ATTORNEYS FOR PETITIONER:
DAVID A. SUESS
BENJAMIN A. BLAIR
ABRAHAM M. BENSON
FAEGRE DRINKER BIDDLE
& REATH LLP
Indianapolis, IN

ATTORNEYS FOR RESPONDENT:
MARILYN S. MEIGHEN
ATTORNEY AT LAW
Carmel, IN

BRIAN A. CUSIMANO
ATTORNEY AT LAW
Indianapolis, IN

IN THE INDIANA TAX COURT

SOUTHLAKE INDIANA, LLC,	)	
Petitioner,	)	
v.	)	Case No. 19T-TA-00022
LAKE COUNTY ASSESSOR,	)	
Respondent.	)	

ON DIRECT APPEAL FROM THE
THE INDIANA BOARD OF TAX REVIEW
PURSUANT TO INDIANA CODE § 6-1.1-15-5(g)

FOR PUBLICATION
December 13, 2021

WENTWORTH, J.

Southlake Indiana, LLC has challenged the assessment of its real property for both the 2015 and 2016 tax years.[1] The Court holds that neither party met its requisite burden of proof under Indiana Code § 6-1.1-15-17.2 and, as a result, Southlake's 2015 and 2016

[1] Much of the evidence presented to the Court in this case has been designated as confidential. Consequently, this opinion provides only that information necessary for the reader to understand its disposition of the issues presented. See IND. ACCESS TO COURT RECORDS RULE 9(A)(2)(d) (2021).

assessments shall revert to the assessment that was in place for tax year 2010.

FACTS AND PROCEDURAL HISTORY

Southlake owns the Southlake Mall, a super-regional shopping mall located in Hobart, Indiana. (See, e.g., Pet'r Trial Ex. P-3 at 2, 14.) For purposes of this appeal, the portions of the Southlake Mall at issue include twelve separate tax parcels that comprise its: vacant land, surface parking lots, and retention ponds; inline retail space, as well as the attached JCPenney and Dick's Sporting Goods stores; several outlot parcels with free-standing improvements that are used as a movie theatre, a Gander Mountain store, restaurants, and various other retail spaces. (See, e.g., Pet'r Trial Ex. P-3 at 2, 47, 89, 91, 94, 97; Resp't Trial Ex. A at iv-ix, 82.) This opinion refers to all twelve parcels collectively as "the Mall."[2]

For both of the years at issue, the Mall was assigned an assessed value of $242,890,500. (See Pet'r Pet. Jud. Rev. Prop. Tax Assessments ("Pet'r Pet.") at 2 ¶¶ 6, 9.) Believing the value to be too high, Southlake appealed the assessments and, after the Lake County Property Tax Assessment Board of Appeals failed to act on them, Southlake sought relief with the Indiana Board of Tax Review. (See Pet'r Pet. at 2-3 ¶¶ 7, 10-11.) When the Indiana Board also failed to timely act on its assessment protests, Southlake filed a direct appeal pursuant to Indiana Code § 6-1.1-15-5(g). (See Pet'r Pet. at 3 ¶¶ 12-14.)

The Court conducted a five-day trial on Southlake's appeal, beginning on August 17, 2020. During trial, both parties presented, among other things, professional appraisal

[2] The parcels that comprise the Mall's three other attached anchor stores, a free-standing Kohl's store, and a free-standing Chili's restaurant are not included in this appeal because they are not owned by Southlake. (See, e.g., Pet'r Trial Ex. P-3 at 2; Resp't Trial Ex. A at iv, 82.)

reports and expert appraiser testimony regarding the Mall's market value-in-use as a fee simple estate. (See, e.g., Resp't Trial Ex. A at 189, 191; Pet'r Trial Ex. P-3 at 119-20.) While both parties' appraisers considered all three standard appraisal approaches to valuing the Mall (i.e., the cost approach, the sales comparison approach, and the income capitalization approach) in their appraisal reports, they both relied primarily on the income capitalization approach. (See, e.g., Resp't Trial Ex. A at 189; Pet'r Trial Ex. P-3 at 119; Tr. Vol. 1 at 115-16; Tr. Vol. 3. at 775-79, 805.)[3]

