

REPRESENTATIVE FOR PETITIONER:

Beth H. Henkel, Law Office of Beth Henkel, LLC

REPRESENTATIVE FOR RESPONDENT:

Jess Reagan Gastineau, Office of Corporation Counsel

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Square 74 Associates, LLC)	Petition Nos.:	See Attached
)		
Petitioner,)		
)	Parcel Nos.:	See Attached
)		
v.)		
)	Assessment Years:	2010-2018
Marion County Assessor,)		
)		
Respondent.)		

May 20, 2022

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:

I. Introduction

1. The Petitioner, Square 74 Associates, LLC, (“Square 74”) brought these Form 131 petitions concerning restaurant space located in the World of Wonders Garage in downtown Indianapolis. The petitions are part of a larger group of appeals that included Form 133 petitions for correction of error on which both we and the Tax Court have previously issued decisions. *See Square 74 Assocs., LLC v. Marion Cty. Ass’r*, pet. nos. 49-101-08-3-4-00912-16 etc. (IBTR Apr. 18,

2019); *Square 74 Assocs., LLC v. Marion Cty. Ass'r*, 138 N.E.3d 336 (Ind. Tax Ct. 2019).

2. The City of Indianapolis, an exempt entity, owns the garage,¹ and Square 74 is the successor Master Lessee under a Master Lease with the City. Under those circumstances, Ind. Code § 6-1.1-20-37(b) requires that Square 74's "leasehold estate" and appurtenances "be assessed and taxed as if they were real property owned" by Square 74. Square 74 agreed that it had the burden of proof for the 2010 appeal, and the only valuation evidence before us is from Square 74's appraiser, Richard Correll. Contrary to the statute's requirements, however, Correll excluded any value attributable to the land, although he did separately estimate a land value for use in calculating ground rent as an operating expense in his analysis under the income approach. Because we find Correll's valuation of the land and his estimate of the improvements' depreciated replacement costs both to be probative, we add the two together to determine the property's market value-in-use for 2010.

3. Indiana Code § 6-1.1-15-17.2—which has since been repealed, but which was in effect on the date of the hearing and therefore applies to these appeals—governs the burden of proof for the remaining years at issue. Because the parties failed to meet their respective burdens of proof under that statute (the Assessor to show the appealed assessment was correct and Square 74 to show that its proffered assessment was correct) the assessments for those years revert to the level we determined for 2010.

¹ Land and improvements owned by the City are exempt from taxation. I.C. § 6-1.1-10-4 (property owned by a political subdivision is exempt) and I.C. § 6-1.1-1-13 (defining "political subdivision" to include a city or county).

II. Procedural History

4. Square 74 appealed its assessments for 2010 through 2018 (“Years at Issue”). In some instances, the PTABOA issued determinations. In other instances, the PTAOA did not act within statutory deadlines, and Square 74 exercised its right to appeal to the Board without waiting any longer. The assessments under appeal, which in some cases reflect the PTABOA’s determination and in others reflect the original assessment, are as follows:

Assessment Year	Assessment
March 1, 2010	\$5,099,900
March 1, 2011	\$5,099,900
March 1, 2012	\$5,281,900
March 1, 2013	\$5,257,700
March 1, 2014	\$5,257,700
March 1, 2015	\$4,922,600
January 1, 2016	\$4,734,400
January 1, 2017	\$4,801,000
January 1, 2018	\$4,851,500

See Form 131 petitions and attachments.

5. Square 74 timely filed Form 131 and 133 petitions with us.² At the parties’ request, we agreed to address Square 74’s anticipated summary judgment motion on the Form 133 appeals before setting a hearing on the Form 131 petitions. *Joint Case Management Plan*. Subsequently, both parties filed dispositive motions concerning the Form 133 appeals. On April 18, 2019, we issued a final determination that granted the Marion County Assessor’s (“Assessor”) motion, explaining that Square 74’s claims could not be resolved under the Form 133 appeals process because the resolution of the issue depended on the subjective matter of how Square 74’s leasehold estate was to be valued. *Square 74 Associates, LLC v. Marion Cty. Ass’r*, pet. nos. 49-101-08-3-4-00912-16 etc. (IBTR Apr. 18, 2019). We then granted the parties’ request to stay the proceedings on the Form 131 petitions pending the Tax Court’s determination of

² The Form 133 petitions challenged assessments for 2008 through 2011 on multiple parcels.

the Form 133 appeals on judicial review. *Order Granting Unopposed Motion to Stay Proceedings*. Upon review, the Tax Court affirmed the Board's final determination. *Square 74 Assocs. LLC v. Marion Cty. Assessor*, 138 N.E.3d 336 (Ind. Tax Ct. 2019).

6. Beginning March 29, 2021, our designated administrative law judge, David Pardo ("ALJ"), held a two-day hearing on Square 74's Form 131 petitions. Neither the Assessor nor the Board inspected the property. Richard Correll, Joshua Malancuk, and Gregory Dodds were sworn as witnesses.

7. Square 74 offered the following exhibits:

Petitioner's Exhibit P-1:	Appraisal Report of World Wonders Garage Shops Property
Petitioner's Exhibit P-2:	Diagram of Square 74 Participants
Petitioner's Exhibit P-4:	Square 74 Master Lease and Master Lease, Estoppel, Consent & Agreement
Petitioner's Exhibit P-5:	Maintenance & Insurance Responsibility Spreadsheet
Petitioner's Exhibit P-6:	Contract for Assignment of Square 74 Retail Lease
Petitioner's Exhibit P-7:	Extension Agreement – Square 74
Petitioner's Exhibit P-8:	First Amendment to Square 74 Master Lease
Petitioner's Exhibit P-9:	Assignment of Leases – Square 74
Petitioner's Exhibit P-10:	Year End Financials for Square 74 (2009-2018)
Petitioner's Exhibit P-11:	Square 74 Rent Rolls (YE 2009-2017)
Petitioner's Exhibit P-12:	Investor Surveys (2010-2018)
Petitioner's Exhibit P-13:	Rebuttal Exhibits ³

³ When exploring whether the parties would stipulate to the admission of any exhibits, the Respondent indicated that he would object to Petitioner's Exhibit P-3 as hearsay. The ALJ told the Petitioner that it would need to offer that exhibit separately during its case-in-chief and that he would address any objections at that time. The Petitioner never moved to admit the exhibit. *Tr.* at 44, 214-216.

9. The Assessor offered the following exhibits:

Assessor's Exhibit R-1:	PTABOA Exhibits
Assessor's Exhibit R-2:	Comparable Property Record Cards

The record also includes the following: (1) all petitions, motions, and other 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.

III. Background Facts and Property Description

10. Square 74's interest in the leasehold estate was created through the September 30, 1999 Square 74 Master Lease between the Consolidated City of Indianapolis Department of Metropolitan Development ("City"), an exempt governmental entity, and Indianapolis Downtown, Inc. *Pet. Ex. P-4*. Indianapolis Downtown assigned its interest in the Master Lease to Square 74 in exchange for a lump sum payment and annual revenue sharing through 2011 in the form of additional payments to Indianapolis Downtown and the City. The revenue-sharing payments were based on a percentage of net cash flow. *See Pet. Exs. P-4, P-6*.
11. The subject property is comprised of five parcels on the first floor of the World of Wonders Garage that are depicted in exhibits to the Master Lease. The World of Wonders garage has a skyway to Circle Centre Mall. The adjacent parking garage has skyways to PNC Center and the Indiana Convention Center. *Pet. Ex. P-1* at 22, 32.
12. The improvements on all five parcels consist of build outs for the operation of restaurants. Two of the five parcels have frontage on Maryland Street; one has frontage on both Maryland and Illinois Streets; one has frontage on Illinois Street; and one has frontage on both Illinois and Georgia Streets. The parcels have 31,363 square feet of gross building area, and 30,811 square feet of net rentable area per the rent roll. When combined, the total footprint of the land underlying the parcels is approximately .72 acres:

<u>Address</u>	<u>Acres</u>
101 W Maryland St (Steak 'n Shake)	0.12
111 W Maryland St (Dick's Last Resort)	0.15
121 W Maryland St (Noodles & Co.)	0.06
140 S Illinois St (RAM)	0.27
148 S Illinois St (Mikado)	<u>0.11</u>
	0.72

Pet. Ex. P-1 at 7, 22, 32; *Pet. Ex. P-4* at 2, *Tr.* at 63, 68.

13. The Master Lease requires Square 74 to pay real estate taxes on the leased premises and provides in pertinent part:

Real Estate Tax Obligation. Master Tenant shall pay and discharge or cause the Qualified Subtenants to pay and discharge, as and when the same become due and payable, all Real Estate Taxes assessed for or with respect to the Leased Premises, the leasehold interest of Master Tenant in the Leased Premises, and/or any subleasehold interest in the Leased Premises; provided that Master Tenant shall pay all such Real Estate Taxes directly to the appropriate assessing authority. Master Landlord shall pay and discharge, as and when the same become due and payable, all Real Estate Taxes assessed for or with respect to Square 74 Garage, excluding the Real Estate Taxes assessed for or with respect to the Leased Premises, the leasehold interest of Master Tenant in the Leased Premises, and/or any subleasehold interest in the Leased Premises[.]

Pet. Ex. P-4 at 4.

14. The Master Lease expires on May 31, 2037. *See Pet. Ex. P-4* at 1, 26; *Pet. Ex. P-6*; *Tr.* at 138. When the lease expires, all the leasehold improvements revert to the City. *See Pet. Ex. P-4* at 5 (“Section 10(b) Other Alternations”).
15. Square 74 offered an appraisal report that covered the assessment dates from March 1, 2010 through January 1, 2018. According to the findings contained in the appraisal, the market-value-in-use of the subject property for the Years at Issue are as follows:

<u>Assessment Year</u>	<u>Value</u>
March 1, 2010	\$3,350,000
March 1, 2011	\$3,450,000
March 1, 2012	\$3,500,000
March 1, 2013	\$3,600,000
March 1, 2014	\$3,600,000
March 1, 2015	\$3,500,000
January 1, 2016	\$3,650,000
January 1, 2017	\$3,600,000
January 1, 2018	\$3,650,000

Pet. Ex. P-1 cover letter at 1-2.

