REPRESENTATIVE FOR PETITIONER: Paul M. Jones Jr., Jones Pyatt Law, LLC
Brigham Michaud, Jones Pyatt Law, LLC

REPRESENTATIVE FOR RESPONDENT: Brian Cusimano, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Dillard Department Stores, Inc.,	)	Petitions: *See Attached.*
Petitioner,	)	Parcels: *See Attached.*
v.	)	Assessment Years: 2018-2020
Clark County Assessor,	)	
Respondent.	)	

July 25, 2022

FINAL DETERMINATION

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

INTRODUCTION

1. The subject property is an anchor department store in a regional mall. The parties offered competing valuation opinions from qualified experts. We find Dillard's expert, Bradley Braemer, was more persuasive and provided better data in support of his conclusions. Accordingly, we order the assessments changed to reflect the conclusions from Braemer's appraisal.

PROCEDURAL HISTORY

2. Dillard filed timely Form 130 appeals with the Clark County Property Tax Assessment Board of Appeals ("PTABOA") for three parcels for the 2018, 2019, and 2020 assessment years. The PTABOA denied the 2018 appeals but took no action for 2019 or 2020. Dillard appealed all three years to the Board. The assessments under appeal as determined by the PTABOA (2018) or the Assessor (2019, 2020) are as follows:

Parcel No.: 10-14-03-100-475.000-011

Year	Land	Improvements	Total
2018	$174,400	--	$174,400
2019	$174,400	--	$174,400
2020	$174,400	--	$174,400

Parcel No.: 10-14-03-200-584.000-011

Year	Land	Improvements	Total
2018	$648,700	--	$648,700
2019	$648,700	--	$648,700
2020	$648,700	--	$648,700

Parcel No.: 10-14-03-200-510.000-011

Year	Land	Improvements	Total
2018	$2,430,500	$6,771,000	$9,201,500
2019	$2,430,500	$6,846,300	$9,276,800
2020	$2,430,500	$6,687,700	$9,118,200

3. Dillard timely filed Form 131 appeals with the Board for each year. Beginning on July 27, 2021, our designated administrative law judge Erik Jones ("ALJ"), held a two-day hearing on the petitions. Neither he nor the Board inspected the subject property.

4. David Hall and Bradley Braemer were sworn as witnesses and testified.

5. The parties offered the following exhibits[1]:

Petitioner's Ex. A: Appraisal Report prepared by Bradley Braemer,

[1] The Assessor also submitted Exs. D, H, P, S, and U-Y to the Board but did not offer them into evidence. Accordingly, we did not consider them in reach our conclusions.

Petitioner's Ex. B:	2021 Real Property Assessment Manual, pp. 1-2 (with highlights),
Petitioner's Ex. C:	2011 Real Property Assessment Manual, pp. 1-2 (with highlights).

Respondent's Ex. A:	Appraisal Report prepared by David Hall,
Respondent's Ex. B:	ShoppingCenters.com report on Green Tree Mall,
Respondent's Ex. C:	ShoppingCenters.com report on Universal Shopping Center,
Respondent's Ex. E:	Work file excerpt from Braemer Appraisal regarding Comparable Sale 1
Respondent's Ex. F:	Work file excerpt from Braemer Appraisal regarding Comparable Sale 2
Respondent's Ex. G:	Work file excerpt from Braemer Appraisal regarding Comparable Sale 3
Respondent's Ex. I:	Work file excerpt from Braemer Appraisal regarding Comparable Sale 5
Respondent's Ex. J:	Work file excerpt from Braemer Appraisal regarding Comparable Sale 6
Respondent's Ex. K:	Work file excerpt from Braemer Appraisal regarding Comparable Sale 7
Respondent's Ex. L:	Work file excerpt from Braemer Appraisal regarding Comparable Sale 8
Respondent's Ex. M:	Work file excerpt from Braemer Appraisal regarding Comparable Sale 9
Respondent's Ex. N:	Work file excerpt from Braemer Appraisal regarding Comparable Sale 10
Respondent's Ex. O:	Demonstrative exhibit of stipulated trending,
Respondent's Ex. Q:	Demonstrative exhibit of stipulated trending,
Respondent's Ex. R:	Demonstrative exhibit of stipulated trending,

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

FINDINGS OF FACT

A. The Subject Property.

7. The subject property is a department store/mall anchor property located at Green Tree Mall, an indoor regional shopping mall. The mall is in Clarksville, Indiana, northwest of

Interstate 65 and the Lewis and Clark Parkway. It is accessible from Green Tree Boulevard. *Pet'r Ex. A at 3, 10; Resp't Ex. A at 2, 4.*

8. The property consists of three parcels with land and improvements. It includes a one-story building of approximately 204,500 square feet. The combined parcels make up 13.24 acres.[2] *Pet'r Ex. A at 3; Resp't Ex. A at 4.*

9. The Lewis and Clark Parkway area includes residential neighborhoods and shopping/entertainment destinations. The nearby Interstate 65 corridor is heavily traveled by commuters. *Pet'r Ex. A at 48; Resp't Ex. A at 20.*

