in-use standard is so entirely unique and difficult to apply that excellent appraisers would have difficulty applying the standard correctly. Mitchell questioned Kenney's competence due to his few assignments in Indiana. He stated that he was aware of many situations in which competent appraisers with limited Indiana experience have arrived at the wrong conclusion because the appraiser valued the property like "98% of the rest of the appraisal population would." *Tr. at 1125-36; Pet'r Ex. D at 5-6.*

97. Mitchell cited six specific USPAP competency concerns, nearly all of which related to Mitchell's presumption that Kenney misunderstood the meaning of market value-in-use. He also stated eight concerns related to carelessness:

> (1) There are a material number of different adjustments applied to the same comparable and other inconsistent adjustments in the sales comparison analysis.
>
> (2) The use of the term "market value" rather than "market value-in-use" throughout the report.
>
> (3) The use of several comparables with different uses either prior to or after the sale which are not applicable for a market value-in-use analysis.
>
> (4) The lack of the deduction of items considered personal property for assessments in Indiana.
>
> (5) The lack of any rent comparables for 2014.
>
> (6) The report emphasizes that the conclusion from the highest use analysis is critical to establish the basis for the comparables selected and the valuation applied. However, a material number of the comparables used had different uses than the subject's highest and best use conclusion.
>
> (7) Some of the land sale comparables used are not in fact comparable.

(8) The lack of material discussion regarding the impact to value, if any, of the subject's two-story configuration.

He also faulted Kenney for his use of post-valuation date sales comps. *Tr. at 1160-61; Pet'r Ex. D at 7.*

98. Mitchell complained of other "Non-USPAP Related Report Deficiencies," including "plagiarized narrative." But his biggest issue concerned the use of leased-fee sales in determining a fee simple value. *Tr. at 1162-75; Pet'r Ex. D at 8-9.*

99. Mitchell stated that it is only acceptable to use leased-fee sales to value market value-in-use of the fee simple interest if the lease rates and terms of comparable sales are truly at market levels at the time of sale. He offered his legal interpretation of Indiana case law in support. Mitchell believed that the Kenney report lacked analysis, discussion, or data to support a conclusion that the leased-fee sales reflected market values. *Tr. at 1166-67; Pet'r Ex. D at 8.*

100. Coers similarly testified that Kenney, and also Kleszynski, erred in their "fixation" on Kohl's or other users of "similar economic strength. She believed Kleszynski was "focused on the user instead of the use" while she saw the subject as a retail building that happens to be occupied by Kohl's. *Tr. at 1023-24, 1041-42.*

101. Mitchell repeated statements from the Coers and Mitchell-Coers appraisals that reference guidance from the Board and Indiana Tax Court on the treatment of build-to-suit leases or sale-leasebacks. He argued that build-to-suit leases might not be at market levels due to financing, tenant quality, atypical motivations, tenant specific superadequacies, and personal property conveyed to make a property "turnkey" in accordance with the tenant's preferences. *Tr. at 1168-72.*

102. Mitchell claimed that he confirmed that each of Kenney's selected Kohl's sales comps were leased-fee with build-to-suit leases used as financing transactions. He claimed that Kenney did not sufficiently analyze any of the leases in place with regard to these

transactions, and therefore, they must all be excluded as not reliable indicators of fee simple sales. *Tr. at 1190; Pet'r Ex. D at 10-11.*

103. Mitchell faulted Kenney's sales comps for including multiple tenant properties, a movie theater, and buildings as small as 20,000 s/f. He also faulted Kenney's adjustments to his various sales comps as inconsistent or unsupported. *Pet'r Ex. D at 11-13; Tr. at 1191-1209.*

104. Though Kenney's market extraction analysis was significantly more detailed than the Coers or Mitchell-Coers appraisals, Mitchell criticized Kenney's appraisal for failing to discuss rate adjustments for smaller comps, the inverse relationship between square footage and rental rate, or adjustments for leases differing materially from the subject's triple-net lease. *Tr. at 1202-8.*