IV. Pre-Hearing Motion to Dismiss

16. On March 26, 2021, the Assessor filed a *Motion for Judgment on the Pleadings or to Dismiss* (“Motion to Dismiss”). Square 74 responded by filing a *Motion to Strike and Memorandum in Response to Assessor’s Brief in Support of Motion for Judgment or Dismissal* on March 28, 2021 (“Square 74’s Response”). We did not issue an order addressing either filing prior to the hearing on March 29, 2021.

A. The Assessor’s request to strike the Motion to Dismiss on grounds of laches is moot.

17. Before dealing with the substance of the Assessor’s Motion to Dismiss, we will briefly address its timing. Square 74 asked us to strike the motion, arguing that the doctrine of laches barred the Assessor from filing the motion essentially on the eve of the hearing. We agree that the Assessor’s tardiness in filing the motion is at least partly symptomatic of a general lack of urgency in preparing this case. As explained below, however, we deny the Motion to Dismiss on the merits, which moots Square 74’s request to strike the motion.

B. We deny the motion to dismiss on its merits because (1) Square 74 is a taxpayer that is authorized to bring these appeals, and (2) it timely raised the issue of valuation for the Years at Issue under appeal.

18. Citing Indiana Rules of Trial Procedure (“T.R.”) 12(C) and 12(B)(6), the Assessor asserts that Square 74 lacks standing to bring these appeals because it is neither the property

owner nor the tenant responsible for property taxes. Even if Square 74 has standing, the Assessor claims that Square 74 failed to raise the issue of valuation in its Form 131 petitions for 2011-2018 and that we should therefore limit our consideration of that issue to the 2010 appeal. *Motion to Dismiss* at 1-3. We disagree on both counts.

1. We consider Square 74's motion based on the evidence at hearing and without regard to a preliminary or summary disposition standard.

19. The Assessor first claimed that Square 74 lacked "standing." Although the Assessor's Motion referenced T.R. 12(C) and 12(B)(6), our procedural rules provide:

(a) To the extent that they do not conflict with the statutes governing property tax appeals or this title, the **board may consult the trial rules**, and the body of case law developed around them, to assist with handling tax appeals.

(b) The **provisions of the trial rules pertaining to notice pleading and affirmative defenses do not apply to appeals before the board.**

52 IAC 4-4-1 (emphasis added).⁴ Thus, T.R. 12(B)(6) and 12(C), both of which pertain to notice pleading, do not directly apply to appeals before us. That is particularly true for T.R. 12(C), which considers responsive pleadings, something for which there is no analog under our rules. For challenges that might be resolved prior to a full evidentiary hearing, our rules expressly contemplate some forms of summary dismissal, including dismissing a defective appeal petition for failure "to state a claim upon which relief can be granted." 52 IAC 4-9-5(a)(3).⁵ Under these circumstances, we consider the Assessor's motion in light of the evidence adduced at trial and without regard to a preliminary or summary disposition standard.

⁴ Before the adoption of 52 IAC 4-4-1 in 2020, our rules provided that "[t]he Indiana Rules of Trial Procedure may be applied to the extent that the trial rules do not conflict with the statutes governing property tax appeals or this title." 52 IAC 2-1-2.1 (repealed May 15, 2020).

⁵ Prior to the adoption of 52 IAC 4-9-5 in 2020, the Board had adopted 52 IAC 2-10-2, which contained similar language.

2. Square 74 is a taxpayer authorized by Ind. Code § 6-1.1-10-37(b) to appeal its assessment.

20. The Assessor argues that Square 74 lacks standing to bring these appeals. As the Tax Court recently reaffirmed, the judicial doctrine of standing does not apply in determining whether a complaining party is the proper person to invoke administrative review. *Marion Cty. Ass'r v. Kohl's Ind., LP*, 179 N.E.3d 1, 6 (Ind. Tax Ct. 2021) (citing *Huffman v. Office of Env't Adjudication*, 811 N.E.2d 806, 809 (Ind. 2004)). Instead, Chapter 15's appeal provisions govern who may pursue property tax appeals. *Id.*
21. The statutes governing appeals to the PTABOA (Ind. Code § 6-1.1-15-1 through 2017 and Ind. Code § 6-1.1-15-1.1 going forward) and to the Board (Ind. Code § 6-1.1-15-3) provide that a "taxpayer" may obtain review. I.C. §§ 6-1.1-15-1 (repealed 2017) -1.1, -3; *Kohl's*, 179 N.E.3d at 6-7. At the time Square 74 filed these appeals, the property tax appeal statutes did not define the term "taxpayer."⁶ Absent an express statutory definition, the Tax Court in *Kohl's* held that "the very same persons who are subject to or liable to pay real property tax assessments were also intended as the 'taxpayers' authorized to pursue an appeal of those assessments under Sections 15-1 and 15-3." *Kohl's* 170 N.E.3d at 8.
22. According to the Assessor, Square 74 acknowledged that it was neither the property's owner nor its tenant. But that does not foreclose any set of facts that would make Square 74 liable to pay taxes on the assessments, and hence, a taxpayer. So even if we were constrained by T.R. 12(B)(6) and case law interpreting that rule, we would not grant the Assessor's motion. *See Gilday & Assoc. v. Marion Cty. Ass'r*, 176 N.E.3d 1000, 1005-6 (Ind. Tax Ct. 2021) (applying T.R. 12(B)(6) standard and explaining that dismissal would be affirmed only if Form 131s stated "a set of facts, which, if true, clearly demonstrate

⁶ Effective July 1, 2022, Ind. Code § 6-1.1-15-.08, added by P.L. 174-2022, defines taxpayer as "(1) an owner of the property at the time of the issuance of the assessment or tax bill; (2) a person statutorily or contractually obligated to pay property taxes on the property; or (3) a tenant obligated under a lease to reimburse the owner for property taxes on the property."

that it was not entitled to the relief requested under any theory or basis found on the face” of the petition.).

23. In any case, the evidence submitted by Square 74 both in its response to the Motion to Dismiss and at hearing demonstrates that it was a taxpayer within the meaning of the relevant appeal statutes. Crucial to this analysis is Ind. Code § 6-1.1-20-37(b), which treats non-exempt lessees who lease property from exempt entities as property owners for purposes of assessment and taxation:

If real property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the real property does not make it taxable, the leasehold estate and the appurtenances to the leasehold estate shall be assessed and taxed as if they were real property owned by the lessee or his assignee.

I.C. § 6-1.1-10-37(b). Furthermore, as previously noted, the Master Lease requires Square 74 to pay real estate taxes on the leased premises. *Pet. Ex. P-4* at 4.

24. Real property owned by a political subdivision is exempt from taxation. I.C. § 6-1.1-10-4. (“Except as otherwise provided by law, the property owned by a political subdivision of this state is exempt from property taxation.”). A political subdivision, the City of Indianapolis, held title to the subject property. The City entered a Master Lease with Indianapolis Downtown, which assigned its rights under that lease to Square 74. Neither party points to any authority to support the proposition that property of Indianapolis Downtown or Square 74 is exempt. Likewise, neither party provided any authority to support the notion that the City’s act of leasing out the property otherwise makes the property taxable. Thus, Ind. Code § 6-1.1-10-37(b) applies on its face and Square 74 is 1) treated as the property’s owner for purposes of the property tax code, and 2) both statutorily and contractually liable for the taxes assessed. Square 74 therefore qualifies as a taxpayer.

3. Square 74 timely raised assessed valuation as an issue for all the years under appeal.

25. The Assessor claims that even if Square 74 has “standing,” we should preclude it from claiming that the 2011-2018 assessments fail to accurately reflect the property’s market value-in-use and exclude Correll’s appraisal to the extent it estimates the property’s value for those years. According to the Assessor, Square 74 attached a “Form 131 Explanation of Appeal Merits” to all its petitions. That attachment “lead[] into a separately revised cost analysis” describing specific corrections that Square 74 sought. Only the 2010 petitions contained an additional paragraph alleging that the property was assessed for more than its market value-in-use, as shown by an appraisal. *Respondent’s Motion* at 4-5.
26. The Assessor therefore argues that allowing Square 74 to contest the property’s market value-in-use for 2011-2018 would violate statutory and regulatory rules, which taken together, require taxpayers to 1) use our prescribed Form 131 for bringing an appeal, and 2) specify all the reasons they believe an assessment is erroneous. To add any new claims, argues the Assessor, a taxpayer must amend its appeal petitions. According to the Assessor, it would be prejudiced if we allow Square 74 to address the property’s market value in use for 2011-2018, without Square 74 either raising that issue in its original petitions or amending the petitions to include that issue. The Assessor argues that if Square 74 had properly raised the issue, he would have prepared his case differently. *See Motion to Dismiss* at 4-5 (*citing e.g.*, I.C. § 6-1.1-15-3(e); 52 IAC 2-5-2 (repealed May 15, 2020); 52 IAC 4-5-4 (filed May 15, 2020)).
27. We disagree. Neither the appeal statutes nor our procedural rules call for notice pleading comparable to what the trial rules require.⁷ We look at all the allegations—not just those contained in a taxpayer’s Form 131 petitions. And as Square 74 explained in its post-hearing brief, the Assessor had long been on notice that Square 74 intended to offer appraisals covering assessment years past 2010. *See Brief of Square 74* at 4-5.

⁷ Our procedural rules now affirmatively state that the “provisions of the trial rules pertaining to notice pleading . . . do not apply to appeals before the board.” 52 IAC 4-4-1(b) (filed May 15, 2020).

28. But even if we were to limit our review of the issues raised to the Form 131 petitions and attachments, we would find that Square 74 raised the issue of whether the property's assessment accurately reflected its market value-in-use. As the Assessor acknowledges, the 2010 Form 131s include language alleging that the assessments exceed the property's market value-in-use. In its 2011-2018 Form 131s, Square 74 expanded on that claim by including an eight-page "Legal Opinion Memorandum" detailing its concerns. That memorandum raises numerous issues, such as explaining that the "determination of the appropriate method for assessing and valuing the leasehold interest is a matter both of appraisal practice and of legal analysis." The memorandum continues by offering legal authorities that "may provide some guidance to the appraiser in determining the appropriate method to develop an opinion of the value for the subject property." Thus, any claims of prejudice or surprise from the Assessor are meritless. *2011-2018 Form 131s, Legal Opinion Memorandum at 6-8.*

V. Objections

29. The Assessor objected to Exhibit P-1, Correll's appraisal, as irrelevant and outside the scope of the petitions for years beyond 2010. The Assessor also objected to the exhibit as hearsay, but ultimately withdrew his hearsay objection. The ALJ took the objections under advisement. *Tr.* at 43-47, 54-55, 58, 62. We overrule the objections. The exhibit is clearly relevant because it sets forth Correll's value opinions for the subject property. And as we have already explained, Square 74 raised valuation as an issue for all the years under appeal.

