REPRESENTATIVES FOR PETITIONER:
Vickie Norman – Attorney, Baker & Daniels LLC
Jon Laramore – Attorney, Baker & Daniels LLC

REPRESENTATIVES FOR RESPONDENT:
Betty Smith – Wayne Township Assessor
Charles Todd – Attorney, Todd Law Office

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Meijer Stores LTD,	)	Petitions No.: 89-030-02-1-4-00417
	)	89-030-02-1-4-00415
Petitioner,	)	89-030-02-1-4-00416
	)	89-030-03-1-4-00018
	)	89-030-03-1-4-00019
v.	)	89-030-03-1-4-00020
	)	89-030-05-1-4-00004
Betty Smith,	)	
Wayne Township Assessor	)	Parcels: 46-21-000-107.000-29
	)	46-21-000-113.010-29
Respondent,	)	46-21-000-110.000-29
	)	
	)	
	)	County: Wayne
	)	Township: Wayne
	)	Assessment Years: 2002, 2003 and 2005
	)	

Appeal from the Final Determination of
Wayne County Property Tax Assessment Board of Appeals

August 16, 2006

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue for consideration by the Board is whether the assessed values of the subject parcels exceed their market value-in-use.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Baker & Daniels, on behalf of Meijer Stores LTD, filed Form 131 Petitions for Review of Assessment, petitioning the Board to conduct an administrative review of the above petitions. For 2002, the Wayne County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations on September 17, 2004. The Form 131 petitions for 2002 were filed on October 14, 2004. For 2003, the PTABOA issued its determinations on November 19, 2004. The Form 131 petitions for 2003 were filed on December 16, 2004. Finally, for 2005, the PTABOA issued its determination on September 28, 2005. The Form 131 for 2005 was filed on October 15, 2005.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (ALJ), Debra Eads, held a hearing on March 16, 2006, in Richmond, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Lawrence Mitchell – Mitchell Appraisals

For the Respondent:

Michael Statzer – County Assessor and PTABOA Member
Joseph Kaiser – PTABOA President
Richard Lee – PTABOA Member
Marie Elstro – PTABOA Member
Dan Williams – PTABOA Member
Betty Smith – Wayne Township Assessor

David Fradenburg – Wayne County Assessment Office.

5. The following exhibits were presented for the Petitioner:[1]

Petitioner Exhibit 1 – Petitioner's Brief,[2]
Petitioner Exhibit 2 – Wayne Township property record cards,
Petitioner Exhibit 3 – MAI Appraisal,
Petitioner Exhibit 4 – Page 2, 2002 Real Property Assessment Manual,
Petitioner Exhibit 5 – Page 3, 2002 Real Property Assessment Manual,
Petitioner Exhibit 6 – Page 6, 2002 Real Property Assessment Manual,
Petitioner Exhibit 7 – Department of Local Government Finance testimony in *United States Steel* appeal,
Petitioner Exhibit 8 – GUIDELINES, Appendix F, Commercial and Industrial Depreciation, page 26,
Petitioner Exhibit 9 – GUIDELINES, Appendix F, Commercial and Industrial Depreciation, page 4,
Petitioner Exhibit 11 – Article – The Hometown Advantage,
Petitioner Exhibit 12 – GUIDELINES, Appendix F, Commercial and Industrial Depreciation, page 13,
Petitioner Exhibit 13 – Dollars and Cents for Shopping Centers – 2002,
Petitioner Exhibit 14 – Price Waterhouse Coopers – Fourth Quarter 2002,
Petitioner Exhibit 15 – Page 5, 2002 Real Property Assessment Manual,
Petitioner Exhibit 16 - Indiana Board of Tax Review Hearings Notices; Miscellaneous,
Petitioner Exhibit 17 – Article – Site Size Adjustments.

.

6. The following exhibits were presented for the Respondent:

Respondent Exhibit 1 – Sales disclosures and property record cards,
Respondent Exhibit 2 – Aerial photographs of the subject property.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – The Form 131 Petitions,
Board Exhibit B – Notice of Hearing dated January 13, 2006,
Board Exhibit C – Notice of Appearance for Charles Todd,
Board Exhibit D – Hearing Sign in Sheet.