B. Braemer's Appraisal

10. Dillard hired Bradley Braemer, MAI, to appraise the market value-in-use of the fee simple interest in the property. He has appraised at least 100 anchor department stores and 50 shopping centers. He certified that he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Tr. at 16-17; Pet'r Ex. A at 1, 182.*

11. Braemer used the 2018 valuation date as the "basis" for his appraisal. He then developed trending factors for the 2019 and 2020 valuation dates using market data from various sources including Green Street Advisors, Marcus & Millichap, and CBRE. *Tr. at 97-98. Pet'r Ex. A at 176.*

12. Braemer did not include one parcel that was "approximately 175,000 in value" in his appraisal. He did not offer any explanation for this omission. *Tr. at 23; Pet'r Ex. A.*

a. Market Analysis

13. Braemer began his appraisal by analyzing the property's market. He specifically noted the "threat" of e-commerce and discount retailers (such as Target and Walmart) to the

[2] Braemer included only 12.6 acres in his valuation. *Pet'r Ex. A.* at 48.

business model of an anchor department store. He found that online sales have consistently outpaced traditional brick-and-mortar sales over the previous five years. *Tr. at 24-26*; *Pet'r Ex. A, 23, 26-28.*

14. Braemer explained that because anchor department stores typically invest more in advertising, and therefore generate significant mall traffic, they can secure lower rental rates. He noted that it was difficult to find local data specific to anchor department stores as most reports speak to retail generally. He found that the vacancy rate for the southern Indiana retail market held roughly steady between 9.5%-10% between 2017 and 2019. He noted that most anchor chains are struggling, and "face an uphill battle to avoid extinction." Despite this, 2019 was the first year since 2012 to see both smaller and larger retailers post positive net absorption, and the overall price-per-square-foot trended slightly upward. Additionally, though his overall review of major national department retailers revealed many were planning to close or restructure during 2020, the Louisville area had historically not been oversaturated with retail locations, keeping occupancy high. *Tr. at 27-30; Pet'r Ex. A at 29-36.*

15. Braemer also analyzed the Clarksville market specifically. He defined the city as a 10-square-mile area roughly 3.5 miles north of Louisville. It has maintained a steady population between 2000 and 2019. Though per capita income, household income, and home values all increased slightly over that time, it nevertheless consistently lagged behind county and state averages. *Tr. at 31-32; Pet'r Ex. A at 37-39.*

16. As for the subject property, Braemer determined its highest and best use based on definitions from the DICTIONARY OF REAL ESTATE APPRAISAL, 6th edition and the Indiana 2021 REAL PROPERTY ASSESSMENT MANUAL. He concluded that an anchor department store was the highest and best use for the subject property under those standards. *Tr. at 33-34; Pet'r Ex. A at 66-73.*

b. Land Valuation

17. Although Braemer did not develop a cost approach, he still developed a land value to make sure that the subject property's land value was not more than its improved value. He first reviewed four local land sales. These ranged in size from 97,000 to 207,000 square feet. They sold between 2015 and 2019 for prices ranging from $5.29/sq. ft. to $7.72/sq. ft. He made qualitative adjustments to the sales but did not come to a conclusion of value for the subject property using this method. *Tr. at 35-36; Pet'r Ex. A at 65-70.*

18. Because none of those land sales were used for anchor department stores, Braemer also performed another analysis specific to anchor department store land, which he called a "mini-income approach." In this method, he reviewed ground leases from four department stores located in Illinois. Based on these leases and the retail sales data from each department store, he concluded that ground leases are "typically executed at approximately 1% of store retail sales." Using his estimates of stabilized retail sales from his income approach, he estimated an annual ground lease rate range from $194,276 to $204,501 depending on the year at issue. He capitalized this with a 7% rate to arrive at values ranging from $2,775,371 to $2,921,443 or $5.06/sq. ft. to $5.32/sq. ft. *Tr. at 35-36; 124-25; Pet'r Ex. A at 65-70.*

19. After considering both his valuation methods, inducements that are typically given to anchor stores, as well as trends in the retail market, he came to a concluded land value of $5.50/sq. ft. or $3,020,000 for all three valuation dates. *Tr. At 34-37; Pet'r Ex. A. at 71-72.*

c. Valuation approaches

20. To value the subject property, Braemer considered the three generally recognized valuation approaches, the cost, sales-comparison, and income approaches. He decided not to develop the cost approach because it would require estimating physical depreciation alongside functional and external obsolescence, a time-consuming and difficult process. He stated that even if he had developed this approach, the resulting

estimation would have been "very subjective." He found that there was sufficient rental and sales data to reach supportable conclusions of the subject's market value-in-use using the income and sales-comparison approaches. *Tr. at 20-22; Pet'r Ex. A at 74.*

i. Income Capitalization Approach

21. For his income capitalization approach, Braemer explained that the lease rate for anchor department stores would typically be negotiated as a percentage of expected retail sales. Thus, he chose to use a method of valuation based on that percentage. To begin this analysis, he first examined a variety of sources to determine the percentage of gross sales that an anchor department store such as the subject property would lease at. These included historical reports, leases for anchor stores in the Midwest, Dollars & Cents, publications from the Appraisal Institute and other sources, data from a major department store chain, and tax decisions from other jurisdictions. The leases he presented ranged from \$2.33-\$5.00/sq. ft. He found that although the actual rent can vary widely, it was consistently in the range of 2-3% of retail sales. *Tr. at 37-50, 103-09; Pet'r Ex. A at 76-119.*

