

REPRESENTATIVE FOR PETITIONER:
Vickie L. Norman, Baker & Daniels, LLP

REPRESENTATIVE FOR RESPONDENT:
Alan D. Wilson, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kokomo Mall, LLC,	)	Petition Nos.:	34-002-07-1-4-00454
	)		34-002-08-1-4-00041
	)		34-002-08-1-4-00043
	)		34-002-08-1-4-00188
Petitioner,	)		34-002-09-1-4-00181
	)		34-002-09-1-4-00182
	)		34-002-09-1-4-00183
v.)		
	)	Parcel Nos.:	34-10-06-476-017.000-002
	)		34-10-06-476-020.000-002
Howard County Assessor,	)		34-10-06-476-022.000-002
)		
	)	County:	Howard
)		
Respondent.	)	Assessment Years:	2007, 2008, and 2009

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

August 5, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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 presented for consideration by the Board is whether the assessed values of the Petitioner's properties are over-stated for the 2007, 2008 and 2009 assessment years.

PROCEDURAL HISTORY

2. The Petitioner initiated its assessment appeals by filing Form 130 Petitions with the Howard County Property Tax Assessment Board of Appeals (the PTABOA) on July 17, 2008, for the 2007 assessment year, on May 8, 2008,¹ for the 2008 assessment year, and on October 21, 2009, for the 2009 assessment year. The PTABOA issued its assessment determinations for all three tax years on February 4, 2010.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed its Form 131 Petitions for Review of Assessment on March 2, 2010, petitioning the Board to conduct an administrative review of the properties' 2007, 2008, and 2009 assessments.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Carol Comer, held a hearing on February 15, 2011, in Kokomo, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Sara H. Coers, MAI Appraiser, Mitchell Appraisals, Inc.
Lawrence W. Mitchell, MAI Appraiser, Mitchell Appraisals, Inc.

¹ The Petitioner's counsel originally filed the Petitioner's 2008 petitions on May 8, 2008, pursuant to the annual May 10 appeal deadline. On June 29, 2009, Petitioner's counsel filed a duplicate request for review of assessment upon receiving the Petitioner's 2008 tax bill dated May 22, 2009.

For the Respondent:

Jamie Shepherd, Howard County Assessor
Brian Thomas, Ad Valorem Solutions
Ralph Reddersdorf, Former Manager of J. C. Penney

6. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Brief in Support of Real Property Tax Assessment Appeal,
Petitioner Exhibit 2 – Summary Appraisal Report,
Petitioner Exhibit 3 – Appraisers’ sources referenced in the appraisal report.

7. The Respondent presented the following exhibits:

Respondent Exhibit A – Excerpt of the Summary Appraisal Report.

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

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing – Reschedule dated December 15, 2010.

9. At the hearing, the Respondent’s counsel requested permission to submit a post-hearing brief. The Administrative Law Judge granted the request and both parties filed their briefs timely. Subsequently, the Petitioner requested leave to file a reply brief. Leave was granted and the Petitioner filed its “Petitioner’s Response to Respondent’s Post-hearing Brief” on March 22, 2011.

10. The properties at issue in this appeal include an enclosed, regional shopping center and a theater on 21.15 acres identified as Parcel No. 34-10-06-476-020.000-002 (Parcel No. 20); 1.73 acres of land improved with a paved parking lot identified as Parcel No. 34-10-06-476-022.000-002 (Parcel No. 22); and 9.86 acres of land improved with a J. C. Penney store and an additional structure identified as Parcel No. 34-10-06-476-017.000-002 (Parcel No. 17). All three parcels comprise the Kokomo Mall located at 1718 E. Boulevard in Kokomo, Indiana.