105. Mitchell questioned the credibility of Kenney's vacancy and collection loss conclusions and his reliance on power center and national data. Coers took it upon herself to review Kenney's vacancy and collection loss conclusions. A result, she was not confident that Kenney's vacancy and collection rates accurately reflected naturally occurring supply and demand fluctuations in the relevant market over the years at issue. *Tr. at 1094-95, 1232-34; Pet'r Ex. D at 14..*

106. Coers and Mitchell both doubted the credibility of Kenney's capitalization rate conclusions and his band of investment technique. Coers testified that it was hard to tell how investment rates at the time related to the risk in the market. In particular, his 2010 selected a capitalization of 6.7% was well below his sales comparison range of 7.5% to 8.5%. *Tr. at 1094-98; Pet'r Ex. D at 15-16.*

107. As for the cost approach, Mitchell had not originally questioned Kenney's base costs. Apparently after listening to Coers' testimony, Mitchell determined that Kenney applied the wrong cost scale. Coers testified that Kenney's cost valuation was similar to treating the Southlake Outlot like a high-end department store such as a Nordstrom or Neiman Marcus rather than a big-box discount department store. Her most detailed and forceful

responses to criticisms were in defense of her selection of cost categories, where she spent considerable time hashing through the appraisals, parsing the cost schedules, and even looking to actual renovation costs at the Southlake Outlot. *Tr. at 1072-86.*

108. Coers also took substantial pains to review Kenney's calculations with regard to comparable land sales. Under her analysis, Kenney should have used a simple average that would have resulted in $484,232 per acre or a weighted average that would have resulted in $353,507 per acre. She criticized the size range of comps as unreasonable substitutes. She also cited the distortion that results from the inverse relationship between land size and unit price. Mitchell also believed Kenney erred in his selection of land comps because their use did not match the Southlake Outlot. *Tr. at 1061-70, 1117, 1246-50; Resp't. Ex A at 180-81; Pet'r Ex. D at 16-17.*

109. Finally, while both Kenney and Kleszynski applied entrepreneurial profit factors of 20% and 25% respectively under their cost approaches, Coers did not believe that such entrepreneurial profit should be considered. She further contended that MVS already builds in a developer profit, which is not related to the developer risk that entrepreneurial profit is meant to capture. Mitchell echoed those sentiments. *Tr. at 1081-86, 1250-53; Pet'r Ex. D at 17.*

110. On cross examination, Mitchell conceded that some of the deficiencies he noted in Kenney's appraisal were also found in Mitchell-Coers appraisal, and there were errors in his review appraisal. One of these errors was his belief that the Indianapolis Kohl's comp was a mall anchor, which was more troubling due to the fact that Mitchell was familiar with the area. Mitchell also conceded that the two story format is likely a necessity out of decreasing land inventories, and Mitchell noted that once one runs out of land, one starts building up. *Resp't Post-Hearing Br. at 35-36.*

C. Conclusions of Law and Analysis

1. Burden of Proof

111. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that the assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to the rule.

112. First, Ind. Code § 6-1.1-15-17.2(a) " applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Under Ind. Code § 6-1.1-15-17.2(b), "the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indianan board of tax review or to the Indiana tax court."

113. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).

114. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

115. In any case, if an assessor has the burden and fails to meet it, the taxpayer may offer evidence of the correct assessment. If neither party offers evidence that suffices to prove the property's correct assessment, it reverts to the previous year's value. *See* Ind. Code § 6-1.1-15-17.2(b).

116. In this case, the parties agreed on the record that Kohl's would accept the burden for 2007. The burden for each succeeding year turns on our decision for the preceding year. Where both parties offer probative appraisals from highly qualified experts, the question is largely academic because both parties have met the burden.