22. Next, Braemer developed an estimate of stabilized retail sales for the subject property. He began by reviewing the subject property's historical sales. He found that they trended downward from \$88.88/sq. ft. to \$80.38/sq. ft. from 2015-2019. He combined this data with the data from other department stores in the Green Tree mall to arrive at weighted averages for the subject property. These ranged from \$102.26/sq. ft. in 2015 to \$89.03/sq. ft. in 2019. In addition, he also examined data from anchor department stores from other regional shopping centers in Indiana. From this data, he estimated the following stabilized retail sales for the subject property: \$100/sq. ft. for 2018, \$95/sq. ft. for 2019, and \$95.00/sq. ft. for 2020. After applying his 2-3% percentage range he arrived at estimated rental rates of \$2.00-\$3.00/sq. ft. for 2018 and \$1.95-\$2.85/sq. ft. for 2019 and 2020. He reconciled this estimate with data from other Midwest stores, giving primary weight to his estimates for the subject property, to arrive at rental rates of \$2.50/sq. ft. for 2018 and \$2.40/sq. ft. for 2019 and 2020. *Tr. at 53-58, 149-51; Pet'r Ex. A at 88-97.*

23. Braemer then accounted for three deductions from net rent: market vacancy, management fees, and collection losses. Based on data from the southern Indiana retail submarket, he concluded to vacancy rates ranging from 9.5%-10.0% depending on the year under appeal. He also examined data for management fees. He determined that management fees for a single-tenant property would be on the lower end of the range, because these stores require less management than multi-tenant properties. Braemer concluded that a 1% deduction for this was appropriate. Finally, he estimated collection loss at 1%. Together, these deductions amounted to 12% for 2018 and 11.5% for 2019 and 2020. *Tr. at 55-58, 60-61; Pet'r Ex. A at 95; 98-103.*

24. Braemer then determined stabilized net income for each year by multiplying the net rental rate by the property's size, then subtracting the deductions at their percentage rate. He found stabilized net income of $449,903 for 2018; and $434,360 for 2019 and 2020. *Tr. at 61; Pet'r Ex. At 104.*

25. Finally, he determined the overall capitalization rate. To do this, he considered three methods: market abstraction, PwC Real Estate Investor Surveys for power centers and regional malls, and a Marcus & Millichap report covering all Louisville-area retail properties. While he considered all three methods reasonable, he found the market abstraction method the most reliable because the PwC and Marcus & Millichap methods used multi-tenant properties and did not account for property age. Within this method, he gave the most weight to two sales that were based on actual net income rather than imputed retail sales. These two properties had indicated capitalization rates of 8.8% and 11.7% respectively. After additional consideration, Braemer ultimately concluded that a lower overall capitalization rate of 8.5% was appropriate for the subject property. *Tr. at 62-64; Pet'r Ex A at 110-19.*

26. After applying these capitalization rates to his estimates of net income, he arrived at the following rounded values for each year under appeal:

Year	Value
2018	$5,295,000
2019	$5,110,000
2020	$5,110,000

Tr. at 64-65; Pet'r Ex. A at 119.

ii. Sales-Comparison Approach.

27. Braemer began his sales-comparison approach by selecting comparable sales. Because of the lack of sales of anchor department stores that sold for continued use as an anchor department store, he determined he needed to expand his criteria. He ultimately selected comparables from three distinct sets. They were: (1) recent sales of former anchor department stores attached to regional malls that remained vacant after sale or were used for a retail use other than as a department store; (2) older sales of anchor department stores attached to regional malls that continued as anchor department stores; and (3) a single recent sale of a local "big box" property. *Tr. at 65-67; Pet'r Ex. A at 121.*

28. For his first set, Braemer selected four sales from across the Midwest. The properties ranged from approximately 98,000 to 227,000 sq. ft. They sold between January 2017 and November 2019 for prices ranging from $10.89/sq. ft. to $20.40/sq. ft. Braemer also determined stabilized retail sales per square foot for the comparables ranging from $75 to $100. Three of the sales were sold via bankruptcy, but Braemer determined that they were reliable because he found a report that indicated to him they had been sufficiently exposed to the market within the bankruptcy proceedings. *Tr. at 67-73; Pet'r Ex A. at 125-35.*

29. Next, Braemer selected sales that were used for continued use as an anchor department store. Because of the lack of retail sales that fit this criteria, these sales were significantly older. He ultimately selected seven sales from across the Midwest. The properties ranged from approximately 94,000 to 153,000 sq. ft. They sold between January 2002 and January 2011 for prices ranging from $29.15/sq. ft. to $92.24/sq. ft. Braemer also determined stabilized retail sales per square foot for the comparables ranging from $160

to $315. He noted that one sale was for the building only, so he added in the capitalized value of the ground lease to arrive at a value for the entire property. In addition, one of the comparables was sold out of bankruptcy, but he determined it was widely marketed. *Tr. at 73-79; Pet'r Ex. A. at 135-52.*