[1] Petitioner requests that Exhibit 10 be disregarded.

[2] The Petitioner has designated Petitioner Exhibit 1 as confidential information. Petitioner's *Brief in Support of Real Property Tax Assessment Appeal Before the Indiana Board of Tax Review*, however, contains no site-specific cost or profit information. The brief is merely a written version of Petitioner's counsel's argument at the hearing which restates information from the Petitioner's appraisal. As the appraisal has not been deemed confidential by the Petitioner, the Brief cannot be considered confidential.

8. The subject property is a 158,114 square foot discount supermarket store located on three parcels of land that comprise 30.106 acres in total at 2507-2335 Chester Boulevard, Richmond, in Wayne Township.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2002, the PTABOA determined the total assessed value of the properties to be $4,042,100 for the land and $6,607,100 for the improvements, for a total assessed value of $10,649,200 for Parcel No. 46-21-000-107.000-29; $125,500 for the land for Parcel No. 46-21-000-110.000-29; and $180,100 for the land for Parcel No. 46-21-000-113.020.29; for a total assessment of $10,954,800 for all three parcels. There are no improvements on Parcel Nos. 46-21-000-110.000-29 and 46-21-000-113.010.29.

11. For 2003, the PTABOA determined the total assessed value of the properties to be $5,524,900 for the land and $6,607,100 for the improvements, for a total assessed value of $12,132,000 for Parcel No. 46-21-000-107.000-29; $108,300 for the land for Parcel No. 46-21-000-110.000-29; and $180,100 for the land for Parcel No. 46-21-000-113.020.29; for a total assessment of $12,420,400 for all three parcels. There are no improvements on Parcel Nos. 46-21-000-110.000-29 and 46-21-000-113.010.29.

12. For 2005, the PTABOA determined the assessed value of Parcel No. 46-21-000-107.000-29 to be $5,524,900 for the land and $6,607,100 for the improvements, for a total of $12,132,000.[3]

13. For the 2002, 2003 and 2005 assessment years, the Petitioner contends the total assessed value for all three parcels together should be $6,300,000.

[3] For 2005, only one parcel, Parcel No. 46-21-000-107.000-29, is under appeal.

JURISDICTIONAL FRAMEWORK

14. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

15. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

16. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

17. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

Objections

18. During the hearing the following objections were made:

A. Petitioner's attorney, Jon B. Laramore, objected to the admission of Respondent Exhibits 1 and 2 because the exhibits were not received timely. According to Mr. Laramore, the exhibits were received on March 13, 2006, for the March 16, 2006, hearing. The Respondent stated that the exhibits were mailed on March 10, 2006. 52 IAC 2-7-1(b) states that "[a] party to the appeal must provide to the other parties: (1) copies of documentary evidence or summaries of testimonial evidence at least five (5) business days prior to the hearing." Furthermore 52 IAC 2-7-1(c) states that "the parties must either provide [the documents by] personal or hand delivery or deposit the materials in the United States mail or other courier service three (3) days prior to the deadline." The Respondent, by its own admission, mailed the exhibits on March 10, 2006. To comply with the Board's rules, the Respondent must have hand-delivered the exhibits on March 9, 2006, or deposited the documents in the United States mail on March 6, 2006. The Respondent failed to meet the Board's requirement of submission five business days prior to the March 16, 2006 hearing date and, therefore, the Respondent's exhibits are not admitted. The Petitioner's attorney further objected to testimony relative to the Respondent's exhibits. Because the exhibits are not admitted into evidence, this objection is sustained.[4]

B. The Respondent's attorney, Charles Todd, objected to the submission of Petitioner Exhibit 17 because the Petitioner did not identify or exchange the exhibit prior to the hearing. Mr. Laramore testified, however, that the exhibit was submitted as impeachment to the testimony of the Respondent's witness. The Petitioner, however, failed to disclose that it may use unidentified exhibits for impeachment or rebuttal purposes in its *Petitioner's Evidence and Summaries of Witness Testimony*. The Respondent's objection is, therefore, sustained.

[4] Mr. Laramore also objected to the non-specific nature of the witness testimony summary submitted by the Respondent. Because the testimony and other evidence have been excluded, this is not an issue. Similarly, the Petitioner's attorney objected to the relevancy of Respondent's exhibits. Because the exhibits have not been admitted, this objection is moot.