2. Conclusions of Law

117. The Taxpayer argued that Coers' valuation is "more supported" because she applied the "proper definition of 'market value-in-use'" based on settled case law in the context of valuing "big box general retail property." Furthermore, the Taxpayer argued that the Assessor's experts "just do not understand" Indiana's unique valuation standard. *Pet'r Post-Hearing Br. at 2, 4*. The Board finds that the Taxpayer overstates the uniqueness of Indiana law, and precedent does not compel the Board to adopt Coers' valuation. In some regards, Kenney and Kleszynski do place too much emphasis on the identity of the user of the Southlake Outlot. However, the Board does not find that they valued the property to the user. Moreover, Coers and Mitchell also relied heavily on Kohl's-specific data in their opinions. In the final analysis, the Board's conclusion in this case is not dictated by competing interpretations of true tax value or case law, but by the evidence before it.

118. In Indiana, assessments are based on a property's true tax value. "True tax value" does not mean fair market value. Ind. Code § 6-1.1-31-6(c). Nor does "true tax value" mean the value of the property to the user. Ind. Code § 6.1-1.1-31-6(e). Subject to those somewhat tautological directives, the Legislature relies on the Indiana Department of Local Government Finance ("DLGF") to define true tax value. Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as: "the market value-in-use of a property for its

current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 MANUAL at 2; 2011 MANUAL at 2.[1]

119. The Manual offers further guidance. It defines "market value-in-use," "value in use," and "use value," as being synonymous. 2002 MANUAL at 6-8. But it also states that a property's true tax value will equal its value-in-exchange when properties are frequently exchanged and used for the same purposes by the buyer and seller. *Id.* at 2, 4.

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

121. The Taxpayer's brief relied heavily on case law. However, "each assessment and each tax year stands alone" and the Board "evaluates each property's value based on its specific facts and circumstances." *CVS Corp. v. Monroe Cty. Assessor*, 83 N.E.3d 1286, 1292 (Ind. Tax Ct. 2017). The Board is "not bound to reach the same conclusions regarding the persuasive value of an appraiser's reports and valuation methods for different tax years or different properties." *Id.* The Tax Court has held that the "valuation of property is an opinion and not an exact science." *Monroe Cnty. Assessor v. SCP 2007-C-26-002, LLC*, 62 N.E.3d 478, 482 (Ind. Tax Ct. 2016). Therefore, "it is up to each party to convince the Indiana Board why its opinion . . . is more probative." *Id.*

122. In the context of big box valuations, the Tax Court has "repeatedly interpreted the meaning of 'current use' broadly, rejecting the contention that with respect to commercial and industrial properties, properties that have been sold to 'secondary users' cannot be considered comparable." *Howard Cnty. Assessor v. Kohl's Indiana LP*, 57 N.E.3d 913,

[1] Some of the years at issue fall under the 2002 Manual and others under the 2011 Manual. The definition in the 2011 Manual is identical except for one word: "The market value-in-use of a property for its current use, as reflected by the utility received by the owner or *by* a similar user, from the property." 2011 MANUAL at 2 (emphasis added). The parties do not suggest that the Manuals differ in regard to the meaning of true tax value, and the Board will refer to the 2002 Manual for purposes of simplicity.

918 (Ind. Tax Ct. 2016). However, the Tax Court has never held that market value-in-use requires (1) a valuation under the comparable sales approach that is (2) based on the sales of vacant properties to secondary users.

123. In regard to build-to-suit leases and sale-leasebacks, the Tax Court has held that a party may establish "a significant difference between the subject property's market rent and contractual rent," particularly in instances where sale-leaseback transactions are used "as a means to generate additional business capital from investors." *Shelby County Assessor v. CVS Pharm., Inc.*, 994 N.E.2d 350, 354, (Ind. Tax Ct. 2013). Furthermore, a "subject property's contractual rent" may capture "more than the value of the real property (i.e., the 'sticks and bricks')." *Id.* However, the Tax Court has *not* held that the leases for build-to-suit properties must be presumed to reflect above-market rent.