30. Finally, Braemer examined one local big box sale as a check on the local market. This property sold for $22.52/sq. ft., but he gave it minimal weight. For his other comparables, Braemer made qualitative adjustments to each sale. This included adjustments for property rights conveyed, stabilized retail sales per square foot, land to building ratio, building size, and age. He noted that factors such as location and market conditions were included in his stabilized retail sales adjustment. After adjustment he determined that his first set of sales were inferior to the subject property, while his second set were all superior to the subject property. *Tr. at 80-86; Pet'r Ex. A at 157-68.*

31. Braemer used two methods to develop his opinion of value under the sales comparison approach. In the first method, Braemer extracted a "retail sales multiplier" from each sale in his first two sets. He used this analysis because he believed that estimated retail sales per square foot were the primary driver for the sale prices of anchor department stores. The multiplier represents the relationship between the sale price per square foot and the retail sales per square foot. The extracted multipliers ranged from .16 to .29 with an average of .21. He determined the subject property would be in the middle of the range at .25. Braemer then applied this to his stabilized retail sales per square foot from his income approach. This resulted in an indicated value of $25.00/sq. ft. for the subject property. *Tr. at 86-88; Pet'r Ex. A at 168-69.*

32. For his second method, Braemer considered the sale prices per square foot of the comparables. Based on his qualitative analysis, he concluded that the subject property would sell for more than $20.40/sq. ft., the highest value from his inferior sales, and less than $29.15/sq. ft., the lowest value from his superior sales. *Tr. at 88; Pet'r Ex. A at 170-71.*

33. Based on these two methods, Braemer ultimately settled on a value of $25.00/sq. ft under the sales-comparison approach for each year under appeal. When applied to the subject property's building area, this resulted in a rounded indicated value of $5,115,000 under the sales comparison approach for each year under appeal. *Tr. at 88; Pet'r Ex. A at 172.*

34. Braemer reconciled his income capitalization approach and his sales comparison approach, giving slightly more weight to the income capitalization approach. He ultimately settled on the following values for each year under appeal:

Assessment Year	**Value**
2018	$5,200,000
2019	$5,110,000
2020	$5,110,000

Tr. at 88-89; Pet'r Ex. A at 172-74.

C. Hall's Appraisal

35. The Assessor hired David Hall and Michael Lady, MAI appraisers for Integra Realty Resources, to appraise the subject property. They prepared comprehensive retrospective appraisal reports of the subject property's market value-in-use for each of the three years on appeal. They certified that they appraised the property and prepared the reports in conformity with USPAP. Only Hall attended the hearing and he testified that he had the primary responsibility to prepare the report. Accordingly, we will refer to the Assessor's appraisal as Hall's and the valuation opinions as his. *Tr. at 221, 239, 310, 316-317; Resp't Ex. A at 6-7, 138.*

36. Like Braemer, Hall estimated the market value-in-use of the fee-simple interest in the property. Unlike Braemer, Hall included the 27,617-square-foot parking lot that was part of the appealed parcels. Hall first determined an assessed value for the subject property as of January 1, 2019, he then trended that value for 2018 and 2020. *Tr. at 224-25; Resp't Ex. A at 42.*

a. Market Overview and Subject Property

37. Hall analyzed the economic and demographic trends in Clarksville. He found the surrounding population increased by 0.6% between 2010 and 2021 and projected this trend would hold steady over the next five years. He found the Clarksville job market to be equally stable, with an almost 15% increase in employment between 2009 to 2019, and a steadily downward-trending unemployment rate over that time. *Tr. at 231-33; Resp't Ex. A at 13-15.*

38. He also found that gross domestic product was stable, as was household income, which tracked slightly ahead of state averages for the period. In his neighborhood analysis, Hall found that the subject property's neighborhood was supported by area employers, single-family residential neighborhoods, multifamily developments, shopping and entertainment destinations, and the Interstate 65 corridor. In all, he found that the dense concentration of surrounding retail uses is supported by demand generators, and most properties are in fair to good condition, relative to age. *Tr. at 234; Resp't Ex. A at 17-18, 20-21.*

39. Hall next conducted a market segmentation analysis. He based his analysis on several sources, including PwC, Vox, CoStar, and his firm's own national database. He first established a 5-mile trade area boundary around the subject property, which included parts of Louisville. Within this boundary, Hall found the subject property had "good" access to supporting and complementary properties, such as nearby restaurants, entertainment venues, and office properties. *Tr. at 234-35; Resp't Ex. A at 25-27.*

40. Hall then reviewed market data, indicators, and trends on national, Midwest, and local scales. For his national analysis, he looked to a report from JLL, which found that demand for department store properties was on a continual decline, with over 350 department stores closing in Quarter 3 2018, and another 120 in Quarter 4. A PwC report found that average capitalization rates increased between 2016 and 2019 while rent growth tumbled —both indicators of weakening investor demand. A review of a 2020 report from the U.S. Census Bureau found that monthly department store revenues

declined at an average annual rate of -3.7% between 2012 and 2019. He then cited to a source which showed that many anchor retail stores were being converted to different uses, such as warehouse, residential, or mixed. This shift guided his selection of comparable sales for his valuation approaches. *Tr. at 236-38, 359-60; Resp't Ex. A at 28-32; Pet'r Brief at 13.*