The Assessor was the first of the two parties to present evidence during trial because, as she acknowledged, she bore the burden of proof under Indiana Code § 6-1.1-15-17.2. (See Tr. Vol. 1 at 5.) Under the income capitalization approach, the Assessor's appraiser, Mark Kenney, MAI (Member of the Appraisal Institute), estimated that the Mall's market value-in-use was $258,990,000 during the 2015 tax year and $241,690,000 during the 2016 tax year. (See Resp't Trial Ex. A at 189, 191; Tr. Vol. 1 at 36-43.) Southlake's appraiser, John Mackris, MAI, also applied the income capitalization approach and estimated that the Mall's market value-in-use for the 2015 and 2016 tax years was much lower: $142,300,000 and $144,500,00 respectively.[4] (See Pet'r Trial Ex. P-3 at 119; Tr. Vol. 3 at 651-62; Tr. Vol. 4 at 946, 950-57.)

In addition to presenting their own appraisal reports, both parties called witnesses who had reviewed the other party's appraisal report. Southlake's review of the Assessor's

[3] The trial transcript in this matter consists of five volumes. The Court refers to those volumes as "Tr. Vol. 1," "Tr. Vol. 2," and so forth.

[4] Daniel McNeilly co-authored the Mackris appraisal report. (See Pet'r Trial Ex. P-3 at 5-6; Tr. Vol. 3 at 664-66.) McNeilly was not, however, called as a witness during trial. (See Tr. Vol. 1 at 3, Tr. Vol. 2 at 291, Tr. Vol. 3 at 614, Tr. Vol. 4 at 912, Tr. Vol. 5 at 1252.)

appraisal report was performed by David Lennhoff, MAI. (See Pet'r Trial Exs. P-1, P-2; Tr. Vol. 2 at 496-578.) The Assessor's review of Southlake's appraisal report was performed by William Miller, Managing Director of Integra Realty Resources – Chicago. (See Resp't Trial Ex. B; Tr. Vol. 4 at 1133-1248; Tr. Vol. 5 at 1255-1304.)

The Court concluded the evidentiary portion of the trial on August 21, 2020. Upon receiving the completed trial transcript from the court reporter, the Court established a post-trial briefing schedule for the parties, and on January 14, 2021, heard their closing arguments and took the matter under advisement. Additional facts will be supplied when necessary.

STANDARD OF REVIEW

This Court hears direct appeals initiated under Indiana Code § 6-1.1-15-5(g) de novo. IND. CODE § 6-1.1-15-5(g) (2020). Moreover, the procedural posture here requires the Court to examine each of the parties' evidentiary presentations through the lens of Indiana Code § 6-1.1-15-17.2, which provides that when a taxpayer appeals an assessment that increased more than 5% from one year to the next,

> the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court. If a county assessor or township assessor fails to meet the burden of proof under this section, the taxpayer may introduce evidence to prove the correct assessment. If neither the assessing official nor the taxpayer meets the burden of proof under this section, the assessment reverts to the assessment for the prior tax year, which is the original assessment for that prior tax year or, if applicable, the assessment for that prior tax year:
>
> (1) as last corrected by an assessing official;
>
> (2) as stipulated or settled by the taxpayer and the assessing official; or

(3) as determined by the reviewing authority.

IND. CODE § 6-1.1-15-17.2(a), (b) (2021) (emphases added). See also Southlake Indiana, LLC v. Lake Cnty. Assessor, 174 N.E.3d 177, 178-81 (Ind. 2021) (explaining the burden of proof under Indiana Code § 6-1.1-15-17.2 with respect to Southlake's appeals of the Mall's 2011-2014 assessments).