124. While the case law addresses appraisal theory, most often the question comes down to which "appraiser exercised . . . caution in his income approach, [and which] appraiser did not." *Grant County Assessor v. Kerasotes Showplace Theatres, LLC*, 955 N.E.2d 876, 882 (Ind. Tax Ct. 2011). If an appraiser has not sufficiently "identified the objective bases for his [or her] opinion, the Indiana Board has no way to assess whether the proffered opinion is rationally-based or merely a conclusion," and conclusory statements do not qualify as probative evidence. *Marion County Assessor v. Washington Square Mall, LLC*, 46 N.E.3d 1, 12 (Ind. Tax Ct. 2015).

125. The Taxpayer placed substantial weight on Mitchell's argument that only experienced Indiana appraisers are capable of divining the veiled meaning of the words "market value-in-use." This is not supported by case law, and it is inconsistent with the basis of the Coers and Coers-Mitchell appraisals. If Indiana law compelled a jurisdictionally unique result in this case, Mitchell and Coers could not have relied so heavily on case law from Kansas and Wisconsin. Likewise, Coers and Mitchell could not have relied so heavily on David Lennhoff's article, which was not based on any peculiarity of Indiana property tax law. When it comes to interpreting generally accepted appraisal principles, Indiana is not different from "98% of the rest of the appraisal population." The Board

finds this case comes down to a weighing of the relative strengths and weaknesses in competing choices of data and applications of appraisal theory.

126. As the Taxpayer repeatedly noted, market value-in-use is often described as "the value of a property for its use, not the value of its use." *Stinson v. Trimas Fasteners, Inc.*, 923 N.E.2d 496, 501, (Ind. Tax Ct. 2010). In big box cases, there is often a stark difference in the "value of" and the "value for" a property use. In this case, however, the Board has found that the Southlake Outlot is not like most big box stores. It is not owner-occupied and its likely buyers are not necessarily owner-occupiers. It is owned by a mall and described as a mall anchor, and Coers stated that the mall owners would not likely sell it to an owner-occupant. None of the appraisers made an adjustment for functional obsolescence. It does not suffer from substantial superadequacies that have value only to the current user and would not be reflected in a sale to a secondary user. This is a relatively interchangeable income-producing retail property.

3. Analysis

127. In sorting through disagreements among experts, it is wise to consider where there is agreement. Coers and Kenney generally agreed as to the market for buyers for the Southlake Outlot. Coers stated that the market "is divided between investors and owner-occupants." Kenney noted that while investors and owner-occupants are both potential buyers, "investors are a better fit for the typical buyer." He further stated that investors are primarily concerned with "income potential, in this case based on market rent." In her final analysis, Coers placed most weight on the income approach, signaling that she found the sales comparison approach, which "explicitly recognizes the motivations of owner occupants," of lesser importance than the income approach, which "recognizes the motivations of investors and speculators." Thus, in the final analysis, Kenney and Coers agree that investors are the most likely buyers. *Pet'r Ex. C at 49-50, 173; Resp. Ex. A at 14.*

128. Neither party found the cost approach applicable to this property. Coers stated that the cost approach "is not applicable due to the subject's age and lack of consideration by

market participants." Kenney noted that the cost approach "is given little weight by the realty market" and that it is most relevant for new construction projects. While Kenney considered the cost approach relevant in his reconciliation, it was not given primary weight. Thus Kenney and Coers agree that the cost approach is the least relevant. *Pet'r Ex. C at 49; Resp. Ex. A at 64, 200.*

129. As for the sales comparison approach, finding relevant data was a struggle for both parties. Kenney noted that, particularly for properties at super-regional shopping malls, sales are infrequent and are often included within larger transactions. Coers noted that the number of sales that are "similar in both physical and locational characteristics . . . are somewhat limited." Coers admitted the difficulty in finding comps "more similar in physical or locational attributes" due to her exclusion of leased-fee comps. Thus Kenney and Coers agree that the reliability of the sales comparison approach was somewhat limited due to the data. *Pet'r Ex. C at 93, 170; Resp. Ex. A at 67-68.*

130. While Kenney equally weighted the sales and income approaches, the Board agrees with Coers that most weight should be placed on the income approach. The Board finds that the income approach is the valuation method most likely to lead to a credible value for the Southlake Outlot. The income approach most clearly captures the motivations of investors, and there is less dispute about the availability and reliability of the data.