30. The Assessor objected to the admission of Exhibit P-5, a "Maintenance & Insurance Responsibility Spreadsheet," arguing that it was hearsay and that Square 74 had not laid a foundation for its admission. The ALJ took the objection under advisement. Square 74 subsequently laid a foundation for the exhibit by calling Joshua Malancuk, who testified that "my team prepared it under my supervision[.]" *Tr.* at 183-85, 210. As for the Assessor's hearsay objection, we may admit hearsay with one caveat: if the opposing party properly objects to the hearsay and it does not fall within a recognized exception to

the hearsay rule, we cannot base our determination solely on that evidence. *See* 52 IAC 4-6-9(d). As we do not solely base our decision on Exhibit P-5, we overrule the objection and admit the exhibit.

31. The Assessor objected to Exhibit P-12, a collection of investor surveys, on relevancy grounds. According to the Assessor, Square 74's witness Richard Correll claimed that not all the information contained in the exhibit was necessary to support Correll's appraisal. In response, Correll testified that he used all the materials in Exhibit P-12 in developing his appraisal. The ALJ overruled the relevancy objection during the hearing. Evidence is relevant if it tends to make a fact of consequence "more or less probable than it would be without the evidence." Ind. Evid. R. 401. "This often includes facts that merely fill in helpful background information . . . even though they may only be tangentially related to the issues presented." *Hill v. Gephart*, 62 N.E.3d 408, 410 (Ind. Ct. App. 2016). We find that the exhibit meets that threshold and adopt the ALJ's ruling. *Tr.* at 180-182.
32. During the Assessor's cross-examination of Malancuk, Square 74 objected to a line of questioning concerning a third party's prior involvement in the appraisal process on grounds that it was outside the scope of direct examination. The ALJ overruled the objection on expediency grounds, reasoning that even if the topic was outside the scope of direct, the Assessor could simply call Malacuk in his case-in-chief and ask the same questions. We adopt his ruling. *Tr.* at 217-218.
33. Square 74 objected to pages 9-16 and 17-21 of Exhibit R-1. Regarding pages 9-16—a Form 134 joint report of settlement and property record card for another downtown Indianapolis property occupied by Kilroy's sports bar—Square 74 asserted that evidence regarding the settlement of an appeal involving another property is inadmissible to prove the value of the subject property. It also objected to those pages on relevancy grounds. Regarding pages 17-21—assessment and tax information for another Marion County property—Square 74 made a relevance objection, arguing that the information was

derived from a different assessment system that predated the Years at Issue. *Tr.* 257, 263-264, 268, 272-276, 281-283, 285-289.

34. In response to Square 74's objections to Exhibit R-1, the Assessor noted that pages 9-16 are public records, and that the settlement information and property record card together are necessary to show a full picture of the property, which it argued was comparable to the subject property. According to the Assessor, the existence of a settlement was irrelevant. As for pages 17-21, the Assessor claimed that the documents were relevant because they assisted his witness, Gregory Dodds, recall various historical details about other government-owned properties that had been leased by private enterprises. *Tr.* at 273-276, 282-283.
35. We have repeatedly rejected attempts to use evidence of settlement negotiations to prove value. Our state's Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). Pages 9-10 show the terms of settlement for a taxpayer's appeal. We therefore sustain the objection as to those two pages. We find that pages 11-16 meet the low threshold for relevance and admit those pages.
36. Regarding pages 17-21, we agree with Square 74 to the extent that information does not pertain to the years at issue in this matter. Nevertheless, we find that pages 17-21 satisfy the low threshold for relevance and overrule the objection as to those pages.
37. During Square 74's cross-examination of Dodds, the Assessor objected to a question concerning the adherence to USPAP by certain individuals in the performance of their duties. Although the Assessor objected to the question on grounds that it had already been asked and answered, the ALJ found that it was a different question and overruled the objection. We adopt his ruling. *Tr.* at 306.

VI. Findings of Fact

A. Square 74's appraisal and related analysis.

38. Square 74 offered an appraisal of its leasehold interest in the subject property. The appraisal was prepared by Richard Correll, a certified general appraiser with over 30 years of experience who has appraised over 10,000 properties, including many retail properties, and Jason G. King, a member of the Appraisal Institute ("MAI") and Accredited Senior Appraiser ("ASA"). They certified that they prepared the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"), and it covered the assessment dates from March 1, 2010, through January 1, 2018. For ease of reference, we will refer to the appraisal and accompanying opinions as Correll's. *Pet. Ex. P-1 cover letter at 1-2; Tr. at 48-53.*
39. According to Correll, the subject property has several characteristics that make it unique. For example, it is in an urban location and on the ground floor of an eight-level parking garage that is exempt from property tax because the garage and the land beneath are owned by the City. *Tr. at 50-51.* Additionally, the property is in a good location with great access to the offices and "to nearby shopping, dining, ... the recreation and amenities of our downtown district." *Tr. at 77-78.* Correll described the Master Lease as a preferential ground lease at [REDACTED] with cash-sharing and income-sharing over a period of twelve years, as detailed in the separate Contract for Assignment of Square 74 Retail Lease. *Pet. Ex. P-4 at 3; Pet. Ex. P-6; Tr. at 63-64.*
40. Correll explained that he did not determine the value of the lease to the Master Tenant or to the Master Landlord. Instead, he determined the "fee simple" value of the leasehold interest in the property. *Tr. at 66.* Correll considered all three generally recognized valuation approaches: the cost, sales-comparison, and income approaches. But he developed only the cost and income approaches, explaining that he could not find sales of any street-level retail or restaurant properties that were part of a larger building in downtown Indianapolis. *Pet. Ex. P-1 at 53.*

1. Correll's cost approach.

41. Correll explained that the cost approach is especially useful when analyzing properties like the subject property because it accounts for the two components of real property value: improvements and land. Specifically, that approach analyzes the cost of the improvements by estimating the cost to develop similar improvements with the same utility as the subject property and then accounts for the value of the land. *Pet. Ex. P-1* at 53, *Tr.* at 65.

a. Correll's decision to exclude land value.

42. Correll, however, did not include land value in his conclusions under the cost approach, which he acknowledged is unusual. *Pet. Ex. P-1* at 54. According to Correll, what Square 74 really had was a fee-simple interest in the improvements on leased land. Those improvements would revert to the landowner and have zero value to Square 74 when the lease terminated:

In all cases when ground lease contracts expire, the leaseholder who has invested in the improvements, in this case it's [REDACTED] billion, they have zero. Those improvements, whatever they are, and they cost millions, they're held hostage by the groundholder.

Everyone is saying leasehold. It is a leasehold, but a leasehold refers a lease and a specific contract, even though a leasehold is okay. What it really is is a fee simple interest in the improvements. That's really what this number is, to be most accurate.

So fee simple of the leasehold improvements, fee simple of the full bundle of rights of the improvements, the cost approach of all improvements depreciated, this is our solid foundation for basis of valuation using that method.

Tr. at 134-35, 137, 139-140.

b. Replacement cost of improvements.

43. After explaining his decision to exclude the value of the land from the cost approach, Correll turned to valuing the improvements. He relied on the Marshall Valuation Cost

Service (“MVCS”) to develop the replacement cost of the subject’s building and site improvements. This service offers two methods: segregated and comparative unit costs. Segregated costs are broken down for various installed building components. Conversely, the comparative unit method estimates costs by dollars per unit of area and is more often used when considering whether to build new or purchase an existing structure. The comparative unit costs include all short and long-life components of a building, architect and engineering fees, costs for normal site preparation such as grading and excavation for the foundation, as well as the contractor’s overhead and profit including job supervision, insurance, and security. Correll chose the comparative unit method. *Pet. Ex. P-1* at 54, *Tr.* at 127-128.

44. Relying on the MVCS cost guide, Correll determined that the sections of the subject property are “good” and “very good” Class C Restaurant properties for purposes of estimating the replacement cost new (“RCN”) for the property’s improvements. The “good” sections fronted Maryland Street and had a base cost of \$172.00 per square foot, while the “very good” sections fronted Illinois Street and had a base cost of \$221.00 per square foot. *Pet. Ex. P-1* at 54-56; *Tr.* at 129-30.
45. Because the improvements were built within a preexisting parking garage structure and lack structural components such as foundations, frame, roof structure, and roof cover, Correll adjusted the base MVCS base costs to exclude those items:

Quality	Good	Very Good
Base cost	\$172.00	\$221.00
Foundation	-\$4.26	-\$4.26
Structural Frame	-\$8.82	-\$8.82
Roof Structure	-\$15.05	-\$15.05
Roof Cover	-\$6.39	-\$6.39
Adjusted Base	\$137.48	\$186.48

Correll then made additional adjustments to account for things like sprinklers, building height, and local costs. *Pet. Ex. P-1* at 55; *Tr.* at 129-30.

46. Next, Correll examined indirect/soft costs that included incidental expenses such as legal fees, professional fees, feasibility studies, environmental reports, and financing expenses during construction, which he estimated at approximately 5% of total hard costs. He also considered entrepreneurial incentive, which he explained allocates a return on the cost of the improvements based on the expectation of an investor. According to Correll, developers of commercial projects like the subject property typically have a profit expectation of at least 15% of cost. But the incentive is upon lease-up of a property, and Correll was analyzing the fee-simple interest. He therefore used entrepreneurial incentive equaling 5% of cost. *Pet. Ex. P-1* at 55, *Tr.* at 130-132.

