

ATTORNEY FOR PETITIONER:

Vicki L. Norman

ATTORNEY FOR RESPONDENT:

John Slatten

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

REL P PENDLETON, LLP	)	Petitions:	49-400-06-1-4-12211
	)		49-401-06-1-4-12210
Petitioner,	)		49-401-07-1-4-05628
	)		49-401-07-1-4-01533
v.	)		49-401-08-1-4-00124
	)		49-401-08-1-4-00122
MARION COUNTY ASSESSOR,	)		49-401-09-1-4-03135
	)		49-401-09-1-4-03139
Respondent.	)		49-401-10-1-4-00001
	)		49-401-10-1-4-00001A
	)		
	)	Parcels:	49-07-13-106-001.000-401
	)		49-07-13-106-005.000-401
	)		
	)	County:	Marion
	)		
	)	Township:	Lawrence
	)		
	)	Assessment Yrs:	2006/2007/2008/2009/2010

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Appeal from the Final Determination of the  
Marion Property Tax Assessment Board of Appeals

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**December 11, 2012**

**FINAL DETERMINATION**

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

## **ISSUE**

1. Did the Petitioner prove that the current assessments for 2006 through 2010 are not accurate market values-in-use for the subject property, and did the Petitioner prove what the correct land assessments should be for the years at issue?

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. The subject property consists of a 134,797 square foot, big box retail building with two attached smaller retail spaces and a gas station/convenience store. The improvements are located on 12.29 acres. The property is located at 7201 Pendleton Pike in Indianapolis. Kmart leases 114,797 square feet from the Petitioner, and the remaining 20,000 square feet has been vacant since January 2007. Kmart vacated the store on May 18, 2012, and continues to pay rent through the November 30, 2012 lease expiration date.
3. The Petitioner filed Form 130 petitions with the Marion County Assessor contesting the subject property's March 1, 2006, through March 1, 2010, assessments. On May 4, 2011, the Marion County Property Tax Assessment Board of Appeals ("PTABOA") issued its respective determinations for the 2006 through 2009 assessments denying Petitioner relief for the land values while decreasing the improvement values.
4. The PTABOA did not act and did not issue a Form 115 for the 2010 petitions. The 2010 petitions were filed because the PTABOA did not act (did not schedule hearing). The Petitioner timely filed Form 131 petitions with the Board concerning all assessment dates.
5. A consolidated hearing was held on September 12, 2012, in Indianapolis before Jaime S. Harris, the designated Administrative Law Judge ("ALJ") authorized by the Board to conduct the hearing. Neither the Board nor the ALJ inspected the subject property.
6. Sara H. Coers and Eve M. Beckman were sworn as witnesses and testified at the hearing.

7. The Petitioner submitted the following exhibits:
- Petitioner Exhibit 1: Petitioner’s Brief summarizing testimony of Sara Coers
  - Petitioner Exhibit 2: MAI Summary Appraisal Report prepared by Sara Coers
  - Petitioner Exhibit 3: Appraisers’ Sources Referenced Throughout Appraisal Report
  - Petitioner Exhibit 4: Appraisal Replacement Page 78
  - Petitioner Exhibit 5: Appraisal Replacement Page 80
8. The Assessor submitted the following exhibits:
- Respondent Exhibit 1: Market value analyses prepared by Eve Beckman and any supporting documents
  - Respondent Exhibit 2: Lease Summary
  - Respondent Exhibit 3: Lease Abstracts
  - Respondent Exhibit 4: Convenience Market/Gas Station sales comparison data
  - Respondent Exhibit 5: Property Assessment Valuation excerpts
  - Respondent Exhibit 6: The Appraisal of Real Estate excerpts
  - Respondent Exhibit 7: Photographs of subject convenience store/gas station
  - Respondent Exhibit 8: Comparable sale data
  - Respondent Exhibit 9: Subject convenience store/gas station building permit data
  - Respondent Exhibit 10: Subject lease
  - Respondent Exhibit 11: Fall 2010 RERC Real Estate Report
  - Respondent Exhibit 12: CoStar data on subject property
  - Respondent Exhibit 13: Korpacz Real Estate Investor Survey
  - Respondent Exhibit 14: Internet print-outs regarding Winchester and Monticello
9. The Board recognizes the following additional items as part of the record of proceedings:
- Board Exhibit A: Form 131 petitions and attachments
  - Board Exhibit B: Notices of Hearing
  - Board Exhibit C: Hearing Sign-in Sheet
10. For 2006 through 2010, the PTABOA determined the following assessments:
- |       |                   |                           |                    |
|-------|-------------------|---------------------------|--------------------|
| 2006: | Land: \$913,700   | Improvements: \$2,050,100 | Total: \$2,963,800 |
| 2007: | Land: \$913,700   | Improvements: \$2,050,100 | Total: \$2,963,800 |
| 2008: | Land: \$913,700   | Improvements: \$1,804,200 | Total: \$2,717,900 |
| 2009: | Land: \$913,700   | Improvements: \$1,404,500 | Total: \$2,318,200 |
| 2010: | Land: \$1,535,100 | Improvements: \$2,961,600 | Total: \$4,496,700 |
11. On the Form 131 petitions, the Petitioner requested the following assessments:
- |                          |                          |
|--------------------------|--------------------------|
| 2006: Total: \$1,980,000 | 2009: Total: \$1,500,000 |
| 2007: Total: \$2,120,000 | 2010: Total: \$1,340,000 |
| 2008: Total: \$1,800,000 |                          |