131. The fundamental disagreement in the income approach is whether build-to-suit leases must be excluded or adjusted in determining market rent. The Appraisal of Real Estate does not include Lennhoff's conclusory exclusion of build-to-suit leases. It states that the value of a leasehold estate (contract rent) "may be positive, zero, or negative, depending on the relationship between market rent and contract rent." THE APPRAISAL OF REAL ESTATE, 441. Accordingly, "appraisers differentiate between lease provisions that are generally representative of the market and other elements of a contract that are not typical of the market." *Id.* The Appraisal of Real Estate specifically cautions against basing rent on leases from owner-occupied buildings or sale leasebacks, but not build-to-suit leases. *Id.* at 466. The treatise considers the effect of build-to-suit provisions on rent. "In many

retail environments, the rents vary directly with the level of build-out provided to the tenant." *Id.* at 474. Under those circumstances, "the level of build-out supplied with the rent is an important element of comparison," and should be adjusted "as above-the-line or below-the-line expenses." *Id.* at 474-75. This suggests that leases with build-out provisions may require adjustment, not necessarily exclusion.

132. In this case, neither appraiser completely excluded build-to-suit leases in their analysis of market rent. Coers admitted that the Southlake Outlot is in a market "dominated by built-to-suit rental rates." She included the "two closest leased Kohl's stores" in her comparable lease analysis. These were also included in the Mitchell-Coers appraisal. The Kohl's leases are significant to Coers' opinion of market rent. If these build-to-suit leases are excluded, only 4 of the remaining 14 leases are within Coers' range of market rental rates. *Tr. at 50; Pet'r Ex. C at 128.*

133. Coers did not adjust her Kohl's leases for being build-to suit. While she claimed that her exclusion of most build-to-suit leases came from "a great deal of analysis as opposed to none at all," she devoted the least attention to her market extraction analysis. She did not even relate which leases were relevant to each year. Her testimony was very vague as to why a build-to-suit lease would be too difficult to adjust. This contrasted with her very specific claim that build-to-suit leases are commonly 30% to 70% above market. Because neither Coers nor Mitchell adjusted their build-to-suit leases, their criticisms ring hollow. *Pet'r Ex. C at 128; Resp. Ex. A at 118; Resp. Ex. F at 88; Tr. at 51-52, 1034-38.*

134. The Board also notes that Coers freely relied on build-to-suit data in other areas of her appraisal. She heavily relied on Kohl's and other build-to-suit rental data in calculating her gross percentage sales estimate of market rent. She relied on sales of Kohl's and other build-to-suit properties in identifying capitalization rates for her cost-based market rent and her income approach. Build-to-suit data was used the same way in the Mitchell-Coers appraisal. The Board cannot find that the inclusion of market data influenced by unadjusted build-to-suit leases is fatally unreliable in estimating market rent, but perfectly

reliable in other critical aspects of an appraisal. *Pet'r Ex. C at 129, 139-142; Resp. Ex. F at 89-94.*

135. The most persuasive testimony regarding the nature of build-to-suit leases came from Lees, the Kohl's executive. He stated that Kohl's very closely watches rent markets and tries to enter into leases at market rates. Similarly, Kohl's closely watches construction costs, even engaging in reverse-build-to-suit to prevent overcharges. This testimony contradicts Coers' claim that excessive charges by contractors might push build-to-suit Kohl's lease rents as much as 30%-70% above market. Lees did not testify that the Kohl's leases were generally above market or that build-to-suit leases would typically be above market. He stated that some Kohl's leases might be above market due to chasing a particular location for reasons unique to the company's business model. While he characterized a build-to-suit lease as a financing arrangement, he did not state that it was used to raise capital or to finance personal property. This testimony is far different from the evidence presented in other cases where there was direct testimony from the owner that more than the building was being financed through a sale-leaseback transaction. *See Shelby County Assessor,* 994 N.E.2d at 354.

