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Minnesota Association  
of Assessing Officers

## Big-Box Retail Past, Present, and Future

- Big-Box Stores were born in 1962
- The term *Big-Box* stems from the store's defining characteristic: It's large size and windowless box-like appearance
- A new prototype – A large store with a large variety of merchandise

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## Woolworths - Woolco Stores

Woolco fights rising clothing costs by cutting prices in HALF

### Suits and Sportcoats

Nationally-Advertised  
**LEXOX-ROYAL®**  
Doubleknits drastically reduced December only

Quick! Take advantage of this fabulous Woolco offer. Update your wardrobe with new fashion at prices that may never return.

Sportcoats - Everyday low Woolco price of \$39.99  
**now \$20.**

Suits  
Everyday low Woolco price of \$69.99  
**now \$35.**

Dress-vest-in-double-knits at one-half the cost. Lexox-Royal® Sport Coats in bright, bold prints, classic checks and ever-popular solid color fabrics. Lexox-Royal® Suits, tailored in the latest's newest prints, checks, patterns and solid tones. All with wide lapels, dual center vents and fused linings. Step out of the old. Step in, save and step into the new.

Fashionably tailored in the U.S.A.

PlaidStallions.com



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## Remember when....



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## The Changing Face of Big-Box

- Adapting to Smaller Formats and embracing E-commerce
  - To adapt to this trend of “shopping small”, many larger retailers are opening small format versions of their traditional larger-format stores



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- Retailers are identifying the demands and needs of shoppers in different markets
  - Walmart has six different store types ranging from its Supercenter, with 180,000 SF, to its Walmart Express, a 15,000 SF competitor to local drug stores
  - Walmart opened 130 Supercenters, but only 121 small-format stores in 2014, and 120 Supercenters in 2015

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- The *Supercenter* format provides advantages
  - It allows retailers to provide a wide variety of merchandise
  - The One-Stop Shop
  - Supercenters are serving as distribution points for on-line shopping and smaller-format stores



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- Big-Box Goes Urban – Adapting to the changing needs of this generation
  - Millennials prefer cities to suburbs
  - Despite an affinity for on-line shopping, 75% of millennial purchases are made at brick and mortar stores
  - Target is moving to CityTarget format



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## Challenges in the Valuation of Big Box Retail Properties

- Cost Approach
  - Difficultly determining appropriate adjustments for obsolescence
- Income Capitalization Approach
  - Lack of comparable rental data
  - Lack of cap rates derived from comparable sales

## Challenges in the Valuation of Big Box Retail Properties

- Sales Comparison Approach
  - Lack of comparable sales
  - Consideration of the Fee Simple and Leased Fee Interests
  - Difficulty determining appropriate adjustments for deed restrictions on comparable sales

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# Home Depot Cottage Grove



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## Home Depot Cottage Grove

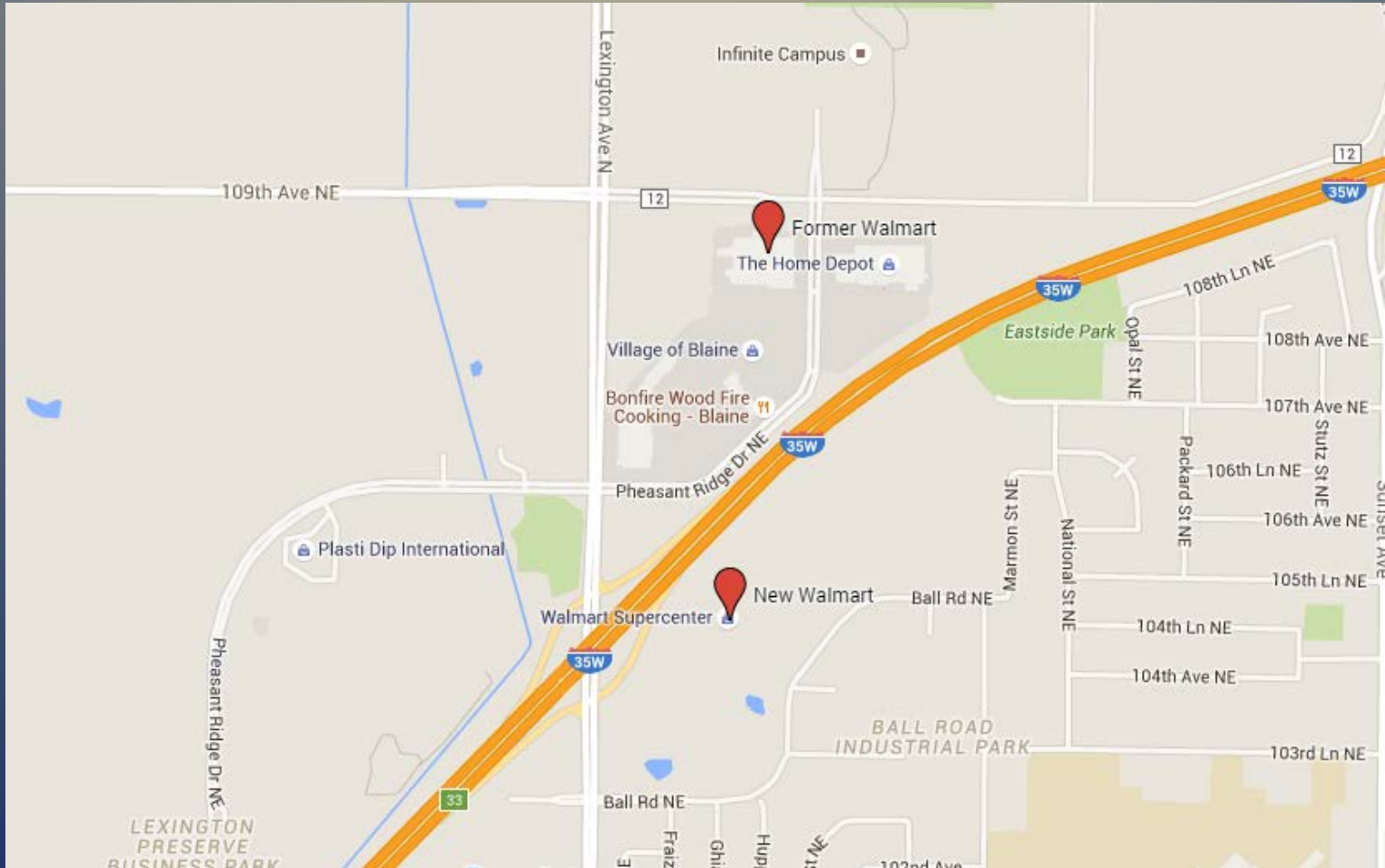
- Store closed in 2008, deed restrictions in place
- City bought for \$2.25M (\$24 PSF), will subsidize \$300K in order to stimulate area development
- New agreement- gives Home Depot the first right of refusal of home improvement centers, garden centers, lumber yards and hardware stores of more than 40,000 square feet from occupying the space

## Cottage Grove mayor fumes over Home Depot building sale conditions



“I am not going to shop at Home Depot. I am encouraging our citizens to not shop at Home Depot” Cottage Grove Mayor Myron Bailey

