REPRESENTATIVE FOR PETITIONER:
Milo E. Smith, Tax Representative

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

BEFORE THE
INDIANA BOARD OF TAX REVIEW

L&R ENTERPRISES, LLC,	)	Petition Nos.: 30-009-15-1-4-01262-16
	)	30-009-16-1-4-01892-16
Petitioner,	)	
	)	
v.	)	Parcel No.: 30-07-29-104-006.000-009
	)	
HANCOCK COUNTY ASSESSOR,	)	County: Hancock
	)	
Respondent.	)	Assessment Years: 2015, 2016

July 2, 2018

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

1. The parties offered competing valuation opinions from their respective appraisers—Richard Correll for L&R Enterprises, LLC, and David Hall for the Hancock County

Assessor.[1] Each appraisal suffers from problems that detract from the reliability of the appraiser's overall valuation opinion, although the problems with Correll's appraisal are more profound. After weighing the evidence, we find Hall's valuation conclusions under the cost approach to be the most persuasive evidence of the property's true tax value.

II. PROCEDURAL HISTORY

2. L&R contested its 2015 and 2016 assessments. The Hancock County Property Tax Assessment Board of Appeals ("PTABOA") determined the following values:

Year	Land	Improvements	Total
2015	$497,400	$1,715,500	$2,212,900
2016	$497,400	$1,603,500	$2,100,900

3. On October 25, 2017, our designated administrative law judge, Jacob Robinson ("ALJ"), held a hearing on L&R's petitions. Neither he nor the Board inspected the property.

4. Correll, Hall, and L&R's certified tax representative, Milo Smith, were sworn and testified.[2]

5. L&R submitted the following exhibits:

Exhibit 1: 2014 Property Record Card for subject property
Exhibit 2: 2015 Property Record Card for subject property
Exhibit 3: 2016 Property Record Card for subject property
Exhibit 4: Department of Local Government Finance Annual Adjustment Memo dated February 9, 2010
Exhibit 5: Department of Local Government Finance Annual Adjustment Memo dated January 4, 2016
Exhibit 6: Overview of Hancock County's 2015 Annual Trending dated June 4, 2015, Department of Local Government Finance Ratio Study Letter dated June 24, 2015, and related statistics

[1] Although an additional appraiser, Michael Lady, also signed the appraisal offered by the Assessor, Hall was the only one who testified. For simplicity, we will refer to the appraisal as Hall's.
[2] Mary Noe, Hancock County Assessor, was sworn but did not testify. Additionally, Lana Boswell, vice president of operations for Nexus Group, and Heather Scheel, an attorney, attended the hearing but did not participate.

Exhibit 7:	Overview of Hancock County's 2015 Annual Trending dated June 4, 2015, and related statistics
Exhibit 8:	Form 115 Notice for subject property's 2015 assessment dated May 18, 2016
Exhibit 9:	Form 115 Notice for subject property's 2016 assessment dated September 29, 2016
Exhibit 10:	Appraisal report prepared by Richard Correll
Exhibit 11:	Email from Tim Rohrer dated September 30, 2017, and attached letter from Tim Rohrer regarding remodeling expenses dated May 11, 2006
Exhibit 12:	Copies of exhibits submitted to PTABOA,
Exhibit 13:	Commercial and Industrial Cost Schedules, 2014 Appendix G (October 31, 2014), 2011 Real Property Assessment Guidelines – Book 2

6. The Assessor submitted the following exhibits:

Exhibit 1:	Appraisal report prepared by Michael Lady and David Hall
Exhibit 2:	Aerial photograph of subject property and comparable land sales
Exhibit 3:	Class descriptions for restaurants – Marshall Valuation Service
Exhibit 4:	Photograph of the subject property's exterior with descriptive notes
Exhibit 5:	Photograph of the subject property's exterior with descriptive notes
Exhibit 6:	Photograph of the subject property's interior with descriptive notes
Exhibit 7:	Photograph of the subject property's interior with descriptive notes
Exhibit 8:	Photograph of the subject property's interior with descriptive notes
Exhibit 9:	Photograph of the subject property's interior with descriptive notes
Exhibit 10:	Photograph of the subject property's interior with descriptive notes
Exhibit 11:	Photograph of the subject property's interior with descriptive notes
Exhibit 12:	Photograph of the subject property's exterior with descriptive notes
Exhibit 13:	Excerpt from *Valuing the Leased Fee Simple Estate: The Answer for Ad Valorem Taxation Issues,* Thomas W. Hamilton, Ph.D., CRE, MAI, REAL ESTATE ISSUES vol. 40, No. 1 (2015)
Exhibit 14:	Description of Occupied, Leased Fee Sales
Exhibit 15:	Pictures and description of Parcel No. 53-05-33-405-034.000-005
Exhibit 16:	Photograph of Correll's Comparable Sale No. 1 from Keystone Avenue
Exhibit 17:	Aerial photograph and descriptive notes for area surrounding Correll's Comparable Sale Nos. 1 and 2
Exhibit 18:	Indianapolis Business Journal Article dated June 18, 2011
Exhibit 19:	Demonstrative exhibit

7. The record also includes the following: (1) all pleadings, motions, briefs, 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) a digital recording of the hearing.

III. FINDINGS OF FACT

A. The Subject Property

8. The subject property is located at 1945 N. State Street, Greenfield. It contains an approximately 5,561-square-foot freestanding restaurant building,[3] a parking lot, and other related improvements on an approximately 1.66-acre site. The property is adjacent to a Walmart Supercenter and sits about ¾ mile south of the State Road 9 (State Street) interchange with Interstate 70. It originally housed a Garfield's restaurant built in 2003. L&R bought the property in 2006 for $925,000 and extensively renovated its interior and exterior. The original budget for the renovations was $200,000, although Correll testified that he believed the costs were higher. *Hall testimony; Correll testimony; Pet'r Exs. 1-3, 10-11; Resp't Exs. 1-2.*

9. The building is wood framed, with some brick and stone veneer. It has a covered main entrance with metal roofing, Montana Mike's branded signage above the entrance and along the north side, and decorative awnings and light fixtures on three sides. The interior contains a vestibule area inside the main entrance, a main dining room area, a side dining room addition, a bar area, restrooms, and a kitchen/food storage area located in the rear. The building has a mountain lodge theme and features natural wood planks, exposed log beams, stone veneers, and decorative metal roofing and light fixtures. *Pet'r Ex. 10; Resp't Ex. 1 at 52-53, 61-75; Resp't Exs. 4-12.*

10. L&R leased the property to an entity that operated a Montana Mike's Steakhouse. The precise identity and ownership of that entity is unclear. Correll described Montana Mike's Steakhouse as a small chain brand with 16 locations across the country, including four in Indiana. According to Correll, Montana Mike's Steakhouse has a parent company called Stockade Companies, which started the Sirloin Stockade. He initially described

[3] That is the building area listed on the property record card and in Hall's appraisal report. *Pet'r Exs. 1-3; Resp't Ex. 1 at 1.* Correll's appraisal report lists the building area as 5,690 square feet. *Pet'r Ex. 10 at 9.*

Montana Mike's Steakhouse as being owned by three "partners." The only partner Correll identified by name was Tim Rohrer, who he described both as "the point guy" on the tax appeals and as the principal member of L&R. On cross-examination, Correll sought to "clarify" the relationship between L&R and its tenant:

> [I]t is my understanding that Tim Rohrer is the real estate piece, that he has the real estate ownership, and that one of the other partners is the operating partner and he gets a salary to operate the property. I know that this operating partner has now taken over 100% ownership of this location. This is post our dates. Because their location in Edinburgh is doing so well that he traded—you know they all had an interest in two locations—this operating guy took over Greenfield and is now the sole owner and he is out of the Edinburgh property. So they did some internal thing where they traded, but he'll still pay the lease. He's obligated to it for 15 years or whatever and that will be received . . . by Tim Rohrer, the real estate guy partner.