## OBJECTIONS

12. The Petitioner objected to Respondent Exhibits 2, 5 through 9, and 11 through 14, because the Respondent failed to provide copies of said documentary evidence prior to the trial. Respondent claimed that the exhibits were being presented as rebuttal evidence so as to avoid violating the 5 day evidence exchange rule. For plenary hearings, the Board's procedural rules require that a party to the appeal must provide other parties with a list of exhibits to be introduced at the hearing at least fifteen business days before the hearing. 52 IAC 2-7-1(b)(2). Copies of documentary evidence must be exchanged at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). Failure to comply with these requirements can be grounds to exclude evidence. 52 IAC 2-7-1(f). The purpose of this requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. While most of Respondent's exhibits could be excluded for failure to provide said evidence prior to the hearing, the Board will allow them. Their inclusion does not affect the result of this determination.
13. The Petitioner also objected to the Respondent's questioning of Ms. Coers' character by stating that the Respondent was accusing the witness of something that was not true. Attorney Slatten asked Ms. Coers if she charged separately to testify for Petitioner and whether it was likely that she would still be asked to testify if she would have determined values below what Petitioner wanted. Attorney Norman argued that Mr. Slatten was accusing the witness of determining her assessment values based on improper considerations. The objection is overruled.
14. The Petitioner objected to Attorney Slatten's cross-examination of Ms. Coers regarding sales per square foot, stating that Ms. Coers did not testify about sales per square foot, and sales per square foot were not discussed in her appraisal. Based on what was said during the hearing, the objection is sustained.<sup>1</sup>
15. The Petitioner objected to Ms. Beckman's testimony regarding her income approach analysis. Ms. Beckman stated that she used sales from assessments she had seen or used within the last

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<sup>1</sup> Upon further review of the exhibits, although Ms. Coers did not testify about sales per square foot during the hearing, sales per square foot were included in the Petitioner's appraisal on page 88. Had Mr. Slatten pointed the Board to this fact during the hearing, the objection would have been overruled.

few years. Ms. Beckman stated that she could not enter these assessments into evidence because they included confidential information. This position precludes meaningful cross-examination and is unacceptable. The objection is sustained.

16. Attorney Slatten objected to Ms. Coers' use of national surveys in her market expense analysis as she had no personal information regarding the process of the surveys. His objection was based on hearsay, because the national statistics process was not in evidence. National surveys are commonly used in appraisals that conform with the Uniform Standards of Professional Appraisal Practice ("USPAP"). The objection is overruled.

### **SUMMARY OF THE PETITIONER'S CASE**

17. The Petitioner's witness, Sara Coers, is a certified general appraiser and a Member of the Appraisal Institute (MAI). To become an MAI designated appraiser, one has to complete rigorous education requirements, including over 4500 hours of specialized experience. The designation also includes a two day comprehensive final examination. The appraiser must complete a demonstration report, which is an appraisal report taken to the extreme highest level. Being an MAI is the highest designation in the field of appraisers. Ms. Coers has appraised hundreds of retail properties such as the subject property in her 8 ½ years as an appraiser for Mitchell Appraisals, Inc. *Coers testimony.*
18. The Petitioner contends that the property is over-valued for the 2006, 2007, 2008, 2009 and 2010 assessments. In support of this contention, the Petitioner presented an appraisal prepared by Ms. Coers. It was prepared in accordance with USPAP. The purpose of the appraisal was to determine the retrospective market value-in-use of the fee simple interest of the subject property as of multiple dates of value. In her report, Ms. Coers estimated the total value of the Petitioner's property was \$1,980,000 as of January 1, 2005; the value was \$2,120,000 as of January 1, 2006; the value was \$1,800,000 as of January 1, 2007; the value was \$1,500,000 as of January 1, 2008; and the value was \$1,340,000 as of March 1, 2010. *Norman argument; Coers testimony; Pet'r Ex.2.*