41. Regionally, Hall relied on a CoStar report reviewing trends in the Midwest. This report found an increase in vacancy between 2019-2020 and a significant slowdown in new construction activity for department store retail properties. Despite this, the average market sale price for these properties was stable between 2016-2019. However, market capitalization rates increased after 2016, suggesting a decrease in investor demand after that period. *Tr. at 240-41, 316; Resp't Ex. A at 33-36.*

42. For his 5-mile trade area boundary, Hall again looked at the same categories. He found that local market rents increased between 2015 and 2018, but then declined in 2019. Local retail vacancy also dropped from 8.5% to 3.5% between 2012 and 2017 and has held stable since. Average market sale prices increased between 2012-2017 and then stabilized. As with the regional trends, market capitalization rates decreased at first, but then began to rise in 2019, again suggesting a decrease in investor demand. Overall, he found the local and regional retail markets to be very similar. He did note that the subject property's immediate trade area is less relevant than national trends, as investors do not limit their activity to such a narrow physical area. *Tr. at 240-42; Resp't Ex. A at 37-41.*

43. Hall viewed the subject property as having good access and exposure because it was situated on the northwest quadrant of Interstate 65 and the Lewis and Clark Parkway. He also noted that it had multiple entry points, including direct and shared. *Resp't Ex. A at 46, 57.*

44. Turning to the improvements, Hall considered them to be of average overall quality, relative to age, though he noted that because a portion of the roof was repaired in 2019, he presumed that portion of the roof was approaching the end of its useful life by January

2019. Because the property was specifically designed and built for use as a department retail store, he found no functional obsolescence. He ultimately determined a weighted average age of 25 years as of January 1, 2019. *Tr. at 245-47; Resp't Ex. A at 53-57.*

b. Valuation approaches.

45. Unlike Braemer, Hall developed all three generally accepted approaches to value the subject property. He considered the cost approach highly relevant and frequently used for large retail properties because these owners tend to be highly educated about construction costs and frequently use this method when buying or renovating a retail store. Hall found there was sufficient market data to develop credible opinions under this approach. Like Braemer, he noted the lack of "simple" transactions where an anchor department store acquired a former department store. *Tr. at 239, 324; Resp't Ex. A at 81-82.*

i. Land valuation

46. Hall began his land valuation by considering land transactions in Clark County for properties between 5 and 18 acres for commercial, business, or planned development between 2014 and 2019. He settled on five sales that sold for between $157,319/acre and $379,360/acre. He adjusted the sales for market conditions, location, access/exposure, size, physical characteristics, and zoning. After adjustment, the sale prices ranged from $192,279/acre to $267,793/acre with an average of $219,251/acre. He settled on a value of $220,000/acre for the subject property which resulted in a rounded value of $2,910,000 for the subject land. *Tr. at 247-53; Resp't Ex. A at 84-94.*

ii. Cost approach.

47. Hall began his analysis under the cost approach by estimating the replacement cost for the subject property. He relied on cost estimates from Marshall Valuation Service ("MVS"). Hall determined that the property was properly identified as a "Class C" "Department store/ Mall Anchor," in the MVS schedule. His estimates included building improvements, site improvements, and 2% indirect costs. He did not include

entrepreneurial incentive because the subject property was not built on a speculative basis and there was insufficient data to make an estimate. After adding the components together, he arrived at a value of $18,153,258 for replacement cost new. *Tr. at 254-57; Resp't Ex. A at 95-97.*

48. Hall then accounted for depreciation using the age-life method. He found the subject property suffered from no functional obsolescence. He did find some external obsolescence, but determined that it was accounted for in his estimate of effective age because the age life method includes "all forms of depreciation, and that would include physical depreciation due to age, functional obsolescence, economic obsolescence." *Tr. at 260.* After applying the depreciation, 55.6% for the building improvements and 73.4% for the site improvements, he arrived at a rounded depreciated replacement cost of $7,890,000. *Tr. at 259-263, 330, 375; Resp't Ex. A at 99-101.*

49. Finally, Hall added the depreciated replacement cost to his land value to arrive at a total value of $10,800,000 for 2019 under the cost approach. *Tr. at 263; Resp't Ex. A at 102; Resp't Brief at 9-10.*

iii. Sales-Comparison Approach

50. For his sales-comparison approach, Hall looked for properties that met these criteria:

- Department store / mall anchors where fee simple property rights were conveyed,
- Located in the eastern half of the U.S.,
- Were for buildings at least 100,000 sq. ft. and built within 15 years of the subject property, and
- Occurred between 2012 to 2019.

Tr. at 264-65; Resp't Ex. A at 103.