Correll testimony.

11. A May 11, 2006 letter discussing the budget for the renovations to the subject property may shed some further light on those questions. The letterhead contains logos for Montana Mike's Steakhouse and Sirloin Stockade. Tim Rohrer signed the letter as chairman of Hoosier Mike's, Inc. When asked whether Hoosier Mike's owned Montana Mike's Steakhouse, Correll responded:

> I don't think so . . . because its L&R, that's how he's referred to. I don't really understand. I mean . . . Tim Rohrer is an individual, a partner in many things. He owns Freddy's. So what is Hoosier Mike's? I don't know the corporate entities.

Correll testimony; Pet'r Ex. 11.

12. Based on the admittedly scant and confusing evidence before us, we infer that Hoosier Mike's leased the property to operate a restaurant under the name Montana Mike's Steakhouse. In any case, from the time the lease was negotiated through the valuation dates at issue in these appeals, Rohrer had an ownership interest in both L&R and whatever entity leased the property to operate a Montana Mike's Steakhouse. The lease

was for 15 years. It was on a triple-net basis with annual rent of $108,000 or $18.98/SF. *See Correll testimony; Pet'r Ex. 10 at 28; Pet'r Ex. 11*.

B. Expert Opinions

1. Hall's Appraisal

13. The Assessor offered an appraisal report from Hall. He is an Indiana certified general real estate appraiser and managing director of Integra Realty Resources–Indianapolis. He holds the following designations: MAI, AICP. Hall appraised the market value-in-use of the subject property's fee simple interest, and certified that he appraised the property and prepared his report in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Hall testimony; Resp't Ex. 1 at 4, 141-42.*

a. Hall's Market Overview

14. Hall gave an overview of the property's market, including a review of Hancock County's economic and demographic data, a neighborhood and county analysis, and a review of national retail/restaurant trends. His primary takeaway from the economic and demographic data was that property values and asking rental rates in Hancock County were increasing between 2012 and 2015, indicating a healthy market with strong demand. The neighborhood and county trends further indicated that the property's market area was expanding from 2010 to 2016. This tracked broader trends, with the national retail and restaurant markets also showing sustained growth and favorable economic conditions. *Hall testimony; Resp't Ex. 1 at 15-32.*

15. Hall also performed a market-segmentation analysis, which "helps to define the most probable users for a particular property based on their consumer characteristics." His analysis indicated that the property is a freestanding restaurant/bar of very good quality and construction that primarily competes for customers against a limited number of casual-dining restaurants from Greenfield and Hancock County. In looking for substitute properties, Hall considered the fact that the property was occupied by a single user

affiliated with a regional chain to be particularly important. He identified only two potential substitute restaurant/bar properties located in Greenfield. But he believed that a typical buyer would consider the property's market to include freestanding restaurant properties throughout Indiana. *Hall testimony; Resp't Ex. 1 at 33-40.*

16. In Hall's view, the property is a prime retail lot. It is well supported by complimentary uses (demand generators), particularly the adjacent Walmart Supercenter to which the property had direct access. It sits on a corner along State Street, which is the primary route into Greenfield. It has good exposure and accessibility based on its frontage, curb cuts, and site orientation. Based on his analysis of market trends and the property's overall market appeal, Hall projected that the property would have had gradually increasing rent and stable vacancy during the years under appeal. *Hall testimony; Resp't Ex. 1 at 40-41.*

17. Although Hall believed a highest-and-best-use analysis was not required under Indiana's true tax value standard, he performed one anyway because it can help (1) determine whether a property's market value and market value-in-use are equivalent, and (2) identify functional or external obsolescence that might exist. He concluded that the property's highest and best use as if vacant was for commercial use and as improved was its current use as a freestanding restaurant/bar. *Hall testimony; Resp't Ex. 1 at 81-84.*

b. Hall's Land Valuation

18. Hall used the sales-comparison approach to value the property's land. He searched for sites along the State Street corridor in Greenfield that were between 0.5 and 2.0 acres and that sold between March 2006 and January 2016 for restaurant use or commercial development. He identified four sales fitting his criteria:

- Land Sale No. 1 (1981 N. State Road 9): a 1.2-acre Walmart outlot that sold for $573,614/acre in January 2015 and was developed into a Popeye's restaurant;
- Land Sale No. 2 (1314 N. State Street): a 0.76-acre outlot assemblage that sold for $328,515/acre in December 2013;

- Land Sale No. 3 (1736 N. State Street): a 0.55-acre site that sold for $371,560/acre in April 2013 and was developed into a freestanding Waffle House;
- Land Sale No. 4 (1846 N. State Street): a 1.16-acre site that sold for $504,310/acre in March 2006 and was developed into a Culver's restaurant.

Hall testimony; Resp't Ex. 1 at 107-09; Resp't Ex. 2.

19. To account for material differences between the subject site and his land sales, Hall made adjustments for market conditions, location, and physical characteristics. For 2015, Hall's adjusted prices ranged from $442,023/acre to $494,362/acre, with an average of $466,855/acre. He placed the most weight on Sales 1, 3, and 4. After analyzing measures of central tendency, he settled on $470,000/acre for the subject property, which translated to $780,000 (rounded). For 2016, Hall's adjusted prices ranged from $452,764/acre to $507,046/acre, with an average of $478,400/acre. He settled on a value of $480,000/acre, or $800,000 (rounded). When asked about Hall's land valuation, L&R's appraiser, Richard Correll, responded that it was "excellent" and that Hall had used "great data." *Hall testimony; Correll testimony; Resp't Ex. 1 at 89-94.*

c. Hall's Cost Approach

20. Having estimated the site value, Hall turned to the improvements. He used Marshall Valuation Service ("MVS") to estimate the building's replacement cost new. Based on his review of the building's features, many of which matched MVS's description of a "very good" Class-D restaurant, Hall selected a unit cost of $188.53/SF. He adjusted that number to $198.39/SF for 2015 and $196.43/SF for 2016. He then estimated the replacement cost new for the site improvements—a parking lot and sidewalks—at $205,508 for 2015 and $204,193 for 2016. *Hall testimony; Resp't Ex. 1 at 95-96, 101-02, Resp't Exs. 3-12.*

21. Because MVS does not account for all indirect costs, Hall applied a 10% allowance for those costs. He also included an allowance for entrepreneurial profit. MVS does not

provide estimates for entrepreneurial profit. According to Hall, however, *The Appraisal of Real Estate, 14th Edition*, instructs that it should be included. Hall explained that no investors, developers, or builder/owners would agree to take on the time and expense of a building project if there were no return in it for them. To estimate entrepreneurial profit, Hall surveyed market participants and reviewed budgets for projects that disclosed expected returns. He determined that for a restaurant project of the subject property's quality and risk, developers would typically seek returns of 10%-20%. He settled on a 15% allowance for entrepreneurial profit. *Hall testimony; Resp't Ex. 1 at 95-101.*