19. In preparing her appraisal, Ms. Coers considered the specific attributes of the property, the market at the time of each assessment, and the applicable approaches to value the property. According to Ms. Coers, the property suffers from functional obsolescence due to its big box configuration. As the property ages and market trends change, the property quickly becomes outmoded both in design and size. The b space also has functional obsolescence because its bay depth is deeper (200 feet deep) than preferred by market users.<sup>2</sup> The typical depth or current standard b space is around 80 to 100 feet. Approximately 2400 square feet of the b space is considered “orphaned” space, which is basically useless to rent as retail. It was walled off at some point to decrease the depth. Because space like this rarely leases, Ms. Coers included the 2400 square feet in the appraisal for \$150 per month because some retailers could use it as a storage facility. *Coers testimony; Pet’r Ex. 2.*
20. The Kmart lease commenced in 1968. The tenant currently pays \$272,000 per year, or \$2.37 per square foot. Kmart leases 20,000 square feet back to the Petitioner/landlord for \$46,600 per year, or \$2.33 per square foot. Therefore, Kmart’s effective lease rate is less than \$2.00 per square foot per year based on the lease-back arrangement. Kmart is also responsible for paying percentage rents equal to 1% of sales over \$10,454,940. The income and expense statements showed that a small amount of percentage rent was paid in 2007 only. *Coers testimony; Pet’r Ex. 2; Pet’r Ex. 3.*
21. The Petitioner’s appraiser first considered the property from the perspective of a retail user. Retail demand is driven by population, housing growth and income, which are partially driven by employment. The immediate trade area has had a declining population and is considered an inferior location within Indianapolis. A retail user would also consider the physical features of the property. The subject’s rating is below average when factors such as the site, parking, building, and marketing features are compared to its competition. After taking all of these factors into account, the property would get less than its fair share of demand within the market and would sell at the low end of the price range indicated by sales.<sup>3</sup> *Coers testimony; Pet’r Ex. 2; Pet’r Ex. 3.*

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<sup>2</sup> B space means secondary space to an anchor. It is a smaller space that is used for supporting shops.

<sup>3</sup> Ms. Coers used the following market sources to support her conclusions in the appraisal: RERC’s Real Estate Report Spring 2006; Marcus & Millichap’s 2007, 2008, 2009 and 2010 National Retail Reports.

22. The perspective of buyers and sellers was the next consideration in Petitioner's appraisal. As of the later dates of value, economic conditions were weak for retail due to an oversupply of competing space in the general market and the limited number of users for second generation big box space. During 2006, the availability of retail space was rising due to new construction outpacing demand. Retail was at its peak in 2007, but the market began to rapidly decline in 2008. Due to heightened job losses, reduced consumer spending, and distress in the housing and equity markets, 2009 and 2010 were extremely weak years for retail. *Coers testimony; Pet'r Ex. 2.*
23. Ms. Coers considered all three approaches to value the property. She determined that the cost approach is unnecessary for a credible valuation of a building that is over 10 years old, because market participants would not consider the cost approach to value the property. *Coers testimony; Pet'r Ex. 2.*
24. In preparing her income approach calculation, Ms. Coers first looked at the existing lease terms and compared it to market rents to determine if the contract rents are at market value. A rental survey provided the basis for the estimated market rent.<sup>4</sup> She then compared the existing vacancy to the market and applied a market vacancy and collection loss. This calculation resulted in the effective gross income (EGI).<sup>5</sup> Expenses that are an obligation to the property owner in lease situations, such as taxes, insurance, management fees, and utilities, were deducted from the EGI in order to determine the net operating income (NOI) of the property. The NOI was turned into a value using direct capitalization for a final value on each assessment date. *Coers testimony; Pet'r Ex. 2.*
25. The property's existing income was compared to market rental and vacancy rates to determine its reasonableness. Ms. Coers relied on the property's income and expense statements for a history of its income as well as rent rolls that showed a breakdown of the space and how it had been leased at each date of value. She compared the market parameters to the actual performance of the property, showing that the market rents are higher than

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<sup>4</sup> Market rent is the rental income that a property would most likely command on the open market. See Appraisal Institute. *The Appraisal of Real Estate*, 13<sup>th</sup> Edition. Chicago: 2008, 453.