LAW

Indiana property is assessed on the basis of its market value-in-use. See IND. CODE § 6-1.1-31-6 (2015) (amended 2016); 2011 REAL PROPERTY ASSESSMENT MANUAL ("Manual") (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2 (2011)) at 2. A property's market value-in-use is equivalent to its market value when the property's current use is consistent with its highest and best use, and there are regular exchanges within its market so that ask and offer prices converge. Millennium Real Est. Inv., LLC v. Assessor, Benton Cnty., 979 N.E.2d 192, 196 (Ind. Tax Ct. 2012), review denied. See also Manual at 5-6 (defining "market value" as "[t]he most probable price, as of a specified date, in cash, or in terms equivalent to cash . . . for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress"). Here, both parties have agreed that the Mall's market value-in-use and market value are equivalent. (See, e.g., Resp't Trial Ex. A at 129; Pet'r Trial Ex. P-3 at 60-61; Tr. Vol. 1 at 57; Tr. Vol. 3 at 774-75; Initial Br. Pet'r ("Petr Br.") at 40 n.25.)

"Income-producing real estate is typically purchased as an investment, and from an investor's point of view[,] earning power is the critical element affecting property value." Appraisal Institute, THE APPRAISAL OF REAL ESTATE 413 (15th ed. 2020). "The income to investment properties consists primarily of rent." Id. at 420. Thus, for purposes of assessing Indiana properties, the income capitalization approach applies to those "income producing properties that are typically rented[and] converts an estimate of income, or rent, [a] property is expected to produce into value through a mathematical process known as capitalization." Manual at 2.

DISCUSSION & ANALYSIS

I. The Assessor's Evidentiary Presentation

As stated above, the Assessor bears the burden of proof under Indiana Code § 6-1.1-15-17.2, which expressly provides that she must prove her 2015 and 2016 assessments of the Mall were "correct." See I.C. § 6-1.1-15-17.2(a),(b). To meet her burden, the Assessor produced a USPAP appraisal that valued the Mall at $258,990,000 for the 2015 tax year and $241,690,000 for the 2016 tax year. Neither of these appraisal values, however, is identical to the $242,890,500 assessed value the Assessor originally assigned to the Mall for either of the tax years. Thus, the Court must decide whether either of the Assessor's appraised values demonstrates that her original assessments are "correct."

When interpreting a statute, the Court's primary goal is to determine and implement the intent of the Legislature in enacting that statute. Hamilton Square Inv., LLC v. Hamilton Cnty. Assessor, 60 N.E.3d 313, 317 (Ind. Tax Ct. 2016), review denied. The best evidence of that intent is found in the statute's plain language that was chosen

by the Legislature. Id. See also Southlake Indiana, 174 N.E.3d at 179 (stating that "[w]hen interpreting a statute, we start with its clear and unambiguous meaning and apply its terms in their plain, ordinary, and usual sense" (citation omitted)).

Indiana Code § 6-1.1-15-17.2 does not define the word "correct." See I.C. § 6-1.1-15-17.2. Thus, the non-technical, undefined word will be given its ordinary and accepted meaning. See Johnson Cnty. Farm Bureau Coop. Ass'n v. Indiana Dep't of State Revenue, 568 N.E.2d 578, 581 (Ind. Tax Ct. 1991) (explaining that non-technical statutory words and phrases are to be understood in their plain, ordinary, and usual sense), aff'd, 585 N.E.2d 1336 (Ind. 1992).

To determine words and phrases in their plain or ordinary and usual sense, Indiana courts commonly refer to "general-language" dictionaries. See, e.g., Rainbow Realty Grp., Inc. v. Carter, 131 N.E.3d 168, 174 (Ind. 2019) (using the Merriam-Webster Dictionary to define the word "dwelling"); Universal Health Realty v. Fluty, 144 N.E.3d 857, 863 (Ind. Tax Ct. 2020) (relying on Webster's Third New International Dictionary to define the word "residence"); Estes v. State, 166 N.E.3d 950, 952 (Ind. Ct. App. 2021) (using the Merriam-Webster Dictionary to define the word "endanger"). Webster's Dictionary defines the word "correct" as "conforming to or agreeing with fact: ACCURATE . . . free from errors . . . EXACT[.]" WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 511 (2002 ed.). Webster's Dictionary also provides definitions for "accurate" and "exact," which are synonyms of "correct": "ACCURATE implies positive and careful fidelity to fact or truth . . . EXACT, sometimes interchangeable with PRECISE, generally emphasizes the strictness of the agreement or conformity with fact, standard, or truth[.]" Id. Therefore, the Court acknowledges the plain meaning of the word "correct" as used

in Indiana Code § 6-1.1-15-17.2 is the dictionary meaning and the term "correct assessment" refers to an accurate, exact, precise assessment.

