

REPRESENTATIVE FOR THE PETITIONER:

Beth Henkel, Attorney

REPRESENTATIVE FOR THE RESPONDENT:

Jess Reagan Gastineau, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

G & E Healthcare REIT,	)	Petition Nos.: See attached listing
	)	
Petitioner,	)	Parcel Nos.: See attached listing
	)	
v.	)	County: Marion
	)	Township: Pike
Marion County Assessor,	)	
	)	Assessment Years: 2011, 2012, and 2013
Respondent.	)	

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Appeal from the Final Determinations of the  
Marion County Property Tax Assessment Board of Appeals

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**November 13, 2019**

**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 the assessments were incorrect?

**PROCEDURAL HISTORY**

2. The Petitioner initiated assessment appeals for four properties, consisting of six different parcels, with the Marion County Assessor. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued determinations itemized below. The Petitioner

timely filed Petitions for Review of Assessment (Form 131s) with the Board, appealing the 2011 assessments of all four properties, and the 2012 and 2013 assessments of two of the properties.

3. On March 11, 2019, Kyle C. Fletcher, the Board's Administrative Law Judge (ALJ), held a consolidated hearing. Neither the Board nor the ALJ inspected the properties.

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

4. Certified commercial appraiser Andrew Hartigan was sworn and testified on behalf of the Petitioner. Greg Dodds was sworn and testified on behalf of the Respondent.

5. The Petitioner submitted the following exhibits:

- Petitioner Exhibit 1: BBG Appraisal of 3881 Eagle Creek Parkway with an effective date of March 1, 2011,
- Petitioner Exhibit 2: BBG Appraisal of 6620-40 Parkdale Place with an effective date of March 1, 2011,
- Petitioner Exhibit 3: BBG Appraisal of 6820 Parkdale Place with an effective date of March 1, 2011,
- Petitioner Exhibit 4: BBG Appraisal of 6920 Parkdale Place with an effective date of March 1, 2011,
- Petitioner Exhibit 5: Property record card (PRC) and Notification of Final Assessment Determination (Form 115) for 3881 Eagle Creek Parkway,<sup>1</sup>
- Petitioner Exhibit 6: PRC and Form 115 for 6620 Parkdale Place,
- Petitioner Exhibit 7: PRC and Form 115 for 6820 Parkdale Place,
- Petitioner Exhibit 8: PRC and Form 115 for 6920 Parkdale Place,
- Petitioner Exhibit 9: Chart entitled "G & E REIT Appeals" (Demonstrative).

6. The Respondent submitted the following exhibits:

- Respondent Exhibit C3: 27 photographs of 6620 Parkdale Place,
- Respondent Exhibit C4: 19 photographs of 3935 Eagle Creek Parkway,
- Respondent Exhibit E1: Permits for electrical, heating and cooling, plumbing, and structural alterations and additions for 6820 Parkdale Place,
- Respondent Exhibit E2: Permits for electrical, heating and cooling, plumbing, and structural alterations and additions for 6620 Parkdale Place and 6640 Parkdale Place,

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<sup>1</sup> The address listed on the PRC and Form 115 state the address as 3935 Eagle Creek Parkway.

Respondent Exhibit E3:	Permits for electrical, heating and cooling, plumbing, and structural alterations and additions for 6845 Parkdale Place and 3945 Eagle Creek Parkway,
Respondent Exhibit M:	Transcript of October 25, 2018, deposition of Lindsay C'Debaca,
Respondent Exhibit Q:	Corporate Balance Sheets and Insurance Premium Statements,
Respondent Exhibit Q1:	Table labeled "Book Value" (Demonstrative),
Respondent Exhibit Q2:	Table labeled "CPI" (Demonstrative),
Respondent Exhibit Q3:	Table labeled "CPPI" (Demonstrative),
Respondent Exhibit Q4:	Table labeled "All" (Demonstrative),
Respondent Exhibit R:	Appraisal of 6920 Parkdale Place as of May 20, 2008,
Respondent Exhibit S:	Appraisal of 6820 Parkdale Place as of May 20, 2008,
Respondent Exhibit T:	Appraisal of Eagle Highlands Office Park located at Parkdale Place and Eagle Creek Parkway as of May 20, 2008,
Respondent Exhibit Y:	Historic consumer price index data from <i>Inflationdata.com</i> ,
Respondent Exhibit Z:	Real Capital Analytics CPPI national indices data. <sup>2</sup>

7. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) the transcript of this hearing and these findings and conclusions.
  
8. The properties under appeal are multi-tenant general office and medical office buildings located on the west side of Indianapolis. Eagle Highland Office Park (EHOP) is located at 3881 Eagle Creek Parkway. Eagle Highland Business Center (EHBC) is located at 6620 Parkdale Place. Methodist Medical Plaza II (MMP II) is located at 6820 Parkdale Place. And Methodist Medical Plaza I (MMP I) is located at 6920 Parkdale Place. The properties are all owned by G & E Healthcare REIT.<sup>3</sup>

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<sup>2</sup> The Board listed the Respondent's exhibits as identified and numbered by Ms. Gastineau.

<sup>3</sup> G & E Healthcare REIT is also known as Healthcare Trust of America.