<sup>5</sup> EGI is essentially the amount which would result if rent were applied to 100% of the space with a deduction for the typical vacancy.

actual rents because the subject is not leased triple net, even though the market is triple net.<sup>6</sup> The actual operating expenses for 2008, 2009 and 2010 are higher than market expenses because the subject property does not have a triple net lease. The determined market expenses were deducted from the determined market income to calculate NOI. This NOI based on the market is higher and more consistent than the actual historical NOI of the property. Ms. Coers also compared market vacancy rates to the subject's historical vacancy rates, concluding that market vacancy rates were less than the subject's actual vacancy rates in 2007, 2008 and 2009. The rates were similar to the subject's actual vacancy in 2006 and 2010. Ms. Coers compared the subject's historical expenses with the Institute of Real Estate Management's (IREM) annually published Income/Expense Analysis: Shopping Centers for 2007 through 2011. *Coers testimony; Pet'r Ex. 2; Pet'r Ex. 3.*

26. Next in her income analysis, Ms. Coers selected a capitalization rate by reviewing overall capitalization rates from retail sales and market publications. She determined cap rates for each assessment date under appeal and applied the appropriate portion of the tax component for the landlord's tax liability based on the market. The NOI was then divided by the loaded cap rate to determine the final retrospective market value-in-use of the fee simple interest for each assessment date. The following are the values reached by use of the income capitalization approach:

a. March 1, 2006	\$2,080,000	d. March 1, 2009	\$1,390,000
b. March 1, 2007	\$2,430,000	e. March 1, 2010	\$1,330,000
c. March 1, 2008	\$1,820,000		

*Coers testimony; Pet'r Ex. 2.*

27. To develop the sales comparison approach, Ms. Coers defined the sub-market in which the subject competes, researched the market for sales transactions, compared the market data to the subject property, made appropriate adjustments and reconciled the value indications to a range of values. The appraiser used fee simple sales of big box properties, not sales of leased properties. Primary consideration was given to the fee simple interest transferred, continued

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<sup>6</sup> Triple net means that the owner pays taxes, insurance and common area maintenance (CAM), which is typically expenses such as parking lot cleaning and lighting and snow removal. CAM varies widely from property to property. Generally, the owner pays these expenses and the tenant then reimburses the owner. Triple net does not reflect the actual lease in place on the subject property, but does reflect what the appraiser considers to be market.



retail use and size. Construction, date of sale and location were also considered. Ms. Coers used the appraiser's in-house data, commercial database for Indiana transactions, CoStar and LoopNet as sources to gather sales. *Coers testimony; Pet'r Ex. 2, page 57.*

28. Ms. Coers used information concerning nine improved sales of big box retail stores in Indiana ranging from \$9.49 per square foot to \$39.28 per square foot. Sale #1 is a former Wal-Mart in Lafayette. Sale #2 is a former Wal-Mart in Winchester. Sale #3 is a former Wal-Mart in Warsaw. Sale #4 is a former Lowes in Anderson. Sale #5 is a former Wal-Mart in Decatur. Sale #6 is a former Wal-Mart in Bloomington. Sale #7 is a former K's Merchandise Mart in Fort Wayne. Sale #8 is a former Wal-Mart in Winchester.<sup>7</sup> Sale #9 is a former Wal-Mart in Wabash. She determined adjustments for market conditions, location, and building condition for each assessment date. After the adjustments were made, the final retrospective market value-in-use of the fee simple interest by the sales-comparison approach as of each assessment date is as follows:

- |                  |   |
|------------------|---|
| a. March 1, 2006 | \$1,890,000/\$14.00 per square foot (rounded) |
| b. March 1, 2007 | \$1,890,000/\$14.00 per square foot (rounded) |
| c. March 1, 2008 | \$1,890,000/\$14.00 per square foot (rounded) |
| d. March 1, 2009 | \$1,480,000/\$11.00 per square foot (rounded) |
| e. March 1, 2010 | \$1,350,000/\$10.00 per square foot (rounded) |

*Coers testimony; Pet'r Ex. 2.*

29. Ms. Coers reconciled the values determined by the income and sales approaches and arrived at her conclusion of the retrospective market values-in-use based on applications of appraisal techniques and the appraiser's judgment. She felt that both approaches were equally reliable as both investors and owner/users have a pretty equal share of the market. Therefore, she took the average of both approaches for each year. It resulted in the following reconciled values:

- |                  |             |                  |             |
|------------------|-------------|------------------|-------------|
| a. March 1, 2006 | \$1,985,000 | d. March 1, 2009 | \$1,435,000 |
| b. March 1, 2007 | \$2,160,000 | e. March 1, 2010 | \$1,340,000 |
| c. March 1, 2008 | \$1,855,000 |                  |             |

*Coers testimony; Pet'r Ex. 2.*

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<sup>7</sup> Sale #'s 2 and 8 are the same property with two different sale dates. Sale #2 occurred on December 15, 2005, and Sale #8 occurred on March 6, 2007.