# Walmart Blaine



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# Walmart Blaine



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# Walmart Blaine



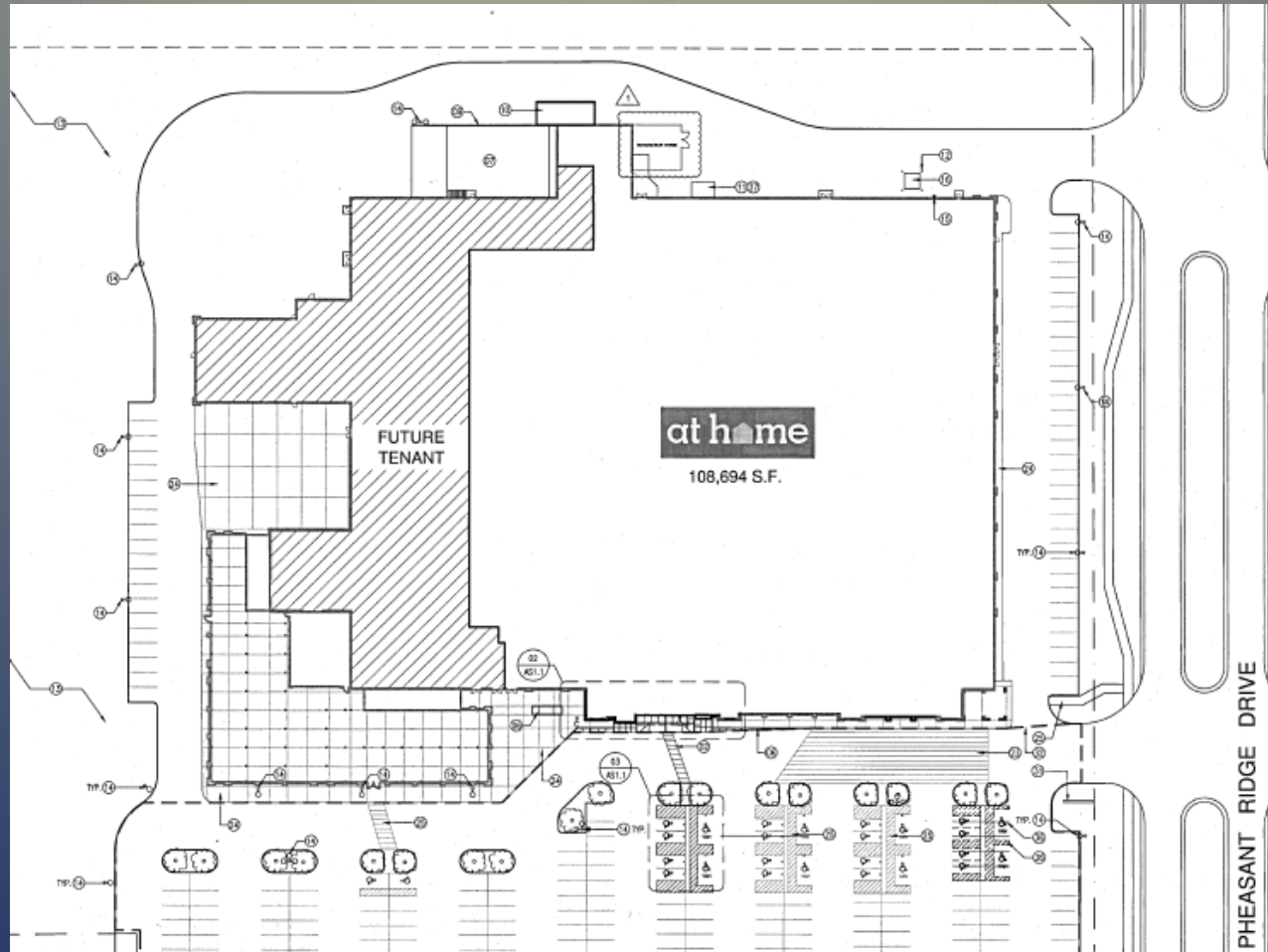
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## Walmart Blaine

- Former Walmart 145,049 SF
- New Walmart 183,072 SF
- Former Walmart store sold for \$5.2M (\$36 PSF) with deed restrictions in place
- Walmart held onto non-compete as they were relocating close by

# Walmart Blaine



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# Dark Store Theory






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## Dark Store Theory

- Poor location (demographics change, better site nearby)
- Outdated building (new building in new location constructed)
- Change in retail trends (online commerce)
- Business decision (deed restrictions)

## Big Box Court Decisions

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### Unfair Comparisons? Meijer, other big-box retailers use ‘dark store’ loophole to cut their Michigan property tax bills

Written by [Nick Manes](#)



Left: Vacant Target store on Sherman Boulevard in Muskegon. Right: Current Target store on Harvey Street near The Lakes Mall in Muskegon.

When it comes to paying property taxes in Mason County, retailer **Meijer Inc.** appears to be following the advice of its old advertising slogan: “Why Pay More.”

## Big Box Court Decisions

- Menard's                      City of Escanaba (Michigan)  
    \$121,000 refund
- Lowe's                      Marquette Township (Michigan)  
    \$755,000 refund
- Kohl's                      Kokomo (Indiana)  
    ~\$3,500,000 value reduction
- Meijer                      Indianapolis (Indiana)  
    \$2,400,000 refund

# Big Box Court Decisions

## Are big-box retailers getting a tax break at schools' expense?

Chelsea Schneider [chelsea.schneider@indystar.com](mailto:chelsea.schneider@indystar.com) 4:07 p.m. EDT September 9, 2015



(Photo: Charlie Nye / The Star)

Last December, when a state board effectively reduced property taxes for a Meijer on 96th Street in Indianapolis and a Kohl's in Howard County, it sounded a warning bell for local governments.

The Meijer and Kohl's used the sale prices of vacant stores in other locations to successfully argue their fully stocked, fully operational stores were assessed too highly for tax purposes.

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# Big Box Court Decisions

## Lawmakers seek a halt to 'dark stores' tax-cutting strategy



By Chastity Pratt Dawsey | Bridge Magazine

on August 11, 2015 at 7:00 AM, updated August 11, 2015 at 7:06 AM

Print

Email

Last year, a Menard's home improvement store won a property tax appeal that [required the City of Escanaba to refund the company \\$121,000](#). That's about the cost of what the Upper Peninsula community of 12,000 on Little Bay de Noc budgeted for major street repairs next year.



Last year, a Menard's in Escanaba won a \$121,000 tax refund using the "dark stores" argument for lowering its assessed value. That was money the Upper Peninsula city has budgeted for major road repair. (courtesy photo)

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## Michigan Legislative Changes

- House Bill 4681:
  - Would create a user fee for corporations that use this tactic to cut their property taxes
- Senate Bill 524:
  - Highest and best use of the property is the continued use of the property as improved

## Indiana Legislative Changes

- Senate Act No. 436:

Cannot use a comparable sale if:

- Vacant > 1 yr.
- Has “significant” recorded restrictions
- Sold for a different use, or,
- If comparable was not arm’s length sale

## Indiana Legislative Changes

- House Bill 1290:
  - Repealed 2015 Senate Act No. 436
  - “a valuation does not reflect the true value of the improved property if the purportedly comparable sale properties supporting the valuation have a different market or submarket than the current use of the improved property based on a market segmentation analysis”

## Menards Moorhead Decision

- Cost Approach given significant weight
- Functional obsolescence adjustment  
\$2,500,000
- Income approach not considered
- Comparable sales excluded from ratio study  
are ultimately utilized
- Deed restriction adjustment of 15%

## Menards Moorhead Decision

### Amended Findings

- Affirmed original decision:
  - Cost approach was useful
  - No reliable market value indication under the income approach

## Seminar Presenters

- Thomas W. Hamilton, Ph.D., CRE, MAI, FRICS, CDEI, Roosevelt University Heller College of Business
- Bob Ehler, Vanguard Appraisals, Inc.
- Josh Johnsen, SAMA, Olmsted County
- Joseph Mako, MAI, AMA, Hennepin County



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# Introduction



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## Introduction

- Hi my name is Joe and I am an appraiser.
- I have been an appraiser for 28 years.
- I did my first Big Box in about 1992.
- I am an MAI
- I am the litigation appraiser for Hennepin County
- Some of you County Assessor's are former clients but I have also appraised big box stores for property owners.

## How to appraise Big Box stores (Five Easy Steps):

1. Have sufficient experience and understanding to do a credible appraisal of a Big Box retail building.
2. Find sales of land, sales of improved property, leases and cost data out of the market.
3. Analyze said data using proper appraisal concepts and procedures.
4. Conclude to a properly supported value.
5. If required, write it all up in a report that meets all of the requirements of the appraisal and assessing professions.

## The Test

- Okay, if I have to teach, you all have to take a test. If you pass the test, or if you don't, you will get a packet to accompany this class containing guides to the different approaches.

## The appraisal process

The appraisal process:

- Observing the market
- Distilling relevant information
- Reporting your results along with support.

## Appraisal is boring

No not really (or shhhh don't tell the young folk **Millennials**, we're having a hard enough time getting people to work in this profession).

Appraisal is a reflection of market activity. What more exciting industry is there than commercial real estate? All of the cool people are in commercial real estate:

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Sam Zell



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R. Donahue Peebles is Chairman and CEO of the most successful African American real estate development company in the nation.



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# Local Boy Curt Carlson



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## Appraisal... The Premise

- The basic premise is that we gather data and evidence from the market and report on what the market appears to be doing. If your conclusions are contrary to what is or was happening in the market you need to explain this departure.
- Assessors and appraisers are not smarter than the market. Likewise attorneys and tax representatives are not part of the market and also not appraisers.
- When you are interpreting the market, you have to be careful not to get off track. If at the end of the day your value and analysis dose not look like the market, then you should reconsider.

## Start with the basics:

All appraisal is basic.

- Define
- Describe
- Highest and best use
- Three approaches
- Reconciliation
- Done

## What is your subject property?

Sounds easy but this is frequently more complex than we understand.

In this case I am supposed to be talking about “big box” stores.

Clears it right-up... Not really. Big Box is a label for a retail market segment that was once revolutionary (the internet of its day). Now it is a mature, some would argue overripe market segment.

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# What is your subject property?



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# What is your subject property?



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What is your subject property?



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## Test question # 1: What is big box retail?

1. Big box refers to the size of a bricks and mortar retail store.
2. Big box refers to a retail concept.
3. Big box does not refer to a construction category in Marshall and Swift.
4. Big box refers to a part of a shopping center.
5. A single-use store typically between 10,000 and 100,000 square feet or more.
6. Big box is a failed retail concept and is basically land less demolition costs.
7. All of the above.

## Test question # 1: What is big box retail?

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The teaching that you should take away from this class is:

**Describe your subject well** and gain an understanding of the market by conducting a **market analysis** and **highest and best use analysis**. You may well find that the labels you have been tossing around, or have been tossed at you, distort the market rather than clarify it.