ANALYSIS

Whether the assessed values of the subject properties exceed their market value in use.

19. The Petitioner contends the assessed values of the properties exceed their market value-in-use based on an appraisal that establishes the value of the property to be $6,300,000.

20. The Respondent contends that the subject property is appropriately valued as required by the 2002 Indiana Real Property Assessment Manual.

21. In support of its value, the Petitioner presented the following testimony and other evidence:

A. The Petitioner submitted an appraisal for the subject property that establishes a retrospective valuation as of January 1, 1999, based on market conditions on March 1, 2002. *Norman argument; Petitioner Exhibit 3.* The appraisal was completed by a licensed Indiana appraiser with a MAI designation in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) using the services of a local MAI appraiser. *Mitchell testimony.* The Petitioner contends the appraisal uses the cost approach, sales approach and income approach to value and establishes the market value of the subject property to be $6,300,000 on the assessment date. *Norman argument; Petitioner Exhibit 3.*

B. The Petitioner first testified regarding the estimated value of the subject properties under the cost approach. According to the Petitioner's appraiser, the value of the subject land and subject improvements using the cost approach is $6,480,000. *Petitioner Exhibit 3, p. 41.* The first step in the cost approach analysis, according to the Petitioner, is to estimate the value of the land by using actual land sales to determine the base land rate for the subject area. *Norman argument; Petitioner Exhibit 3, pp.28-30.* The Petitioner's appraiser testified that properties with commercial zoning, properties that are sized within a reasonable range of the subject land, and properties that are similarly located will have a similar highest and best use

as the subject property. *Mitchell testimony*. According to Mr. Mitchell, his first and second comparable sales are in the Richmond market. *Id.* The remaining comparable sales are for similar properties located in Indiana. *Petitioner Exhibit 3, p. 28*. The unadjusted values of the six land sales ranged from $140,000 to $300,000 per acre and, based on a weighted average, the appraiser determined a land value of $165,000 per acre. *Id., p. 32.* Mr. Mitchell testified that the resultant land value for all three properties under appeal is $4,350,000. *Id.*

C. According to the Petitioner's appraiser, the second step in the cost approach is to estimate the current cost of the improvements. *Petitioner Exhibit 3, pp. 33-34*. Mr. Mitchell testified that he determined the cost of the improvements by utilizing the Marshall & Swift Cost Service data and classifying the improvements as "Class C – Warehouse discount store." *Mitchell testimony.* According to the Petitioner's appraiser, he adjusted the base cost upwards for features not included in the model and adjusted downward for features the subject improvements lacked and then used a cost index to trend the current costs back to March 2002. *Petitioner Exhibit 3, pp. 33-34; Mitchell testimony.* In applying the cost approach to the improvements of the subject property, the appraiser testified, he arrived at a replacement cost new of $6,400,000 as of March 1, 2002. *Id*. On cross examination, Mr. Mitchell agreed that the replacement cost new of $6,400,000 that he determined varies only slightly from the improvement value determined by the assessor. *Id.*

D. The next step in the cost approach to value, according to the Petitioner's appraiser is determining depreciation. Mr. Mitchell testified that he used the "breakdown" method of applying physical depreciation to the subject property and determined the depreciation for long and short-lived items to be $79,057 for short lived items and $347,342 for long lived items. *Mitchell testimony*; *Petitioner Exhibit 3, pp. 35-36.*

E. The Petitioner also contends that the subject property suffers from functional and external obsolescence. *Norman argument; Petitioner Exhibit 9.* According to the Petitioner, two major factors affect the property. *Norman argument.* The first factor

is the short life cycle of retail concepts that require retailers to upgrade or become obsolete. *Id.* Second, this short life cycle has caused an increasing number of vacant properties to compete for a limited number of buyers. *Id.; Petitioner Exhibit 3, pp. 16-18; Petitioner Exhibit 11*. According to Mr. Mitchell, the economic life cycle of similar retailers is much shorter than the physical life of the property. *Mitchell testimony.* As an example, the appraiser testified that Lowe's built a larger store in the same vicinity of an existing store and sold their existing store after only eight years. *Id.* On cross examination, Mr. Mitchell admitted that he did not know the average life of a Meijer store or whether Meijer has a practice of replacing its stores with larger facilities nearby after a period of time. *Id.* Mr. Mitchell further testified that, in his search for comparables, he did not find any former Meijer stores listed for sale or sold in the market. *Id.*