30. After reconciling the values, Ms. Coers' final step was to trend the March 1<sup>st</sup> values to the prior January 1<sup>st</sup> valuation date. The March 1, 2010, value does not require trending. Ms. Coers looked at two different sources. One source was the Consumer Price Index (CPI). The Board has found that the use of a CPI factor applied to a current valuation is an acceptable means to trend the value.<sup>8</sup> The other source was overall rate (OAR) changes in applicable categories of market surveys, such as 2<sup>nd</sup> and 3<sup>rd</sup> tier retail from the RERC Real Estate Report and anchored retail from RealtyRates.com Investor Survey.<sup>9</sup> This source is particularly applicable. Ms. Coers looked at the change in the average cap rates and their implied changes in value. As cap rates rise, values go down. As cap rates go down, values go up. Ms. Coers used the average change in indicated value from each of the surveys and also the change in CPI. She averaged those two market indicators and applied the result to the above stated reconciled values in order to reach the final retrospective market values-in-use of the fee simple interest in the subject property as of each assessment date. *Coers testimony; Pet'r Ex. 2; Pet'r Ex. 3.*
31. There is a gas station/convenience store located on the subject property at a remote location in the parking lot away from the big box anchor building. Ms. Coers found that the gas kiosk (a.k.a. the gas station/convenience store) resulted in no income for the owner/Petitioner. It was built and operated by Kmart as another source of sales volume. It is very small when compared to other gas station/convenience stores. Most gas station/ convenience stores that are owned by big box retail stores are considered "c stores" and are typically 4000 to 5000 square feet. A gas station this size is not particularly desirable for an independent operator. These c stores make a profit from the products sold in the convenience store, but do not profit from the gas. Furthermore, the gas tanks, canopy, and signage are considered personal property and not a part of the real property. It becomes a liability to the next purchaser because of the underground gas tanks. The tanks would either have to be closed off at the owner's expense, or it would become a Leaking Underground Storage Site (LUSS), that could require environmental remediation. For all the foregoing reasons, the appraiser did not consider the gas kiosk to add any extra value to the subject property. *Coers testimony; Pet'r Ex. 2.*

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<sup>8</sup> *Edward Rose of Indiana, LLC v. Pleasant Township Assessor of Johnson County*, Petition 41-026-02-4-00239.

<sup>9</sup> Anchored retail essentially means that there is one main larger "anchor" building/store with smaller retail shops located around the anchor.

## SUMMARY OF THE RESPONDENT'S CASE

32. The Respondent's witness, Eve Beckman, is a commercial industrial evaluation analyst with the Marion County Assessor's Office. She is a level III certified assessor/appraiser. Ms. Beckman had an appraiser trainee's license for approximately 6 to 9 months, but let it lapse. A trainee must be under the supervision of a certified licensed appraiser. She admitted on cross-examination that she represented the county at the PTABOA hearing regarding the case at hand and was also involved in establishing the 2012 assessed value of the subject property. Her compensation is not determined by her testimony at tax appeal hearings. *Beckman testimony; Beckman cross-examination.*
33. The Petitioner's income and sales-comparison approaches to value were based on questionable income, expense, capitalization rate, and comparable sale values. Ms. Coers used comparable properties and dissimilar properties. She applied excessive adjustments of up to 65% to purportedly account for differences in location. If an appraiser has to apply adjustments of 40% or more, the properties are not comparable. Furthermore, by including non-comparables in her income analysis, Ms. Coers' values are skewed significantly. The Petitioner's rental rates were based on averages of rental rates of a wide variety of properties. The wide variations from year to year within the same three mile area show that those rents are not relevant to the subject property and they are not reliable indicators of market rents. By dividing the values in half, Ms. Coers appeared to acknowledge the flawed methodology. Her use of averaging dissimilar comparables and the specious adjustments resulted in an unjustifiably low income figure. *Slatten argument; Beckman testimony; Pet'r Ex. 2.*
34. Ms. Coers made questionable conclusions in her expense calculations. For example, she used expense figures based on national survey data pertaining to shopping centers. That data is not relevant to the subject property, which is a large anchor with only two inconsequential external entry tenants and arguably not a shopping center at all. The large per-square-foot expense figures were based on the unsupported assumption that a hypothetical market lessee under a triple net lease would not pay for or reimburse for common area maintenance (CAM). The appraisal's expense analysis shows that the Petitioner/landlord only gets back 60% of expenses and will have to pay the remaining 40%. That assumption does not make sense, because if it is a market rent and the landlord is getting maximum recovery from the

tenants, the landlord could recover up to 115% of expenses. Ms. Coers' use of significant vacancy losses is questionable because vacancy losses are extremely difficult to quantify with any degree of certainty. Vacancy losses would be more appropriate for spaces that are half the size of the subject property and for properties with shorter term leases (i.e. 5-10 year leases). *Slatten argument; Beckman testimony; Pet. Ex. 2.*