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Remember we are reporting on the market

- **Big Box** is a label not a controlling appraisal definition or concept.
- Big box is a retail concept.
- We are reporting on the retail market.
- Retail is a fast changing market, but it is also a timeless, unchanging market.

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## The Appraisal Process:

- Define the appraisal problem by reporting, defining and analyzing the rights and interest being appraised and the reasons for the appraisal as well as its time parameters.
- Describe the property to be appraised, its neighborhood and its market.
- Analyze the highest and best use. This process may have to be revisited after the approaches to value are conducted.
- After the appraisal problem has been defined and the highest and best use analyzed, the appraiser applies the three recognized approaches to value the property.

## Three recognized approaches to value

- Cost Approach
- Sales Comparison Approach
- Income Approach

*It is acceptable to not use an approach or utilize a different method of analyzing value; however, this must be supported and the users of the report need to be informed of the departure from accepted appraisal practice. Generally, the farther an appraiser varies from accepted methods (for example excluding an entire approach) the more support they should provide for doing so.*

## Test question # 2: Which approaches to value should we use to value Big Box Stores?

1. Only the income approach and sales comparison approach because tax court judges don't want to be bothered with the cost approach and its unsupported estimates of depreciation.
2. Only the income approach because the other two approaches include leased fee value.
3. Only the cost approach and sales comparison approaches because all of the rental data is from build-to-suit transactions.
4. All three approaches, duh its an appraisal

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3. Only the cost approach and sales comparison approaches because all of the rental data is from build-to-suit transactions.
4. **All three approaches, duh its an appraisal**

## Hypothetical Conditions, Extraordinary Assumptions and Scope of Work

These are very important but require their own class. I am going to skip right over them; however, when you write any appraisal I suggest you spend some time on them.

## Rights and interest being appraised:

- Fee Simple. The complete bundle of rights.
- What about street right of way, drainage & utility easements, parking easements, access easements, reciprocal easement agreements, cell tower easements, leases, sale lease-backs and the rest?
- Again, I am going to skip right over this mess; however, when you write any appraisal I suggest you spend some time on it.



Test question # 3: What is the correct value for property taxes in Minnesota?

1. Fee simple market value.
2. Market value of the leased fee.
3. Market value
4. Market value of the property as estimated using only dark stores.
5. All of the above

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Test question # 3: What is the correct value for property taxes in Minnesota?

1. Fee simple market value.
2. Market value of the leased fee.
3. **Market value**
4. Market value of the property as estimated using only dark stores.
5. All of the above

## Test question # 3: What is the correct market value for property taxes in Minnesota?

**90 Federal Reserve notes of other banks**

Reserve banks when certain areas require large volumes of currency or when the public demand for currency is very heavy. As the need for currency relaxes, Federal Reserve Banks retire these notes. Federal Reserve notes are issued in member banks in denominations of \$1 to \$10,000, providing elastic currency with full legal tender status.

**Federal Reserve notes of other banks.** In the United States, the total amount of Federal Reserve notes held by reserve banks other than the bank that issued them.

**Federal Reserve System.** The central banking system of the United States, which was created in 1915 to manage money and credit and to promote orderly growth of the economy. The Federal Reserve System operates independently of Congress and the president. The Federal Reserve regulates the money supply, determines the legal reserve of member banks, oversees the mint, effects transfers of funds, promotes and facilitates the clearance and collection of checks, examines member banks, and serves other functions; consists of twelve Federal Reserve Banks, their twenty-four branches, and national and state banks that are members of the system. All national banks are stockholding members of the Federal Reserve Bank of their district; membership is optional for state banks and trust companies.

**federal rule.** *See before and after rule.*

**fee.** *See fee simple estate.*

**fee on condition.** Also called *fee upon condition*. *See fee simple conditional.*

**fee on limitation.** A fee simple estate that is automatically terminated when a specified event occurs, which may be at any time or not at all; also called *fee upon limitation*.

**fee simple.** *See fee simple estate.*

**fee simple conditional.** A fee simple estate that may be terminated when a specified event occurs, which may be at any time or not at all. The condition does not automatically terminate the estate; the grantor, the heirs, or a designee must act to terminate it.

**fee simple estate.** Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

**fee simple interest.** *See fee simple estate.*

**fee timesharing.** *See timesharing.*

**FEMA map.** A flood zone map created by the Federal Emergency Management Agency (FEMA). Sometimes called a *FIRM*, or *flood insurance rate map*.

**festival shopping center.** A type of specialty shopping center designed to create a destination shopping experience, with entertainment as a unifying theme.

**FF&E.** *See furniture, fixtures, and equipment.*

**FFO.** *See funds from operations.*

**FHLMC.** *See Freddie Mac.*

**fiduciary**

1. Describes a relationship of trust between two individuals in which one has a duty to act for the benefit of the other (e.g., between guardian and ward or money manager and client); the person so charged.
2. An individual or agency such as a bank that is given certain property to hold in trust under a trust agreement. Executors of estates and trustees serve as fiduciaries.

**field review.** A nontechnical term used to describe a review of an appraisal for which the scope of work includes inspection of the exterior and sometimes the interior of the property appraised and possibly inspection of the comparable properties to confirm the data

## Date of Value:

We all know that values have dates. In tax court we constantly live in the past. When our first dates of value are January 2, 2011? 2012? 2013 maybe 2014, some important issues arise.

## Date of Value Issues:

- We know how the story ends or at least the next few chapters, but the buyers, sellers and investors at the time didn't. How do we factor this into our value estimate?
- How far back should we go, how far forward? Be careful about pulling data from later years. The theory behind this is that the market knew what had happened in the past but had no crystal ball to see the future. We are reflecting the workings of the real estate market so we need to pay attention to what they knew or understood at the time. The market can see back to the beginning of time, but one year into the future pretty much exhausts any anticipation or deals in the pipeline. The availability of data also impacts our decision about what we should use. (Should we use a sale 21 months after the date of value?)(Say there are 30 sales over a six year period)(Say there are five sales over a six year period)
- Should we use different comparables for different dates of value? If you have a lot of comp data you should definitely differentiate over time by using or weighting different comps as you move forward in valuation years.

## Date of Inspection

The date of inspection will almost never be the date of value when appraising property for tax appeal. It is up to you to appropriately label the appraisal either as retrospective or prospective.

## Inspection

- When you inspect the property do a thorough job.
- The attorneys and/or property owners filed suit and your inspection is sanctioned by the court.
- Do not be hurried, you are to be provided a chance to inspect the property and I have never met a finder of fact (judge, tribunal or commission) that would want you to do a less than adequate job because someone in the group was impatient.
- Make sure you make a long enough appointment, do not be afraid to ask for another inspection, especially when doing multiple years. Things change and you should be afforded an opportunity to see any changes that occur.
- If you are doing multiple years be sure to gather information on what existed for each date of value.
- Asking questions is as important as taking photos.
- Do not let attorneys or property owners bully you to go faster.
- Also, do not allow attorneys or property owners to withhold reasonable data.

## Competency Rule:

- Are you competent?
- If you are, go for it.
- If you're not, take steps to become competent.
- If you cannot become competent don't do the appraisal.



## Zoning:

- Look at zoning carefully.
- Zoning is an appraisal minefield.
- You need to understand how the market looks at zoning.
- If market participants cannot build what they want, what will they do?
- Are there other factors that control the use of a property like zoning that are not zoning? What is the difference?

## History of the subject property:

- When was the property built, sold, leased, foreclosed or demolished?
- What was on the property previously and why did the use change?
- This helps to define whether the subject is or should be a Big Box retail store. Example metro Menards vs Knox.
- Take the time to describe the history. The judge may be very interested.

## Legal description:

Does your description include all of the easements, right-of-ways and reciprocal agreements?

## Tax and Assessments:

You need to make a comment as to whether they are appropriate.

## Site Description:

Do a good job and it will really help you in the appraisal process.

## Site Description:



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## Site Description:



## Description of Improvements:

- If you cannot describe the property accurately and in terms the market would recognize, are you competent to appraise it?
- More is more and less is less.
- You want the judge to use your appraisal.



## Test question # 4: A Market Analysis/Marketability Study is required in an Appraisal:

1. This is true
2. This is false
3. Like many aspects of appraisal these items are a good idea but not necessarily required.
4. These items should never be included in an appraisal.

## Test question # 4: A Market Analysis/Marketability Study is required in an Appraisal:

1. This is true, (it is also a great place to discuss value issues that you want the judge to understand).
2. This is false
3. Like many aspects of appraisal these items are a good idea but not necessarily required.
4. These items should never be included in an appraisal.

## Highest and Best Use:

- Be careful with your highest and best use analysis.
- Don't conclude to one highest and best use and appraise the property as something different.
- Also, comparable sales of land and improved properties should have the same or similar highest and best use as your subject.
- What does that mean?
- Does this create problems?

## The Cost Approach:

This is personal opinion so we'll do this by show of hands:

The cost approach is the easiest approach and that is why so many appraisers leave it out of their appraisals.