Although it may not seem feasible for an assessing official to present as evidence an appraised value that is exactly the same as the original assessment, it is possible (e.g., preparing appraisals before increasing assessments). Furthermore, even though the Court has long-emphasized that appraisal valuations are opinions and the act of appraising is more art than science, see, e.g., Stinson v. Trimas Fasteners, Inc., 923 N.E.2d 496, 502 (Ind. Tax Ct 2010), these observations neither prohibit concluding with exactitude nor allow broadening the plain meaning of the term "correct." The Court recognizes that the Legislature has chosen to write the statute the way it has, without defining the word "correct," without specifying a range within which an assessment would be "correct," and without providing any other guidance for measuring "correctness." See I.C. § 6-1.1-15-17.2. The Court will not fill that void. See, e.g., Southlake Indiana, 174 N.E.3d at 180 (explaining that courts cannot "second-guess" the Legislature's rationale for writing a statute the way it did); Am. United Life Ins. Co. v. Indiana Dep't of State Revenue, 84 N.E.3d 1244, 1248 (Ind. Tax Ct. 2017) (stating "[t]he Court must apply the law as written and will not impermissibly encroach on the legislative function by reading into it language that is not present" (citation omitted)); Morton Bldgs., Inc. v. Indiana Dep't of State Revenue, 819 N.E.2d 913, 917 (Ind. Tax Ct. 2004) (indicating that any loopholes (i.e., unintended consequences) created by the wording of a statute are for the Legislature, and not the Court, to correct), review denied, superseded by statute. Accordingly, unless and until the Legislature defines it differently, when an assessing official presents evidence to prove that her assessment is "correct" under Indiana Code

§ 6-1.1-15-17.2, that evidence must exactly and precisely conclude to her original assessment.

In this case, the Assessor's evidence does not exactly and precisely conclude to the assessments she originally assigned to the Mall. Indeed, if the values offered as evidence in Kenney's appraisal are correct, then the Assessor's assessments are not correct. Alternatively, if Kenney's appraisal values are not correct, then the Assessor has not met her burden to prove that her assessments are in fact correct. Either way, the Assessor has failed to meet her burden to prove that her original assessments are correct under Indiana Code § 6-1.1-5-17.2. See also, e.g., Southlake Indiana, 174 N.E.3d at 179-80 (indicating that an assessor's appraisal must be examined on a "stand-alone" basis and any finding that the appraisal is "lacking" renders it insufficient to prove that the assessment is correct).

II. Southlake's Evidentiary Presentation

Because the Assessor failed to meet her burden of proof, Indiana Code § 6-1.1-15-17.2 provides Southlake with the opportunity "to prove the correct assessment." See I.C. § 6-1.1-15-17.2(b). Southlake presented its own USPAP appraisal, authored by John Mackris, estimating the Mall's market value for 2015 and 2016 and thus what it believed the correct assessments should be for those years. (See Pet'r Trial Ex. P-3 at 119; Tr. Vol. 3 at 651-63; Tr. Vol. 4 at 946, 950-57.)

Upon considering all three appraisal approaches, Mackris determined the income capitalization approach was the best method for valuing the Mall. (See Pet'r Trial Ex. P-3 at 69-119.) (See also, e.g., Pet'r Trial Ex. P-3 at 63-68; Tr. Vol. 3 at 775-79, 805 (indicating Mackris did value the Mall using the sales comparison approach but gave

virtually no weight to that valuation).) Generally speaking, under the income capitalization approach an appraiser uses market-based data first to estimate a property's net operating income ("NOI") (i.e., its anticipated income stream after deducting vacancy and collection losses as well as operating expenses) and then to select an appropriate capitalization rate to apply against that NOI. See THE APPRAISAL OF REAL ESTATE at 424-33. "[U]nlike variations in a net operating figure, even the slightest variations in a capitalization rate can result in large variations in a property's value[.]" Marion Cnty. Assessor v. Washington Square Mall, LLC, 46 N.E.3d 1, 12 (Ind. Tax Ct. 2015) (citation omitted). See also Eden Prairie Mall, LLC v. Cnty. of Hennepin, 797 N.W.2d 186, 199 (Minn. 2011) (stating that "[t]he calculation of the overall capitalization rate is an important aspect of the computation of market value because a change in the capitalization rate of even a fraction of one percent will significantly change the result").