35. The Petitioner's conclusions about the appropriate capitalization rates suffered from flawed methodology because they were based on averaging. In addition, the cap rates after 2008 were based solely on national survey data (RERC) without regard to local data. The Korpacz Real Estate Investor Survey, which Ms. Beckman used to arrive at the appropriate cap rates, is more reliable than RERC. Ms. Coers' testimony that Korpacz is only used for institutional investors is not accurate. *Slatten argument; Beckman testimony; Resp't Ex. 11; Resp't Ex. 13.*
  
36. The Petitioner's sales-comparison approach lacks relevance and probative value. The comparable sales include properties in different markets. For a retail space, it is problematic to attempt to value a property in a populous metropolitan area by comparing it to a property in a small town because of the impact that traffic counts have on the desirability and profit potential. While Ms. Coers stated that she took traffic counts into consideration by her use of the average rental rates in the area, she did not look at traffic maps when preparing her appraisal. The average asking rent arrived at by Ms. Coers' methodology is not a reliable indicator of land values or a reliable basis for location adjustment. The differences between the small town comparables (such as the one located in Winchester) and the subject property in Indianapolis, cannot be resolved by simply dividing the figures in half. The appraisal also used sales of vacant stores in other areas, even though the Petitioner is still receiving rent. Income producing properties should not be compared to vacant non-income producing properties. According to the International Association of Assessing Officers, an assessor must never average the results in selecting a single value estimate when reconciling the values indicated by the sales-comparison approach. Therefore, Ms. Coers' use of averaging is highly speculative. *Slatten argument; Beckman testimony; Coers cross-examination; Resp't; Ex 5; Resp't Ex. 6.*

37. The Consumer Price Index has no relevance to property tax appeals. Ms. Coers used the CPI to trend her final conclusion of the value of the properties as of the 2006 through the 2009 assessment dates back to the January 1<sup>st</sup> valuation dates of each preceding year. Using the CPI resulted in skewed and unreliable trending factors. Accordingly, the appraisal failed to relate the values determined under the income and sales comparison approaches as of the relevant assessment dates to the values as of the relevant valuation dates. Therefore, the values presented in the Petitioner’s appraisal are not relevant to the present appeals. *Slatten argument; Pet’r Ex. 2.*
38. The Petitioner’s appraisal valued only a portion of the property interests included within the subject property. “Except as otherwise provided by law, all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year.” I.C. §6-1.1-2-1. 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. The gas station/convenience store was in existence on each relevant assessment date. A proper assessment cannot ignore such property, but the Petitioner’s appraisal gave no value to it. Regardless of the lease agreement with the Petitioner, it is unreasonable to conclude that a gas station, which includes an 800 square foot convenience store and is located on a busy road near its intersection with an interstate highway, has no value. Building permit data indicates that the Petitioner’s tenant invested a significant sum in the construction of the gas station/convenience store. Furthermore, CoStar listings demonstrate that it could be marketed separately. *Slatten argument; Beckman testimony; Resp’t Ex. 4; Resp’t Ex. 7; Resp’t Ex. 9; Resp’t Ex. 12.*
39. The gas station/convenience store’s canopy, building, and curbing are real property. *Manual Appendix G; Camelot Company, LLC, Indiana Board of Tax Review Pet. No. 41-009-02-1-4-00013 (June 2005).* The fact that a portion of the gas station/convenience store’s value is attributable to personal property is of little consequence. It can be easily dealt with in an income or sales-comparison approach by “backing out” the personal property. *Slatten argument; Beckman testimony.*