F. The Petitioner's appraiser testified that there are three primary methods of measuring abnormal obsolescence: allocation of market extracted depreciation, analysis of market data, and capitalization of income loss. *Mitchell testimony; Petitioner Exhibit 3, pp.37-41.* According to the appraiser, he used seven retailers that had built a new store in the same market and derived the total obsolescence for each property by taking the original construction costs and removing the land value and comparing that to the resale value. *Mitchell testimony.* As an example, Mr. Mitchell identified that AutoNation had actual construction costs of $14 million and a land value of $6 million and sold eight years later for only $6.5 million. *Id.* Thus, Mr. Mitchell concludes that, on resale, big box stores add very little value to the sale over the value of the land. *Id.* On this basis, Mr. Mitchell calculated a range of obsolescence values from $3,630,000 to $4,150,000 and chose $3,970,000 as the functional obsolescence of the improvements. *Id.* On cross examination, Mr. Mitchell justified his 67% depreciation on a two year old structure by testifying that the building suffered from obsolescence due to super-adequacy at the time of its construction. *Id.* According to the appraiser, the store would not have been constructed at all "if it had been required to have a return on cost." *Id.* The appraiser agreed, however, that while Meijer

would not have built such a store "for investment purposes," it was "built by Meijer for their use and occupancy." *Id.*

G. The second method of valuation is the income approach to value. *Norman argument.* The Petitioner admits, however, that because the subject property is not an investment property the income approach to value is not the best way to value it. *Id.; Mitchell testimony*. Mr. Mitchell testified that he used five rent comparables to establish a market rent for the subject.[5] *Mitchell testimony; Petitioner Exhibit 3, p. 42-54.* According to the Petitioner, the unadjusted market rents in the appraisal ranged from $3.50 to $4.34 per square foot and were adjusted to a range of $4.04 to $5.20 per square foot. *Norman argument; Petitioner Exhibit 3, pp. 43-45.* The appraiser chose a per square foot rental rate of $4.75, applied 10% vacancy and collection loss, utilized total operating expense, with reserves, of $63,384, and calculated a capitalization rate of 10.2834%. *Norman argument; Mitchell testimony; Petitioner Exhibit 3, pp. 45-54; Petitioner Exhibits 13 and 14.* According to Mr. Mitchell, the final value estimate using the income approach is $6,230,000 as of March 1, 2002. *Mitchell testimony; and Petitioner Exhibit 3, p. 54.* On cross examination, Mr. Mitchell admitted that the market rent "comparables" were substantially smaller and were 20 to 28 years old. *Mitchell testimony.* Mr. Mitchell agreed that the income approach is not an ideal way to value the subject property. *Mitchell testimony.*

H. The final approach to value is the sales approach. *Norman argument.* The Petitioner contends that the sales comparison approach to value is the most appropriate for determining the value for the subject property. *Id.; Petitioner Exhibit 3, p. 55-61.* According to Mr. Mitchell, he used five sales of former retail stores with 70,000 or more square feet of space in order to establish a value for the subject properties. *Mitchell testimony; Petitioner Exhibit 3, pp. 55-61.* The appraiser testified that larger single tenant retail properties built as Walmarts or Lowe's are often sold to retailers

[5] A build to suit tenant is one who has a building constructed for his specific use. *Mitchell testimony.* Mr. Mitchell testified that he rejected build-to-suit properties because properties constructed for a specific tenant are leased based on a return on the cost to build. *Exhibit 3, p. 43.* According to Mr. Mitchell, build to suit construction cannot be compared to market rent because it is not an open market transaction. *Id.*

such as Burlington Coat Factory, Value City Furniture, and Hobby Lobby when they are no longer used for the purpose for which they were built. *Id.* According to the Petitioner's appraiser, the unadjusted sale amounts of the five comparables properties range from $14.00 to $42.00 per square foot and the adjusted sale prices for the five comparables ranged from approximately $35.00 to $55.00 per square foot. *Id. at 58-59.* Mr. Mitchell chose $40.00 per square foot for the subject property and estimated the value of the subject property to be $6,330,000 as of March 2, 2002. *Norman argument; Mitchell testimony; Petitioner Exhibit 3, p.61.*