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

12. For 2007, the PTABOA determined the assessed value of Parcel No. 20 to be \$1,636,400 for the land, and \$5,343,300 for improvements, for a total assessed value of \$6,979,700.² For 2008, the PTABOA determined the assessed values of the properties to be \$1,636,400 for the land, and \$5,343,300 for improvements, for a total assessed value of \$6,979,700 for Parcel No. 20; \$157,500 for land, and \$6,200 for improvements, for a total assessed value of \$163,700 for Parcel No. 22; and \$191,900 for land, and \$894,900 for improvements, for a total assessed value of \$1,086,800 for Parcel No. 17. For 2009, the PTABOA determined the assessed values of the properties to be \$1,472,700 for the land, and \$4,819,400 for improvements, for a total assessed value of \$6,292,100 for Parcel No. 20; \$142,000 for land, and \$5,600 for improvements, for a total assessed value of \$147,600 for Parcel No. 22; and \$172,700 for land, and \$807,100 for improvements, for a total assessed value of \$979,800 for Parcel No. 17.
13. For 2007, the Petitioner contends the assessed value of Parcel No. 20 should be \$4,960,000. For 2008, the Petitioner contends the assessed value of all three parcels should total \$6,080,000 and, for 2009, the Petitioner contends the assessed value of all three parcels should total \$3,990,000.

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, (3) property tax exemptions, and (4) property tax credits 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 Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

² Parcel No. 20 is the only parcel under appeal for the March 1, 2007, assessment date.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

15. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PETITIONER'S CONTENTIONS

18. The Petitioner contends that the assessed values of its properties are over-stated for the March 1, 2007, March 1, 2008, and March 1, 2009, assessment years based on an appraisal. The Petitioner presented the following evidence in support of its contentions:
 - A. The subject property is an enclosed retail shopping mall containing 293,666 square feet of leasable space commonly known as the Kokomo Mall. *Norman argument; Petitioner Exhibit 2 at 10; Pet. Br. at 1*. The Petitioner's counsel presented an appraisal of the subject property dated November 22, 2010, prepared by Lawrence Mitchell and Sara Coers, who are both certified general appraisers and MAI designated appraisers. *Petitioner Exhibit 2*. In their report, the appraisers estimated the value of Parcel No. 20 to be \$4,960,000 as of January 1, 2006, for the March 1,

2007, assessment year; and the value of the Petitioner's three parcels together to be \$6,080,000 as of January 1, 2007, for the March 1, 2008, assessment year and \$3,990,000 as of January 1, 2008, for the March 1, 2009, assessment year. *Id.*

- B. Ms. Coers testified that in preparing the appraisal, she considered the specific attributes of the property, the market at the time of each assessment, and the applicable approaches to value the property. *Coers testimony.* According to Ms. Coers, the Kokomo Mall is a regional mall that is in an area with declining population and employment because of a turbulent auto industry. *Id.* Ms. Coers testified that based on the mall's design and age, the property would be considered a greyfield mall. *Id.; Petitioner Exhibit 2 at 16.* A greyfield mall is defined as a mall that has sales per square foot of \$150 or less. *Id.* Ms. Coers testified that the subject property's sales were \$108 per square foot in 2006 which declined to \$91 per square foot by 2009. *Id.* Ms. Coers cited "Dollars and Cents"³ to show that the average sales per square foot for regional malls across the United States in 2008 was \$275 and the average for regional malls in the Midwest was \$240. *Coers testimony; Petitioner Exhibit 2 at 16 and 17; Petitioner Exhibit 3.*
- C. In fact, Ms. Coers argues, the Kokomo Mall would be considered a dead mall, which is defined as a mall that has a high vacancy rate, a low consumer traffic level, or is dated or deteriorating in some manner. *Coers testimony; Petitioner Exhibit 2 at 17.* According to Ms. Coers, a dead mall is typically a mall with 70% occupancy and is on the decline. *Id.* Ms. Coers testified that the subject property's occupancy was just under 72% in 2006 and 2007 and declined to 62.66% in 2008 and 60.44% in 2009. *Id.* Ms. Coers claims the property also suffers from functional and external obsolescence due in part to its functionally obsolete design and due to the competition of another regional mall and over 2,000,000 square feet of competing retail space within a five-mile radius. *Id.*

³ DOLLARS AND CENTS OF SHOPPING CENTERS/THE SCORE 2008 is published biennially by the Urban Land Institute and the International Council of Shopping Centers.