51. Hall ultimately selected six sales that sold between October 2012 and June 2020. These included sales from North Carolina, Ohio, South Carolina, and Virginia. The properties ranged from 112,800 sq. ft. to 212,047 sq. ft. and sold for between $39.81/sq. ft. and

$70.74/sq. ft. Several of the properties were purchased for use as office space. Others were purchased for continued retail use, though not all had been used for that purpose as of the date of Hall's report. None were used as a department store after sale. *Tr. at 265-81, 335-39; Resp't Ex. A at 103-11.*

52. Unlike Braemer, Hall declined to select or adjust his comparable properties based on their retail sales. He stated that anchor department stores like the subject property were not exchanged on that basis during the three assessment years on appeal. He further noted that he saw no evidence that the market was comprised of department stores buying up vacant department store properties, or department store users renting vacant department stores during this period. Instead, properties were being converted to a type of mixed use, both retail and non-retail. Given this shift in use, Hall believed that applying historic retail sales data for these hybrid properties would lead to conclusions without credibility. *Tr. at 273-74; 312-13.*

53. Hall adjusted the sales for a number of factors including market conditions, location, access/exposure, age/condition, and planned local development. After adjustment, the sale prices ranged from $52.42/sq. ft. to $57.72/sq. ft. with an average of $52.02. Hall settled on a value of $52.00/sq. ft. which he applied to the subject property's square footage to arrive at a rounded indicated value of $10,600,000 as of January 1, 2019 under the sales-comparison approach. *Tr. at 267-83; Resp't Ex. A at 107-13.*

iv. Income Capitalization approach.

54. To determine market rent, Hall looked for leases using similar criteria from his sales-comparison analysis. Though he attempted to locate market leases where a vacant or former department store was leased by a subsequent department store user, he was unable to locate any such transaction. Instead, he used leases for properties that were used for other purposes or renewals of department store leases. The lease commencement (or renewal) dates ranged from October 2012 to June 2018. The properties ranged from 102,400 sq. ft. to 170,069 sq. ft. and rented for between $3.41/sq. ft and $5.11/sq. ft. *Tr. at 285-88, 368-71; Resp't Ex. A at 115-16.*

55. After selecting his comparables, Hall analyzed and adjusted each of the leases for several factors such as expense structure, conditions of lease, market conditions, market area and location, size, physical characteristics, age/condition, and other economic characteristics. His adjusted lease rates ranged from $4.09/sq. ft. to $5.52/sq. ft. He ultimately settled on an indicated rent of $5.10/sq. ft. for the subject property. *Tr. at 288-95; Resp't Ex. A at 120-24.*

56. Hall determined that no expense reimbursements were necessary. He found that the market vacancy for regional malls was 6.5% as of January 1, 2019. He ultimately settled on a rate of 8% to account for investors' likely anticipation of higher vacancy rates in the future. He applied that rate to the property's potential gross income to arrive at an effective gross income ("EGI") of $4.69/sq. ft. *Tr. at 296; Resp't Ex. A at 124-25.*

57. From this EGI, Hall arrived at net operating income ("NOI") by deducting management expenses and structural maintenance. To estimate a management fee, he examined data from PwC on the National Regional Mall sector. He settled on a 3% fee, which fell near the middle of PwC's range. For structural maintenance, he again relied on PwC's reports, which found an average expense of roughly $0.36/sq. ft. Hall settled on this rate for the subject property. Based on these rates, he estimated NOI at $856,807, or $4.19/sq. ft. *Tr. at 297; Resp't Ex. A at 126.*

58. To develop his capitalization rate, Hall looked at extracted rates from comparable sales, a number of investor surveys, and a band of investment technique. These ranged from 6.31% to 8.51%. He determined that the declining demand for department stores warranted a rate at the higher end of the range, so he settled on a rate of 8.50%. He applied this to his NOI to arrive at a rounded value of $10,100,000 as of January 1, 2019. *Tr. at 300-05; Resp't Ex. A at 127-30.*

v. Reconciliation

59. Hall then reconciled his conclusions under the three valuation approaches to determine a value for the property. He gave equal weight to the cost and sales-comparison

approaches, but less weight to the income capitalization approach because he found that the subject property would typically be used by an owner-occupant who would not give primary consideration to income potential. He settled on a reconciled value of $10,500,000 for the 2019 assessment year. *Tr. at 305-06; Resp't Ex. A at 131.*

60. To develop a trending factor for the 2018 and 2020 assessment years, Hall looked at changes in market data including sale prices, capitalization rates, and department store revenues. He found that the average sale price held roughly constant for the three years on appeal, dropping $1 from 2018 to 2019. Hall then reconciled this data to +2.6% for 2018 and -1.6% for 2020. After applying these trends to his 2019 concluded value, he reached the following conclusions for each of the three years on appeal:

Year	Rounded Value
2018	$10,773,000
2019	$10,500,000
2020	$10,332,000

Tr. at 305-06; Resp't Ex. A at 132-37.

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof and Valuation Standard

61. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2[3] created an exception to that rule and assigned the burden to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment, regardless of by how much. I.C. § 6-1.1-15-17.2(a)-(b), (d). The parties agree that Dillard had the burden of proof for the 2018 valuation date. The burden for later years necessarily depends on the value we determine for 2018.

[3] I.C. § 6-1.1-15-17.2 was repealed by P.L.174-2022 on March 21, 2022. We analyze the law as it existed at the time of the evidentiary hearing.