I. In response to questioning, the Petitioner's appraiser testified that he was unable to locate any sales or listings for sale of Meijer Stores during his search for the comparable properties used in his appraisal. *Mitchell testimony.* Further, Mr. Mitchell testified that he did not know whether the sales used in his sales comparison approach to value were occupied or vacant at the time of the sale. *Id.* Although the appraiser used the sale of vacated big box stores to secondary users such as Big Lots and Burlington Coat Factory, Mr. Mitchell testified that similar users of big box stores are retailers like Home Depot, Lowe's or Walmart.[6] *Id; Petitioner Exhibit 3, p. 16.* In response to questioning, Mr. Mitchell testified, however, that a competitor would not purchase an existing big box store because "the vast majority of them would like to go build their own along with their marketing scheme and their layout." *Mitchell testimony.* On cross examination, the Petitioner's witness also testified that such properties have more value to the retailer than it would to other users. *Id.* As an example, Mr. Mitchell testified that Lowe's overpaid for a parcel of land in Richmond because the retailer wanted to be in the specific location. *Id.*

J. The Petitioner's appraiser testified that he reconciled the value determined by the cost approach ($6,480,000), the income approach ($6,230,000) and the sales approach ($6,330,000) to a final value estimate of $6,300,000. *Mitchell testimony and*

[6] In its "Asset Identification," the appraisal stated that "[t]hese big-box retail formats typically house warehouse clubs or superstores with prominent market examples being occupants such as Sam's Club, Target, Wal-Mart, Cosco, Lowe's, Home Depot, and Meijer." *Petitioner Exhibit 3, p. 16.* The appraisal does not identify any secondary retailers such as Big Lots or Burlington Coat Factory as similar users.

Petitioner Exhibit 3, p. 63. According to the Petitioner's appraiser, there was no appreciation between January 1, 1999, and March 1, 2002. *Id.* The Petitioner argues that this is supported by the market overview and the retail and value trends discussed in the appraisal report. *Id. at 16-20 and 63.* Thus, the Petitioner contends, the value of the property remains $6,300,000 when related to the January 1, 1999, valuation date. *Id.*

22. Due to the failure of the Respondent to timely submit its summary of witness testimony and the exhibits to the Petitioner, all testimony and exhibits are excluded from these findings. The Respondent's attorney, however, argued that the Petitioner and Respondent were substantially in agreement regarding the land value and the replacement cost new of the improvements. *Todd argument.* According to Mr. Todd, the difference of opinion in value arises from the Petitioner's application of a significant percentage of obsolescence to the improvements of the property. *Id.* The Respondent contends that it is inappropriate to apply approximately 70% obsolescence to a structure that was only built two years prior to the assessment date, particularly when the current owner is receiving full benefit from that structure. *Id.* Further, the Respondent argues that, assuming Meijer follows the purported market trend to which the Petitioner testified, the Board should not approve a 70% depreciation simply because one day "very far down the road" the store will not be the relevant size for the market. *Id.* In addition, the Respondent contends that it is inappropriate to value the subject property, which is being used for the purpose for which it was built, on the basis of stores that had to close because they were already too small for their use or because the retail chain operating the store went bankrupt. *Id.* Finally, the Respondent observed that the Petitioner was represented by two attorneys and an appraiser, but the Respondent argued that there were no representatives of the Petitioner available to cross examine regarding the use and operations of Meijer stores.[7] *Id.*

[7] We note, however, that the parties have a full range of discovery options open to them pursuant to the Board's procedural rules. *See* 52 IAC 2-8-3. We encourage the parties to use such opportunities to fully develop their cases prior to hearing. In addition, the Respondent could have sought to subpoena a representative of the Petitioner pursuant to 52 IAC 2-8-4. Thus, while we understand the Respondent's frustration, the Respondent had options available to it prior to hearing to avoid such a situation.