1. Agree
2. Disagree
3. Mako is completely nuts

## The Cost Approach:

- My belief is that the cost approach is the most time consuming approach because you not only need to do a cost analysis, but also estimate land value. This is the reason I think a lot of appraisers leave it out.
- The cost approach brackets value with land value at the low end and undepreciated replacement cost at the upper end.

## Land Value

**Step 1, Estimate Land Value:** Land valuation is complex and time consuming and probably the most difficult part of any valuation. However, it is also the most important part of a “Big Box” store appraisal.

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Test question # 5: If the land by itself is more valuable than the property as improved, what is the **Market Value** of the **Fee Simple Estate**?

1. Land Value
2. Land Value less demolition costs.
3. You can't tell unless you do the other two approaches.
4. The value estimated by the income and sales comparison approach because the cost approach is not reliable.

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Test question # 5: If the land by itself is more valuable than the property as improved, what is the **Market Value** of the **Fee Simple Estate**?

1. Land Value
2. Land Value less demolition costs.
3. You can't tell unless you do the other two approaches.
4. The value estimated by the income and sales comparison approach because the cost approach is not reliable.



## Land Value Discussion

First of all this is a classic highest and best use question. When people are taught how to appraise we show them this and give them the answer (number 2 above). My experience is that it is not so easy and never clear cut.

- Is number 1 ever likely to be correct?
- Is number 3 ever likely to be correct?
- Is number 4 ever likely to be correct?

## Cost Approach Handout

The process of conducting a cost approach is laid out on Pages 568 and 569 of The Appraisal of Real Estate, 14<sup>th</sup> Addition as follows:

- 1. Estimate the value of the site as though vacant and available to be developed to its highest and best use.**
2. Determine which cost basis is most applicable to the assignment: reproduction cost or **replacement cost.**
3. Estimate the direct (hard) and indirect (soft) costs of the improvements as of the effective appraisal date.
- 4. Estimate an appropriate entrepreneurial incentive or profit from analysis of the market.**
5. Add estimated direct cost, indirect cost and entrepreneurial incentive or profit to arrive at the total cost of the improvements.

## Cost Approach Handout

6. Estimate the amount of **depreciation in the improvements and, if necessary allocate it among the three major categories (Physical Deterioration, Functional Obsolescence and External Obsolescence)**.
7. Deduct the estimated depreciation from the total cost of the improvements to derive an estimate of their depreciated cost.
8. Estimate the contributory value of any site improvements that have not already been considered.
9. Add land value to the total depreciated cost of all the improvements to arrive at the indicated value of the property.
10. Adjust for **personal property** (e.g. furniture fixtures and equipment) or intangible assets that are included in the appraisal.
11. Adjust the value conclusion, **which reflects the value of the fee simple estate**, for property interest being appraised to arrive at the indicated value of the specified interest in the property.

## Test question # 6: Why would we not perform a cost approach?

1. It is a colossal waste of time.
2. The market does not rely on the cost approach.
3. The petitioner's appraiser is not going to do it.
4. The petitioner's attorney said it is not necessary, so he won't cross examine me if I don't include it.
5. Judges don't like the cost approach.
6. Depreciation is much more difficult to estimate than rents, cap rates, and adjustments in the sales comparison approach.
7. Sales of comparable properties that reflect the fee simple estate are available in adequate quantities.
8. The income approach is the best indicator of fee simple value.
9. None of the above.

## Test question # 6: Why would we not perform a cost approach?

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8. The income approach is the best indicator of fee simple value.
9. **None of the above.**

## Test question # 7: Why should we perform a cost approach?

1. Land value is a key factor in retail property value.
2. It **can** be conducted for almost all retail properties.
3. It reflects the value of the fee simple estate.
4. The retail market generally builds new properties when they can, so we are reflecting market thinking.
5. All of the above.

## Test question # 7: Why should we perform a cost approach?

1. Land value is a key factor in retail property value.
2. It **can** be conducted for almost all retail properties.
3. It reflects the value of the fee simple estate.
4. The retail market generally builds new properties when they can, so we are reflecting market thinking.
5. **All of the above.**

## **The Sales Comparison Approach:**

An approach that provides a direct link between the market and value. This approach is dependent on the availability of sales of similar properties.



## The Sales Comparison Approach:

Sales of big box retail stores are not common. Some reasons for this:

- Big retail stores are uncommon and require large commercial sites, which are uncommon in built-up areas.
- Retailers do not leave functional stores with good locations. This is true no matter what the size of the retailer or mix of products. Target on I-494.
- Large retailers cannot relocate in most built-up suburban markets. Large commercially zoned lots are rare and sell at a premium.
- In rural markets large retailers do relocate. However, they do not willingly sell their old stores to competitors.
- Many municipalities do not want selected large retailers for specific reasons.

## The Sales Comparison Approach:

Large retail stores are generally not sold for a continuation of the same use. Some reasons:

- Retailers generally pluck a few of the sticks from the bundle of rights as they leave.
- Older stores generally are not up to the high standards of first tier large retailers. For example when Target moves out at the end of 25 years, the store is likely no longer suitable for Target, Kohls, or Herbergers. A 30 year old Menards store is not up to the standards of their current stores so what happens to it?
- Even prior to moving into new spaces, retailers sometimes divide up which retailer can sell which product. This is done through operating agreements. Unfortunately, retail evolves but the agreements in place do not. A new retailer is not going to move into a limiting situation. (recent Walmart)
- Even in shopping centers it is sometimes difficult to sell a property that is controlled by a dominant retailer. Discount retailers compete in most product types; so who can be tenants in the same center as a Walmart?

## The Sales Comparison Approach:

### Unit of comparison

- Is this something we should think about?
- Can we just use gross building area and not get too deep into this?
- Does our base square footage include or exclude mezzanines, parking ramps, garden centers, penthouses, smaller buildings on pads, lumber storage and/or warehouse space?
- If we include/exclude these areas how do we adjust for them?

## The Sales Comparison Approach Handout:

The following is a brief overview of the process of developing a Sales Comparison Approach The Appraisal of Real Estate, 14th Edition, p.377.:

*“In the **Sales Comparison Approach**, the appraiser develops an opinion of value by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property. The comparative techniques of analysis applied in the sales comparison approach are fundamental to the valuation process. Estimates of market rent, expenses, land value, cost, depreciation, and other value parameters may be derived in the other approaches to value using comparative techniques. Similarly, in applying the sales comparison approach, appraisers often analyze conclusions derived in the other approaches to determine the adjustments to be made to the sale prices of comparable properties”*

## The Sales Comparison Approach Handout:

*The general procedures followed in the Sales Comparison Approach are as follows: (The Appraisal of Real Estate, 14<sup>th</sup> Edition, pgs. 381-382)*

- 1. Research the competitive market for information on properties that are similar to the subject property and that have recently sold, are listed for sale, or are under contract. Information on agreements of sale, options, listings, and bona fide offers may also be collected. The characteristics of the properties such as property type, date of sale, size, physical condition, location and land use constraints should be considered. The goal is to find a set of comparable sales or other evidence such as property listings or contracts as similar as possible to the subject property to ensure they reflect the actions of similar buyers. Market analysis and highest and best use set the stage for the selection of appropriate comparables.*
- 2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length market considerations. Verification should elicit additional information about the property such as buyer motivation, economic characteristics (if the property is income producing), value component allocations and other significant factors as well as information about the market to ensure the comparisons are credible.*

## The Sales Comparison Approach Handout:

- 3. Select the most relevant units of comparison used by participants in the market (e.g., price per acre, price PSF, price per front foot, price per dwelling unit) and develop a comparative analysis for each unit. The appraiser's goal is to define and identify a unit of comparison that explains market behavior.*
- 4. Look for differences between the comparable sale properties and the subject property using all appropriate elements of comparison. Then adjust the price of each sale property, reflecting how it differs, to equate it to the subject property or eliminate that property as a comparable. This step typically involves using the most similar sale properties and then adjusting for any remaining differences. If a transaction does not reflect the actions of a buyer who would also be attracted to the subject property, the appraiser should be concerned about comparability.*
- 5. Reconcile the various value indications produced from the analysis of comparable sales into a value conclusion. A value opinion can be expressed as a single point estimate, as a range of values, or in terms of a relationship (e.g. more or less than a given amount).*

## The Sales Comparison Approach:

Sales of Big Box stores do occur and should be analyzed. Points of comparison are as follows.

Adjustments for Transactional Elements (in order)

1. Property rights conveyed
2. Financing terms
3. Conditions of sale
4. Expenditures made immediately after the sale.  
(Special assessment, personal property and other expenditures)
5. Market Conditions

## The Sales Comparison Approach:

### Property Adjustments (no set order):

- Location
- Age
- Quality
- Condition
- Land area
- Parking
- Truck access
- Economic Characteristics
- Difference in uses of interior space, office, warehouse, retail and garden center.
- Differences in mezzanine, basement, parking ramps, garden centers, smaller buildings on pads, lumber storage and/or warehouse space. This is a special case. How we adjust for these spaces changes dramatically based on whether or not we included them in the square footage we used for the unit of comparison. At its most basic you need to be consistent.
- Other



## The Sales Comparison Approach:

- Analyze the results: Is the **mean** relevant, is the **range** relevant, which are your “best” sales? Do you have any “best” sales (what does this mean for your conclusion)?
- Conclude to a value. My suggestion is to weight the sales or groups of sales and mathematically then calculate your final value estimate.
- Round your conclusions.