136. Based on the record before it in this case, the Board finds that the concerns about the reliability of using build-to-suit leases in estimating market rent for the Southlake Outlot are overstated. Both appraisers estimated market rent based in part on build-to-suit leases, and neither appraiser made specific adjustments to their build-to-suit lease comps.

137. Both appraisers engaged in a qualitative analysis to extract market rent from a very diverse set of comparable leases. Kenney provided a much broader and more detailed analysis in his market extraction approach. While Mitchell criticized Kenney's choices of lease comps for particular tax years, the Coers and Mitchell-Coers appraisals did not even offer a rental rate for each year under their market extraction analysis. Kenney included some leases of nominal relevance (e.g. ground leases and a small restaurant), but those outliers did not detract from his analysis. In contrast, the majority of Coers' leases had nominal relevance. Coers' inclusion of a month-to-month lease for a fireworks store

in a soon-to-be demolished building, which had a higher rent than two of her other lease comps, casts significant doubt on her market rent analysis. From the data compiled by both appraisers, the Board finds fifteen leases to be relevant and comparable:

Comp	Tenant	Location	Lease Yr.	S/F	Rent S/F
Kenney 1	Kohl's	Columbia, SC	2007	90000	$
Kenney 7	Kohl's	Cedar Falls, IA	2002	87000	$
Kenney 10, 20, 29	Kohl's	Lexington, SC	2007	90000	$
Kenney 23, 31, 38	Kohl's	Henderson, NV	2009	86000	$
Kenney 24, 32, 39	Kohl's	Eureka, CA	2009	76000	$
Kenney 30, 37, 40	Kohl's	Collinsville, IL	2010	64000	$
Kenney 36, 39	Kohl's	Indianapolis, IN	2011	87000	$
Coers 1	Kohl's	Highland, IN	1995	96000	$
Coers 2	Kohl's	Goshen, IN	1999	87000	$
Kenney 5, 13	Boston Store	Racine, WI	2006	102000	$ 10.71
Kenney 6, 14	Gander Mountain	Merrillville, IN	2005	40000	$ 7.42
Kenney 35, 38	The RoomPlace	Merrillville, IN	2011	42000	$ 9.75
Kenney 37	Sportsman's Warehouse	Ankeny, IA	2012	50000	$ 13.00
Coers 12	Godby Furniture	Carmel, IN	2011	41000	$ 6.50
Coers 15	Art Van Furniture	Batavia, IL	2014	43000	$ 8.50

In addition, the Board finds relevant Coers' Comp 3: a Food4Less in a 74,000 s/f building in Hammond with a rent increase in 2012 to $6.50 s/f. This totals sixteen comps, which is the same number of comps Coers used in her analysis.

138. The Board finds the Kohl's leases to be particularly relevant because of Lees' testimony about how Kohl's enters into leases. The uniformity of Kohl's design and location selections suggests they are likely comparable to the Southlake Outlot. They also provide a geographical benchmark for market rates. The comparable Kohl's leases suggest a range of Though the locations are from across the United States, the variance is very similar to locations within Indiana

The highest rent is for an Indianapolis location, across the street from a major mall.