23. The 2002 Real Property Assessment Manual (the MANUAL) defines the "true tax value" of real estate as the "market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." 2002 REAL ASSESSMENT MANUAL – VERSION A at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual's definition of true tax value, such as sales information regarding the subject property or comparable properties that are relevant to a property's market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through the use of generally recognized appraisal principles. *See Meridian Towers,* 805 N.E.2d at 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements' obsolescence through cost and income capitalization approaches).

24. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long* at 471; MANUAL at 4. Consequently, a party relying on market value evidence to establish the value-in-use of a property must provide some explanation as to how the sales or appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*

25. Here, the Petitioner submitted into evidence a fair market appraisal for the subject property with an effective date of January 1, 1999. *Petitioner Exhibit 3.* The appraisal estimated the market value of the subject property based on the cost, income and sales comparables methods of valuation. *Id.*

26. The appraiser testified that the sales comparison method of valuation was the most relevant method of valuing the subject property. The sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market." *See* MANUAL at 3; *See also*, *Long v.*

Wayne Twp. Assessor, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). The appraiser chose the sale of vacant and abandoned Walmart and Lowe's stores to such secondary users as Big Lots as comparable properties. The appraiser admitted, however, that the subject property was built for Meijer's own use. It was not built as an investment. Nor was it built to sell. Mr. Mitchell testified that comparable users of big box retail stores were retail stores like Lowe's, Home Depot and Walmart. He testified, however, that those retailers would not buy an existing big box store, but instead the retailers would build their own store using their own marketing scheme and layout.[8] Despite his testimony that a competitor would not buy a Meijer store but would build its own, the appraiser deemed this not to be a "special use" because there were approximately 46 sales of closed or bankrupt big box stores to secondary users of abandoned big box facilities such as Burlington Coat Factory or Hobby Lobby. We are not persuaded by the Petitioner's argument.[9]

27. The Petitioner testified that the subject properties were developed for the use of Meijer as a Meijer store and are presently being used in the manner for which the store was constructed. Further, the Petitioner testified to no current plans to abandon the store for a larger building or to sell the store to a secondary user. Based on the appraisers own description of the use and operation of big box retail facilities, we find that these secondary users are not "comparable" stores. As the Petitioner testified, comparable uses would be a Lowe's store or a Walmart – a retailer that builds a big box store for its own use. Secondary users, such as Burlington Coat Factory and Hobby Lobby stores who use vacated big box stores, are not comparable. We agree with the Respondent, it is inappropriate to value the subject property, which is being used for the purpose for which

[8] The appraisal quotes Don Williams of Turley, Martin, Tucker as stating that such retailers "will do almost anything not to use an existing building including paying premiums for vacant parcels in the area." *Petitioner Exhibit 3, p. 38.*

[9] The Manual states that "value-in-use approximates value-in-exchange in instances where property types are frequently exchanged and used by both buyer and seller for the same purpose." MANUAL at 2. Here, however, the value-in-exchange does not reflect the value-in-use of the properties. Despite the appraiser's contention that this is not a "special use property," the Petitioner's evidence shows that it was uniquely designed and built for Meijer's use. More importantly, the evidence shows that it is highly unlikely that a comparable user like a Walmart or a Lowe's would purchase the property to use for their own purposes. Such comparable users would build their own stores using their own marketing plans and layouts. That vacant and abandoned big-box stores can later be sold for re-use by a secondary user such as a Big Lots does not change the analysis.

it was built, on the basis of stores that had to close because they were already too small for their use or because the retail chain operating the store went bankrupt. Just as the appraiser testified that it was not appropriate to compare "build to suit" rentals with ordinary market rentals for an income approach, we find that such build to suit uses such as Meijer are not comparable to the secondary users that purchase the existing, abandoned big box stores for their own use.[10] A new big box store that a retailer pays $12 million to construct is simply not "comparable" to an abandoned or bankrupt store sold to a secondary user for less than a million.

28. In addition, the appraiser presents an income approach to valuation. By the Petitioner's own admission, however, the income approach is not a good method of valuing a single-occupant big box retailer who builds a store for its own use and not for investment purposes. *Mitchell testimony.* Further, the appraiser testified that the rent "comparables" were substantially smaller and considerably older than the Meijer store. Like the "comparables" used in the sales comparable analysis, we find that a new Meijer is not comparable to a Big Lots or Hobby Lobby store that rents a vacant or abandoned store. We, therefore, also discount this method of valuation.