22. Turning to depreciation, Hall found no deferred maintenance. To the contrary, he believed that the extensive renovations in 2006-2007 reduced the building's effective age. He used that reduced effective age in estimating depreciation equaling 15% of cost new for 2015 and 17.5% for 2016. He applied age-life depreciation of 50% to the site improvements for both years. He then added his estimated land value for each year to reach the following totals:

Year	**2015**	**2016**
Building (Direct)	$1,103,247	$1,092,347
Site Improvements (Direct)	$205,508	$204,193
Total Direct	$1,308,755	$1,296,540
Indirect	$130,875	$129,654
Subtotal	$1,439,630	$1,426,194
Entrepreneurial Profit	$215,945	$213,929
Total Replacement Cost New	$1,655,575	$1,640,123
Total Depreciation	($339,325)	($370,970)
Depreciated Replacement (rounded)	$1,320,000	$1,270,000
Land Value	$780,000	$800,000
Total	**$2,100,000**	**$2,070,000**

See Resp't Ex. 1 at 95-106.

d. Hall's Sales-Comparison Approach

23. Hall began his sales-comparison analysis by looking for sales of freestanding restaurant/bar properties that competed in the casual-dining market. He focused on properties occupied by a single user that had a regional or national chain affiliation. He identified 10 leased-fee restaurant sales that he considered comparable to the subject property—four Applebee's, two Chili's, two O'Charley's, an IHOP, and a Logan's Roadhouse. Except for the O'Charley's restaurant in Greenfield, all of the comparable sales were from outside of Hancock County. *Hall testimony; Resp't Ex. 1 at 107-10.*

24. Hall made several adjustments to account for material differences between the subject property and his comparable sales. Because he was attempting to appraise the fee-simple estate while his comps sold with leases in place, Hall analyzed the sales to determine whether they required adjustments for the difference in real property rights transferred. According to Hall, *The Appraisal of Real Estate, 14th Edition,* summarizes this adjustment process as follows: "To compare the leased fee interest to the fee simple estate of the subject property, the appraiser must determine if the contract rent of the comparable property was above, below, or equal to market rent." For sales of properties leased at market rent, the market value of the leased-fee interest is equal to the market value of the fee-simple interest because property held in fee simple can be leased at market rent. Those sales require no adjustment to account for the lease's value. *Hall testimony; Resp't Ex. 1 at 111-12; Resp't Exs. 13-14.*

25. With that in mind, Hall estimated a range of market rent for each comparable property. But he offered little support for his estimated market range. Although he testified that he performed a "separate and distinct analysis" using some of the properties from his income approach as well as 7-10 additional properties, he offered no details about any of the properties he supposedly analyzed. In any event, he compared his estimated range for each property to the property's contract rent, making 10% upward adjustments for the

two sales he determined were leased below-market and a 10% downward adjustment for the one sale leased above market. The upward adjustment for one of the properties, an Applebee's from Evansville (Sale 8), did not suffice to bring the rent into Hall's estimated range. *Hall testimony; Resp't Ex. 1 at 111-12*.

26. Hall could not confirm the contract rent for two of his comparable sales—an Applebee's from Angola (Sale 3) and an IHOP from Anderson (Sale 4). Regardless, he concluded that they were leased at market rent. He explained that his conclusion for the Applebee's was supported by a paired-sales analysis in which he compared its sale price to the sale price for another one of his comps—an Applebee's from Richmond. The Angola Applebee's, which was newer and better located than the Richmond Applebee's, sold at a slightly higher unit price. Based on that sale price, Hall believed that the contract rent for the Angola Applebee's would be higher than the $30.72/SF rent for the Richmond Applebee's, bringing it within his estimated market range of $35/SF to $40/SF. As for the IHOP, Hall simply indicated that there was no evidence that its contract rent fell outside its market range. *Hall testimony; Resp't Ex. 1 at 107-12*.

27. To account for differences in market conditions, Hall applied a positive 3% annual adjustment to reflect incremental increases in values and rental rates since market conditions stabilized in 2011. Turning to location, he rated the locations of his comparable sales from Richmond, Angola, Anderson, Greensburg, and Vincennes as inferior to the subject property's location. He therefore adjusted their sale prices upward by 10% or 20% based on factors such as market size, recent population trends, prospects for growth, household income, and other things that influence restaurant demand. As for accessibility, he rated the Chili's in Greensburg (Sale 6) as superior to the subject property based on its proximity to the I-74 and State Road 3 interchange, and he adjusted its sale price downward by 10%. Because the O'Charley's in Bloomington (Sale 9) is only accessible to southbound traffic along State Road 37, he rated it as inferior to the subject property and made a 15% upward adjustment. *Hall testimony; Resp't Ex. 1 at 112-13, 115, 118.*

28. Hall also made adjustments ranging from negative 10% to positive 10% to account for differences in building size, explaining that all things being equal, smaller properties tend to sell for higher per-unit prices. He rated all but one of his comparable sales as physically superior to the subject property based on their overall construction quality and made downward adjustments to account for their superiority. He believed that the one exception—the Anderson IHOP (Sale 4)—was inferior because it lacked a bar area and had average quality finishes. He adjusted its sale price upward by 15%. *Hall testimony; Resp't Ex. 1 at 113-115, 118.*

29. Finally, Hall made adjustments for differences in age and condition. Based on his analysis of two of the Applebee's he used as comparable sales, Hall determined that the market does not penalize for age differences at the 2.5% rate indicated by MVS's straight-line depreciation. Instead, he believed that an adjustment of 1.5% per year was appropriate to account for differences in effective age and condition. *Hall testimony; Resp't Ex. 1 at 114-15, 118.*

30. Hall gave the greatest weight to the adjusted sale price for the O'Charley's from Greenfield (Sale 7) and to the Applebee's sale from Evansville (Sale 8), and he arrived at a value for the subject property of $450/SF or $2,500,000 for 2015. For 2016, he relied on the same comparable sales and made the same adjustments, with the exception of those applied for market conditions and age. Those two adjustments changed because the valuation date was a year further removed from each sale date and the subject building was one year older. He again assigned the most weight to the O'Charley's sale from Greenfield (Sale 7) and the Applebee's sale from Evansville (Sale 8) and arrived at a value of $460/SF or $2,560,000 for 2016. *Hall testimony; Resp't Ex. 1 at 116-19.*

31. Hall also reviewed two additional sales from the Greenfield market that he considered appropriate substitutes for the subject property—an Applebee's and a Bob Evans. Like the subject property, chain-affiliated restaurants occupied both those properties. But he

gave the sales less weight because of when they occurred: one was from 2011 and the other was from April 2016, after the valuation date. The Applebee's sold for approximately $607.81/SF. It was smaller than the subject building is, but Hall considered it superior in terms of accessibility and overall construction quality. The Bob Evans sold for approximately $293.97/SF. Although it did not have a bar, it still competed in the casual-dining market. It was also smaller than the subject building, and it was inferior to the subject building in terms of accessibility and physical characteristics. The Bob Evans sale was part of a larger sale-leaseback transaction that included 26 properties. *Hall testimony; Resp't Ex. 1 at 120-22*.