47. After all adjustments, Correll settled on RCN of \$154.55 per square foot for Maryland Street and \$209.04 per square foot for Illinois Street. Multiplying those rates by the total area for each section, Correll arrived at RCN of \$5,668,937, or \$183.99 s/f for the property. He then applied an inflation factor derived from MVCS's comparative cost indexes to calculate RCN for each valuation date:

Effective Date of Valuation	3/1/2010	3/1/2011	3/1/2012	3/1/2013	3/1/2014	3/1/2015	1/1/2016	1/1/2017	1/1/2018
Inflation Factor	0.79618	0.82305	0.84317	0.87413	0.89767	0.90909	0.90909	0.91912	0.95238
Maryland St. RCN	\$1,743,014	\$1,801,832	\$1,845,890	\$1,913,659	\$1,965,194	\$1,990,205	\$1,990,205	\$2,012,156	\$2,084,977
Illinois St. RCN	\$2,770,471	\$2,863,960	\$2,933,989	\$3,041,705	\$3,123,618	\$3,163,374	\$3,163,374	\$3,198,264	\$3,314,010
Total RCN	\$4,513,485	\$4,665,792	\$4,779,879	\$4,955,365	\$5,088,812	\$5,153,579	\$5,153,579	\$5,210,420	\$5,398,988
RCN/SF	\$143.91	\$148.77	\$152.41	\$158.00	\$162.26	\$164.32	\$164.32	\$166.13	\$172.15

Pet. Ex. P-1 at 56.

c. Depreciation and obsolescence.

48. Correll explained that restaurants “are some of the most heavily depreciable assets because restaurants are a risky business” and have a lot of traffic pressure on use. He

used the age-life method to estimate depreciation. He estimated that the Maryland Street parcels had a total economic life of 35 years. Because the Illinois Street parcels were of a little higher quality, he estimated their economic life at 40 years. Correll, however, explained that if a property is well maintained, its effective age might be lower than its actual age, which would result in less depreciation. He estimated each section's effective age as lower than its actual age for each assessment date and ended up with depreciation ranging from approximately 20% to 37% for the Maryland Street improvements and from 17.5% to 32.5% for the Illinois Street improvements. *Pet. Ex. P-1* at 28-29, 56-57; *Tr.* at 86-87, 128-30.

49. Although Correll concluded that the property did not suffer from functional obsolescence, he “thought that market conditions created some external obsolescence[,]” which he explained is caused by things outside the property. According to Correll, “it’s a deduction in the costs and, potentially, the value based on external events, external pressure.” *Pet. Ex. P-1* at 29, 56; *Tr.* at 88, 132-133. To estimate external obsolescence, Correll examined survey data from *RealtyRates.com* to determine average historical capitalization rates for all types of restaurants. Because his cost data was from 2020, he used the second quarter of that year as a baseline. He then calculated changes in value as indicated by the changing capitalization rates, which he attributed to obsolescence. *Pet. Ex. P-1* at 29; *Tr.* at 132-133. Based on those calculations, Correll estimated obsolescence at 10% for 2010-2015, 5% for 2016-2017, and 0% for 2018. Although page 29 of his appraisal report indicated different percentages for some years, those were typographical errors. The correct percentages are listed on page 57, and those are the ones he applied. *Pet. Ex. P-1* at 29, 56-57; *Tr.* at 129, 132-33, 315-16.

50. The depreciation and obsolescence figures are summarized in the chart below:

Valuation Date	3/1/10	3/1/11	3/1/12	3/1/13	3/1/14	3/1/15	1/1/16	1/1/17	1/1/18
Maryland St. Dep.	20.00%	20.00%	20.00%	20.00%	22.86%	28.57%	28.57%	31.43%	37.14%
Illinois St. Dep.	17.50%	17.50%	17.50%	17.50%	20.00%	25.00%	25.00%	27.50%	32.50%
Obsolescence	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	5.00%	5.00%	0.00%

Pet. Ex. P-1 at 56

d. Overall value under cost approach.

51. After accounting for RCN, depreciation, and obsolescence, Correll arrived at the following values under the cost approach:

Valuation Date	3/1/10	3/1/11	3/1/12	3/1/13	3/1/14	3/1/15	1/1/16	1/1/17	1/1/18
Maryland St. Dep.	20.00%	20.00%	20.00%	20.00%	22.86%	28.57%	28.57%	31.43%	37.14%
Illinois St. Dep.	17.50%	17.50%	17.50%	17.50%	20.00%	25.00%	25.00%	27.50%	32.50%
Obsolescence	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	5.00%	5.00%	0.00%
Maryland St. RCN	\$1,743,014	\$1,801,832	\$1,845,890	\$1,913,659	\$1,965,194	\$1,990,205	\$1,990,205	\$2,012,156	\$2,084,977
Illinois St. RCN	\$2,770,471	\$2,863,960	\$2,933,989	\$3,041,705	\$3,123,618	\$3,163,374	\$3,163,374	\$3,198,264	\$3,314,010
Maryland St. Dep.	(\$348,603)	(\$360,366)	(\$369,178)	(\$382,732)	(\$449,243)	(\$568,602)	(\$568,602)	(\$632,421)	(\$774,361)
Illinois St. Dep.	(\$484,832)	(\$501,193)	(\$513,448)	(\$532,298)	(\$624,724)	(\$790,843)	(\$790,843)	(\$879,523)	(\$1,077,053)
Obsolescence	(\$451,348)	(\$466,579)	(\$477,988)	(\$495,536)	(\$508,881)	(\$515,358)	(\$257,679)	(\$260,521)	\$0
Value	\$3,228,701	\$3,337,653	\$3,419,265	\$3,544,798	\$3,505,964	\$3,278,776	\$3,536,455	\$3,437,956	\$3,547,574
Rounded	\$3,230,000	\$3,340,000	\$3,420,000	\$3,540,000	\$3,510,000	\$3,280,000	\$3,540,000	\$3,440,000	\$3,550,000

Pet. Ex. P-1 at 57.

2. Correll's income approach.

52. Correll next analyzed the property's value under the income capitalization approach. According to Correll, that approach identifies a property's income and resale value capitalized into a current value. Income can be capitalized using direct capitalization or yield capitalization methods. Under direct capitalization, the relationship between one year's income and value is reflected in either a capitalization rate or an income multiplier. Alternatively, yield capitalization "anticipates changes in property income and value over a holding period. Changes in the property's income stream or future value are reflected by specific inputs." *See Pet. Ex. P-1 at 59.*

53. Correll applied both methods, although as explained below, he ultimately determined a value for each year by capitalizing a single year's net operating income using a capitalization rate that he derived by discounting the property's future income streams over the life of the lease. *Pet. Ex. P-1* at 59, 62-65.

a. Potential & effective gross income.

54. Both capitalization methods required Correll to project annual net operating income by first determining potential gross income ("PGI") and effective gross income ("EGI") based on market data and then subtracting estimated operating expenses. The first step in determining the PGI and EGI required Correll to estimate market rent for the property. In determining market rent for the subject property, Correll examined actual rents paid and vacancies incurred at the property during the valuation period. *Pet. Ex. P-1* at 33-34, 60. With one exception, the tenants paid varying levels of Common Area Maintenance ("CAM").

55. The property had vacancy rates ranging from [REDACTED] to [REDACTED] during 2010-2013. The following year, 2014, was the first year in the valuation period with full occupancy. The actual rents ranged from [REDACTED] s/f to [REDACTED] s/f, depending on the space and year. Correll, however, acknowledged that the appraisal was "not valuing the actual performance. We're actually just using that as a backdrop as we make some estimates of projected performance." *Pet. Ex. P-1* at 33, 60. *Tr.* at 98.

56. With the actual rents as a "backdrop," Correll then examined rent from comparable spaces to test whether the subject property's rents were at market level. He acknowledged that it was difficult to find comparable properties, but he ultimately located data from three properties fitting the relevant market segment in downtown Indianapolis. The comparable rents he considered were effective January 1, 2012, to August 1, 2014. *Pet. Ex. P-1* at 35-38, 60; *Tr.* at 98, 100.

57. Correll determined that the comparable spaces were in worse condition than the subject property and from inferior locations; both of which required upward adjustments to their rental rates (5% for location and 10% for condition). He also used a market factor of 1.5% per year to adjust the rents to March 1, 2013. The adjusted rents ranged from \$23.11 s/f to \$25.35 s/f, with an average of \$24.37 s/f. Based on the subject property's construction quality and location, Correll settled on market rent of \$24.50 s/f as of March 1, 2013. *Pet. Ex. P-1* at 39; *Tr.* at 101-104.
58. Next, Correll applied his projected unit rent to the subject property's net rentable area (30,811 s/f) to determine PGI as of March 1, 2013. He applied an inflationary factor of 1.5% to estimate PGI for the other valuation dates. To estimate EGI, he adjusted PGI by 10% for vacancy and collection loss each year. He arrived at that adjustment by considering the property's average annual vacancy rate of [REDACTED] between 2010 and 2020, and the collection loss the property experienced during the Great Recession. The following chart shows how Correll arrived at market EGI for each year, as well as how that number compared to the property's historical experience:

Effective Date	Market Rent	S/F	PGI	Vacancy	EGI	Actual
3/1/2010	\$23.41	30,811	\$721,286	10.00%	\$649,157	[REDACTED]
3/1/2011	\$23.77	30,811	\$732,377	10.00%	\$659,140	[REDACTED]
3/1/2012	\$24.13	30,811	\$743,469	10.00%	\$669,122	[REDACTED]
3/1/2013	\$24.50	30,811	\$754,870	10.00%	\$679,383	[REDACTED]
3/1/2014	\$24.87	30,811	\$766,193	10.00%	\$689,573	[REDACTED]
3/1/2015	\$25.24	30,811	\$777,685	10.00%	\$699,917	[REDACTED]
1/1/2016	\$25.62	30,811	\$789,351	10.00%	\$710,416	[REDACTED]
1/1/2017	\$26.00	30,811	\$801,191	10.00%	\$721,072	[REDACTED]
1/1/2018	\$26.39	30,811	\$813,209	10.00%	\$731,888	[REDACTED]
Totals			\$6,899,630		\$6,209,667	[REDACTED]

Correll believed that the property's actual rents supported his market analysis. *Pet. Ex. P-1* at 39, 60; *Tr.* 106, 143.

b. Operating expenses.