29. The final valuation method used by the Petitioner's appraiser is the cost method. Under the cost method of valuation, Mr. Mitchell estimated the value of the subject property to be $4,350,000 for the land and $6,400,000 for the improvements.[11] From this value, the appraiser deducted depreciation of $79,057 for short lived items and $347,342 for long lived items and $3,970,000 for the "functional obsolescence" of the improvements. The appraiser determined the obsolescence based on seven retailers that had built a new store

[10] Similar to a "build to suit" property, the Meijer store cannot be compared to an open market transaction because it was not built to be sold in any open market transaction, but rather for the profits generated by the store's operation. As the Petitioner itself observed, the store would not have been constructed at all "if it had been required to have a return on cost." *Mitchell testimony.* Thus, it is clear that the value of the property to Meijer to use as a Meijer store is the cost of the development and construction of the property and not what price in the market that the properties may raise if the properties are later sold for a different retail purpose than the one for which they were developed.

[11] We note that despite the fact that the store opened in 2000, the Petitioner presented no evidence of its actual construction costs or the purchase price of the property on which the store was built. Because there is no evidence of the actual construction costs, we base our conclusions on the assumption that the actual costs are not exceeded by the appraised "costs" of the subject property.

in the same market. According to Mr. Mitchell, he derived the total obsolescence for each property by taking the original construction costs and removing the land value and comparing that to the resale value.

30. For a Petitioner to show it is entitled to receive an adjustment for obsolescence, the Petitioner must both identify the causes of obsolescence it believes is present in its improvement and also quantify the amount of obsolescence it believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioner must present probative evidence that the causes of obsolescence identified by the Petitioner are causing an actual loss in value to its property. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Further, the Petitioner's quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure's overall value. *See Clark,* 694 N.E.2d at 1238. It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must explain how those purported causes of obsolescence cause the property's improvements to suffer an actual loss in value. *See Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied.*

31. Here, the appraiser testified that there is a short life cycle of retail concepts that require retailers to upgrade or become obsolete and that, this short life cycle has caused an increasing number of vacant properties to compete for a limited number of buyers. The appraisal states that the life cycles of retailers "of 10 or less years is substantially lower than the physical life of these centers which is typically 30 or more years. Retailers build new buildings in an attempt to capture the increase in sales and then abandon the store in preference of a new store that fits the new profile even when the current building has remaining physical life. The subsequent sale price is typically only slightly more than land value. This suggests the value of the property to the original retailer has decreased significantly in a short time frame." *Petitioner Exhibit 3, p. 17.* The Petitioner argues, therefore, that the improvements are entitled to a 67% obsolescence deduction

immediately upon construction due to the prevailing market forces. There can be no question, however, that when the store was constructed the value of the subject properties to Meijer was equal to the cost of construction and development of those properties, otherwise the store would not have been built.[12] The evidence also suggests that when the store is abandoned, the value of the property may be little more than the value of the land on which the store was built. To use the Petitioner's own example, the AutoNation store was constructed for $14 million and, thus, had a value to its owner of at least $14 million. *Id.*, p. 39. The AutoNation store closed and was sold eight years later for $6.5 million. *Id.* The decrease in value from the building's $14 million construction cost to its $6.5 million sale price, however, did not occur as soon as the AutoNation store was constructed. The loss in value occurred over the life of the AutoNation store and was realized eight years later. Therefore, while the Petitioner may argue that big box retail stores should be granted some form of accelerated depreciation, we do not believe that the Petitioner's evidence supports the application of an immediate or continuing 67% obsolescence deduction for any loss in value that the Petitioner may experience when it later closes this store and attempts to sell the properties.[13]

32. Further, the Petitioner failed to prove that the Meijer store is subject to the market forces for which it seeks an obsolescence adjustment. The Petitioner's appraiser did not testify that Meijer stores are typically outgrown quickly and close in a short period of time. More importantly, there was no evidence that the subject store is too small for its current

[12] The definition of "true tax value" is the "market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property." MANUAL at 2. The Petitioner argues that we should consider the value to a "similar user" and focus on the market rather than the value of the properties to Meijer. We decline to read the definition so narrowly as to disregard the value of a property to its owner. Because the Meijer store at issue here is a store developed and constructed for Meijer's own use and purposes it is well within the Manual's contemplation that the value of that use to Meijer be considered.