32. Despite the differences between those two properties and the subject property, their sale prices bracketed Hall's conclusions. In fact, their average price was $450.89/SF, within a dollar of Hall's value for 2015. Hall therefore felt they lent additional support to his conclusions. *Hall testimony; Resp't Ex. 1 at 122.*

e. Hall's Income Approach

33. Finally, Hall estimated the subject property's value using the income approach. He began by estimating its potential gross income. He did not consider the property's actual contract rent. He instead looked for comparable properties to help estimate market rent. He focused on freestanding restaurant/bars with regional or national chain affiliation that competed in the casual dining market and had leases with a triple-net or absolute-net expense structure. *Hall testimony; Resp't Ex. 1 at 123.*

34. Hall selected six leases of comparable properties used by national chain restaurants. According to Hall, the properties reflected the spectrum of similar users and bracketed the subject property in terms of age and building size. Their unadjusted rents ranged from $30/SF-$44.72/SF. Hall considered adjusting their rental rates for expense structure, conditions of lease, market conditions, location, access/exposure, size, physical characteristics, and age/condition. He did not quantify any adjustments. Instead, he qualitatively indicated whether the lease rates should be adjusted upward or downward.

He determined that three should be adjusted upward, one should be adjusted downward, and two should not be adjusted. The rates ranged from $30/SF for a lease that needed to be adjusted upward to $44.72/SF for a lease that needed downward adjustment. The two leases that Hall felt needed no adjustment were for $32.24/SF and $32.87/SF, respectively. For 2015, Hall settled on a rate of $32.00/SF for the subject property. Based on trends reported by CoStar for restaurants in the Indianapolis metropolitan area, he increased that rate by 2%, for 2016. *Hall testimony; Resp't Ex. 1 at 124-29.*

35. Hall also estimated the property's feasibility rent based on development costs. According to Hall, feasibility rent helps an owner or developer determine the rent necessary to justify new construction. Generally, when market rent meets or exceeds feasibility rent, the new project is financially feasible. Rent for an existing building, however, should be lower than feasibility rent. Thus, determining feasibility rent provides a test of reasonableness when appraising a property that is not brand new—if the appraiser's estimate of market rent for such a property is higher than feasibility rent, there is a problem. Using 10% to 12% as the range of return that developers expect on investments for similar property types, Hall estimated feasibility rent ranging from $39.91/SF to $47.90/SF for 2015 and from $40.03/SF to $48.04/SF for 2016. Both those ranges exceed Hall's market rent estimates for the subject property. *Hall testimony; Resp't Ex. 1 at 130.*

36. Turning to projected vacancy, Hall highlighted a CoStar analytic survey, which reported that vacancy for restaurant properties in the Indianapolis MSA fluctuated between approximately 4.5% and 5.5% from 2013 to 2015. But "consistent with the methodology by which the market derives capitalization rates," he did not deduct estimated vacancy and collection loss from potential gross income. Instead, he explained that the capitalization rate he selected "implicitly" reflected the risk attributable to that loss. Similarly, because Hall assumed an absolute-net expense structure in which all operating expenses are the tenant's responsibility, he did not deduct anything for operating expenses. Thus, Hall's estimates of the subject property's stabilized net operating

income ("NOI") for each year was the same as his estimate of potential gross rent. *Hall testimony; Resp't Ex. 1 at 132-33*.

37. Hall relied on three methods to select an appropriate capitalization rate to apply to his projected NOI. First, he reviewed rates indicated by sales of eight comparable restaurants from Indiana that bracketed the subject building in terms of age and size. Those sales had an average cap rate of 7.31% and a midpoint of 7.42%. Second, he reviewed national investor surveys from Calkain Research and The Boulder Group. He gave the greatest weight to the Calkain data because it was specific to the casual-dining sector. That data indicated an average rate of 7.03%. Finally, he employed the band-of-investment method, which derives a capitalization rate using the weighted average of the mortgage and equity demands on a property's income. His band-of-investment analysis produced a rate of 7.43%. He gave similar weight to all three methods and selected a capitalization rate of 7.40% for both 2015 and 2016. *Hall testimony; Resp't Ex. 1 at 134-37.*

38. Hall then capitalized his estimated NOI for each year to reach the following conclusions under the income approach:

Year	**2015**	**2016**
NOI	$177,952	$181,511
Cap Rate	7.4%	7.4%
Value (rounded)	**$2,400,000**	**$2,450,000**

Hall testimony; Resp't Ex. 1 at 138.

f. Hall's Reconciliation

39. In his reconciliation, Hall gave similar weight to his conclusions under all three approaches and came to the following values:

Year	Cost	Sales	Income	Reconciled
2015	$2,100,000	$2,500,000	$2,400,000	$2,330,000
2016	$2,070,000	$2,560,000	$2,450,000	$2,360,000

Hall testimony; Resp't Ex. 1 at 139.

2. Correll's Appraisal

40. L&R hired Correll, an Indiana certified general appraiser and principal of Correll Commercial Real Estate Services, to appraise the property. Like Hall, Correll certified that he performed his appraisals and prepared his report in accordance with USPAP. *Correll testimony; Pet'r Ex. 10 at 17.*

41. Correll applied the sales-comparison and income approaches to estimate the market value-in-use of the fee-simple interest of the property. He gave two reasons for why he did not think the cost approach was relevant: the restaurant's age and the fact that in prior appeals, his opinions under the cost approach lost to appraisals with one comparable sale. But he did note in his report that the property's 2006 sale price combined with the cost of the 2006-2007 renovations gave it a "cost basis" of $1,125,000, although he testified that because cost of those renovations actually exceeded the $200,000 he used in that calculation, the "cost basis" would actually be higher. *Correll testimony; Pet'r Ex. 10 at 29.*

a. Correll's Market Overview

42. Correll defined the property's market area as the Greenfield market. Greenfield is the county seat and benefits from good access and proximity to the Indianapolis metropolitan region. He largely agreed with Hall's description of the property's location and highest and best use. *See Correll testimony; Pet'r Ex. 10 at 26-28.*

43. According to Correll, the market for full-service restaurants like the subject property includes net-leased properties, locally owned properties, and vacant properties. When selecting comparable sales, he thought it was important to consider the property's market and the rights conveyed. Investors in the net-lease market actively seek investments that carry the highest annual yield. Those typically include properties with long-term leases to tenants with high credit ratings. Correll explained that in most cases, prices for sales of leased-fee and fee-simple interests differ greatly due to the value placed on long-term, "credit" leases. *Correll testimony; Pet'r Ex. 10 at 27-28.*

44. The 14th edition of *The Appraisal of Real Estate* explains that a lease never increases the market value of real property rights to the fee simple estate. Any potential value increment in excess of fee simple estate is attributable to the particular lease contract. Indiana and Kansas courts have concluded that rent in excess of fee-simple rent should not be included when valuing the fee-simple interest. That conclusion is consistent with the argument that excess rent represents interest in a contract rather than in the real estate. *Correll testimony.*

45. Correll explained that determining fee-simple rent for a restaurant leased to Montana Mike's Steakhouse is difficult because the majority of the market consists of triple-net leases backed by tenants with high credit ratings. According to Correll, using properties with triple-net leases as comparable sales would require grading each tenant's credit rating. Montana Mike's Steakhouse does not have credit to leverage, and even if it did, that credit should not be taxed as part of the real estate. To illustrate, Correll took what he called the property's excess rent (the difference between Hall's rent conclusion of $32/SF and the subject property's actual rent of $19/SF) and capitalized it using Hall's 7.43% cap rate. In his view, that calculation showed that Hall's valuation opinions included $1 million in excess value. *Correll testimony; Pet'r Ex. 10.*

b. Correll's Sales-Comparison Approach

46. Correll began his sales-comparison analysis by searching the region for sales and listings of comparable properties. He identified three sales and one pending sale to include in his analysis:

- Sale 1 (2375 E. 116th St., Carmel): a 6,876-square-foot former Macaroni Grill built in 2002 that sold for $1.4 million in July 2015;
- Sale 2 (2293 E. 116th St., Carmel): a 7,062-square-foot former O'Charley's built in 2001 that sold for $1.2 million in June 2016;
- Sale 3 (6709 Lima Rd., Fort Wayne): a 6,358-square-foot former O'Charley's built in 2002 that sold for $1.15M (after excluding $200,000 in personal property) in September 2013;
- Pending Sale (3851 Vincennes Rd., Indianapolis): a 6,500-square-foot former O'Charley's built in 1995 that was under contract to sell for $1.1 million as of September 2017.