- D. Ms. Coers testified that she considered all three approaches to value the property in preparing her appraisal. *Coers testimony*. However, she argued, she did not develop the cost approach for the mall because the cost approach is not considered credible for the valuation of buildings over ten years old and because market participants rarely consider the cost approach when purchasing a property even when the property is new. *Id.*; *Petitioner Exhibit 2 at 42*. Similarly, Ms. Coers testified that the sales comparison approach could not be used as a primary source of value for the subject property because of the limited quality and quantity of data she had available to her. *Coers testimony*. She did, however, use the sales comparison approach as a secondary method to confirm the reliability of her income approach estimate for the mall. *Id.*
- E. Ms. Coers testified that she primarily relied on the income approach to value the Kokomo Mall. *Coers testimony*. In preparing her income approach calculation, Ms. Coers testified that she reviewed the mall's actual income and expense statements for 2006 through 2009, the rent rolls for 2007-2009, the lease summaries, the theater lease, and the actual retail sales per square foot for the property. *Id.*; *Petitioner Exhibit 2 at 43, 44*.
- F. Ms. Coers first analyzed the actual income that the property had been achieving and the historical vacancy rate for the appropriate years. *Coers testimony*. She then compared the property's actual income and vacancy rates to market rates. *Id.* Ms. Coers looked at data for comparable enclosed malls in the northern half of Indiana because, she argues, that data was more specific to the subject property than the national or state surveys. *Id.* The malls in the market she considered showed average occupancies of 88% in 2007, 85% in 2008, and 76% in 2009. *Id.*; *Petitioner Exhibit 2 at 46 and 47*. Ms. Coers testified that, based on the average of the properties included in her analysis, she applied a market vacancy of 14% for the 2007 valuation date, a market vacancy of 16% for the 2008 valuation date, and a market vacancy of 27% for the 2009 valuation date. *Id.* Ms. Coers testified that she used the average of three malls and calculated a rent per square foot of \$3.87 for 2007 and \$3.78 for

2008. *Id.* However, because no data was available for 2009, Ms. Coers testified that she applied the same rent per square foot for 2009 as she calculated for 2008. *Id.*; *Petitioner Exhibit 2 at 47 through 50.* Based on the market rent and vacancy rates, Ms. Coers estimated the property's gross effective income to be \$3.96 per square foot for 2007, \$3.82 per square foot for 2008, and \$2.81 per square foot for 2009. *Id.*
- G. Ms. Coers then considered the property's historical expenses which she compared to market survey data from two separate sources, "Dollars and Cents," and the "Institute for Real Estate Management Income/Expense for Shopping Centers." *Coers testimony; Petitioner Exhibit 2 at 51 through 59.* Ms. Coers testified that she used the property's actual expenses for insurance and utilities because variations between companies are not reflected in the market survey data. *Id.* Ms. Coers testified that she also did not include real estate taxes because she used a loaded capitalization rate. *Id.* Further, because the majority of market participants indicated they considered a capitalization rate before reserves, Ms. Coers testified, she did not include reserves in the operating expenses. *Id.* Based on her expense analysis, Ms. Coers estimated operating expenses of \$2.52 per square foot for March 1, 2007, \$2.31 per square foot for March 1, 2008, and \$2.31 for March 1, 2009. *Id.* Using her market income and expenses, Ms. Coers testified, she arrived at a net operating income for the property of \$1.44 per square foot, or \$422,695, for March 1, 2007, \$1.30 per square foot, or \$381,157, for March 1, 2008, and \$.50 per square foot, or \$146,085, for March 1, 2009. *Id.*
- H. To capitalize the net income, Ms. Coers testified that she considered sales data from seven sales and three different market publications to determine a capitalization rate.⁴ *Coers testimony; Petitioner Exhibit 2 at 59 through 61.* Excluding one of the sales because the property was superior to the subject property, Ms. Coers testified that capitalization rates for the remaining sales ranged from 9% to 12.7%. *Id.* Ms. Coers then reviewed data from the market publications and determined that data from the Real Estate Research Corporation (RERC) for the Midwest, third-tier, regional mall

⁴ According to Ms. Coers, the sales data included the subject property. *Coers testimony.*

category was the most applicable to the subject property. *Id.* Based on her research, Ms. Coers estimated the overall capitalization rates to be 11% for 2007, 11% for 2008, and 11.75% for 2009. *Id.* After adding the tax rate that she contends reflected the percentage of taxes paid by the landlord for each year, Ms. Coers testified that she calculated the loaded capitalization rates to be 12.68% for 2007, 12.65% for 2008, and 13.73% for 2009, resulting in an estimated value of the property of \$3,130,000 for the March 1, 2007, assessment year, \$3,070,000 for the March 1, 2008, assessment year, and \$1,100,000 for the March 1, 2009, assessment year. *Id.*