139. The Board notes the Gander Mountain ($7.42 per s/f) and the RoomPlace ($9.75 per s/f) leases are particularly relevant due to their proximity to the Southlake Outlot. The Gander Mountain lease is older, from 2005. The RoomPlace is across the street. Both

are half the size of the Southlake Outlot. The Board finds that, despite the size difference, the Southlake Outlot might still command a higher per unit rent due to its much superior location in terms of its visibility and access at the crossroads of US 30 and Mississippi Street and its proximity to the mall.

140. From this the Board must decide which opinion of market rent is best supported. Kenney's estimate ranged from $9.00 per s/f to $10.50 per s/f. Coers' estimate ranged from $5.50 per s/f to $7.25 per s/f. The Board could accept Coers' range only if it presumed the Kohl's leases were all generally above market and a significant inverse size to unit value were applied to the smaller lease comparisons. The Board has already found that Lees' testimony established that build-to-suit Kohl's leases are not generally above market, and Coers has failed to substantiate a basis to quantify an adjustment for size.

141. Coers also performed a gross sales percentage rent analysis. The Board notes that her analysis is substantially flawed because she evidently bases it on gross rent *clauses* (1.5%, 2%, 3%) rather than rent as a percentage of gross sales.[2] Oftentimes, as with the lease on the Southlake Outlot, gross percentage rent is *in addition* to fixed rent. The median *clause* percentage is not helpful without knowing the fixed median *base* rate. She did not calculate the more relevant percentage: the ratio of median rent to median gross sales. This error, however, may be corrected by dividing the median sales by median rent for each of the categories from the survey data:[3]

	Median Sales per s/f	Median Rent per s/f	Rent as % of Sales	Clause % Rent
Discount Dept.	$ 243.25	$ 4.94	2.03%	1.5%
Junior Dept.	$ 149.50	$ 5.13	3.43%	3.0%
Junior Discount Dept.	$ 163.59	$ 6.90	4.22%	2.0%
Discount Mixed Apparel	$ 232.44	$ 9.48	4.08%	2.0%

Thus, the range of medians of gross percentage sales as a measure of rent is not 1.5%-3%; the range of medians is 2.03%-4.22%. *Pet'r Ex. C at 139-44.*

[2] Coers' report stated that she included the "percentages used to determine rent based on those sales shown." *Pet'r Ex. C at 139-140.* However, that cannot be the case because, under Discount Dept., $243.25 x .015 = $3.64 which is not the rent listed at $4.94. The Board infers that the survey data references reported percentage rent *clauses.*

[3] For example, Discount Dept. is calculated as follows: $4.94 / $243.25 = .0203.

142. In estimating a range of retail sales per s/f, Coers noted that her estimates from the Kohl's data were "equivalent to the medians for discount department stores and junior discount department stores" from the trended survey data. The Board finds that the Southlake Outlot is likely at the high end of Coers' range, which is consistent with the average sales for competitors like Target and Sears in Kenney's data. The Board also finds that the junior discount department percentage rent rate best reflects the prime location of the Southlake Outlot.

Pet'r Ex. C at 139-44; Resp. Ex. F at 133.

143. From this, the Board reconstructs Coers' gross percentage sales analysis by using the higher range of Coers' sales per s/f (*Pet'r Ex. C at 142*) and the junior discount department rent to gross sales rate of 4.22% calculated in the prior table.[4]

The Board finds that these numbers are remarkably supportive of the market rents proposed by Kenney.

144. While Coers also presented a rent estimate based on cost, she clearly stated that the cost approach is not applicable. Using an inapplicable approach to estimate rent is not likely to provide a more reliable result than the market extraction and gross percentage rent estimates.

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145. Based on this, the Board finds that the market rents proposed by Kenney are the most credible. The Board now turns to the income adjustments and operating expenses.

146. As for vacancy and collection loss, Kenney used 5% across the years on appeal. Coers' rates fluctuated from 2.8% to 8.7%, but the average across the years on appeal was 6.02%. This issue is largely theoretical in the context of a single-tenant building with a long-term lease and reflects perceptions of risk. A buyer would most likely look at long-term trends in valuing the property, and Kenney's approach is more persuasive.