40. The value of the gas station/convenience store should be dealt with separately. The portion of the parking lot used for the gas station is too far from the retail building to be necessary for parking. The parking area closer to the store is more than sufficient for the size of the retail building. The gas station/convenience store area is not necessary for access to the main retail building. *Slatten argument; Beckman testimony; Resp't Ex 12.*
41. The methodology used by Ms. Coers was not proven to conform to USPAP or any other generally accepted standards. An appraiser may be entitled to deference based on her experience, state certification, or appraisal designations. When it is shown that the appraiser made unsupportable adjustments and questionable assumptions, it is necessary for her to demonstrate that the methodology conforms with generally accepted standards and the definition required by Indiana law. The methodology employed by Ms. Coers is flawed and is not probative evidence for the years under appeal. Accordingly, the Petitioner failed to make a case for any reduction of the current assessment. When a taxpayer fails to provide substantial evidence to support a claim, the Respondent's duty to support the assessment is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d at 1119 (Ind. Tax Ct. 1998). *Slatten argument; Beckman testimony.*
42. Eve Beckman provided an analysis of the subject property without the shortcomings that were present in Ms. Coers' appraisal. Ms. Beckman's analysis indicated that the value of the subject property exceeded the assessed value for each year under appeal. *Slatten argument; Beckman testimony.*
43. In respect to the gas station/convenience store, the Respondent provided information concerning five comparable properties located in close proximity. The comparables with highest and lowest sale prices were eliminated, leaving three remaining comparables with a range from \$227 to \$386 per square foot. The median of these three comparables is \$243 per square foot. The assessor's value for the gas station/convenience store located on the subject property was approximately \$240 per square foot. This is a viable amount when compared to the median of the Respondent's comparables. *Beckman testimony; Resp't Ex. 1; Resp't Ex. 2; Resp't Ex. 4.*

44. Ms. Beckman used the income and sales-comparison approaches to arrive at an assessment value of \$3,369,000 for all five years under appeal. For the income approach, Ms. Beckman considered values she has seen and used from other assessments in the past few years.<sup>10</sup> Triple net leases have the tenant bearing almost 100% of the expenses. The landlord pays basically only the liability insurance, accounting and a small portion of management fees, but has no responsibility for operating expenses. Therefore, a NOI of 3% was applied. Ms. Beckman also looked at surveys and the RERC in order to arrive at an appropriate cap rate of 10%, which was at the upper end of the range. Ms. Beckman testified that she also looked at local sales, but there was not much information available in that area. The property's income stabilized at \$2.50 per square foot based on the market data collected. The gas station/convenience store can be marketed and sold separately and has depreciated approximately 50% since being constructed in 2001. She arrived at her final value of \$3,469,000 by adding the big box's value to the gas station/convenience store. *Beckman testimony; Resp't Ex. 5; Resp't Ex. 6.*

#### **ADMINISTRATIVE REVIEW AND BURDEN**

45. 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).
46. 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. Washington 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”).
47. 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); *Meridian Towers*, 805 N.E.2d at 479. The assessing official must offer

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<sup>10</sup> See ‘Objections’ section.

evidence that impeaches or rebuts the Petitioner's case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

### ANALYSIS

48. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
49. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). 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 (“USPAP”) often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
50. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also, Long v. Wayne Twp. Assessor*, 821 NE2d 466, 471 (Ind. Tax Ct 2005). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2006 through 2009 assessments, the valuation date is January 1<sup>st</sup> of the prior year. 50 IAC 21-3-3 (2006). For March 1, 2010 assessments, the valuation date is March 1, 2010. Ind. Code § 6-1.1-4-4.5(f) (2010).



51. The Petitioner's case primarily relies on an appraisal prepared by Sara Coers that estimated the value of the subject property for the 2006, 2007, 2008, 2009 and 2010 assessment years and the testimony of Ms. Coers. Ms. Coers is a credible witness and her work appears to conform to generally accepted appraisal principles. She is an Indiana certified appraiser who attested that she prepared the Petitioner's appraisal in accordance with USPAP. The appraiser used the income approach and sales-comparison approach to value the property and estimated the property's value as of the correct valuation dates. *Pet'r Ex. 2.*
52. While the Respondent may have impeached portions of Ms. Coers' appraisal and her testimony, it did not destroy the credibility or probative value of that evidence. Here, the Respondent attempted to impugn the Petitioner's appraisal by questioning the appraiser's methodology and sources. The Respondent argued that the Petitioner's appraiser used the wrong comparable properties to estimate the subject property's income or sales-comparison value. The Respondent believes that Ms. Coers use of vacant properties was inappropriate, because vacant properties should not be compared to the subject property as it is income producing. Ms. Beckman stated that the use of vacant properties would be appropriate when dealing with a short term lease, which is 3 to 5 years. The subject has less than 5 years on the lease. The Respondent also argued that the appraiser should never have averaged the results in order to reconcile her values. The Respondent further stated that the Petitioner's appraiser failed to review all the available information, such as traffic counts. Credible evidence, however, established that traffic counts were taken into consideration in Ms. Coers' analysis of location adjustments. The Respondent also contends that Ms. Coers' adjustments were excessive, thereby making the properties no longer comparable. The Respondent, however, did not credibly establish that these "flaws" invalidate the Petitioner's evidence. "Open-ended questions" and "conclusory 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). It is well within an appraiser's expertise to choose the sales she deems "most comparable" to the subject property or how best to value a property. Based on everything that is in the record, the Board finds the method of valuation and the comparable properties chosen by Ms. Coers are reasonable.