- I. In order to trend her estimated values to the appropriate valuations dates, Ms. Coers testified that she considered several factors, including the change in the Consumer Price Index and the change in the market surveys of overall rates. *Coers testimony; Petitioner Exhibit 2 at 68 through 71.* According to Ms. Coers, the resulting market values-in-use for the property were \$3,060,000 for January 1, 2006, \$2,930,000 for January 1, 2007, and \$1,150,000 for January 1, 2008. *Id.*
- J. Unlike the mall valuation, Ms. Coers testified that she used the cost approach for the theater because, she contends, it is a newer building and it has a specialized use. *Coers testimony.* Ms. Coers testified that she reviewed the assessor's cost information and Marshall & Swift data for the structure. *Id.* Because she found the assessor's value to be reasonable, Ms. Coers testified, she did not develop a separate cost approach for the theatre building. *Id.* Instead, she added the theatre building's assessed value to the value of the mall that she estimated using the income approach. *Id.* In its reply brief, the Petitioner argued that "because the theater is located behind the mall and is landlocked by the mall property, its site value is considered to be included in the mall value, so only the improvement value had to be added back." *Pet. Reply at 8.* Ms. Coers, however, did not include the ground lease for the theatre building as income to the mall.⁵ *Petitioner Exhibit 2 at 43.*

⁵ The appraisal states that in determining the property's actual income, "the [theater] ground rent under the current lease is deducted from 2007, 2008, and 2009."

- K. Adding the value of the theater to the estimated mall valuation for all three years and, for 2007, deducting the \$1,250,800 value of the two parcels that were not under appeal for that year, Ms. Coers argues, results in a final retrospective market value-in-use for the subject property of \$4,960,000 as of January 1, 2006, for Parcel No. 20, \$6,080,000 as of January 1, 2007, for all three parcels and \$3,990,000 as of January 1, 2008, for all three parcels.⁶ *Coers testimony*.
- L. Ms. Coers testified that she also considered the sales comparison approach as a secondary check on the property's value. *Coers testimony*. Ms. Coers testified that she looked at the sales in Indiana that she used to develop a capitalization rate and two additional sales in Ohio and determined that the sale prices of the subject property, the Richmond Mall, the Marquette Mall, and the two malls in Ohio, which ranged from \$6.57 per square foot to \$16.48 per square foot, were the most relevant sales. *Id.*; *Petitioner Exhibit 2 at 64 through 67*. Ms. Coers then adjusted the sale prices based on each property's income per square foot to account for the differences in each property's location, condition and tenant mix. *Id.* The resulting adjusted sales ranged from \$10.64 to \$17.02 with a mean sales price per square foot of \$12.26 for March 1, 2007; the sales ranged from \$10.42 to \$16.55 with a mean sales price per square foot of \$12.39 for March 1, 2008, and the sales ranged from \$4.04 to \$6.45 with a mean sales price per square foot of \$4.80 for March 1, 2009.⁷ Because the 2007 and 2008 values from the income approach fell within the ranges of the adjusted sales prices per square foot, Ms. Coers contends, those values are considered to be supported and reasonable. *Id.* Ms. Coers admitted that the value for 2009 falls just below the range of sales, but she argues, there was no income data from the two most

⁶ In response to the Respondent's argument that the Petitioner should have used a "leased fee value" rather than market value in its appraisal, the Petitioner's counsel cited to *Kerasotes Showplace Theatres, LLC v. Grant County Assessor, Petition No. 27-023-06-1-4-00825 (July 14, 2009)*, wherein the Board held that contract rent must be viewed in terms of market rent. *Pet. Reply at 10*.

⁷ The appraisal titles this chart "Using Economic Data on Sales Comparables for \$/sf Adjustment as of 3/1/08." *Petitioner Exhibit 2 at 66*. However, the first two charts are identified as "Using Economic Data on Sales Comparables for \$/sf Adjustment as of 3/1/07" and "Using Economic Data on Sales Comparables for \$/sf Adjustment as of 3/1/08." *Id.* Therefore, the Board infers the third chart was intended to represent a sales comparison analysis for the March 1, 2009, assessment year.