59. Having determined EGI, Correll turned to operating expenses. Because he posited a triple-net leasing structure, the tenants would be responsible for all expenses other than management and professional fees, although management would be responsible for fixed expenses, like insurance and real estate taxes, during periods of vacancy. Because he believed that Square 74 leased the underlying land on a ground lease, however, Correll explained that he also needed to subtract the annual market rent under that lease as an expense. *Pet. Ex. P-1* at 61; *Tr.* at 149-50.

i. Ground lease.

60. Correll viewed the actual rental rate for the ground lease, which he described as \$10 plus a revenue-sharing component, as “a very preferential structure since [you] know that downtown is a great place to be.” *Tr.* at 110. He therefore sought to determine a market rate for the ground lease. Unfortunately, he had trouble locating data for comparable ground leases, explaining that “[w]e don’t have anything downtown. It’s all in the outer area.” *Tr.* at 111. Given that difficulty, Correll used an alternate method under which he first estimated the value of the land supporting the subject improvements and then multiplied that value by what he determined was a market-based capitalization rate for ground leases in downtown Indianapolis. *Pet. Ex. P-1* at 40-52.
61. He began by using the sales-comparison approach to value the entire two-acre site. He identified four sales, which occurred over a broad period (1999 to 2016) and included sites ranging from .61 acres to 1.95 acres. One (comparable 3) was an industrial site. He acknowledged that the downtown Indianapolis market for land sales similar to the subject property was limited: “Right off the bat you can see these sales occurred over a wide time frame, and the prices are roughly, you know, 900,000 to 1.5 million or \$11.55 per square foot to almost \$34 per square foot, so 12- to \$34 per square foot is a very large range, and it shows you the data is difficult.”⁸ *Tr.* at 113-14; *see also, Pet. Ex. P-1* at 43-49.

⁸ *P-1* at 44; *Tr.* at 113-14 (the four comparable sales prices ranged from \$850,000 to \$1.35 million per acre: a .62-acre White Castle site that sold in 1999 for \$1,394,000 per acre; a 1.95-acre site on W. South Street, sold in 1999 for

62. Next, Correll adjusted the sale prices to account for differences between the comparable sites and the subject site. He viewed the sales that were located farther away from downtown as inferior and adjusted the sale prices upward. And he adjusted the sale prices for sites that were considerably smaller downward to account for “their smaller economies-of-scale.” He similarly made upward adjustments to account for less desirable zoning. After making all other adjustments, Correll did a sensitivity analysis to determine a market-conditions adjustment that best correlated the data. He settled on a 5% annual appreciation rate. *Pet. Ex. P-1* at 50, *Tr.* at 115-17, 330.
63. The adjusted sale prices ranged from \$27.73 s/f to \$38.16 s/f as of March 1, 2013, with a mean of \$34.45 s/f. The industrial site sold for an adjusted price that was more than \$7 lower than the next lowest adjusted sale, and he gave it little weight. Correll gave the greatest weight to comparable sales 1 and 2, which required the least property adjustments and settled on \$36 s/f or \$3,140,000 for the subject property’s two-acre site. *Pet. Ex. P-1* at 50-51, *Tr.* at 116-117.
64. Of course, Square 74 did not lease the entire site. The footprint of the restaurant spaces comprised only .72 acres. And the restaurant spaces comprised only 4.47% of the total building area in the eight-story structure, although they comprised 36% of the ground-floor space. Reasoning that three quarters of the land value was attributable to the ground-floor space with the remaining quarter attributable to the air rights, Correll valued the proportion of land attributed to the subject property at \$850,000 (rounded) as of March 1, 2013.⁹ *See Pet. Ex. P-1* at 51-52; *Tr.* at 117-18.
65. Next, Correll extracted a capitalization rate from three Indianapolis properties that sold with ground leases in place, although none were from downtown. The rates ranged from

\$794,872 per acre; a 1.75-acre industrial site that sold in 2004 for \$503,300 per acre; and a .918-acre commercial site that sold in 2016 for \$1,471,100 per acre).

⁹ Total Site Value (\$3,140,000) * Percent of Ground Floor Area Controlled by Petitioner (36%) = \$1,130,400 * Percent of Site Value Attributed to Ground Floor (75%) = \$850,000 as of March 1, 2013 (rounded).

4.12% to 5.59%, with an average of 4.91%. Accounting for the strength of the downtown Indianapolis market, Correll believed that an appropriate rate for the subject property's ground lease was between 4.25% and 4.75%, which when applied to the site's total land value yielded annual rent ranging from \$36,125 to \$40,375. Correll settled on \$38,000 or \$1.21 s/f. for 2013. He then applied a 5% annual adjustment across the valuation period and arrived at the following values:¹⁰

Val. Date	3/1/2010	3/1/2011	3/1/2012	3/1/2013	3/1/2014	3/1/2015	1/1/2016	1/1/2017	1/1/2018
Land Val.	\$720,195	\$758,100	\$798,000	\$840,000	\$882,000	\$926,100	\$964,920	\$1,013,166	\$1,063,824
Mkt Ground Rent	\$32,580	\$34,295	\$36,100	\$38,000	\$39,900	\$41,895	\$43,651	\$45,834	\$48,125
Ground Rent/SF	\$1.04	\$1.09	\$1.15	\$1.21	\$1.34	\$1.39	\$1.46	\$1.46	\$1.53

Pet. Ex. P-1 at 52.

ii. Other estimated expenses.

66. For the other operating expenses, Correll considered the actual expenses incurred for the subject property as well as his experience with similar properties and discussions with real estate brokers. He estimated a management fee and legal and professional fees at 4% and 1% of EGI, respectively. Based on discussions with local brokers, he estimated an annual leasing expense as well as an expense for tenant improvements. He also accounted for insurance and maintenance costs during periods of vacancy when those expenses would be the landlord's responsibility. But he did not include property taxes, which he loaded into his capitalization rate. *Pet. Ex. P-1* at 61; *Tr.* at 146-50.

¹⁰ Correll's calculations contain a minor error because the March 1, 2013 value used in his calculations was \$840,000, rather than the \$850,000 figure he had previously calculated for that valuation date. *Pet. Ex. P-1* at 52; *Tr.* at 111-12, 119-21.

c. Calculating net operating income.

67. Based on his income and expense projections, Correll arrived at the following net operating income (“NOI”) for each year during the appraisal period:

		<u>3/1/2010</u>	<u>3/1/2011</u>	<u>3/1/2012</u>	<u>3/1/2013</u>	<u>3/1/2014</u>	<u>3/1/2015</u>	<u>1/1/2016</u>	<u>1/1/2017</u>	<u>1/1/2018</u>
Potential Gross Income		\$721,286	\$732,377	\$743,469	\$754,870	\$766,193	\$777,685	\$789,351	\$801,191	\$813,209
Vacancy & Collection Loss	10.0%	\$72,128.60	\$73,237.70	\$74,346.90	\$75,487.00	\$76,619.30	\$77,768.50	\$78,935.10	\$80,119.10	\$81,320.90
Effective Gross Income		\$649,157	\$659,139	\$669,122	\$679,383	\$689,574	\$699,917	\$710,416	\$721,072	\$731,888
Expenses										
Property Taxes		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance	\$0.20	\$598	\$616	\$635	\$654	\$673	\$694	\$714	\$736	\$758
Management	4%	\$25,966	\$26,366	26,765	\$27,175	\$27,583	\$27,997	\$28,417	\$28,843	\$29,276
Legal & Professional	1%	\$6,492	\$6,591	\$6,691	\$6,794	\$6,896	\$6,999	\$7,104	\$7,211	\$7,319
Miscellaneous	\$1,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Ground Rent		\$32,580	\$34,295	\$36,100	\$38,000	\$39,900	\$41,895	\$43,651	\$45,834	\$48,125
Leasing Expenses		\$72,441	\$72,608	\$72,774	\$72,945	\$73,115	\$73,287	\$73,462	\$73,640	\$73,820
Maintenance	\$0.50	\$1,496	\$1,541	\$1,587	\$1,634	\$1,683	\$1,734	\$1,786	\$1,839	\$1,895
Total Expenses		\$144,573	\$147,016	\$149,552	\$152,202	\$154,850	\$157,606	\$160,134	\$163,103	\$166,192
Cash Flows Before Property Taxes		\$504,584	\$512,123	\$519,570	\$527,181	\$534,723	\$542,311	\$550,282	\$557,969	\$565,696

Pet. Ex. P-1 at 62.

d. Calculating the capitalization rate.

68. Correll’s explanation was confusing regarding how he capitalized his estimated NOI. But it appears that he used both yield and direct capitalization techniques. He estimated both a discount rate and a capitalization rate. To determine an overall capitalization rate, Correll examined 27 restaurant sales throughout the Midwest between 2009 and 2018. Those sales were from the national triple-net investment market and showed that rates were trending downward. Correll also examined survey data from *RealtyRates.com* for all restaurant types. The survey data was broken into quartiles. According to the appraisal report, the third quartile for 2nd quarter 2010 was between 12.36% and 14.31%, although

based on Correll's testimony, it appears that may represent the range between the average rates for the third and fourth quartiles. *Pet. Ex. P-1* at 62-63; *Tr.* at 155-56.

69. Applying the data to the subject property, Correll explained that Square 74 was in a "sandwich lease" position, meaning that it was the lessee of one party (the City) and the landlord of others (the restaurant tenants). According to Correll, "[t]here's no doubt that a sandwich leasehold position is a riskier position" than its fee simple or leased-fee counterparts because when the lease expires, the leaseholder will have no interest in the land or improvements. Considering the risks involved, Correll estimated overall capitalization rates between 13.5% and 14.5% during the valuation period. *Pet. Ex. P-1* at 62-63; *Tr.* at 154-61.

70. Correll also estimated a discount rate to convert future income streams to present value and account for income growth. He explained that a discount rate "reflects the value of money over time, so there's always a relationship between the cap rate and the discount rate. The discount rate is usually high. It's always higher than the cap rate in an increasing income situation." He determined that a discount rate of 15% was appropriate. *Pet. Ex. P-1* at 63; *Tr.* at 164.