62. In Indiana, real property is assessed based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean "fair market value" or "the value of the property to the user" Ind. Code § 6-1.1-31-6(c), (e). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2.[4] Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market value-in-use appraisals will often be probative. *Kooshtard Property VI, LLC v. Whiter River Twp. Ass'r*, 836 N.E.2d 501, 501, n.6 (Ind. Tax Ct. 2005).

63. A valuation does not reflect the true tax value of an improved property if the purportedly comparable sales "have a different market or submarket than the current use of the improved property based on a market segmentation analysis." I.C. § 6-1.1-31-6(d). Market segmentation analyses "must be conducted in conformity with generally accepted appraisal principles" and are not limited to the categories of markets and submarkets laid out in the DLGF's rules or guidance materials. *Id.*

64. Both parties presented USPAP appraisals prepared by very experienced experts. Both of those appraisals had serious flaws that detracted from their reliability. Despite these flaws, we find both appraisals to be reliable opinions of value. Ultimately, we find Braemer's opinion more persuasive and a better representation of the market value-in-use of the subject property primarily on the strength of his income approach.

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[4] The Department of Local Government Finance adopted a new assessment manual for assessments from 2021 forward. 52 IAC 2.4-1-2.

B. Braemer Appraisal

65. As discussed above, Braemer prepared two of the recognized approaches to valuation, the income capitalization approach and the sales-comparison approach. Each approach has flaws, and his sales-comparison approach in particular suffers from lack of comparable data. Nevertheless, we find they are sufficient to support his overall conclusions and the most persuasive evidence in the record.

a. Braemer's Income Capitalization Approach

66. For his income capitalization approach, Braemer utilized a method of estimating income based on expected retail sales. As the Assessor points out, there are several potential issues with this method. First, given Braemer's admission that different businesses may expect different sales in a particular location, there is some risk of valuing the business (either of the comparables used for comparison or of the subject property) rather than the particular location at issue. Second, it means that much of his valuation is premised on subjective estimates of stabilized income, rather than clear market data. Despite these concerns, we agree with Braemer that this is an accepted method to value anchor department stores. And given the lack of market data to support more traditional methods of valuation, we find his choice reasonable.

67. Braemer provided extensive data in support of most aspects of his income approach. We are convinced by his conclusions that anchor department stores typically sell for 2-3% of their gross retail sales. We also find his estimates of stabilized retail sales and vacancy to be credible. We also agree with his choice of capitalization rate, which was identical to Hall's.

68. We do have some concerns about his final reconciliation of rent. As discussed above, Braemer presented extensive data supporting his assertion that department stores typically rent at 2-3% of gross retail sales. After applying this to his estimates of stabilized income he arrived at rates of $2.00-$3.00/sq. ft. for 2018 and $1.90-$2.85/sq. ft. for 2019 and 2020. Then, without explanation, he settles on $2.50/sq. ft. for 2018 and $2.40/sq. ft. for 2019-2020. His decision to use the midpoint (or approximate midpoint

for 2018 and 2019) seems somewhat arbitrary. Moreover, the difference of \$0.45-\$0.50/sq. ft. represents approximately \$1,000,000 in potential value. Given the impact of this decision on his conclusions of value, we would have preferred more explanation. But his choice was within the range, and we find it to be reasonable and within his discretion. Ultimately, we find Braemer's income approach as a whole to be a reliable estimate of value.

b. Braemer's Sales-Comparison Approach

69. Braemer's sales-comparison approach mainly suffers from a lack of comparable data. Of his four recent sales, three were sold as part of bankruptcy proceedings. While this alone does not entirely negate their probative value, Braemer does little to confirm their reliability. Instead, he primarily relies on a single report regarding how they were marketed. This leaves only one recent sale without these concerns, which we do not find particularly compelling.

70. Braemer also presented a second set of seven "older" department store sales. While these did sell for continued use as a department store, they are far removed from the valuation dates at issue. The newest is from January 2011, while the rest range from January 2002 to April 2006. Even with adjustment we do not find these particularly compelling for the valuation dates at issue. These concerns are magnified by Braemer's choice to account for market conditions within his adjustments for stabilized retail sales. Without more explanation, we remain unconvinced that he sufficiently related the sales back to the relevant valuation dates.

71. Finally, we note that like his income approach, Braemer provided little explanation for why he chose to settle on the middle of the range for his retail sales multiplier method. In addition, because this method uses his stabilized retail sales estimate from his income approach, it undercuts the independence of the sales-comparison approach as a whole.

c. Braemer's Conclusions

72. As discussed above, we find some issues with Braemer's appraisal, particularly the lack of reliable data in his sales-comparison approach. Despite these concerns, we find his valuation opinion to be credible, primarily on the strength of his income approach. We now examine whether the Assessor's evidence is more persuasive.

C. Hall Appraisal

73. Unlike Braemer, Hall chose to develop all three generally recognized approaches to value. In each approach, we find serious issues that undercut their reliability. Nevertheless, we find Hall's ultimate conclusions to be minimally credible.

a. Hall's Cost Approach

74. We first note that Dillard made no convincing criticisms of Hall's land valuations. In addition, Hall's values were very similar to Braemer's, with Hall's coming in slightly lower. Thus, we find his land valuation reliable. Similarly, we find no serious issues with Hall's estimate of replacement costs.