- recent sales, which may justify the lower value in 2009 based on the downturn of the retail market and the lower income for the subject property. *Id.*
- M. Finally, Ms. Coers testified, Kokomo Mall, LLC, purchased the subject property, plus five outlots, from The Manufacturers Life Insurance Company in 2005 for \$8,250,000. *Coers testimony; Petitioner Exhibit 2 at 10.* According to Ms. Coers, the outlot parcels were sold in December of 2005 to Lawndale Plaza, LLC, for \$3,638,000, resulting in a net sales price for the mall of \$4,611,200. *Id.* On cross-examination, Ms. Coers testified that she considered publicly available information concerning the sale, but she did not see the closing statement, nor did she have the deeds, leases, or tenant list. *Id.* Although the sale appeared to be a market transaction based on the capitalization rate, Ms. Coers argues, she considered the sale to have only limited relevance. *Id.*
- N. On cross-examination, Ms. Coers testified that she inspected the property with Larry Mitchell in April of 2010. *Coers testimony.* According to Ms. Coers, they viewed 50% to 75% of the property, including the vacant and occupied spaces and the common areas. *Id.* However, she admitted, they did not measure the building nor did they have a site survey, but instead relied upon the gross leasable area provided by the mall owners. *Id.* Ms. Coers also testified that the subject property's primary trade area is within a five-mile radius, which includes twenty competing shopping centers. *Id.* Therefore, according to Ms. Coers, the subject property's area would be considered semi-rural by investors. *Id.*
- O. Further, in response to questioning, Ms. Coers admitted that she used a confidential sale for a range of expenses, but she argues, she supported that data with information from "Dollars and Cents/The Score." *Coers testimony.* Ms. Coers also testified that an appraiser, who asked to remain confidential, supplied the capitalization rate for the historical sales. *Id.* In its reply brief, the Petitioner contends that "maintaining confidential information is not an uncommon practice in the appraisal industry." *Pet. Reply at 7.* Finally, Ms. Coers agreed that the appraisal of the subject property was

prepared for Jerry Wise, who is an owner of the mall, but she argues she was not aware of any connection that Mr. Wise had to the purchaser of the outlots. *Id.*

P. In its post-hearing brief, the Petitioner's counsel argues that the Petitioner's appraisal was sufficient to raise a prima facie case and that the Respondent failed to rebut the Petitioner's market value-in-use evidence. *Pet. Br. at 7.* According to Ms. Norman, the Respondent produced no market evidence to support the properties' assessed value in the course of the hearing. *Id.*

RESPONDENT'S CONTENTIONS

19. The Respondent contends that the assessed values of the properties are correct for the March 1, 2007, March 1, 2008, and March 1, 2009, assessment years. The Respondent presented the following evidence in support of its contentions:

A. The Respondent's witness, Mr. Thomas, testified that he verified that the information on the property record card was accurate for the PTABOA hearing. *Thomas testimony.* Mr. Thomas also testified that the Petitioner's witness, Ms. Coers, was incorrect when she stated that the new theater was built on the site of the old theater. *Thomas testimony.* According to Mr. Thomas, the old theater was demolished about two or three months before the construction of the new theater was completed in 2006. *Id.*

B. In addition, Mr. Thomas testified that Jerry Wise is the owner or a part owner of Lawndale Plaza, LLC. *Thomas testimony.* According to Mr. Thomas, Lawndale Plaza, LLC, purchased the outlots from Kokomo Mall, LLC. *Id.*

C. In its post-hearing brief, the Respondent's counsel argued that the Petitioner's appraisers failed to show that the national trends upon which they valued the Petitioner's property were relevant to the subject property. *Res. Br. at 2 to 4.* According to Mr. Wilson's brief, the Petitioner's "survey" evidence is full of aggregated data which includes "little information from Indiana, let alone Kokomo."