## The Income Approach:

- I can think of several great reasons why this approach is unlikely to lead to a reliable indicator of value for the fee simple interest. Should we still do it, or should we save time and concentrate on our better approaches???
- If you can find data you should do the income approach. There is income data for most Big Box stores.
- Okay, Joe I looked and I couldn't find data; therefore, I can skip this approach, right. Sorry.

## The Income Approach:

- First of all, income data exists.
- Second, if you conduct the approach the limitations become obvious; or you find so much wonderful data that the income approach is justified.
- Third, if you do not perform an income approach you have to discuss why, and you had better be right.
- Fourth, appraisal includes three approaches to value. This concept has been under attack for longer than I have been working in the field. By not conducting an approach you contribute to the argument that approaches can be left out of an appraisal. Guess what, this is what advocates want. They want to pick and choose what approaches we do.

## The Income Approach Handout:

The general procedures followed in the Income Capitalization Approach are discussed in The Appraisal of Real Estate, 14<sup>th</sup> Edition, pages. 460 and 461, as follows:

*“Although there are various income capitalization techniques available to the appraiser, certain steps are essential in applying the income capitalization approach. Before applying most capitalization techniques, an appraiser works down from potential gross income to net operating income. To do this, the appraiser will*

- 1. Research the income and expense data for the subject property and comparables.*
- 2. Estimate the potential gross income of the property by adding the rental income and any other potential income.*
- 3. Estimate the vacancy and collection loss.*
- 4. Subtract vacancy and collection loss from total potential gross income to arrive at the effective gross income of the subject property.*

## The Income Approach Handout:

5. Estimate the total operating expenses for the subject by adding fixed expenses, variable expenses, **and a replacement allowance (where applicable).**

6. Subtract the estimate of total operating expenses from the estimate of effective gross income to arrive at net operating income. **(Deductions for capital items may also be necessary at various points in time through the projection period to calculate the cash flow used in discounted cash flow analysis.)**

7. Apply one of the direct or yield capitalization techniques to this data to generate an estimate of value via the income capitalization approach.

*Some capitalization techniques involve the use of a potential gross income multiplier or effective gross income multiplier. In those cases, the appraiser does not work down to net operating income but stops at effective gross income.”*

## The Income Test Questions:

1. True or False: Most big box leases are the result of build-to-suit deals.
2. True or False: Most big box retailers are credit tenants.
3. True or False: All Big Box retailer's rent their space.

## The Income Test Questions:

1. True or False: Most big box leases are the result of build-to-suit deals. (Probably true and what does this tell us about the market?)
2. True or False: Most big box retailers are credit tenants. (Like Class A office buildings, if the property type is commonly occupied by credit tenants does appraising it based on non-credit tenants result in “market value”?)
3. True or False: All Big Box retailer’s rent their space. (Menards, Fleet Farm) Why: control, land value, profit from development.

## Leases

These terms are defined in the *The Dictionary of Real Estate Appraisal, Sixth Edition*, Page 111, published by The Appraisal Institute as follows:

**Lease:** *A contract in which the rights to use and occupy land or structures are transferred by the owner to another for a specified period of time in return for a specified rent.*

**Leased fee estate/Leased fee Interest:** *A freehold ownership interest where the possessory interest has been granted to another party by the creation of a contractual land-lord tenant relationship (i.e., a lease).*

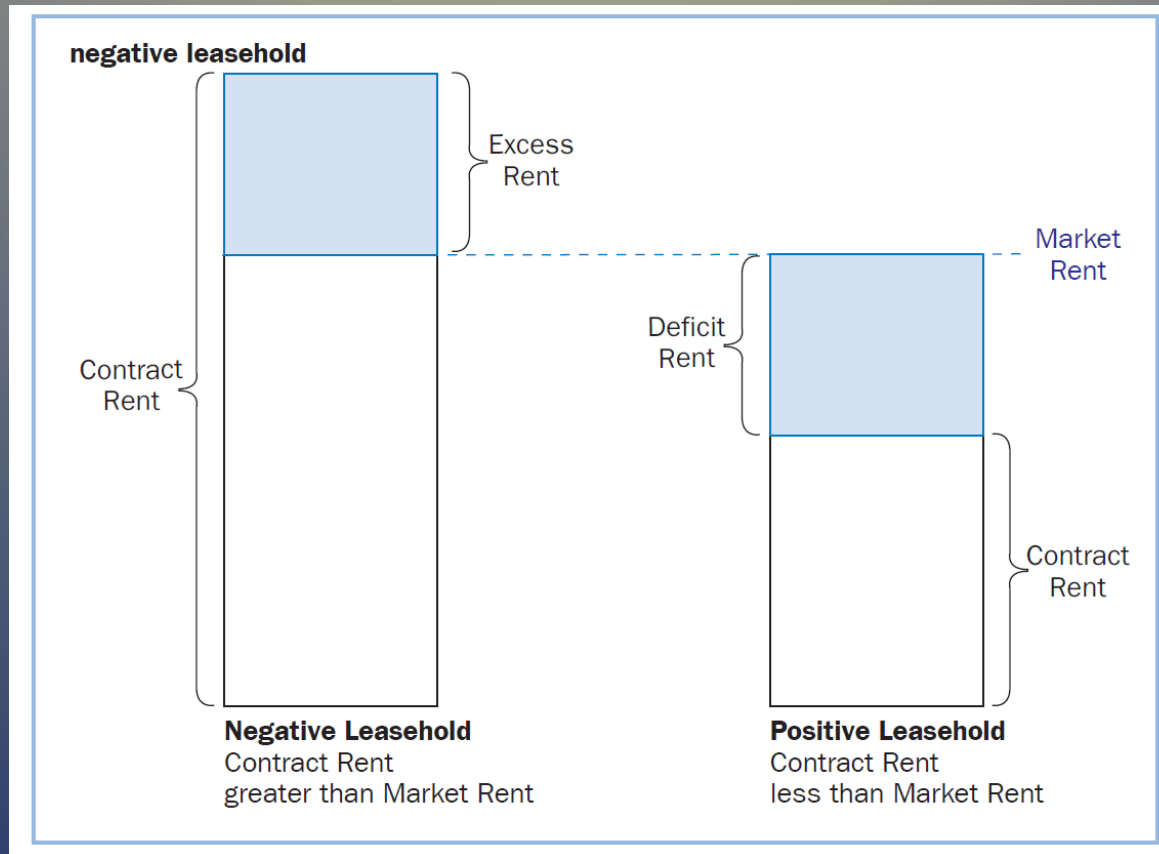
**Leasehold estate/Leasehold interest.** *The right held by the lessee to use and occupy real estate for a stated term and under the conditions specified in the lease. See also negative leasehold; positive leasehold. (Negative leasehold. A lease situation in which the market rent is less than the contract rent. Positive leasehold. A lease situation in which the market rent is greater than the contract rent.*

The following Graphic is from page 156.

*The Valuation of Big Box Retail*



## Leases



## The Income Test Questions:

What is more valuable, the positive leased fee or negative leased fee?

1. Positive leased fee
2. Negative leased fee
3. They both have the same value.
4. These are made up terms and this is a stupid question.

## The Income Test Questions:

What is more valuable the positive leased fee or negative leased fee?

1. Positive leased fee
2. Negative leased fee
3. They both have the same value.
4. These are made up terms and this is a stupid question.

## The Income Test Questions:

Big Box leases generally have a large land component. In theory, are cap rates for land higher or lower than cap rates for improvements only, or the total property?

1. Land Capitalization rates are lower because land does not depreciate.
2. Building Capitalization rates are lower because the income is earned by the improvements on the property not the land.
3. There is no difference between land and building capitalization rates.

## The Income Test Questions:

Big Box leases generally have a large land component. In theory, are cap rates for land higher or lower than cap rates for improvements only or the total property?

1. Land Capitalization rates are lower because land does not depreciate.
2. Building Capitalization rates are lower because the income is earned by the improvements on the property not the land.
3. There is no difference between land and building capitalization rates.

## The Income Test Questions:

What are the proper deductions to rental income that need to be made prior to capitalizing income into value?

1. Vacancy
2. Any deductions made to rent should match, reflect or relate to similar deductions made to your capitalization rate comps.
3. Vacancy, operating expenses, reserves, mortgage, depreciation and the cost to cure deferred maintenance.
4. None, it is okay to use face rent as income in the income approach.
5. Vacancy, operating expenses and reserves.
6. Vacancy, operating expenses, reserves and the cost to cure deferred maintenance.

## The Income Test Questions:

What are the proper deductions to rental income that need to be made prior to capitalizing income into value?