Mackris's Capitalization Rate

A capitalization rate is designed to reflect an investor's expected rate of return in purchasing the subject property. See THE APPRAISAL OF REAL ESTATE at 427 (explaining that an expected rate of return has two components: 1) the full recovery of the invested amount, i.e., the return of capital, and 2) a reward for assuming the risk of the investment, i.e., a return on invested capital), 429 (stating that "the conversion of income into property value should reflect the annual rate of return the market indicates is necessary to attract investment capital"). When selecting an appropriate capitalization rate to apply in his appraisal assignment, therefore, an appraiser must consider and analyze numerous factors, such as the overall degree of perceived risk in that type of investment, expectations for changes to the subject property's income and expense patterns, and the

rates of return earned by investors in recent sales of comparable properties. See id. at 429-30. Moreover, The Appraisal of Real Estate instructs that

> [d]eriving capitalization rates from comparable sales is the preferred technique when sufficient information about sales of similar, competitive properties is available. Data on each property's sale price, income, expenses, financing terms, and market conditions at the time of sale is needed. In addition, appraisers must make certain that the net operating income of each comparable property is calculated and estimated in the same way that the net operating income of the subject property is estimated. . . . [Moreover, b]oth income and expense data . . . and the structure of expenses in terms of replacement allowances and other components should be similar to those of the subject property. . . .[N]either non-market financing terms, different market conditions, nor different property rights should have affected the prices of the comparable properties. . . .[Finally, t]he overall level of risk associated with each comparable should be similar to that of the subject property. Risk can be analyzed by investigating the credit rating of the property's tenants, market conditions for the particular property, the stability of the property's income stream, the level of investment in the property by the tenant, the property's net income ratio, and the property's upside or downside potential.

Id. at 460-61. Here, Mackris relied on two sources of data to develop his capitalization rate: 1) data from the five properties he used for his sales comparison approach, and 2) investor surveys. (See Pet'r Trial Ex. P-3 at 63-68, 112-13, Add. B; Tr. Vol. 4 at 916.)

1) Sales Comparison Approach Data

During the trial, Mackris explained that he had developed a conclusion regarding the Mall's value under the sales comparison approach based on sales data from five other mall properties (one in Georgia, one in Mississippi, one in Michigan, and two in Texas) that sold between October 2013 and September 2016. (See Pet'r Trial Ex. P-3 at 63-68, Add. B; Tr. Vol. 3 at 776-778, 780-800.) Mackris ranked each of the five properties as either "inferior" or "superior" to the Mall based on both their physical attributes and conditions of the market at the time of sale, concluding to an overall "sale price per square

foot" that he attributed to the Mall. (See Pet'r Trial Ex. P-3 at 63-68, Add. B; Tr. Vol. 3 at 776-78, 780-800.) Mackris explained, however, why he chose to give his sales comparison approach valuation no weight:

> [d]efinitely the weakness in the sales comparison approach when we are looking at regional malls is – or I guess the primary weakness is your typical buyers don't hang their hat, so to speak, on what malls sell for on a per square foot basis. And that's – if you think about a mall, you have different rent levels. You could have really low rent levels on the anchor space and really high levels on the food court. And the rents that those different spaces generate skews the sales price per square foot up and down.
>
> And so within a mall where you have a whole variety of different types of spaces, it is I don't want to say nearly impossible, but let's say nearly impossible to get to an accurate indication in the sales comparison approach. . . . [Consequently,] I gave this approach next to no weight or [as] I think I mentioned in [my pre-trial] deposition[,] .1 percent.

(Tr. Vol. 3 at 778-79.)