71. Correll then estimated the net present value ("NPV") of his projected annual income streams through 2037 (the date when Square 74's last renewal option expired).¹¹ The NPV figures allowed him to extract capitalization rates of 13.85% to 14.41% for the various valuation dates, which were similar to the overall rates that he estimated from *RealtyRates.com* survey data. Correll explained that "if that extracted cap rate [from the cash flow/NPV analysis] didn't parallel what we found at surveys or other methods, in this case it's a survey of rates [the estimated capitalization rates], then we would know something's off." *Pet. Ex. P-1* at 64; *Tr.* at 172-174.

¹¹ For years following the last valuation date, Correll estimated NOI using 2% annual appreciation. *Pet. Ex. P-1* at 64.

72. However, Correll's NOI did not include property taxes as an operating expense during periods of vacancy. He therefore accounted for those taxes by loading the capitalization rate extracted from his NPV analysis with the percentage of the effective tax rate that corresponded to his estimate for vacancy and collection loss. He then capitalized each year's NOI using that loaded rate to arrive at a value estimate for the property:

Year	NOI	NPV	Cap Rate	Tax Rate	Vacancy	Loaded Cap Rate	Market Value-in-use	Rounded
2010	\$504,584	\$3,642,392	13.85%	3.08%	10.00%	14.16%	\$3,563,199	\$3,560,000
2011	\$512,123	\$3,684,166	13.90%	3.11%	10.00%	14.21%	\$3,603,534	\$3,600,000
2012	\$519,570	\$3,724,668	13.95%	3.24%	10.00%	14.27%	\$3,640,036	\$3,640,000
2013	\$527,181	\$3,763,798	14.01%	3.00%	10.00%	14.31%	\$3,685,003	\$3,690,000
2014	\$534,723	\$3,801,187	14.07%	2.92%	10.00%	14.36%	\$3,723,863	\$3,720,000
2015	\$542,311	\$3,836,642	14.14%	3.03%	10.00%	14.44%	\$3,756,196	\$3,760,000
2016	\$550,282	\$3,869,827	14.22%	2.61%	10.00%	14.48%	\$3,800,007	\$3,800,000
2017	\$557,969	\$3,900,020	14.31%	2.75%	10.00%	14.58%	\$3,826,346	\$3,830,000
2018	\$565,696	\$3,927,054	14.41%	3.11%	10.00%	14.72%	\$3,844,091	\$3,840,000

Pet. Ex. P-1 at 65.

3. Correll's reconciliation.

73. In his final reconciliation of the property's market value-in-use, Correll gave more weight to the cost approach, noting that his conclusions under the income approach were founded chiefly on estimated market rents, estimated market ground lease rates, and estimated discount or yield rates without substantial support. His settled on the following values:

Year	Reconciled Value
2010	\$3,350,000
2011	\$3,450,000
2012	\$3,500,000
2013	\$3,600,000
2014	\$3,600,000
2015	\$3,500,000
2016	\$3,650,000
2017	\$3,600,000
2018	\$3,650,000

P-1 at 66; Tr. at 169.

B. Assessor's analysis of the appraisal.

74. Unlike Square 74, the Assessor did not offer a USPAP-compliant appraisal. Instead, he largely repeated one of the arguments from his Motion to Dismiss: that Square 74 did not raise the issue of valuation of the leasehold interest in its Form 131 appeals for 2011-2018. In any case, even if Square 74 did raise that issue, the Assessor argued that the City's leasing of the property either made it taxable, or if it did not make it taxable, that Ind. Code § 6-1.1-10-37(b) required the leasehold estate to be assessed as if it were real property owned by Square 74. Either way, the property must be assessed using the "exact same" standards typically used for valuing property in Indiana. Because Correll departed from those standards by valuing the "'fee simple' value of the leasehold interest," he failed to make a prima facie case for any of the years at issue. *See Assessor's Brief* at 3-6.
75. The Assessor pointed to several statements from Correll about the difficulty posed by valuing the property as further evidence that he departed from typical appraisal standards. Correll repeatedly described the property as "unique," pointing to its location in "an urban downtown center of the city under a preferential land lease property with the kind of private/public partnership structure that started this whole thing." Correll's view of the property's uniqueness prevented him from applying the sales-comparison approach due to the lack of comparable sales data and complicated his analysis under the income approach due to a lack of comparable lease data. And he was estimating a value for nine separate valuation dates. *Resp. Brief* at 6; *Pet. Ex. P-1* at 53; *Tr.* at 63, 65-66, 100-104, 200.
76. Next, the Assessor pointed to what he characterized as Correll's lack of knowledge about the subject property. For example, Correll admitted that he was uncertain about some of the property's characteristics, including how many hotels and other businesses were connected to the parking garage through skywalks and tunnels. The Assessor also questioned Correll's general credibility, pointing to his admission that he and other appraisers have found Indiana's market value-in-use standard "confusing," and his

inability to recall whether we had rejected aspects of his appraisal opinions in other appeals. *Resp. Brief* at 7; *Tr.* at 189, 190-91, 195-97.

77. As for Correll's analysis under the income approach, the Assessor highlighted his admission that authoritative sources have described the discounted-cash-flow method as vulnerable to misuse and as an assumption-laden approach that is prone to errors. Although the Assessor argued that Correll was uncertain about several USPAP standards, he did not point to any specific errors in Correll's discounted-cash-flow analysis or to evidence that Correll had misused that method. *Resp. Brief* at 7; *Tr.* at 200-201.
78. The Assessor also criticized Correll's calculation of external obsolescence. Citing *Meridian Towers E. & W v. Washington Twp. Ass'r*, 805 N.E.2d 475 (Ind. Tax Ct. 2003) and *Lowe's Home Centers, Inc. v. Monroe Cty. Ass'r*, 160 N.E.3d 263 (Ind. Tax Ct. 2020), the Assessor argued that Square 74 had the burden to identify causes of obsolescence and to quantify any obsolescence. According to the Assessor, Square 74 did not meet that burden due to discrepancies in the percentages of obsolescence listed on pages 29, 56, and 57 of Correll's appraisal. *Resp. Brief* at 7.
79. Finally, the Assessor argued that Correll's appraisal was not supported by probative evidence. To explain why, the Assessor offered testimony from Gregory Dodds, a commercial and industrial valuation analyst for the Assessor. Dodds is a Level III assessor-appraiser, which required him to take "the 101 or the Indiana Assessor's Association the IAAO 101, 102, 300, 400, USPAP" and to pass State exams. He has worked for Marion County for almost 32 years, including time with two different township assessors. *Tr.* at 227-29.
80. Dodds took issue with Correll's decision to price the restaurant improvements as two separate sections, one of which he judged as "good" and the other as "very good," when the improvements are all part of the same building and in the same location. Dodds also believed that Correll failed to comply with the assessment guidelines promulgated by the

Department of Local Government Finance (“DLGF”). Specifically, those guidelines explain that the elements of cost include all components of a structure, while Correll excluded features such as foundations, frame, roof structure, and roof cover.¹² The Assessor asserts that we should disregard Correll’s appraisal based on his arbitrary exclusion of these features. *Resp. Brief* at 8; *Tr.* at 299-300.

81. Dodds also criticized the comparable sales that Correll used to estimate the land value for the entire site, and ultimately the contributory value of the land comprising the subject property’s footprint. Dodds testified that:

[F]or another thing, was the land with his comparables, one was an industrial versus this is -- you know, these are commercial properties being in this commercial business district 2, and usually when you make adjustments off of the comparable, if you start making adjustments too high or too low, then you have to figure is it truly a comparable. And, you know, when he's making total difference of 37, 40 percent difference, those truly aren't comparables for this property.

Tr. at 302.

82. Although the Assessor offered, and Dodds discussed, the sales and assessments of a few other properties, Dodds did not perform a sales-comparison analysis. Nor did he offer an opinion of value. *See Resp. Ex. R-1* at 2-8, 11-14; *Resp. Ex. R-2*; *Tr.* at 284-98, 308-11.

¹² It appears that the Respondent is relying on the Real Property Assessment Guidelines for 2002 – Version A. Those guidelines have been updated for assessment dates after 2020. *See* 2011 Real Property Assessment Guidelines and 2021 Real Property Assessment Guidelines. Neither updated version includes the language cited by the Respondent.

VI. Burden of Proof

83. Generally, an assessment determined by an assessing official is presumed to be correct, and a taxpayer has the burden of proving otherwise. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022); 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. At the time we heard these appeals, however, the property appeal statutes provided several exceptions to that general rule, including where a taxpayer appealed an assessment that represented an increase of more than 5% over the assessment for the prior year as last determined by an assessing official or reviewing authority, or as stipulated to between the taxpayer and assessing official. I.C. § 6-1.1-15-17.2(a)-(b). Under those circumstances, the assessor had the initial burden of proving that the assessment under appeal was correct. *Id.*
84. The Legislature recently repealed Ind. Code § 6-1.1-15-17.2 on March 21, 2022. P.L. 174-2022 § 32 (repeal effective on passage). Both the burden-shifting statute and its repeal dealt with a procedural question: how the parties must go about making their respective cases. Under those circumstances, we must apply the law that was in effect at the time of the procedural event covered by the statute and its repeal. And that procedural event was our hearing. A hearing is the point at which the parties can tailor their evidentiary presentations to address the burden of proof. Once the hearing has concluded, it is too late. Because the hearing on these appeals occurred before the Legislature repealed Ind. Code § 6-1.1-15-17.2, that statute governs who has the burden of proof in these appeals if its terms otherwise apply. *See Love v. State*, 286 So.3d 177, 187-88, 190 (Fla. 2019) (explaining that the “‘commonsense’ application of a new procedure generally ‘depends on the posture of the particular case’” and holding that a statute changing the burden of proof at an immunity hearing applied to hearings held after the statute’s effective date) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 275 n. 29, 114 S.Ct. 1483, 128 L. Ed. 2d 229 (1994)).

85. With that in mind, Square 74 admitted that the assessment did not increase by more than 5% between 2009 and 2010, and that Ind. Code § 6-1.1-15-17.2 therefore did not apply to its 2010 appeal. *Tr.* at 25-26. Whether the statute applied to later years, however, necessarily depends on our determination for 2010. We will therefore address Square 74's 2010 appeal first.