Hall testimony; Correll testimony; Pet'r Ex. 10 at 30-38; Resp't Ex. 17.

47. Sales 1 and 2 were from the same immediate area in the southeast quadrant of 116th Street and Keystone Avenue. Sale 2 was originally an O'Charley's. It was then used successively as a Major's Sports Café and an Asian restaurant called Zhu Lan, with periods of vacancy in between. It was vacant when it sold in June 2016. It remained vacant except for a period in the summer of 2017, when it housed a seasonal fireworks store. The adjacent property to the east of Sale 2 was a former LongHorn Steakhouse that was vacant. The adjacent property to the south of Sale 1 was a former Borders Bookstore that was vacant from 2011 until 2015, when it was bought for use as a church. *Hall testimony; Resp't Ex. 17*.

48. Correll described all four comparable sales as full service restaurants located in suburban areas. They sold for prices ranging from $169/SF to $204/SF. Because they were all cash sales of the fee-simple interest, he made no adjustments for sale terms or property rights. Similarly, he explained that his data did not show that any adjustments for market conditions were necessary. And while the subject building was slightly smaller than the

buildings from his comparable sales, Correll claimed that his data did not support an adjustment for size. *Correll testimony; Pet'r Ex. 10 at 40.*

49. He adjusted the sale (or contract) prices for the former O'Charley's restaurants in Fort Wayne and Indianapolis upward by 10% each to account for their inferior locations. But he found it unnecessary to make any location adjustment to account for the superiority of the Carmel market, because the two sales from that market involved properties with "difficult access." In considering location adjustments, Correll did not analyze demographics or rental or vacancy rates in the areas surrounding the properties; rather, he used his "judgment." *Correll testimony; Pet'r Ex. 10 at 40-41*

50. Correll did adjust all of the sale prices upward by 10% or 20% to account for the subject property's comparatively newer construction and superior condition. When asked if he used Marshall & Swift in quantifying those adjustments, he explained that appraisers do not use that data in analyzing the sale and lease markets. Instead, he used his "judgment ... and the data." Correll also adjusted one sale price—the former O'Charley's from Carmel (Sale 2)—upward by 10% to account for its comparatively inferior construction quality. He did not have a paired-sales analysis to support that adjustment. He testified that "the adjustment is the analysis" and that he used his "judgment." Indeed, although Correll's appraisal report indicates that he "tried to use 'a matched pairs or paired sales' type analysis to develop some adjustments," he did not point to any instances where he actually used such an analysis. *Correll testimony; Pet'r Ex. 10 at 40-42.*

51. The adjusted sale prices ranged from \$217/SF to \$224/SF, which indicated a range of \$1,234,730 to \$1,274,560 for the subject property. Correll settled on a value of \$1.25 million for both valuation dates. He did not believe that any trending was necessary because his value conclusion "covers a period between 2015 and 2017." *Correll testimony; Pet'r Ex. 10 at 42.*

c. Correll's Income Approach

52. Correll began his analysis under the income approach by determining rent for the subject property. He began with the existing lease of $18.98/SF, which he believed was negotiated at arm's length, despite his acknowledgement that Rohrer had an ownership interest in both the landlord and tenant. He explained his reasoning as follows:

> [I]n this case they said 'actually, we negotiated this.' And one of the guys said, 'I've got this, this is my piece and this is the rent I'm getting, which is $9,000 a month and I can't change it.' So he is frustrated that he's got this big assessment and he's like 'I can't change the rent, I can't do anything,' because he is also a partner in the business and they have to pay the taxes.

Corell testimony; Pet'r Ex. 10 at 28.

53. He then looked at lease rates for three restaurant properties with triple-net leases—a Kilroy's from Bloomington, a Panera Bread from Indianapolis, and an Arni's from Greenwood. Kilroy's rented for $19/SF, while Panera and Arni's both rented for $22/SF. *Correll testimony; Pet'r Ex. 10 at 28.*

54. Correll neither reviewed the leases nor looked at the vacancy rates or rent levels for the areas surrounding those properties. He likewise did not know who owned the properties. Similarly, while he thought it was important to avoid using leases to national chains, he could not say how many locations Arni's had. In fact, he admitted that Panera was a national chain and that he therefore should not have used that lease. *Correll testimony*.

55. In Correll's view, those three leases confirmed that the subject property's lease was "market supported," and he therefore used that lease's annual rent of $108,000 as the property's potential gross income. Based on the current lease's length and the likelihood it would be renewed, Correll did not deduct an allowance for vacancy. *Pet'r Ex. 10 at 43.*

56. Turning to operating expenses, Correll explained that landlords are typically responsible for structural building elements and management fees in net leases. He therefore deducted an allowance for a third-party management fee of $4,320 (4% of gross rent) and reserves of $1,718 ($0.30/SF). That left NOI of $101,962. *Correll testimony; Pet'r Ex. 10 at 43.*

57. To select a capitalization rate, Correll reviewed asking rates for various triple-net-leased investment opportunities throughout the country. He took rates from listings for three properties with 10 years remaining on leases that were backed by strong corporate guarantees from tenants with high credit ratings. Those properties included two Logan's Roadhouses—one each from Indiana and Michigan—and an Applebee's from Georgia. Their asking rates ranged from 7.25% to 7.50%. He also looked at capitalization rates for three properties with "lesser credit quality offerings." One was a Fatz Café subleased to Japan 49 in North Carolina with an asking rate of 8.75%. The other two were non-chain restaurants: Casa Ole in Louisiana, and Richard Rawlings Garage in Texas. They had asking rates of 8.5% and 8%, respectively. Because Montana Mike's Steakhouse is a small chain, Correll considered its market position to align more with the independent offerings and settled on rates ranging from 8% to 8.5% for the years under appeal. *Correll testimony; Pet'r Ex. 10 at 44.*

58. When he applied those rates to his estimated NOI, it produced values ranging from $1,200,000 to $1,275,000 (rounded). Considering the property's market position, he settled on a value of $1.25 million for each year. *Correll testimony; Pet'r Ex. 10 at 45.*

d. Correll's Reconciliation

59. Correll relied on his conclusions under both approaches. As he explained, his income capitalization analysis valued the leased-fee interest under the property's current lease, while his sales-comparison approach valued the fee-simple interest in the property. In any case, they produced the same value: $1.25 million. He adopted that as his valuation opinion for both years. *Correll testimony; Pet'r Ex. 10 at 46.*