1. Vacancy
2. Any deductions made to rent should match, reflect or relate to similar deductions made to your capitalization rate comps.
3. Vacancy, operating expenses, reserves, mortgage, depreciation and the cost to cure deferred maintenance.
4. None, it is okay to use face rent as income in the income approach.
5. Vacancy, operating expenses and reserves.
6. Vacancy, operating expenses, reserves and the cost to cure deferred maintenance.

## Reconciliation:

This is an important part of the appraisal. You should be using it to help the reader understand what drives value in the market.

The reconciliation should weight the approaches based on the following.

- The relevance of each approach to market participants.
- The data available in the market for conducting each approach.
- The relevance of each approach with respect to the property rights appraised (fee simple) and type of value estimated (market value). This is important enough for you to write a paragraph about it in the reconciliation.



## Reconciliation:

Which approach should be given the greatest weight in valuing Big Box retail properties?

- The cost approach because the market players generally build new stores, when possible.
- The sales comparison approach because sales are direct indications of market thinking.
- The income approach because it is what the lawyers and tax reps rely on most.



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# Now What?



*The Valuation of Big Box Retail*

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“The Highest and best use of a specific parcel of land is not determined through subjective analysis by the property owner, the developer, or the appraiser; rather highest and best use is shaped by the competitive forces within the market where the property is located.”

*-The Appraisal of Real Estate (10<sup>th</sup> ed, 1992 Appraisal Institute), p. 275*

*The Valuation of Big Box Retail*

## Considering Highest & Best Use

### Forces Impacting Value

- Social
- Economic
- Physical/Environmental
- Governmental

### Elements Affecting Current Use

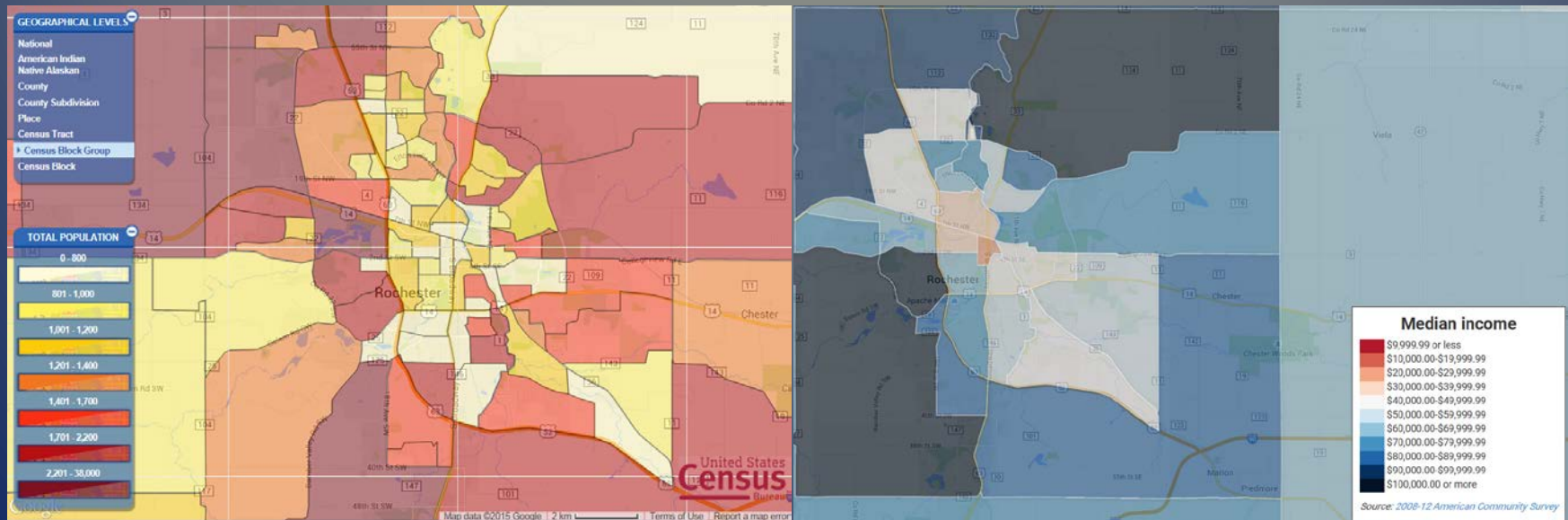
- Deed Restrictions
- Location
- Utility of Improvements
- Governmental Restrictions
- Consumer preferences

### Recognizing Depreciation

- Physical
- Functional
- Economic

## Bases for Segmentation in Consumer Markets: Looking at it through the eyes of the business

- **Geographic** – Customer, Location, Region
- **Demographic** - Gender, Age, Religion, Education, Income, Occupation
- **Psychographic (How they live)** - Personality, Lifestyle, Interests
- **Behavioral** –Benefit sought, Occasion used, Frequency of usage, Knowledge, Attitude towards product



## 2<sup>nd</sup> Tier Use

### 3 Possible Scenarios:

- What would be the most probable buyer of this improved site do with the improvements?

1. Keep using the improvements the way they exist?
2. Make modifications to what exists?
3. Demolish the existing improvements to obtain a vacant site?

- *Common Errors and Issues* (April 15, 2015 Appraisal Institute), p. 11

## 2<sup>nd</sup> Tier Use

Where in the life cycle is the subject property?

- How much physical and functional depreciation is suffered?

What has changed in the demographics of the subject area?

- Is there economic depreciation? What are the social and economic forces?

Why is the property available for sale/lease?

- Corporate decision, poor location, new store format, downsizing, bankruptcy?





## Rochester Menards Comparison:

- Menards - Built 1971, 77,000 SF
- Menards - Built 1996, 160,500 SF
- Menards - Built 2013, 162,000 SF



## Menards 2<sup>nd</sup> Generation

- Old format store – Built in 1971
- 77,000 SF with 18,000 SF of retail mezzanine
- Menards vacated this location in 2014
- 43 years of 1<sup>st</sup> generation use

## Mid-Life



- Built in 1996 with 118,000 SF of enclosed retail space
- In 2006 they enclosed the garden center and added on a new garden center
- Currently has 160,500 SF of retail space

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## Current Generation

- Built in 2013
- 162,000 SF of retail space
- Higher Clear Height
- New 12,000 SF alteration for Ashley Furniture inventory



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# Next Generation Examples



## Former **MENARDS**

- Furniture Superstore buys property
- Operates a factory outlet furniture store
- Purchased in 2015 for \*\$5,093,936 (\$66.30 PSF)

\*Purchase included a Joann Fabric and surplus land. Total sale was \$7,500,000. Allocated based on land size.



## Issues Affecting The Property

### Outdated format

- Less than 100,000 SF.
- Mezzanine retail space with no escalator / freight elevator access.

### Location – Economic/Environmental

- Flight to NW Rochester (West of 52)
- Lack of retail presence (synergy).  
Surrounding area dominated by car dealerships

- Minimal improvements. Furniture Superstore has limited branding and therefore had minor building alterations.





## As Target:

- Built in 1982
- 106,149 SF
- Anchor to aging strip center
- Occupied for approximately 18 years
- In 2000 Target Moved directly across Hwy 52
- Built a 204,234 SF store as the anchor to a new strip center

## 2<sup>nd</sup> Generation:

- In 2002 Ashley Properties purchased property for \$22 PSF
- Added portioning wall and created two mid-box spaces
- Tenants now include Hobby Lobby and Ashley Furniture
- By re-purposing space they increased the economic life and added value.



## Reasons for Relocation

- Physical depreciation of 18 year old center
- Possible functional issues with truck access
- Ability to develop “Superstore” format
- Follow development trends west of Hwy 52



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## former



- Built in 1981
- 93,951 SF
- K-Mart occupied for approximately 18 years
- Sold to Bowman Tool in 2008 for \$3,100,000, or \$33 PSF
- Re-Zoned to allow for an industrial use
- Limited new improvements - Bowman Tool painted the exterior and created office space

*The Valuation of Big Box Retail*

## Use Change Factors

- Business repositioning
- Down sizing
- Location no longer supports big box retail
- The interim use is industrial



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**FORMER**  
**MILLS**  
**FLEET FARM**



- Mills Fleet Farm – 118,000 SF, built in 1980
- Sold in 2007 for \$34 PSF
- Converted to an Appliance Smart and an Amish Furniture Store
- Built a hotel on pad site

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## Hy-Vee → Big Lots → Charter School?

- Sold 9/30/2015 for \$1,300,000 - \$41 PSF
- Built as a grocery store in 1981
- 2<sup>nd</sup> Generation was as a Big Lots
- Sold in 2015 to potentially become a Charter School



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## Redevelopment



- Built in 1970 – 114,500 SF
- Within walking distance of SE Rochester neighborhoods
- Nearby land values increasing over \$50 PSF



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## Valuation of Big-Box Retail for Assessment Purposes: Right Answer to the Wrong Question

BY DAVID CHARLES LENNHOF, CRE, MAI  
Real Estate Issues, Volume 39, Number 3, 2014

“Market value would be the price the property would fetch had it been offered on the open market to a pool of knowledgeable buyers. It would not be the value to Lowe’s.”