VII. Conclusions of Law and Analysis

- A. The most persuasive evidence of the subject property's market value-in-use for the 2010 assessment date is the sum of Correll's estimate of the improvements' depreciated replacement cost and his valuation of the land footprint.**

1. Market value-in-use standard and evidence in assessment appeals.

86. Real property is assessed based on its market value-in-use. I.C. § 6-1.1-31-6(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2. The cost, sales-comparison, and income approaches are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
87. Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2010 through 2015, the valuation date was March 1 of each respective assessment year. For 2016 through 2018, the valuation date was January 1 of each respective assessment year. *See e.g.*, I.C. § 6-1.1-2-1.5.
88. In general, the most effective method of determining true tax value is through an appraisal; however, simply showing up with a document that purports to be an accurate appraisal is not enough to make a prima facie case. *Wigwam Holdings LLC v. Madison*

Cty. Ass'r, 125 N.E.3d 7, 12 (Ind. Tax Ct. 2019). Where a taxpayer has not supported its claim with probative evidence, the assessor's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).

89. The Tax Court has held that the “valuation of property is an opinion and not an exact science.” *Monroe Cty. Ass'r v. SCP 2007-C-26-002, LLC*, 62 N.E.3d 478, 482 (Ind. Tax Ct. 2016). Therefore, “it is up to each party to convince the Indiana Board why its opinion. . . is more probative.” *Id.* While case law generally addresses appraisal theory, most often the question comes down to which “appraiser exercised . . . caution in his income approach, [and which] appraiser did not.” *Grant Cty. Ass'r v. Kerasotes Showplace Theatres, LLC*, 955 N.E.2d 876, 882 (Ind. Tax Ct. 2011). If an appraiser has not sufficiently “identified the objective bases for his [or her] opinion, the Indiana Board has no way to assess whether the proffered opinion is rationally based or merely a conclusion,” and conclusory statements do not qualify as probative evidence. *Marion Cty. Ass'r v. Washington Square Mall, LLC*, 46 N.E.3d 1, 12 (Ind. Tax Ct. 2015).

2. Because Indiana Code § 6-1.1-10-37(b) requires that the assessment of Square 74's leasehold estate include value for the leased land, we cannot rely on Correll's overall valuation opinion.

90. Square 74 argues that the assessment should not include any value associated with the land underlying the subject improvements. It bases its claim, at least in part, on its interpretation of Ind. Code § 6-1.1-10-37(b), which provides:

If real property that is exempt from taxation is leased to another whose property is not exempt and the leasing of the real property does not make it taxable, the leasehold estate and the appurtenances to the leasehold estate shall be assessed and taxed as if they were real property owned by the lessee or his assignee.

I.C. § 6-1.1-10-37(b). Pointing to cases we cited in our determination of Square 74's Form 133 petitions as well as a decision from a federal district court, Square 74 argues

that the statute requires assessment of its possessory interest.¹³ Because its possessory interest in the underlying land reverts to the City when the lease terminates, Square 74 and Correll both view that interest as having no value.

91. Despite Square 74's current interpretation of Ind. Code § 6-1.1-10-37(b), it made a different claim in its Form 133 appeals. There, it argued to the Tax Court 1) that under the terms of the Master Lease, it leased only improvements, and 2) that regardless of the lease terms, Ind. Code § 6-1.1-10-37(b), when read in conjunction with 50 IAC 1-3-3, excludes land from the leasehold estate to be assessed to a non-exempt tenant. *Square 74 Assocs.*, 138 N.E.3d at 340-46.
92. The Tax Court rejected both arguments. First, it held that because the leasing documents that Square 74 relied on did not expressly exclude land from the leasehold, the question required subjective judgment to resolve and was therefore inappropriate to bring on a Form 133 petition. *Id.* at 340-43. Second, the Court rejected Square 74's interpretation of Ind. Code § 6-1.1-10-37(b) and the cited DLGF regulation. The Court explained that "***under [Ind. Code § 6-1.1-10-37(b)] a leasehold estate is synonymous generally with the term 'real property.'***" *Id.* at 345 (citations omitted) (emphasis added). Based on the property tax code's definition of real property, the Court held that:

[a]n assessment for a leasehold estate could reflect the assessed value of one or more of the following: land, a building or fixture situated on the land, an appurtenance to the land, or certain mining rights or mineral interests

Id. at 345 (Ind. Tax Ct. 2019) (citing I.C. § 6-1.1-1-15(1)-(4)). Thus, the statute did not mandate the scope of Square 74's leasehold. And in promulgating 50 IAC 1-3-3, the

¹³ *Square 74's Reply* at 5-6 (citing *Korzen v. American Airlines, Inc.*, 233 N.E.2d 568, 570 (Ill. 1967) (Illinois Supreme Court explained that the tax being appealed by the lessee of an airport hangar owned by the City of Chicago "was not levied on the demised premises, which are owned by the City, but on the leasehold estate, which is the property of the lessee, American."); *Gourmet Dining, LLC v. Union Township*, 30 N.J. Tax 381, 420 (N.J. Tax Ct. 2018) (New Jersey Tax Court held that when an exempt entity leases its property to a non-exempt entity, "the real estate does not become taxable; rather it is the leasehold interest that is subject to taxation.")).

DLGF did not intend to create a per se rule that the assessment of a leasehold estate excludes the value of the underlying land. *Id.*

93. The Court did not directly address Square 74's argument in the current appeals: that Ind. Code § 6-1.1-10-37(b) calls for the assessment of its possessory interest rather than a fee interest in the property it leases. But the Court's discussion strongly suggests its belief that whatever property that is covered by a lease that is subject to the statute should be assessed the same as any other real property, which under our assessment system generally means valuing a fee interest. Given the Tax Court's decision, the cases we cited from sister jurisdictions interpreting statutes like I.C. § 6-1.1-10-37(b) are of doubtful value.¹⁴
94. Even if we were to accept Square 74's claim that only its possessory interest may be assessed, we would still reject Correll's conclusion that Square 74's possessory interest in the land underlying the restaurants has no value. Correll based his conclusion on the fact that the land reverts to the City when the ground lease terminates. But the same is true for the improvements, to which Correll ascribed significant value under both the cost and income approaches. As the Tax Court aptly noted, nothing in the plain language of Ind. Code § 6-1.1-10-37(b) purports to exclude land value when assessing a leasehold estate. *Square 74 Assocs.*, 138 N.E.3d at 345; *see also, Tobacco Comm'n v. Spirited Sales, Inc.*, 79 N.E.3d 371, 376 (Ind. 2017) (explaining that courts should be mindful of what a statute says and what it does not say).
95. Indeed, Correll's approach would frustrate the Legislature's intent in enacting the statute: to prevent non-exempt entities from gaining tax benefits afforded to exempt entities.

¹⁴ The federal district court decision that the Petitioner cites, *United States v. Clark County*, does not purport to decide whether Ind. Code § 6-1.1-10-37(b) calls for a leasehold to be valued based solely on the lessee's possessory interest rather than on the full value of the property itself. To the contrary, the Court explained that neither would violate the Supremacy Clause. *United States v. Clark Cty., Indiana*, 234 F. Supp. 2d 934, 948-49 (S.D. Ind. 2002) ("A state or locality may also constitutionally tax private lessees of tax-exempt property (including property that is owned by the government) which is used in a business conducted for profit, even if the leasehold interest is calculated for purpose of the tax by measuring the full value of the property."). But a State cannot tax the property itself (instead of a lessee), which is what the Court found the county did in *Clark. Id.* at 948-49.

Sangralea Boys Fund v. State Bd. of Tax Comm'rs, 686 N.E.2d 954, 958 (Ind. Tax Ct. 1997) (explaining that the legislature's "clear" intent in adopting Ind. Code § 6-1.1-10-37 was "to prevent an entity from qualifying for exempt status and subsequently leasing the property to another non-exempt entity for the financial gain of either of the parties."). To allow Square 74 or another lessee to escape assessment and taxation for any value of land it leases to pursue non-exempt commercial activities would give it an unfair advantage over similarly situated enterprises, which are taxed either directly or indirectly for the full value of the property they use for their commercial purposes.

96. We therefore reject Correll's conclusion that the land under the subject improvements contributes nothing to the property's market value-in-use. Because his final value opinions expressly exclude any contributory value from the land, we cannot rely on those opinions. But that does not mean his appraisal lacks probative weight. Correll's appraisal allows us to remedy his exclusion. Because he separately valued Square 74's interest in the underlying land, we can add that value to his estimate of the improvements depreciated replacement costs. Similarly, we can reverse Correll's deduction of the ground lease payments as an operating cost and calculate a revised NOI. Of course, we would only do so if we find his analyses under the cost or income approaches otherwise persuasive. We therefore turn to those analyses, beginning with the cost approach.

3. Adding Correll's estimate of the land footprint's value to his estimate of the improvements' depreciated replacement costs offers the most persuasive evidence of the property's market value-in-use.

97. Correll applied both the cost and income approaches, giving the greatest weight to his conclusions under the cost approach. Although the Assessor did not offer his own appraisal or other valuation opinion, he did identify what he alleged were problems with Correll's appraisal. Those ranged from critiques of Correll's competence for the assignment to more specific attacks on his methodology.

98. We begin with the Assessor's more general critiques of Correll's competence for the assignment: Correll's description of the appraisal assignment as unique, his purported

unfamiliarity with the subject property, his admission that he and other appraisers have found Indiana's market value-in-use standard confusing, and our supposed rejection of aspects of his opinions in other tax appeals. We have no qualms with Correll's candor about the uniqueness of this appraisal assignment—estimating a value for restaurant space within a larger parking garage for nine different assessment dates. Nor are we troubled by his inability to testify to specific details about matters like how many hotel rooms the World of Wonders garage is connected to by skywalk. Correll analyzed the property's location in the heart of downtown Indianapolis and judged it to be “good to excellent.” *Pet. Ex. P-1* at 32. Finally, we give little weight to the fact that Correll could not recall how we have treated aspects of his valuation opinions in other assessment appeals. The Assessor did not even attempt to show how those matters relate to any aspect of Correll's appraisal of the subject property. At most, he characterized one of our determinations as rejecting Correll's “rule of thumb” in arriving at \$10 s/f ground rent for a convenience store. *Tr.* at 192-95. But Correll did not apply anything resembling a rule of thumb in estimating market ground rent in these appeals.