C. Other Opinions

60. L&R's certified tax representative, Milo Smith, testified mostly about his belief that the Assessor and PTABOA had ignored the 2011 Real Property Assessment Guidelines and guidance from the Department of Local Government Finance ("DLGF") when the Assessor in the first instance, and the PTABOA on appeal, increased the 2015 assessment to $2,212,900 from its 2014 level of $838,100. He took issue with the Assessor lowering the restaurant's effective age and increasing its quality grade, even though 2015 was a year during which local officials were supposed to adjust assessments based on ratio studies rather than reassess properties. Guidance issued by the DLGF in 2016 instructed assessors to comply with ratio-study standards to value properties. Assuming they did so, the DLGF indicated, "no further adjustment is necessary." In overviews of her annual trending, the Assessor indicated that she examined neighborhoods and that land values were not increased.[4] *Smith testimony; Pet'r Exs. 1-3, 8.*

61. As part of the Assessor's application asking the DLGF to approve her ratio study, she agreed to use base prices from the DLGF's cost schedule for dining/lounge properties. Those base prices ranged from $85.70/SF to $94.45/SF, which the Assessor increased by 40% when she applied a "B+2" quality grade. Smith criticized Hall's use of MVS cost data because it produced significantly higher base prices than the DLGF's cost schedules, although he acknowledged that the DLGF's guidelines do not prohibit using MVS cost data in assessment appeals. *Smith testimony; Pet'r Exs. 2-3, 13.*

62. In passing, Smith testified that L&R had given the PTABOA an appraisal from the Pillar Valuation Group valuing the property at $1.45 million and an insurance quote estimating the building's replacement cost at $744,000 (rounded). Those documents are included in Petitioner's Exhibit 12. *See Smith testimony and argument; Pet'r Ex. 12*.

[4] The 2015 overview actually says: "As required in the General Reassessment, new land values were established in July 2011 and have been implemented since that time. No other changes have been made to the land order since that time, except in the neighborhoods where market data indicated the need for an adjustment." *Pet'r Ex. 6.* The 2016 overview includes very similar language. *Pet'r Ex. 7*.

63. The Pillar appraisal contains a bolded statement explaining that the rationale for how the appraiser arrived at her opinions "may not be understood properly without additional information in the appraiser's workfile." The report itself does little to explain the appraiser's underlying analyses, such as how she determined her adjustments under the sales-comparison approach or how she determined market rents and expenses or an appropriate capitalization rate under the income approach. The insurance quote appears to have been generated by software from "Marshall & Swift/Boeckh, LLC and its licensors." It includes a few inputs regarding the building's finish and mechanicals but no other analysis. It also includes a disclaimer saying, "Costs represent general estimates which are not to be considered a detailed quantity survey. These costs include generalities and assumptions that are common to the types of structures represented in the software." *Pet'r Ex. 12*.

IV. ANALYSIS AND CONCLUSIONS OF LAW

A. Burden of Proof

64. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof 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. I .C. § 6-1.1-15-17.2(b), (d).

65. The Assessor stipulated that she had the burden of proof for 2015. Assigning the burden of proof for 2016 depends on our determination for 2015. The question is largely moot, however. Assigning the burden of proof becomes a central issue only where the parties fail to offer probative evidence from which to determine the appealed property's true tax value. As discussed below, we have sufficient probative evidence to make that determination in these appeals.

B. True Tax Value

66. Indiana assesses property based on its "true tax value," which is determined under the rules of the 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." I.C. § 6-1.1-31-6(c) and (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. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

67. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2015, the valuation date was March 1, 2015; for 2016, the valuation date was January 1, 2016. I.C. § 6-1.1-2-1.5(a).

C. Expert Opinions

68. Each party offered a USPAP-compliant appraisal prepared by a qualified appraiser. We must therefore weigh the evidence to determine which party presented the most credible opinion of the subject property's true tax value for each year.

1. Hall's Appraisal

69. Hall developed all three recognized valuation approaches and testified that he followed generally accepted appraisal principles in applying them. He gave similar weight to his conclusions from each approach in reaching his final opinions of value. Because we do not find his valuation opinions under the sales-comparison or income approaches

convincing, his reconciled value conclusions are not reliable indicators of value. Nevertheless, we find his conclusions under the cost approach to be the most persuasive evidence of the property's true tax value.

a. Hall's Cost Approach

70. L&R challenged few aspects of Hall's cost approach. Smith attempted to cast doubt on Hall's land valuation, claiming that the Assessor did not increase land values for 2015 and 2016 as part of the annual adjustment process. That may be relevant to how the Assessor applied (or should have applied) the DLGF's assessment regulations and guidelines for mass appraisal. Under our current assessment and appeal system, however, true tax value is no longer determined by strictly applying those regulations and guidelines. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (explaining that strict application of the DLGF's regulations is not enough to make a prima facie case that an assessment is incorrect and laying out types of market-based evidence that may be used to show a property's market value-in-use). Instead, the focus has shifted to "examining whether a property's assessed value actually reflects the external benchmark of market value-in-use." *Westfield Golf Practice Ctr. v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007).

71. L&R did little else to dispute the validity of Hall's land valuation. To the contrary, Correll believed that Hall's land valuation was "excellent" and that he based it on "great data." We agree. Hall used four comparable land sales located relatively close to the subject property, and he adjusted the sale prices to account for relevant differences in market conditions, location, and physical characteristics. Thus, we find Hall's opinion of the subject land's value highly probative.

72. L&R similarly did little to criticize Hall's replacement cost for the building and site improvements. Correll agreed that Hall accurately described the building's features, but that was the extent of his observations about Hall's analysis under the cost approach. While Smith complained that the base costs from MVS were higher than the base costs

from the DLGF's cost schedules, he admitted that the DLGF's guidelines do not prohibit the use of MVS cost data in assessment appeals. Indeed, as explained above, a party cannot make a case on appeal by simply applying the DLGF's assessment guidelines. L&R's arguments that the PTABOA erred in changing the building's effective age, grade, and condition and that those changes did not comply with the DLGF's ratio study guidance are similarly misplaced in the face of probative market-based evidence.

73. We do have some concerns with Hall's estimates of indirect costs and entrepreneurial profit. While we have little reason to question his decision to include those items, Hall did not do much to support how he quantified them. For indirect costs, Hall simply estimated a 10% allowance without explaining why that is an appropriate amount. He offered slightly more support for his estimate of entrepreneurial profit, explaining that he had reviewed budgets and surveyed developers about their expected returns and that based on the subject property's quality and risk level, he thought a suitable range was 10-20%. But he failed to explain what it was about those things that led him to settle on a 15% allowance for entrepreneurial profit. When developing a feasibility rent in his income approach, Hall used 10% as the low end and 12% as the high end of the range of return he thought developers would expect for building a similar property. Nonetheless, we find his estimates to be at least minimally credible. And they did not greatly affect his overall value estimate.

74. Thus, while not perfect, Hall adequately supported his conclusions under the cost approach. Given the weaknesses in his analyses under the other two approaches and in Correll's appraisal, we find Hall's conclusions under the cost approach to be the most persuasive evidence of the property's true tax value.