## Knowledgeable Buyers?

- Lowes (or Menards, Walgreens, etc.) is not a knowledgeable buyer?
- Property owner representatives assume the property is vacant. Wouldn't Lowes then be a prospective buyer or tenant?
- The attributes that make the property a Lowes are “architectural” in nature

## Property Assessment Valuation

second edition

Page 19 states the following when discussing Important points regarding market value:

- “It recognizes the present use as well as the potential use of the property.”

## Property Assessment Valuation

second edition

Page 35

- “Value in use means that value is within the object itself. Value in exchange comes from the human desire to acquire objects. It also requires that the objects possess utility, scarcity, and desirability.”

*The Valuation of Big Box Retail*

# Property Assessment Valuation

second edition

Page 16

- “....When a property is utilized at its highest and best use, its value in use and value in exchange are the same....”

## Highest and Best Use

- Physically possible
- Legally permissible
- Financially feasible
- Most productive

## Highest and Best Use

Page 33, PAV

- “Most productive, requires the Assessor to determine which use, from among all uses that are physically possible, legally permissible, and financially feasible, will produce the highest rate of return or value to the property”

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## Why Big Box Assessment Appeal Decisions vary from State to State?

### Highest and Best Use Analysis

- Broad interpretation
  1. Commercial, Retail, Large Retail, etc.
- Narrow interpretation
  1. Home Improvement Center, Drug Store, Grocery Store, etc.

## Broad Interpretation

- States Like Minnesota and Michigan have had appeal decisions based on the broad interpretation
- Opens the door for the “dark store theory”
- Do not give weight to “sale-leasebacks” as comparable sales and lease comparable’s
- Ignores the “most productive” concept of the highest and best use analysis



## Narrow Interpretation

- States Like Iowa and Florida have had appeal decisions based on the narrow interpretation
- Closes the door for the “dark store theory”
- Do give weight to “sale-leasebacks” as comparable sales and lease comparable’s
- (with certain adjustments)
- Gives considerable weight to the “most productive” concept of the highest and best use analysis

# MAAO

## Common threads between Iowa and Florida decisions

- Agree that “Value in Use” and “Value in Exchange” can be the same when “Current Use” is the Highest and Best Use
- Use “First Generation” and “Second Generation” language

## Helpful Iowa Decisions

- Soifer vs Floyd County (Supreme Court Case of a McDonalds)
- Edgewood-Johnson CR, LLC vs. Cedar Rapids (Walgreens PAAB Case)
- Hy-Vee Inc. vs. Dallas County (Court of Appeals)

## Soifer vs Floyd County

In response to Petitioners argument that existing Fast Food Restaurant sales should not be used the court stated:

“to obscure the fact that this real estate is being operated as a viable McDonalds restaurant, a quite popular American Establishment” would be to ignore reality....”

## Soifer vs Floyd County

McDonalds argued that their property cannot be valued as a “Fast Food Restaurant” because McDonalds sells all buildings with “noncompete clauses” to which the court stated:

“to eliminate franchise-to-franchise sales because McDonalds insist on noncompete clauses when selling its properties would ignore the requirement that real estate be valued based on its highest and best use.”

## Edgewood-Johnson CR, LLC vs. Cedar Rapids (Walgreens PAAB Case)

- Allowed Sale-Leasebacks, in the sales comparison approach and income approach, as long as adjustments were made.
  1. Adjusted sales down by comparing to cost approach.
  2. Adjust rents down by the same % used in the sales comparison approach

## Edgewood-Johnson CR, LLC vs. Cedar Rapids (Walgreens PAAB Case)

- Used “First Generation” and “Second Generation” language
  1. Discounted “dark sales” because of the extremely long marketing time
  2. Indicated adjustments should have been made to allow for cost to retrofit to another use
  3. Sales with noncompetes should not be considered

## Hy-Vee Inc. vs. Dallas County (Court of Appeals)

- Highest and Best use
  1. Plaintiff 's appraisers concluded “large retail”
  2. Defendants Appraiser concluded “Grocery Store” and only used Grocery Store sales
  3. Court agreed that Grocery Store was the proper HBU



## Helpful Florida Decisions

- CVS vs Sarasota County (District Court)
- CVS vs Hillsborough County (District Court)
- Assessor's said CVS did not appeal because they did not want to set precedent with these cases

## Helpful Florida Decisions

- Again the courts used “First Generation” and “Second Generation Language”
- “Each party acknowledged that a determination of the highest and best use of the properties is a critical issue in any appraisal and of foremost importance in this case”

JP/2012  
LakeCityFlorida.blogspot.com

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Given recent Minnesota Decisions is  
There Still Hope for the State?

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Given recent Minnesota Decisions is  
There Still Hope for the State?

Yes!

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## Given recent Minnesota Decisions is There Still Hope for the State?

- Ohio changed course on these types of decisions in the 2009 case of “Meijer Stores vs Franklin County”
- County won at BTA (Board of Tax Appeals) and the decision was affirmed by the Supreme Court

## Meijer Stores vs Franklin County

- 2003 Assessment of a 193,000 SF Meijer Store built in 2002
- Assessment: \$13,290,000
- Meijer Opinion of Value: \$9,500,000

## Meijer Stores vs Franklin County

- Previous Big Box decisions in Ohio sided with the plaintiffs agreeing with the “dark store” theory
- In this case BTA and the Supreme Court changed direction stating “Also significant was the superior quality of evidence in this case that supported a higher value of the property”

## Meijer Stores vs Franklin County

Court Quoting Counties Appraiser:

“Koon looked at Meijer’s own use as the touchstone for determining market rent and comparable sales. When asked, in the context of his income approach, who would lease the space, Koon answered: “Meijer.” Accordingly, “market rent” for Koon consisted in part as what rent Meijer itself would be willing to pay to an owner other than itself. Comparable sales in Koon’s view included sales by developers who built big-box retail facilities on a build-to-suit basis and then sold them to third parties

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## Meijer Stores vs Franklin County

Court Commenting on Counties Appraiser:

Koon's comparable properties included seven properties, four of which were purchased subject to long-term leases. Koon opined that the value of the Meijer store is "at a point which lies somewhere between selling prices of properties which are leased to first generation users and prices of properties which are vacant and available for occupancy."



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# How Did We Get Here



## Wisconsin: 2008 *Walgreen* Decision

### – Distortion of “Fee Simple”

- Leased Property– Ignore existence of lease and ignore the sale prices arising from sales of leased property. **PRESUMPTION**: The “Competitive Marketplace” cannot include “Leased Fee” properties.
- Owner Occupied Big Box– Assume property is vacant/ dark and will be sold to a buyer for a secondary use that is not consistent with its current highest and best use. **PRESUMPTION**: Requires a change in use that is inconsistent with present “Market” conditions.

# Valuation Gimmicks



## ➤ Presumption:

*(From: The Cambridge Dictionary)*

- a belief that something is true because it is likely, **although not certain**
- the act of believing that something is true **without having any proof**

# Valuation Gimmicks



- Sales Comparison Approach – Use abandoned distressed properties or deed restricted sales as “comparable sales”. IGNORE THE MARKET
- Income Approach – Ignore the actual rent earned at the property based on the presumption that the rent is always above market. Also ignore the existence of the lease and that the property is occupied. IGNORE THE MARKET
- Cost Approach – Ignore actual construction costs and purchase price for the underlying land. Instead use “estimated” artificial costs with a huge discount for economic and functional obsolescence (measured by dark store sale prices). IGNORE THE MARKET

# Value In Use/Value in Exchange



## Taxpayers Argument –

- “Value In Use” - Improper to use as it values a property’s intrinsic value to its owner (ie. business model and “business” intangibles) instead of only the value of the sticks and bricks and “generic” dirt. **PRESUMPTION:** current use cannot be HBU.
- “Value In Exchange” - Must be used and requires use of “comparable” sales (even if only remotely similar, deed restricted, dark and/or not in a desirable location) in a sales comparison approach. Sales of leased properties must be either ignored completely or heavily discounted because of the lease. **PRESUMPTION:** leases are above market.

# Secondary Sales Conundrum



- Taxpayers PRESUME that the property is substantially obsolete by design when built.
- Assessors assert – there is a market for “special purpose”, “limited market” and “build to suit” properties even in the absence of sales, and ASSUME that markets are competitive and that property is not intentionally overbuilt (*functional* obsolescence) in design or obsolete due to unanticipated changes in the market. (*economic* obsolescence)
- Low re-sale values reflect a change in the marketplace (or deed restrictions to the property) and therefore a change in the property’s highest and best use .

# Assessor's Response



➤ Functional and Economic Obsolescence. Ludicrous  
**PRESUMPTION** ...

.... that a brand new modern store located on a valuable corner or parcel is worth significantly less than its replacement cost new because similar properties are rarely bought and sold.