99. Turning to the more specific criticisms of Correll's assessment methodology, we begin with Dodds' criticism of Correll's decision to estimate the replacement cost for restaurant improvements in sections instead of as one building. Dodds failed to explain why Correll's approach was inappropriate. He simply asserted, without explanation, that because the improvements were all in a similar location, they should be priced using the base rate for “very good” construction quality. As Correll persuasively explained, however, the quality rating is not based on location. And although he offered little detail, we credit his assessment of the improvements' differing construction quality, which he based on his inspection of the property, over Dodd's vague assertions. We similarly credit Correll's estimate of how those differences in the quality of restaurant buildouts affected the improvements' economic lives. *Pet. Ex. P-1* at 7-8; *Tr.* at 69, 127-128.
100. There is a little more merit to the Assessor's concern that Correll improperly removed certain elements (foundation, structural frame, roof) from the base cost calculation in

violation of traditional guidelines for estimating replacement costs. We agree that a traditional estimate of replacement costs would include these elements of a structure. Nevertheless, we acknowledge that the subject property poses unique challenges. This is because the improvements being valued are “built within a preexisting parking garage structure[.]” There is no dispute between the parties that the leasehold estate does not encompass the parking garage. Thus, it is reasonable to conclude that certain components of the larger structure should be excluded when applying the cost approach to the property comprising the leasehold estate. In other words, the property at issue is not a free-standing building, and some cost adjustments were warranted. While another appraiser might offer a more compelling adjustment, this does not cast significant doubt on Correll’s opinion *Pet. Ex. P-1* at 55; *Tr.* at 129-130.

101. As for Dodds’ concerns about Correll’s obsolescence of calculation, Correll explained that the apparent inconsistency was due to typographical errors. Page 29 of his appraisal incorrectly reported the percentages of obsolescence that he found for each year. But he used the correct percentages when calculating the total amount of obsolescence.
102. Turning to Dodds’ criticism of Correll’s decision to use a discounted-cash-flow analysis, we note that Correll did not ultimately base his conclusions under the income approach solely on that methodology. Instead, he appears to have used his discounted-cash-flow analysis to determine the net present value of future cash flows for each year, from which he extracted an overall rate to use in direct capitalization, e.g., capitalizing a single year’s projected NOI. And the capitalization rate that Correll derived from the *Realty Rates* survey data generally supported that extracted rate. Nonetheless, Correll himself acknowledged that he had difficulty finding comparable data from which to estimate market rent, and he gave less weight to his conclusions under the income approach for that reason.
103. Finally, the Assessor criticized the comparable sales that Correll used to estimate the land value for the entire site, and ultimately the contributory value of the land comprising the

subject property's footprint. Correll acknowledged that his comparable sales were less than ideal and required significant adjustments. But neither Dodds nor the Assessor offered any evidence to show that Correll's adjustments were unreliable. And Correll gave the least weight to the industrial sale that Dodds criticized.

104. As explained in our prior analysis of Ind. Code § 6-1.1-10-37(b), we disagree with the view expressed by Square 74 and Correll that, under the statute and the Master Lease, the value of the land underlying the subject improvements should be excluded. But we can remedy that exclusion either by adding Correll's estimated land value to the depreciated improvement costs to come up with a revised value under the cost approach, or by adjusting his estimated net operating income under the income approach. Because we find Correll's analysis of the improvements' depreciated replacement costs and his estimate of the underlying land's value both sufficiently reliable, we find that revising Correll's cost approach would be the best method by which to estimate an accurate value. We are less confident in adjusting Correll's projected net operating income, given his own doubts about the data underlying his estimate of market rent. And our revised NOI calculation would also necessarily affect his NPV analysis from which he extracted his capitalization rate.

105. We therefore determine the subject property's market value-in-use for the March 1, 2010, assessment date by adding the contributory land value to the depreciated improvement costs:

Valuation Date	3/1/2010
Maryland St. RCN	\$1,743,014
Illinois St. RCN	\$2,770,471
Maryland St. Dep.	(\$348,603)
Illinois St. Dep.	(\$484,832)
Obsolescence	(\$451,348)
Land Value ¹⁵	\$720,195
Total Value	\$3,948,897
Rounded Value	\$3,949,000

¹⁵ *Pet. Ex. P-1* at 52.

We reiterate that Correll's appraisal offers the only evidence from which to determine a value. While the Assessor offered some raw sales and assessment data for other properties, Dodds did not perform a sales-comparison analysis or otherwise attempt to explain how that data translated to a value for the subject property.

B. Because Ind. Code § 6-1.1-15-17.2 applied to Square 74's 2011-2018 appeals and neither party met its burden of proof under that statute, those assessments revert to the value we determined for 2010.

106. Having determined a value for 2010, we must now revisit the burden of proof for later years. The property was assessed for \$5,099,900 in 2011, an increase of far more than 5% over what we have determined for 2010. The increase triggers Ind. Code § 6-1.1-15-17.2. Under that statute, an assessor has the burden to prove that the assessment under appeal is "correct," which means "accurate, exact, precise." I.C. § 6-1.1-15-17.2(b); *Southlake Ind., LLC v. Lake Cty. Ass'r* ("Southlake IP"), 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). Thus, an assessor must offer probative, market-based evidence that the assessment is "exactly and precisely" correct. *Southlake II*, 181 N.E.2d at 489 (emphasis in original). If the assessor fails to prove the assessment is correct, the burden shifts to the taxpayer to prove that its proffered assessment is correct. If neither party meets their burden, the assessment reverts to the prior year's level. I.C. § 6-1.1-15-17.2(b); *see also, Southlake Ind., LLC v. Lake Cty. Ass'r* ("Southlake P"), 174 N.E. 3d 177, 180 (Ind. 2021).
107. Because the Assessor offered no probative valuation evidence, he failed to meet his burden of proving that the 2011 assessment was correct. So the burden shifted to Square 74 to prove that its proffered assessment was correct. Square 74 offered Correll's appraisal. As we have already explained, neither Correll's final valuation opinions nor his individual conclusions under the income and cost approaches accurately reflect the property's market value-in-use because they exclude the underlying land. While we can arrive at an accurate value by adjusting Correll's opinions, the *Southlake* decisions make clear that we lack the discretion to do so. *Southlake I*, 174 N.E.3d at 179-180 (reversing the Board's conclusion of value because the Board rejected the values proffered by either

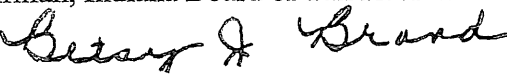
party). The assessment must therefore revert to \$3,949,000—the level we determined for 2010. All the same points apply to Square 74’s appeals for 2012-2018, and we find that those assessments must likewise revert. We therefore order the assessment for each year to be changed to \$3,949,000.

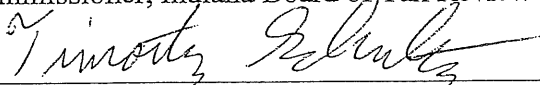
IX. Summary of Final Determination

108. Square 74, through the appraisal of Richard Correll, offered the only probative evidence of the subject property’s market value-in-use. Although we must reject Correll’s overall valuation opinion because he excluded any value for the land that was part of Square 74’s leasehold, he did separately estimate its market value. Because we find both that estimate and his estimate of the depreciated replacement cost for the improvements probative, we add them together to determine the assessment for 2010. For the 2011-2018 appeals, however, Ind. Code § 6-1.1-15-17.2 applied, and neither party met their burden of proof under that statute. The assessments for those years therefore revert to the level we determined for 2010. Thus, we find that the assessment for each year under appeal must be changed to \$3,949,000.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first 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>.

Petition Number	Parcel Number
49-101-10-1-4-82869-15	49-11-11-184-039.001-101
49-101-11-1-4-00437-16	49-11-11-184-039.001-101
49-101-12-1-4-00438-16	49-11-11-184-039.001-101
49-101-13-1-4-00439-16	49-11-11-184-039.001-101
49-101-14-1-4-00440-16	49-11-11-184-039.001-101
49-101-15-1-4-00621-19	49-11-11-184-039.001-101
49-101-16-1-4-00622-19	49-11-11-184-039.001-101
49-101-17-1-4-00623-19	49-11-11-184-039.001-101
49-101-18-1-4-00254-20	49-11-11-184-039.001-101
49-101-10-1-4-82870-15	49-11-11-184-039.002-101
49-101-11-1-4-00433-16	49-11-11-184-039.002-101
49-101-12-1-4-00431-16	49-11-11-184-039.002-101
49-101-13-1-4-00429-16	49-11-11-184-039.002-101
49-101-14-1-4-00428-16	49-11-11-184-039.002-101
49-101-15-1-4-00630-19	49-11-11-184-039.002-101
49-101-16-1-4-00631-19	49-11-11-184-039.002-101
49-101-17-1-4-00632-19	49-11-11-184-039.002-101
49-101-18-1-4-00252-20	49-11-11-184-039.002-101
49-101-10-1-4-82867-15	49-11-11-184-039.003-101
49-101-11-1-4-00436-16	49-11-11-184-039.003-101
49-101-12-1-4-00399-16	49-11-11-184-039.003-101
49-101-13-1-4-00405-16	49-11-11-184-039.003-101
49-101-14-1-4-00407-16	49-11-11-184-039.003-101
49-101-15-1-4-00618-19	49-11-11-184-039.003-101
49-101-16-1-4-00619-19	49-11-11-184-039.003-101
49-101-17-1-4-00620-19	49-11-11-184-039.003-101
49-101-18-1-4-00255-20	49-11-11-184-039.003-101
49-101-10-1-4-82868-15	49-11-11-184-039.004-101
49-101-11-1-4-00441-16	49-11-11-184-039.004-101
49-101-12-1-4-00442-16	49-11-11-184-039.004-101
49-101-13-1-4-00443-16	49-11-11-184-039.004-101
49-101-14-1-4-00444-16	49-11-11-184-039.004-101
49-101-15-1-4-00624-19	49-11-11-184-039.004-101
49-101-16-1-4-00625-19	49-11-11-184-039.004-101
49-101-17-1-4-00626-19	49-11-11-184-039.004-101
49-101-18-1-4-00256-20	49-11-11-184-039.004-101
49-101-10-1-4-82871-15	49-11-11-184-039.005-101
49-101-11-1-4-00430-16	49-11-11-184-039.005-101
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49-101-18-1-4-00253-20	49-11-11-184-039.005-101