75. In fact, Hall's analysis under the cost approach helps illustrate our doubts about his analyses under the other two approaches. The cost approach, absent allowance for depreciation, tends to set the high end of the expected valuation range because it values the improvements as if *brand new*. So one would expect Hall's sales-comparison and

income approaches, which valued the building as if it was 6 years old in 2015 and 6.5 years old in 2016, to produce lower values. Hall acknowledged as much when he explained why determining feasibility rent provided a check on the reasonableness of his market rent estimate under the income approach.

76. But the opposite was true. Hall's land value plus cost new was $2,435,575 for 2015 and $2,440,123 for 2016. His value conclusions from the sales-comparison approach came in at $2.5 million and $2.56 million for those years, while his conclusions under the income approach were $2.4 million and $2.45 million. Thus, only one of Hall's other valuation methods produced a lower value than his undepreciated values under the cost approach, and it was just $35,575 lower. While one might argue that problem lay in his analysis under the cost approach rather than in his analyses under the other two approaches, there is no support for that notion. Correll agreed that Hall's land valuation was "excellent." And there was little criticism of Hall's calculation of replacement costs, which include healthy amounts for indirect costs and entrepreneurial incentive.

77. Consequently, even if we could not point to specific failings within Hall's analyses under the sales-comparison and income approaches, we would still doubt his conclusions. As it is, we have at least some specific reasons to doubt those analyses. We begin with Hall's sales-comparison analysis.

b. Hall's Sales-Comparison Approach

78. L&R primarily criticized Hall's decision to rely exclusively on leased-fee sales. Hall identified 10 sales of properties with leases in place scattered throughout Indiana. In his view, an appraiser may use leased-fee sales in a fee-simple valuation. If the properties are leased at market rent, the appraiser may use the sales without any adjustment for property rights conveyed. If the properties are not leased at market rent, they may still be used with an appropriate adjustment.

79. But Hall did little to show that the seven leased-fee sales he treated as being leased at market rent actually were leased at market rent or that he made appropriate adjustments for the three properties that he determined were not leased at market rent. He offered little support for his estimated market range. Although he testified that he performed a "separate and distinct analysis" using some unspecified properties from his income approach as well as 7-10 additional properties, he offered no details about any of the properties he supposedly analyzed. Thus, he failed to convince us that his estimated market ranges accurately captured rental rates for properties similar to his leased-fee sales.

80. Hall protested that including the data he relied on for his market-rent analysis would have added "another 50 pages" to his report. The Assessor similarly argued that requiring more analysis than Hall provided here would entail performing an appraisal for each property, effectively disallowing leased-fee sales. *Resp't Brief at 27.* We disagree. Nothing we have said would necessarily require an appraiser to include in his report all the data on which he bases his opinion. But where key judgments underlying that opinion are questioned, the appraiser should be prepared to address those questions. In the context of a given case, that may require the sponsoring party to offer portions of the appraiser's file as evidence and the appraiser to explain his analysis of that data.

81. Furthermore, Hall could not confirm the contract rent for two of his comparable sales, yet he still concluded they were leased at market rent. While he offered at least some support for his conclusion regarding one of those sales (the Angola Applebee's) he simply asserted that there was no evidence that rent for the other property (the Anderson IHOP) was outside its market range. Even if we were to assume that Hall had supported his estimate of the market-rent range for each comparable sale, his 10% upward adjustment for the Applebee's from Evansville (Sale 8) did not suffice to bring its contract rent within Hall's estimated market range.

82. While Hall also considered two additional sales from the Greenfield market—an Applebee's and a Bob Evans—neither supports his value conclusions. Despite both properties being leased-fee sales, Hall did not even attempt to demonstrate that their lease rates were equivalent to market rent. Nor did he attempt to adjust them for any of the relevant differences discussed above, or to relate their sales prices to the relevant valuation date. And we are confused by Hall's decision to include the Bob Evans, which he admitted was not a valid substitute for the subject property and which came with the added complication of being part of a sale-leaseback transaction involving 26 other properties. Even absent any of these issues, we fail to see how taking the simple average of their unadjusted sale prices lends support to Hall's value conclusions.

83. In her brief, the Assessor acknowledged that the sales-comparison approach is "the least reliable valuation method" in this case. *Resp't Brief at 24.* Because Hall failed to convincingly show that he valued the fee-simple interest in the property, we agree. In any case, given that Hall's value conclusions were higher than the cost of building brand new improvements on comparable land, we would still harbor doubts about whether he properly adjusted his comparable sales.

c. Hall's Income Approach

84. L&R also criticized several aspects of Hall's analysis under the income approach. First, it pointed to his failure to use local data in estimating market rent. Second, it argued that leases to national restaurant chains with high credit ratings did not accurately reflect the amount for which the subject property would rent. Finally, it claimed that using data from national chains skewed Hall's selection of a capitalization rate.

85. We are not overly concerned by L&R's first two criticisms. Although local data is preferable, we credit Hall's testimony that there were not enough similar properties in the local market. Indeed, Correll did not use local properties in his limited attempt to compare the subject property's contract rent to the market. And we fail to see why properties leased by national chains with high credit ratings are necessarily incomparable

to the subject property. Hall testified that none of the leases was the product of a sale-leaseback transaction, so there is nothing to show that the lease rates were vehicles through which lessees used their creditworthiness as leverage to generate business capital from investors. Granted, Montana Mike's Steakhouse may not be comparable to those other tenants. But we are concerned with the value of the fee-simple interest in the subject property, not its value as leased for the operation of a Montana Mike's Steakhouse. The subject property is in a prime retail location and has a relatively new building with high-quality design and construction. Hall persuasively explained that it likely would compete for quality tenants that operate casual-dining restaurants, including national chains.

86. Of course, that does not mean that the properties Hall chose were particularly comparable to the subject property or that his qualitative analysis adequately accounted for locational or other relevant differences. It just means that the mere use of properties outside of the Greenfield market that were leased to creditworthy tenants does not, by itself, seriously impeach Hall's conclusions about market rent.

87. We have more concerns with Hall's capitalization rate, although not necessarily based solely on his use of sales involving properties leased to national chains or creditworthy tenants. Hall neither accounted for vacancy and collection loss in estimating NOI nor loaded his capitalization rate to account for the owner's share of property taxes during periods of vacancy. He justified his approach on grounds that his capitalization rate implicitly reflected the risk of future vacancy. While he claimed that his approach was consistent with the way the market derives capitalization rates, he did not explain how.

88. We might posit some reasons. Perhaps Hall meant that capitalization rates extracted from sales of single-tenant properties like the subject property and rates for that property type published in investor surveys are based on actual NOI without allowances for vacancy. If so, it is not readily apparent why that logic would apply to a rate determined through the band-of-investment method, which Hall also used. Given that appraisers routinely

account for vacancy and collection loss in estimating NOI and load overall rates with the landlord's share of property taxes when appraising properties in assessment appeals, we are uncomfortable with being left to guess at the support underlying Hall's methodology in departing from that practice.

89. We have fewer specific reasons to doubt Hall's conclusions under the income approach than we have to doubt his conclusions under the sales-comparison approach. But the income approach requires an appraiser to make many judgments that may significantly affect his overall value conclusions. Hall's conclusions under the income approach for 2015 were barely lower than the cost of building brand new improvements on comparable land and his conclusions for 2016 were actually higher than that amount. Our inability to pinpoint exactly why Hall's analysis under the income approach overestimated the property's value does not change our conclusion that it likely did so.