Despite giving "next to no weight" to his sales comparison approach for valuing the Mall, Mackris still used the sales data from his five purportedly comparable malls to derive the capitalization rate he used in his income approach. (See Tr. Vol. 3 at 805-06; Tr. Vol. 4 at 916.) More specifically, Mackris explained that he was able to extract a range of capitalization rates from those sales transactions using the five properties' "economic

characteristics,"[5] and the average (mean) within that range.[6] (See, e.g., Pet'r Trial Ex. P-3 at 112-13; Tr. Vol. 4 at 916-18.) (See also Tr. Vol. 3 at 776-778, 780-800.)

2) Investor Surveys

Next, Mackris referred to two investor surveys to check and corroborate his chosen capitalization rate: RealtyRates' survey of National Retail – Anchored Centers and PwC's survey of National Regional Malls. (See Pet'r Trial Ex. P-3 at 112; Tr. Vol. 4 at 916, 918.) The surveys indicated that during the first quarter of 2016, sales of Class A and B regional malls and anchored centers had capitalization rates ranging anywhere from 4.44% to 13.30%.[7] (See Pet'r Trial Ex. P-3 at 112-13.) Mackris acknowledged that neither of the surveys was geographically disaggregated, meaning that they presented capitalization rates for properties on a national basis, not on a regional or local basis. (Tr. Vol. 4 at 919.) Mackris stated, however, that in his experience mall properties in the Midwest generally have higher capitalization rates than those in either the Chicago metropolitan statistical area or the rest of the country. (Tr. Vol. 4 at 919-21.)

Based on the comparable sales data and the investor surveys, Mackris concluded

[5] Mackris clarified that "economic characteristics" referred to certain performance characteristics of the properties: their occupancy levels, inline sales per square foot, and NOI per square foot. (Compare Pet'r Trial Ex. P-3 at 64, 68, with Tr. Vol. 3 at 793.)

[6] While Mackris did not explain his formula for extracting the capitalization rates, (see, e.g., Pet'r Trial Ex. P-3 at 112; Tr. Vol. 3 at 782-88), the Court was able to determine that he: 1) multiplied each property's NOI per square foot by the total number of square feet that were sold in the transaction to arrive at total NOI attributable to the sale; 2) then divided the total NOI attributable to the sale by the total sales price to arrive at the capitalization rate. (See, e.g., Pet'r Trial Ex. P-3 at 68.)

[7] For purposes of developing his capitalization rate, Mackris classified the Mall as Class B- mall. (See Tr. Vol. 4 at 937-40.)

to a single capitalization rate to apply to the Mall's NOI.[8] (See Pet'r Trial Ex. P-3 at 112-13; Tr. Vol. 4 at 916-18.) Mackris explained that he chose his capitalization rate near the higher end of both the comparable sales data and the surveys' range to better reflect the Mall's "inherent risks." (See, e.g., Pet'r Trial Ex. P-3 at 18-22, 112-13; Tr. Vol. 3 at 867; Tr. Vol. 4 at 917-23.) For instance, Mackris explained that while the Mall had "decent" store sales per square foot, an investor would likely find that overall stability of that income stream jeopardized by numerous factors: flat growth in the areas of gross metropolitan product, employment, and residential development, and negative population growth. (See, e.g., Pet'r Trial Ex. P-3 at 18-22; Tr. Vol. 3 at 679-83, 691-92.) Mackris also noted that competition from surrounding retail uses, e-commerce encroachment on brick-and-mortar sales, and Southlake's ownership of just one of the four Mall anchors would garner investor concern. (See Pet'r Trial Ex. P-3 at 29-31; Tr. Vol. 3 at 696-705, 709-712, 770-72.) Finally, Mackris identified the two factors that he considered had the most effect on the Mall's overall risk profile: the Mall's contract rents were above-market and its inline tenant occupancy costs were too high. (See, e.g., Tr. Vol. 3 at 866-68; Pet'r Trial Ex. P-3 at 75-80, 113.)

Mackris's appraisal report contained generalized information about the five malls such as their locations; when, by whom, to whom, and for how much they were sold; their rentable square footages and occupancy rates, and their inline sales and the NOI per square foot. (See Pet'r Trial Ex. P-3 at 64-68, 112-14, Add. B.) Nonetheless, Mackris's capitalization rate is not based on probative evidence for the following reasons.