Id. at 4. According to the brief, comparables sales were available in Kokomo, but were not used by the Petitioner's appraisers. *Id. at 5.* Further, Mr. Wilson argues, the appraisers submitted no evidence regarding the draw radius or capture rate of the mall, the traffic count on U.S. 31, the state of the manufacturing industry in Kokomo, or the impact of the proximity of Markland Mall and other retail centers to the Kokomo Mall. *Id. at 5 to 6.* Moreover, Mr. Wilson argues, the appraisers' reliance on confidential sources prevents any analysis of the credibility of the data on which the appraisers based their opinion of value. *Id. at 8.*

D. The Respondent's brief also argues that the Petitioner's appraisers' analysis of the sale of the subject property is flawed and should be given little weight. *Res. Br. at 8.* According to Mr. Wilson's argument, the appraisers did not review any closing statement or deed, any leases, lease assignments, or list of tenants, or any outlot leases related to the sale. *Id.* In addition, the appraisers failed to measure the property, but instead relied upon the rent rolls to determine that the property had 293,666 square feet of leasable area. *Id. at 10.* However, the leasing briefs only identify 211,341 square feet of leased space and the assessor's records show only 289,101 square feet of space. *Id.* More troubling still, Mr. Wilson argues, is that when the appraisers analyzed the purchase price of the mall, they determined the price per square foot of the property using 336,346 square feet, which is the 293,666 square feet of leasable area with 42,680 added for the theatre. *Id.* The theatre, however, was not constructed until after the sale closed. *Id.* Thus, Mr. Wilson contends, because the appraisers included the later-constructed theater building in the leasable space of the mall at the time of the sale, the appraisers understated the price per square foot of the mall property based on the property's 2005 purchase. *Id.*

E. Similarly, the Respondent's brief argues that the Petitioner's appraisers' income approach valuation is flawed and does not comply with the Uniform Standards of Professional Appraisal Practice. *Res. Br. at 11.* According to Mr. Wilson in the Respondent's post-hearing brief, the appraisers added the value of the theater building to their estimated income value for the mall, but they excluded the theater's ground

lease from that income valuation. *Id.* Mr. Wilson argues that the ground under the theater has value and should have been taken into account. *Id.* In addition, Mr. Wilson argues, the appraisers compare the income from various malls in the area, but make no comparison of those properties' expenses. *Id.* Further, Mr. Wilson argues, Ms. Coers admitted that there was no rent data for 2009 and only a single mall property was used as a comparable for 2008. *Id. at 11.* Thus, Mr. Wilson argues, the data was insufficient for the appraisers to base any valuation conclusion. *Id.* Moreover, Mr. Wilson contends, the appraisers should have valued the property using a discounted cash flow approach and using its "leased fee interest" rather than its fee simple interest because "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 a similar user from the property." *Id. at 13.*

- F. Finally, the Respondent's post-hearing brief argues that the Petitioner's appraisers' sales comparable approach has no probative value. *Res. Br. at 14.* According to the brief, the appraisers' "sales comparable analysis" is nothing more than a reiteration of their income analysis. *Id.* While the appraisers quote "The Appraisal of Real Estate" in support of their using NOI per square foot as a unit of comparison, Mr. Wilson argues that "The Appraisal of Real Estate" states that that type of analysis "negates the checks and balances provided by using more than one approach to value" and the "results suffer from circular logic." *Id. at 15.*

ANALYSIS

20. The 2002 Real Property Assessment Manual defines "true tax value" as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-

15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
21. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
22. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3. For the March 1, 2008, assessment, the valuation date was January 1, 2007, and for the March 1, 2009, assessment, the valuation date was January 1, 2008. *Id.*
23. The Petitioner’s counsel argues that the Petitioner’s property is over-assessed based on the three parcels’ appraised values. *Norman argument*. In support of this contention, Ms. Norman submitted an appraisal prepared by Lawrence Mitchell and Sara Coers that estimated the value of the Petitioner’s properties for the 2007, 2008, and 2009 assessment years. *Petitioner Exhibit 2*. Both Mr. Mitchell and Ms. Coers are Indiana certified appraisers who attested that they prepared the Petitioner’s appraisal in accordance with USPAP. *Id.* The appraisers used the income approach and sales comparison approach to value the property and estimated the property’s value as of the correct valuation dates.

Id. An appraisal performed in accordance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers*, 805 N.E.2d at 479.