75. The crux of Hall's cost approach comes down to his estimates of depreciation and external obsolescence. While Hall admits the subject property did suffer from some external obsolescence during the years at issue, he stated that this was accounted for in his calculation of depreciation under the age-life method. But he did little to explain how. While we accept Hall's explanation that age-life depreciation can implicitly account for some external obsolescence, we are not convinced that he properly accounted for it here. As Dillard points out, Hall's effective age estimate is identical to his calculation of the weighted average age of the improvements. This makes his claim that he accounted for external obsolescence with his estimate of effective age ring hollow. Both appraisers acknowledged the difficult economic climate for anchor department stores. Hall's appraisal in particular shows that most anchor department stores that sell are being converted to alternative uses. Given these factors, we find Hall did not properly account for external obsolescence in his cost approach.

b. Hall's Sales-comparison Approach

76. Like Braemer, Hall's sales-comparison approach suffered from a lack of comparable data. In particular, none of his sales were used as department stores after sale. Some were not even used for retail at all. Dillard argues that this makes Hall's analysis run afoul of the market segmentation statute, I.C. § 6-1.1-31-6(d). We agree that comparables that sold for use as office space are not reliable evidence of value for the current use of the property. But we do not find that Dillard has provided a reliable market segmentation analysis that shows that the "current use" of the subject property should be defined as specifically an anchor department store as opposed to general retail. And at least some of Hall's comparables were sold for an anticipated retail use. But Dillard's criticisms underscore the lack of comparability in Hall's data. The subject property continued to be used as an anchor department store through the years at issue. Thus, properties that were converted to other uses, particularly non-retail uses, are not very persuasive evidence for the subject property. Nor is there any indication that the subject property would be suitable for such conversion. We find the lack of comparability in Hall's data seriously undercuts the reliability of his sales-comparison approach.

c. Hall's Income Capitalization Approach

77. Hall's income capitalization approach likewise suffers from a lack of reliable data. As Dillard points out, each of his lease comparables suffers from at least one significant problem. Either they were several years removed from the valuation date, they were for non-retail use, or they were renewals rather than new leases. While renewals can be good indicators of value, Hall did not show that he sufficiently analyzed the terms of the leases to show they were good indicators of value as of the renewal dates, as opposed to the parties' expectations as of the original lease commencements. While we acknowledge that Hall's income approach is largely hindered by a lack of available data. that does not make it any more reliable. Despite these concerns, we find his income capitalization approach to be minimally credible.

d. Hall's Conclusions.

77. Hall's cost approach failed to adequately account for obsolescence. Like Braemer, his income and sales-comparison approaches suffered from a lack of reliable, comparable data, but we find they provide at least some support for his conclusions. We also find Hall's trending for the 2018 and 2020 assessment years to be well supported. Overall, we find Hall presented a minimally credible opinion of value.

D. Braemer's Opinion is More Persuasive than Hall's

78. As discussed above, we have serious concerns with both appraisals. Hall's cost approach failed to adequately account for obsolescence. We also agree with Braemer that the cost approach is not a particularly reliable method to value a property like the subject. Neither appraiser presented much reliable data for their sales-comparison approaches. That leaves us to weigh their income approaches. Although Braemer did not explain some of his choices particularly well, his income approach was supported with significantly better data, in both quantity and quality, than Hall's. Ultimately, we find Braemer's appraisal to be more persuasive and the best evidence of value.

78. As discussed above, Braemer valued only two of the three parcels under appeal (Parcel No. 10-14-03-200-584.000-011 and Parcel No. 10-14-03-200-510.000-011). It is unclear from the record why he made this decision. We accept his conclusion that the two of the three parcels he valued could be valued apart from the third. Neither appraiser developed an opinion of value just for Parcel No. 10-14-03-100-475.000-011. Thus, we order the assessments for the two parcels Braemer valued changed to his conclusions, and order no change for the other parcel.

CONCLUSION

79. Because we find Braemers's valuation opinions the most credible evidence of the subject property's market value-in-use, we order the combined assessments for Parcel No. 10-14-03-200-584.000-011 and Parcel No. 10-14-03-200-510.000-011 changed to the following:

Year	Value
2018	$5,200,000
2019	$5,110,000
2020	$5,110,000

We order no change to Parcel No. 10-14-03-100-475.000-011.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review 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 of the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at<http://www.in.gov/judiciary/rules/tax/index.html>.

Attachment

Petition Numbers	Parcel Numbers
10-011-18-1-4-00169-19 10-011-19-1-4-00055-19 10-011-20-1-4-00056-21	10-14-03-100-475.000-011 10-14-03-100-475.000-011 10-14-03-100-475.000-011
10-011-18-1-4-00170-19 10-011-19-1-4-00057-21 10-011-20-1-4-00058-21	10-14-03-200-510.000-011 10-14-03-200-510.000-011 10-14-03-200-510.000-011
10-011-18-1-4-00168-19 10-011-19-1-4-00059-21 10-011-20-1-4-00060-21	10-14-03-200-584.000-011 10-14-03-200-584.000-011 10-14-03-200-584.000-011