First, even though Mackris identified specific totals for the inline sales and the NOI

[8] Mackris subsequently adjusted his capitalization rate to account for a property tax load. (See, e.g., Pet'r Trial Ex. P-3 at 114.)

per square foot for each of the five malls, he failed to provide the components or sources of those totals. (See Pet'r Trial Ex. P-3 at 64-68, 112-14, Add. B.) (See also Tr. Vol. 3 at 776-808, Tr. Vol. 4 at 915-57, 1111-32.) In fact, Mackris could not have provided those specific details because, as he admitted during trial, he did not have access to the leases, rent rolls, operating statements, or store-by-store sales figures for those five other malls. (See Tr. Vol. 3 at 794-95; Tr. Vol. 4 at 1070-71.) Without these pertinent documents, Mackris could not provide sufficient detail to demonstrate the similarity of his NOI figures for each of the five properties to the Mall's NOI. Accordingly, the Court cannot "make certain that the net operating income of each comparable property is calculated and estimated in the same way that the net operating income of the [Mall] is estimated." See THE APPRAISAL OF REAL ESTATE at 460.

Second, Southlake asserted that Mackris's capitalization rate was derived "from sales of malls that bracketed the [Mall] in terms of their risk profile[.]" (See Closing Arg. Tr. at 34, 37.) (See also Pet'r Br. at 39-41; Pet'r Reply Br. at 21-22.) Mackris himself acknowledged that when extracting capitalization rates from the sales of comparable properties, the "risk profiles" of all the comparables must be similar to that of the subject property. (See, e.g., Pet'r Trial Ex. P-3 at 3, 112; Tr. Vol. 3 at 779, 783-84; Tr. Vol. 4 at 917-18.) Mackris's risk comparison, however, was essentially limited to his several statements that one of his five "comparable" malls was "riskier" than the Mall because it had two vacant anchors, not one vacant anchor like the Mall. (See e.g., Tr. Vol. 3 at 781-89, 793, 796 (indicating that he gave no weight to that "riskier" mall for purposes of the sales comparison approach because it was not "a good indication of the [Mall]"); Tr. Vol. 4 at 916-40.) Furthermore, Mackris did not analyze or even discuss whether the five other

malls were in markets that, like the Mall, suffered from 1) "notably flat growth in the areas of gross metropolitan product, employment, and residential development, and negative growth in population" or 2) "competition from surrounding retail uses." (Compare Pet'r Trial Ex. P-3 at 64-68, 112-14, Add. B, and Tr. Vol. 3 at 776-78, 780-800, and Tr. Vol. 4 at 915-57, 1111-32, with supra p.14 (summarizing Mackris's perception of the risks inherent in the Mall).) Indeed, most noticeably absent from Mackris's analysis was a discussion about whether the two most important factors of the Mall's "risk profile" also affected the risk profiles of the other five malls. He made no comparison of the rents (i.e., whether they were above, below, or at, market levels) or of the inline tenant occupancy costs at the five other malls with those of the Mall. (See Pet'r Trial Ex. P-3 at 64-68, 112-14, Add. B; Tr. Vol. 3 at 776-78, 780-800; Tr. Vol. 4 at 915-57, 1111-32.)

Third, the reason Mackris gave in support of his choice of a capitalization rate "at the high end of the range" was that it accounted for and reflected the Mall's "inherent risks." (See, e.g., Pet'r Trial Ex. P-3 at 18-22, 29-31, 75-80, 113; Tr. Vol. 3 at 679-83, 691-92, 696-705, 709-12, 770-72, 866-68.) But, as the Court has just explained, Mackris did not analyze how the risk profiles of the five malls from his sales comparison approach compared to the Mall's risk profile. Consequently, his choice of a capitalization rate at the high end of the range is an arbitrary conclusion rather than one based on facts.

For an appraiser's opinion to be probative, it must be based upon facts. Washington Square Mall, 46 N.E.3d at 12 (citation omitted). If an appraiser has not identified the objective bases for his opinion, then the Court has no way to assess whether the proffered opinion is rationally based or conclusory. See id. See also Whitley Prods., Inc. v. State Bd. of Tax Comm'rs, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (explaining

that conclusory evidence is not probative), review denied. Here, Mackris simply has not provided sufficient detail and analysis about how he derived his capitalization rate for the Court to draw any reliable conclusion of financial and risk comparability between the Mall and the five other mall properties. Accordingly, the Court holds that Mackris's capitalization rate is flawed, his appraisal report lacks probative value, and as a result, the Court finds Southlake has not met its burden under Indiana Code § 6-1.1-15-17.2 to prove what the correct assessments of the Mall should be.