24. Here, however, the Petitioner's appraisers mixed standard appraisal practices with aspects of the properties' assessed values. As set forth above, in Indiana, assessing officials generally value real property using the mass-appraisal version of the cost approach set forth in the Guidelines. In such a mass appraisal system, "the use of cost schedules, models and land classifications are commonly used to save time and money when assessing property. The mechanisms allow an assessor to compare basic characteristics of a subject property to models and arrive at an estimate of the property's value. However, in any such mass appraisal system, invariably, certain properties are over-assessed and some are under-assessed... [T]hese inevitable flaws in the mass appraisal techniques are corrected, inter alia, through the presentation of evidence of actual value during the appeal process." *King Industrial Corp. v. St. Bd. of Tax Comm'rs*, 699 N.E.2d 338, 339, fn. 4 (Ind. Tax Ct. 1998). Thus, the Board cannot simply defer to an appraisal that incorporates an assessed value without some showing that the assessed value is a reasonable estimate of the property's value.
25. The appraisers first add the assessed value of the theater building to their income valuation for the mall to estimate the value of the property as a whole. Ms. Coers testified that she used the cost approach for the theater because the theater building is a newer structure and it has a specialized use. *Coers testimony*. According to Ms. Coers, she looked at the Marshall & Swift cost tables and determined that the assessed value of the theater building was reasonable. *Id.* Similarly, the appraisal itself states that the Guidelines based cost approach "was reviewed by the appraisers and is considered reasonable." *Petitioner Exhibit 2 at 43*. Because the appraisers independently reviewed the assessed value of the theater building; they compared the Guidelines-based cost valuation to Marshall & Swift cost tables; and they determined that the assessed value was a reasonable estimate of the structure's market value, the Board finds that the appraisers sufficiently supported their valuation evidence despite using the assessed value

of the theater building in their analysis. Thus, the Petitioners raised a prima facie case that the subject properties were over-valued for the March 1, 2008, and March 1, 2009, assessment years based on their estimated values of \$6,080,000 for all three parcels for March 1, 2008, and \$3,990,000 for all three parcels for 2009.

26. For 2007, however, only Parcel No. 20 was under appeal. To determine the value of Parcel No. 20, the appraisers merely subtracted the \$1,250,800 assessed value of the two parcels that were not under appeal, Parcel No. 22 and Parcel No. 17, from their \$6,212,100 income valuation of the mall as a whole for that year⁸ to arrive at their final estimate of value of \$4,960,000 as of January 1, 2006, for Parcel No. 20. In fact, the appraisal simply states “the assessment for the theatre building must be added to the 1/1/07 value of the mall, and the assessment of the parcels not being appealed must be subtracted.” *Petitioner Exhibit 2 at 71*. Ms. Coers did not testify that she determined the assessed values of Parcel No. 17 and Parcel No. 22 to be reasonable and the Board was unable to find anywhere in the appraisal that the appraisers applied generally accepted appraisal principles to determine whether the assessed values of Parcel No. 17 and Parcel No. 20 reflected the parcels’ market values-in-use. Thus, the appraisers mixed two approaches to value – the mass appraisal cost approach utilized by the Guidelines for Parcel No. 17 and Parcel No. 22 and an income approach valuation governed by USPAP standards to value the mall. In essence, the appraisers have subtracted apples from oranges and urge the Board to find that the resulting figure represents the market value-in-use of Parcel No. 20. This the Board declines to do.
27. The Board notes, however, that the appraisers estimated the value of all three of the parcels that comprise the mall property to be \$6,212,100 for the 2007 assessment year. Because the value of Parcel No. 20 alone cannot exceed the value of the three parcels together, the Board finds that the value of Parcel No. 20 cannot be any higher than \$6,212,100. Further, because Parcel No. 20 was assessed for \$6,979,700 for the March 1,

⁸ The appraisers estimated the income value of the mall to be \$3,060,000 as of January 1, 2006. *Petitioner Exhibit 2 at 71*. Adding the \$3,152,100 assessed value of the theater building for the March 1, 2007, assessment date, resulted in an estimated value of \$6,212,100 for the mall as a whole for the 2007 assessment year. *Id.*