53. The Petitioner's expert witness determined that the gas station/convenience store had no value. Ms. Coers testified that while Kmart may have received a minimal amount of income from snacks and drinks sold in the tiny convenience store, the Petitioner/owner received nothing additional by allowing the gas station to be built on the property. Furthermore, an investor would get no use and would receive no income from this gas station/convenience store, and an owner would consider it to be a liability due to the presence of the underground gas tanks. The underground gas tanks would likely need to be removed because of the environmental problems they could cause. In response to the Ms. Coers' analysis of the gas station, the Respondent's witness did not meet the burden of showing that the gas station did, in fact, have value. Ms. Beckman testified that she used five comparables. At no point in her analysis did Ms. Beckman describe the differences between her comparables and the subject, nor did she explain any adjustments that were made in order to reach her value conclusions. Although the Board may have some doubt that the gas station/convenience store holds absolutely no value, given the Respondent's failure to provide the Board with sufficient evidence concerning said value, the Board must find that the gas station/convenience store holds no value.
54. Despite the Respondent's criticisms, the Petitioner made a prima facie case for a lower assessment for each of the tax years at issue. *See Meridian Towers*, 805 N.E.2d at 479 (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).
55. In support of the Respondent's case-in-chief, Ms. Beckman stated that for her income approach analysis, she considered sales from assessments she had done in the last few years pertaining to big boxes. The information was given to her confidentially, and therefore, Ms. Beckman could not legally share said evidence with the Petitioner. There are procedures in place that allow a party to submit confidential information as evidence in an administrative hearing, thereby allowing the opposing party to view only the redacted version of said evidence. *See 52 IAC 2-7-5*. When a witness relies on evidence to support her conclusions, she cannot merely state that said evidence is "confidential" and therefore cannot be shown to the opposing party. This argument essentially destroys the credibility of the evidence relied upon by the witness.

56. The result of this case essentially boils down to a credibility comparison between the parties' expert witnesses. While the analysis of Respondent's witness may not differ significantly from the calculations made by a certified appraiser in an appraisal report, the assumptions of the Petitioner's appraiser, a Member of the Appraisal Institute, are backed by her education, training, and experience. Ms. Coers certified that she complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that Ms. Coers used objective data, where available, to quantify her adjustments. Where objective data was not available, the Board can infer that Ms. Coers relied on her education, training and experience to estimate a reliable quantification. On the other hand, Ms. Beckman did not certify that she complied with USPAP in performing her valuation analysis. In the final analysis, the Board finds the appraisal and testimony of Ms. Coers to be more persuasive than the market value analysis and testimony of Ms. Beckman.
57. In further support of the Respondent's case, Ms. Beckman analyzed the subject property's value by using the sales-comparison approach. However, she did not offer a summary of her analysis. Instead, Ms. Beckman pointed to an exhibit that contains sale and listing information for 79 big box properties from throughout Indiana, stating that she looked through the information and disregarded sales that were inapplicable. The majority of the sales, however, were multi-property sales or portfolio sales. Ms. Beckman stated that she researched other big box properties, but did not bring any evidence to demonstrate said properties and their pertinent information. The same type of process was used by Ms. Beckman for the gas station/convenience store analysis. While she used significantly less comparables, Ms. Beckman basically handed a packet of information to the Board without explaining the similarities or differences between the subject and the comparables or why certain adjustments were made to account for any differences between the two. A party cannot merely hand raw data to the Board and expect the Board to figure out to what it pertains or what argument it proves. As stated previously, a party has a duty to walk the Board through every element of the analysis. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004).
58. The entirety of the Respondent's case was less detailed, more conclusory, and less credible than the case offered by the Petitioner.

## **CONCLUSION**

59. The Petitioner made a prima facie case. The Respondent's effort to rebut or impeach the Petitioner's case was not very effective or credible. To the extent that the Respondent did rebut or impeach the Petitioner's evidence to some degree, the Board determines that the weight of the evidence offered by the Petitioner was ultimately more persuasive and conclusive than that of the Respondent. Therefore, the Board finds in favor of the Petitioner and holds that the property's assessment should be \$1,980,000 for the 2006 assessment, \$2,120,000 for the 2007 assessment, \$1,800,000 for the 2008 assessment, \$1,500,000 for the 2009 assessment, and \$1,340,000 for the 2010 assessment.

## **SUMMARY OF FINAL DETERMINATION**

60. In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property for the March 1, 2006, March 1, 2007, March 1, 2008, March 1, 2009, and March 1, 2010, assessment dates should be changed.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.