CONCLUSION

For the above stated reasons, the Court finds that neither the Assessor nor Southlake has met its burden of proof. Accordingly, the Mall's assessments for tax years 2015 and 2016 shall revert under Indiana Code § 6-1.1-15-17.2 to the assessment that

was in place for the 2010 tax year.[9,10]

[9] In previous litigation, Southlake challenged the Mall's 2011-2014 assessments, beginning at the Indiana Board, then at this Court, and finally at the Indiana Supreme Court. See Southlake Indiana, LLC v. Lake Cnty. Assessor, 174 N.E.3d 177 (Ind. 2021). In this case, the Assessor has requested that the Court take judicial notice of an excerpt from an appraisal of the Mall contained in the certified administrative record of that previous case claiming it would lend support to Kenney's classification of the Mall in this case. (See Resp't Br. at 12-13 n.7.) The Court declines to do so because generally a trial court may not take judicial notice of its own records in another case previously before it, even on a related subject with related parties. See Brown v. Jones, 804 N.E.2d 1197, 1202 (Ind. Ct. App. 2004), trans. denied, superseded by statute. See also Thousand Trails, Inc. v. State Bd. of Tax Comm'rs, 757 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001) (explaining that just as each tax year stands alone, so too does each property tax appeals process; "[h]ence, unless otherwise designated, evidence submitted for one petition or tax year will not be used as evidence for a different petition or tax year" (citations omitted).) That said, taking judicial notice of the classification in the previous case would not alter the Court's holding that the Kenney appraisal did not show that the Assessor's assessments of the Mall were correct.

[10] During the trial, the Assessor offered into evidence both a February 2, 2018, appraisal report that valued the Mall for financing purposes and the deposition testimony of its preparer, David Walden. (See Tr. Vol. 1 at 25-29.) Walden, a non-party appraiser, prepared his report to fulfill the Mall ownership's reporting requirements for the preparation of a public bond prospectus in Israel and public financial statements and subsequent public reporting in Israel. (See Tr. Vol. 1 at 27.) The report estimated the "as is" fair value of the Mall's leased fee interest as of September 30, 2017." (See Tr. Vol. 1 at 28.) Southlake subsequently objected to this evidence, claiming it was not relevant, and the Court took the objection under advisement. (See Tr. Vol. 1 at 34.)

Evidence is relevant only if tends to make a fact of consequence in determining the action more or less probable than it would be without it. See Ind. Evidence Rule 401. Here, the Assessor claims that despite the fact that Walden's report did not determine the market value-in-use of the Mall, it and Walden's testimony are relevant because "[s]everal of Walden's opinions and data [upon which he relied] provide another source of accepted and recognized appraisal principles for mall valuation that differ from [Mackris's] data and conclusions." (Resp't Br. at 35.) For instance, the Assessor asserts that through the Walden report, she can demonstrate to the Court that Mackris's analysis of tenant occupancy costs was "incomplete" thereby rendering his conclusion that they were too high "not credible." (See Resp't Br. at 35-36.) In addition, the Assessor explains, the Walden report demonstrates that Mackris's classification of the Mall "was poorly supported," his market rent analysis was "underdeveloped," and his choice of a capitalization rate was "unreasonable." (See Resp't Br. at 35-37.)

While Walden's appraisal valuation concerns a fact of consequence – the Mall's value – it would not tend to make the Mall's value in this case any more or less probable than without it. Indeed, even if the Court were to find that Walden's report was generally supportive of Kenney's appraisal value, it does not get the Assessor any closer to her burden of demonstrating "the correct assessment." See supra pp. 6-9. Moreover, the Court has determined that the Mackris appraisal report is itself flawed and not probative; any further reliance on the Walden report is an unnecessary exercise. See supra pp. 9-17. The Court therefore sustains Southlake's objection.