[13] To the extent that the Petitioner can be seen as arguing that accelerated depreciation should apply, the Petitioner has not sufficiently proven the economic life of a Meijer store in general or the economic life of the subject properties specifically. Further, had the Petitioner properly shown the economic life of the subject properties, the Petitioner nevertheless failed to show how such allegedly short life span translates specifically into depreciation of the improvements. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *Meridian Towers East*, 805 N.E.2d at 478.

use and must be abandoned for a larger facility.[14] Thus, while the Petitioner's appraiser bases his entire obsolescence valuation on circumstances that may exist in the retail market in general, the Petitioner presented no evidence that these market trends presently impact or affect the Meijer store at issue in this appeal or even Meijer stores in general. To adopt the Petitioner's reasoning would have us applying large obsolescence deductions to state of the art facilities because some day in the future the structures will no longer be state of the art. This we decline to do. The Petitioner failed to show that the subject properties are presently impacted by the alleged causes of obsolescence. Thus, the Petitioner failed to raise a prima facie case that the subject properties are entitled to an obsolescence adjustment. Therefore, while we accept the Petitioner's cost analysis, we reject the obsolescence calculation as unsupported by the evidence.

33. The Petitioner presented an appraisal with a cost analysis valuation of $10,323,601. An appraisal performed in accordance with generally recognized appraisal principles is sufficient to establish a prima facie case. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003). Thus, we find that the Petitioner raised a prima facie case that the value of the subject properties total no more than $10,323,601.

34. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id; Meridian Towers*, 805 N.E.2d at 479. Here, the Respondent's evidence was excluded on the basis of the Respondent's failure to

[14] The appraiser argues that the store is "over-built" for the market. The appraiser, however, admits that the store was built for Meijer's own use and not as an investment. Therefore, unless the appraiser shows that the structures are over-built for Meijer's use, which he did not, there can be no obsolescence on this basis.

timely exchange its exhibits and witness lists. Thus, the Respondent has failed to rebut or impeach the Petitioner's prima facie case.[15]

SUMMARY OF FINAL DETERMINATION

Whether the assessed values of the subject properties exceed the market value in use.

35. The Petitioner raised a prima facia case that the value of the subject properties is no more than $10,323,601 ($10,323,600 for assessment purposes). The Respondent failed to rebut the Petitioner's evidence. Thus, the assessment of Parcel Nos. 46-21-000-107.000-29, 46-21-000-110.000-29 and 46-21-000-113.010.29 together should not exceed $10,323,600 for 2002 and 2003 and the value of Parcel No. 46-21-000-107.000-29 should not exceed $10,323,600 for 2005.[16]

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

_____

Commissioner, Indiana Board of Tax Review

[15] Even if the Respondent's evidence had been admitted, the Respondent merely presented evidence that the subject property was assessed properly under the MANUAL and GUIDELINES. Alleging that the subject property was properly assessed, however, is insufficient to impeach or rebut the Petitioner's prima facie case. In order to carry its burden, the Respondent must do more than merely assert that it assessed the property correctly. *See Canal Square v. State Bd. of Tax Comm'rs,* 694 N.E.2d 801, 808 (Ind. Tax Ct. 1998) (mere recitation of expertise insufficient to rebut prima facie case).

[16] The Petitioner raised a prima face case that the value of Parcel Nos. 46-21-000-107.000-29, 46-21-000-110.000-29 and 46-21-000-113.010.29 together is $10,323,600. The Petitioner, however, provided no evidence that partitioned that value among the parcels. Thus, although the Petitioner only appealed Parcel No. 46-21-000-107.000-29 for 2005, the Petitioner did not establish the value of that parcel individually. Therefore, the Board can only conclude that the value of that parcel cannot exceed the value of all three parcels together and finds that the value of Parcel No. 46-21-000-107.000-29 is $10,323,600 for 2005.

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five days of the date of this notice.