147. As for management fees, Kenney used 3% which is slightly below average for "Power Center Managenent Fees" according to the PwC survey. Coers used 5% which equates to $.32 per s/f and the low end of all shopping centers in IREM's Region 5. The Board finds that the Southlake Outlot should be compared to power center type properties, and as a single-tenant property, its management fees are likely on the low end and support Kenney's opinion.

148. As for replacement reserves, Kenney did not allocate a replacement reserve. Coers allocated a reserve to 2012 only. Once again, a buyer would most likely look at long-term trends, and Kenney's approach is more persuasive.

149. The Board now turns to capitalization rates, where the parties reached significantly different conclusions.

	2007	2008	2009	2010	2011	2012	2013	2014
Coers	7	7.5	8	8.5	8.5	7	7.5	7.5
Kenney	6.94	6.83	7.5	6.7	6.8	6.65	6.89	6.5

Choosing capitalization rates involves complicated opinions regarding the value of investments in real estate relative to competing types of investments and how investors weigh risk. The data cited by both parties have a wide range of rates and reflect different

opinions regarding the effect of the Great Recession and this segment of the market. The Board finds that Kenney's capitalization rates are more persuasive because they are tied to more comparable properties. However, Kenney's capitalization rates for 2010, 2011, and 2012 are below the ranges of rates selected in his data.

150. Overall, the Board finds that Kenney's income approach is the most persuasive, with the exception of his capitalization rates for years 2010, 2011, and 2012, which are unsupported by the data. The Board finds that Coers' capitalization rates should be used in those years:[5]

	2010	2011	2012
Coers OAR	8.50%	8.50%	7.00%
Kenney Tax Load	0.15%	0.15%	0.16%
Loaded OAR	8.65%	8.65%	7.16%
Kenney NOI	$ 831,598	$ 831,598	$ 747,256
Capitalized Value	$ 9,613,850	$ 9,613,850	$ 10,436,536
Rounded	$ 9,600,000	$ 9,600,000	$ 10,400,000

151. Because the income approach is the most appropriate method and there is competent and credible evidence supporting conclusions of value under the income approach, the Board will not review the other approaches. Likewise, the Board finds that no weight should be given to the other approaches through reconciliation.

152. As for the review appraisers, the Board finds that Mitchell holds Kenney to a standard of detail that both the Coers appraisal and the Mitchell-Coers appraisal fell far beneath, and his testimony is given little weight. As for Kleszynski, his opinions of value are bereft of supporting data. Without disclosure of his comparable sale and market lease data, the Board cannot give weight to his conclusory opinions of value.

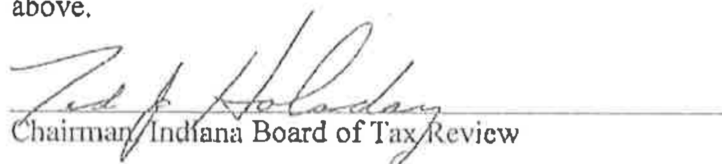
[5] For example, in 2010, Loaded OAR is calculated as follows: .085 + .0015= .0865. The Capitalized Value is calculated as follows: $831,598 / .0865 = $9,613,850.

IV. Conclusion

153. Both parties offered valuation opinions from qualified experts. Except for three years where his capitalization rates were unsupported by the evidence, the Board finds Kenney's income approach valuations to be the most credible. By using Coers' capitalization rates for 2010, 2011, and 2012, the Board can reach credible values based on Kenney's income approach. The Board finds the true tax value of the Southlake Outlot as follows:

Year	Total Assessment
2007	$11,700,000
2008	$11,800,000
2009	$10,900,000
2010	$9,600,000
2011	$9,600,000
2012	$10,400,000
2013	$12,300,000
2014	$13,000,000

The Final Determination of the above captioned matter is issued by the Board on the date written above.


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>.