- The present use of a building must be assessed when a building in good condition is being used currently and for the foreseeable future for the unique purpose for which it was built.
- In the absence of “truly comparable sales” – assessor skips sales approach and instead focus on income and/or cost approach



# 2011 Nestle Sup. Ct. Decision (Wisconsin)



- What is a comparable property sale?
- Limited Market vs. No Market
- There may be a market but no “comparable” sales.
- New construction is evidence of a market
- Comparable sales must share the same highest and best use as the subject.
- General food processing is not the same highest and best use as a baby formula plant.
- No functional or economic obsolescence

# 2016 Wellmark Sup. Ct. Decision (Iowa)



- What is a comparable property sale?
- Limited Market vs. No Market
- There may be a market but no “comparable” sales.
- New construction is evidence of a market
- No functional or economic obsolescence

# Market Segmentation



- In the absence of comparable sales on which to base a determination, the appropriate solution is to reject the use of the sales approach, and not to find the next best economic use for which comparable sales in the market can be found.
- Limits comparable sales to sales that share the same specific highest and best use as the subject.
- *Nestle* and *Wellmark*—Highest and best use should be as specific as the market will allow.
- Indiana (passed) and Michigan (proposed) Legislation

# Seek a Legislative Remedy



Clarify: For property tax assessment purposes, real property includes licenses and leases appertaining to the land and improvements, and introduce a bill accomplishing the above and addressing dark store myths being **PRESUMED** by Big Box national retail chains and their advocates.

# Seek a Legislative Remedy



Reference similar legislative activity in Indiana and Michigan.

The GOP dominated Indiana Legislature has unanimously passed two pieces of legislation recommended by the Indiana Counties Association—for the benefit of the majority of citizens in Indiana, and at the expense of the “wealthy”.

## Definitions

### Fee Simple Definition:

- Appraisal Institute: Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. See also Fee Simple (Estate) in the IVS Glossary in the Addenda. (Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5th ed. (Chicago: Appraisal Institute, 2010).)

## Definitions

### Fee Simple Definition:

- IAAO: Fee Simple Title—Fee simple title indicates ownership that is absolute and subject to no limitation other than eminent domain, police power, escheat, and taxation. (Glossary for Property Appraisal and Assessment Second Edition (Kansas City, Missouri: International Association of Assessing Officers, 2013).)

# Definitions

## Fee Simple Definition:

### – Black’s Law:

- An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs; esp. a fee simple absolute. – Often shortened to *fee*. – **emphasis added** (Black’s Law Dictionary, p. 499, Abridged Seventh Edition, St. Paul, MN 2000.)
- (Fee Simple Absolute) An estate of indefinite or potentially indefinite duration (e.g., “to Albert and his heirs”). – Often shortened to *fee simple* or *fee*. – **emphasis added** (Black’s Law Dictionary, p. 500, Abridged Seventh Edition, St. Paul, MN 2000.)



## Definitions

### Ownership:

- The collection of rights allowing one to use and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent and inheritable. Cf. Possession; Title. –emphasis added (Black's Law Dictionary, p. 906, Abridged Seventh Edition, St. Paul, MN 2000.)

## Definitions

### Deed:

- A written instrument by which land is conveyed. At common law, any written instrument that is signed, sealed, and delivered and that conveys some interest in property. (Black's Law Dictionary, p. 338, Abridged Seventh Edition, St. Paul, MN 2000.).

## Definitions

### Deed:

- The essential elements of a deed are: names of grantor/grantee; a legal description (and address, typically); words of conveyance (e.g., convey and warrant, or convey and quitclaim); date and Habendum clause (usually); and execution. For a deed to be executed it must be signed by both the grantor and grantee (and witnesses where necessary) *and the signatures must be acknowledged by a notary public.* (Real Estate Law, 7<sup>th</sup> Edition, Aalbers and Siedel, South-Western Cengage Learning, 2008, pages 378-385).

## Definitions

### Encumbrance:

- A claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. An encumbrance cannot defeat the transfer of progression, but it remains after the property or right is transferred. –emphasis added (Black's Law Dictionary, p. 432, Abridged Seventh Edition, St. Paul, MN 2000.)

## Definitions

### Property:

- Personal: Any movable or intangible thing that is subject to ownership and not classified as real property. (Black's Law Dictionary, p. 988, Abridged Seventh Edition, St. Paul, MN 2000.)
- Real: Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property can be either corporeal (soil and buildings) or incorporeal (easements). –Also termed *realty*; *real estate*. Cf. *personal property*. (Black's Law Dictionary, p. 988, Abridged Seventh Edition, St. Paul, MN 2000.)

## Definitions

### Leasehold:

- A tenant's possessory estate in land or premises, the four types being the tenancy for years, the periodic tenancy, the tenancy at will, and the tenancy at sufferance. Although a leasehold has some of the characteristics of real property, it has historically been classified as a chattel real. Also termed *leasehold estate*; *leasehold interest*. See Tenancy. Cf. Freehold. (Black's Law Dictionary, p. 722, Abridged Seventh Edition, St. Paul, MN 2000.)

## Definitions

### Leasehold:

- Chattel real: A real-property interest that is less than a freehold or fee, such as a leasehold estate. The most important chattel real is an estate for years in land, which is considered a chattel because it lacks the indefiniteness of time essential to real property. –Also termed real chattel. (Black's Law Dictionary, p. 186, Abridged Seventh Edition, St. Paul, MN 2000.)
- Chattel: Movable or transferable property; esp. personal property. (Black's Law Dictionary, p. 186, Abridged Seventh Edition, St. Paul, MN 2000.)
- Freehold: An estate in land held in fee simple, in fee tail, or for term of life. (Black's Law Dictionary, p. 533, Abridged Seventh Edition, St. Paul, MN 2000.)

## Definitions

### Leasehold:

- “This classification (chattel real) has significance in several contexts. For example, the leasehold estate ‘at common law was a chattel real and personal property; upon the death of the owner of this estate intestate, it passes as any other personalty to the deceased tenant’s personal representative. While it is an estate in real property, it is not real property.’ ” (Real Estate Law, 7<sup>th</sup> Edition, Aalbers and Siedel, South-Western Cengage Learning, 2008, page 424; referencing The Law of Property: an Introduction Survey (American Casebook Series), 4<sup>th</sup> Edition, R. Boyer, et. al., West Publishing, St Paul, MN, 1991, page 246.)



## Definitions

### Appurtenance:

- Property (as an outbuilding or fixture) or a property right (as a right-of-way) that is incidental to a principal property and that passes with the principal property upon sale or transfer. (Merriam-Webster: <http://www.merriam-webster.com/dictionary/appurtenance>; April 18, 2016.)
- noun. Something that belongs or is attached to something else. (Black's Law Dictionary, p. 78, Abridged Seventh Edition, St. Paul, MN 2000.)
- Appurtenant: adjective. Annexed to a more important thing. (Black's Law Dictionary, p. 78, Abridged Seventh Edition, St. Paul, MN 2000.)

## Definitions

Fixture: A piece of personal property that has become affixed to real property in such a way that it becomes part of the real property. (Real Estate Law, 7<sup>th</sup> Edition, Aalbers and Siedel, South-Western Cengage Learning, 2008, page 33.)

- **Fixture Test, Annexation**: Can be physically attached or through Constructive Annexation, “Personal property that is so closely related to real property that it is considered to be annexed even though not actually been annexed, fixed, or fastened to the real property.” Absent the real property, the fixture would have little value. (Real Estate Law, 7<sup>th</sup> Edition, Aalbers and Siedel, South-Western Cengage Learning, 2008, page 34.)

## Definitions

Fixture: A piece of personal property that has become affixed to real property in such a way that it becomes part of the real property. (Real Estate Law, 7<sup>th</sup> Edition, Aalbers and Siedel, South-Western Cengage Learning, 2008, page 33.)

- **Fixture Test, Adaptation:** Is the fixture functionally tied to the real property as well as necessary or beneficial to the enjoyment of the property? (Real Estate Law, 7<sup>th</sup> Edition, Aalbers and Siedel, South-Western Cengage Learning, 2008, page 36.)

## Definitions

Fixture: A piece of personal property that has become affixed to real property in such a way that it becomes part of the real property. (Real Estate Law, 7<sup>th</sup> Edition, Aalbers and Siedel, South-Western Cengage Learning, 2008, page 33.)

- **Fixture test, Intention:** “When the owner of or real estate annexes personal property . . . that is intended to benefit the general use and occupation of the real estate, the law presumes that the owner intended the (personal) property to become a fixture.” (Real Estate Law, 7<sup>th</sup> Edition, Aalbers and Siedel, South-Western Cengage Learning, 2008, page 37.)

## Valuing the Leased Fee Simple

“Leased Fee” is not a legal term. It originated as an appraisal concept to differentiate the valuation of the “fee simple” interest in property from the “investment value” interest caused by a leasehold interest. “Fee” refers to the “Fee Simple”, so when there is no value to the leasehold interest, the “Leased Fee” is nothing more than the “Leased Fee Simple” interest.

## Define The Property's Market

In a market value exercise, the property's HBU must be determined—both “land as though vacant” and “as improved”.

The HBU of “land as though vacant” cannot be a lesser use than as the property currently stands. If the current structure is not there, could the current structure be built and be economically viable? Would it not also be better than an economically lesser structure?

MAAO

Questions??

*The Valuation of Big Box Retail*

MAAO

Thank you for Attending!



*The Valuation of Big Box Retail*