2007, assessment date, the Board finds that the Petitioner raised a prima facie case that Parcel No. 20 was over-valued for the March 1, 2007, assessment year.⁹

28. 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 Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
29. Here, the Respondent attempted to impeach the Petitioner's appraisal by questioning the appraiser's methodology and sources. The Respondent argues that the Petitioner's appraisers used too few comparable properties or the wrong comparable properties to estimate the subject properties' income or sales comparison value. *Resp. Brief*. Similarly, the Respondent argues that the appraisers failed to review all the available information or failed to confirm the data they were provided. *Id.* In addition, the Respondent argues that the appraisers should have chosen the discounted cash flow method to value the property or should have valued the leased fee interest in the property rather than the fee simple interest.¹⁰ Further, the Respondent contends the appraisers' sales comparable analysis was nothing more than a reiteration of their income analysis. However, the Respondent did not go forward to explain why or how these "flaws" invalidate the Petitioner's evidence. "Open-ended questions" and "conclusory

⁹ The Petitioner's appraiser testified that the Petitioner purchased the subject property, plus five outlots, in May of 2005 for \$8,250,000. *Coers testimony; Petitioner Exhibit 2 at 10*. According to Ms. Coers, the outlot parcels were sold in December of 2005 to Lawndale Plaza, LLC, for \$3,638,000, resulting in a net sales price for the mall of \$4,611,200. *Id.* Adding the \$3,152,100 for the theater building to the \$4,611,200 purchase price for the mall, would result in a market value of \$7,763,300 for the Petitioner's property relevant to the March 1, 2007, assessment date. However, the Respondent's witness testified that one of the owners of Kokomo Mall, LLC, was an owner of Lawndale Plaza, LLC, and therefore the sale of the outlots was not a fair market sale. Because the Board cannot rely on the purchase price of the outlots to represent the market values of those parcels, the Board cannot sufficiently rely on the amount of the sale price allocated to the three parcels of the mall at issue in this appeal to rebut the Petitioner's appraisal evidence.

¹⁰ The Board notes that the Respondent's contention that the appraisers should have valued the mall's leased fee interest is contrary to prior Board rulings holding that a property's fee simple interest must be valued for property tax purposes. *See Kerasotes Showplace Theatres, LLC v. Grant County Assessor*, Petition No. 27-023-06-1-4-00825 (July 14, 2009); and *Schooler v. Boone County Assessor*, Petition No. 06-003-071-5-00044 (May 7, 2010).

statements” are not sufficient to rebut the Petitioner’s case. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005) (“In none of these exchanges, however, did Mr. McHenry offer evidence rebutting the validity of Mr. Rassel’s calculations. Rather, he merely asked open-ended questions or made conclusory statements”). It is well within an appraiser’s expertise to choose the sales he or she deems “most comparable” to the subject property or how best to value a property. Therefore, the Board finds the method of valuation and the comparable properties chosen by the appraisers to be reasonable absent any evidence to the contrary.

30. In addition, the Respondent argues that the appraisers improperly excluded the theater’s ground lease from their analysis of the mall’s income and simply added the value of the theater building to their income valuation for the mall. While the Board is troubled by the fact that the appraisers only accounted for the value of the theater’s improvements and not the theater’s land in their valuation, this is insufficient to find that the appraisal as a whole lacked probative value. The Respondent had every opportunity to provide evidence of the mall’s income value with the land lease added in – or any other probative market evidence – but chose not to present such evidence to rebut the Petitioner’s appraisal. Therefore, the Respondent failed to rebut the Petitioner’s prima facie case.

CONCLUSION

31. The Petitioner raised a prima facie case that the subject properties were over-valued for the 2007, 2008 and 2009 assessment years. The Respondent failed to rebut or impeach the Petitioner’s evidence. The Board finds in favor of the Petitioner and holds that the property’s 2007 assessment should be \$6,212,106 for Parcel No. 20. For 2008, the total assessed value for all three parcels should be \$6,080,000 and for 2009, the total assessed value for all three parcels should be \$3,990,000.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of Parcel No. 20 for the March 1, 2007, assessment date and the value of all three of the Petitioner's parcels for the March 1, 2008, and March 1, 2009, assessment dates should be changed.

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Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>