2. Correll's Appraisal

90. Although Correll reached the exact same value conclusions under both the income and sales-comparison approaches, his analyses under both approaches suffer from problems that significantly detract from their reliability. We therefore give little weight to his valuation conclusions.

a. Correll's Sales-Comparison Approach

91. The Assessor primarily objects to Correll's use of vacant properties, arguing that properties that are vacant at the time of sale do not reflect the utility of a property that is occupied and producing rental income. The Tax Court has repeatedly rejected this argument, holding that it is not necessarily improper to consider vacant properties as comparable to occupied properties because market value-in-use measures the value of a property for its use and not of its use. *E.g., Meijer Stores Ltd. P'ship v. Smith*, 926 N.E.2d 1134, 1137 (Ind. Tax Ct. 2010); *Stinson*, 923 N.E.2d 496, 501; *Shelby Cnty. Ass'r v. CVS Pharmacy, Inc. #6637-02,* 994 N.E.2d 350, 354 (Ind. Tax Ct. 2013); and *Marion Cnty. Ass'r v. Washington Square Mall*, 46 N.E.3d 1, 9-10 (Ind. Tax Ct. 2015).

92. But we agree with the Assessor that Correll did not do much to show that his comparable properties were sufficiently similar to the subject property to serve as adequate substitutes. Correll's first two sales were from an area that was suffering from significant problems with vacancy. And the immediate area does not appear to have similar demand generators as the subject property's location. Correll's explanation for why he did not make a location adjustment—that sales were from superior market but had "access" issues—does little to allay those concerns.

93. Indeed, Correll justified many of his adjustments, especially those relating to location, solely by referring to his experience and judgment rather than to market data. While appraisers undoubtedly must rely on their experience and judgment in valuing a property, they cannot do so as a substitute for using market data. Instead, they must explain how they exercised their judgment in light of the data that was available to them. Correll repeatedly failed to do that. In some instances, he did not even bother to justify his adjustments at all. For example, he replied to a question about whether he had done a paired-sales analysis with, "the adjustment is the analysis." In light of the cavalier manner in which Correll attempted to explain his adjustments, we give little weight to his sales-comparison analysis.

b. Correll's Income Approach

94. Turning to Correll's analysis under the income approach, the Assessor criticized, among other things, Correll's use of the subject property's actual lease rate to determine NOI and his estimated capitalization rates. Those concerns are valid, and they undermine the reliability of Correll's conclusions.

95. As for Correll's decision to use the subject property's contract rent to estimate NOI, the Tax Court has explained, "to provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income, expenses, and occupancy rates for the subject property, *but the income, expenses and*

occupancy rates of comparable properties in the market as well." *Indiana MHC, LLC v. Scott Cnty. Ass'r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (emphasis added). Thus, while appraisers should examine a property's actual income, they must compare that income to the market.

96. Correll claimed that he did just that when he reviewed market lease rates for three restaurant properties with triple-net leases. But he admitted that he did not review the actual leases, vacancy rates, or ownership for those properties. More importantly, he did not explain how those restaurants actually compared to the subject property, and he failed to adjust their lease rates to account for any relevant differences. Given his acknowledgement (correct or not) that he should not have used the Panera Bread lease, Correll effectively based his conclusion on a sample size of two. We are skeptical that such a small sample size gave him sufficient information to estimate market rent reliably. We therefore find that he failed to meaningfully analyze whether the subject property's contract rent was at market level.

97. That failure is particularly troubling given the circumstances surrounding the subject property's lease. While Correll believed the lease was negotiated at arm's length, he could not coherently identify the entity that operated the Montana Mike's Steakhouse (presumably Hoosier Mike's) or explain Rohrer's concurrent ownership interests in that entity and L&R. In any case, Rohrer had an ownership interest in both entities. That raises significant concern that the parties to the lease did not negotiate at arm's length. *See Millennium Real Estate Investment, LLC v. Benton Cnty. Ass'r*, 979 N.E.2d 192, 195 (Ind. Tax Ct. 2012), *review den*. (finding that a sale price lacked probative value where, among other things, "the arm's length nature of the sale is questionable because at least two of the parties to the transaction appear to be related."). Correll did little to dispel that concern. Simply testifying that Rohrer told him "we actually negotiated this" without relating any specifics about the negotiation does nothing to show that L&R and Hoosier Mike's acted solely in their own best interests.

98. Finally, we find that Correll failed to persuasively support his range of capitalization rates. All six of the properties Correll selected to develop an appropriate range of cap rates were merely listings—none was a consummated lease. Correll acknowledged that the owners could list their properties with any asking rate. And he selected properties throughout the country without explaining whether they were from markets that were similar to the market in which the subject property competed. Instead, he simply claimed that location does not matter, without explaining why that is true.

99. In sum, Correll determined NOI based on contract rent from a lease that may not have been negotiated at arm's length, without meaningfully comparing that rent to the market. And he capitalized that NOI using a rate he did little to support. We therefore give his conclusions under the income approach no weight.

c. Correll's Appraisal as a Whole

100. Our concerns with Correll's appraisal extend beyond the specific shortcomings in his analyses under the sales-comparison and income approaches. We find his reasons for not developing the cost approach troubling. We have no qualms with the notion that, due to the difficulties in quantifying depreciation, the cost approach may not be particularly helpful in valuing properties with older improvements. But the subject restaurant was built in 2003 and was substantially renovated in 2006. Yet Correll's estimates under the sales-comparison and income approaches implicitly reflected enormous depreciation. Given Hall's admittedly "excellent" estimate of the site value, the contributory value of the improvements under Correll's sales-comparison and income approaches was $450,000 to $470,000, or less than 30% of Hall's estimate of their replacement costs new. If nothing else, developing the cost approach might have helped Correll either isolate the causes of that depreciation, or led him to reconsider some of his judgments under the other two approaches.

101. Correll's failure to develop the cost approach is just one more illustration of a general lack of thoroughness and reliability in his appraisal. He seemed unfamiliar with basic

data relating to the comparable properties he used in his sales-comparison analysis. For example, he did not know the demographics of the areas surrounding those properties or who owned them. And he either did not know, or could not straightforwardly convey, information about the entity that operated the Montana Mike's Steakhouse or any details surrounding the common ownership of that entity and L&R. We have already explained why that common ownership raises concerns about whether the lease was negotiated at arm's length. But Correll's inability to address the issue cogently also speaks to his general lack of credibility.

D. Other Evidence

102. Finally, L&R offered the Pillar appraisal and insurance quote, both of which addressed the subject property's value. Neither of those items is probative. Smith mentioned them only in passing. *See Long*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) *(quoting Clark v. Dep't of Local Gov't Fin.,* 779 N.E.2d 1277, 1282 n.4 (Ind. Tax Ct. 2002) ("[I]t is the taxpayer's duty to walk the [Board] through every element of [its] analysis."). In any case, both documents are too conclusory to carry any weight.

V. CONCLUSION

103. We have two appraisals, both of which are flawed, although one significantly more than the other. Ultimately, we find Hall generally more credible than Correll, and Hall's estimate under the cost approach more persuasive than his estimates under the other two approaches or his reconciled opinion. We therefore order the assessments changed to $2,100,000 for 2015 and $2,070,000 for 2016.

This Final Determination of the above-captioned matter is issued by the Board on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- 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>.