9. The PTABOA determined the following assessments:

	<b>Parcel No.</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>EHOP</b>	6012052	\$2,618,700	\$2,371,500	\$2,285,900
<b>EHBC</b>	6023033	\$4,464,300	NA	NA
<b>MMP II</b>	6019992	\$4,620,000	\$4,620,000	\$4,620,000
<b>MMP I</b>	6018605	\$3,196,800	NA	NA
	6019997	\$162,700	NA	NA
	6021122	\$500	NA	NA
	Total of all three parcels	\$3,360,000	NA	NA

10. The Petitioner requested the following assessments:

	<b>Parcel No.</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>EHOP</b>	6012052	\$1,500,000	\$1,500,000	\$1,500,000
<b>EHBC</b>	6023033	\$3,200,000	NA	NA
<b>MMP II</b>	6019992	\$4,010,000	\$4,010,000	\$4,010,000
<b>MMP I</b>	Total of all three parcels	\$3,000,000	NA	NA

### **OBJECTIONS**

11. Ms. Henkel objected to Respondent's Exhibit Q1, a demonstrative exhibit of a table labeled "Book Value" on the grounds that book value "has little or nothing to do with the market value-in-use of a property." In response, Ms. Gastineau argued that while the valuation date is not perfect, book value is a valuable measure because the lease and intangibles are already mathematically deducted and it is objectively verifiable market data. The ALJ took the objection under advisement.
12. Ms. Henkel also objected to the Respondent Exhibits R, S, and T, the 2008 appraisals, arguing the appraisals clearly state they are leased fee appraisals rather than market value-in-use appraisals. Ms. Henkel went on to argue the appraisals value the properties

based on a portfolio sale. Ms. Henkel also objected to Ms. Gastineau testifying regarding the content of the appraisals. In response, Ms. Gastineau argued she was offering the appraisals to establish the value of the property based on the sale. *Gastineau argument (Tr. at 225)*. Again, the ALJ took the objections under advisement.

13. As to the objections to the documentary evidence, those objections are overruled, because they go to the weight of evidence rather than the admissibility. Thus, Respondent's Exhibits Q1, R, S, and T are admitted. Further, we find the bulk of Ms. Gastineau's comments regarding the appraisals to be legal argument regarding the admissibility of the exhibits, and accordingly that objection is also overruled.

#### **PETITIONER'S CONTENTIONS**

14. The subject properties are over-assessed. In support of this argument, the Petitioner presented four appraisals prepared by certified commercial appraiser Andrew Hartigan. Mr. Hartigan testified he prepared the appraisals in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) and estimated the values as of March 1, 2011. Mr. Hartigan completed his appraisals in 2018; therefore, he did not inspect the properties on or around the appraisals' effective date. For this reason he made an extraordinary assumption, based on information provided by the current ownership that the condition of the properties on March 1, 2011, was average.<sup>4</sup> *Hartigan testimony (Tr. at 23, 24); Pet'r Ex. 1, 2, 3, 4*.
15. Mr. Hartigan acknowledged, based upon the value of improvements and renovations made from 2008 to 2012, the properties may have been in fair condition in 2008. However, the improvements were likely made to maintain the competitiveness of the properties, and not to make them "above average." If there had been a significant change in the condition of the properties, there would have been a corresponding change in the amount of rent collected. *Hartigan testimony (Tr. at 268)*.

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<sup>4</sup> Mr. Hartigan defined an extraordinary assumption as "a detail that cannot be proven if it's true or false, and there's an assumption made that either that particular detail is true or false, depending on the assumption."

16. Mr. Hartigan asserted he appraised the properties at their market value-in-use on a fee simple basis. He explained that fee simple simply means relying on the market rather than relying on the specific leases in place, although leases can be checked for reasonableness. Mr. Hartigan further explained market value and market value-in-use are the same when a property's current use is its highest and best use. *Hartigan testimony (Tr. at 27, 28, 273, 274); Pet'r Ex. 1, 2, 3, 4.*
17. The properties transferred ownership to the Petitioner on July 11, 2008, in a leased fee transaction. Each was part of a portfolio sale, with various values allocated to each property. However, Mr. Hartigan concluded the amounts allocated were likely based on factors other than market value, such as investment purposes, and ultimately the allocated amounts were not a true representation of the properties' market value-in-use. *Hartigan testimony (Tr. at 31, 32, 278, 279); Pet'r Ex. 1.*

#### **A. EHOP**

18. EHOP consists of seven one-story buildings, built around 1986, forming a general office complex located on a 4.71 acre irregularly shaped lot. The gross building area is 44,791 square feet with a rentable area of 43,124 square feet. The buildings lack sprinklers or basements, and they were considered by management to be in average condition. The parking lot includes 192 standard and 12 handicap spaces. Mr. Hartigan made an extraordinary assumption that the parking area is encumbered by an easement allowing needed access to the building located at 3891 Eagle Creek Parkway, which is not a part of EHOP. *Hartigan testimony (Tr. at 26); Pet'r Ex. 1.*
19. Mr. Hartigan developed the sales-comparison and income approaches to value, and reconciled the two in his final conclusion of value. He considered the cost approach, but he did not develop it because the age of the property would have made depreciation very subjective. Further, because EHOP is income-producing, market participants would generally not rely on the cost approach. *Hartigan testimony (Tr. at 35); Pet'r Ex. 1.*
20. In his sales-comparison approach, Mr. Hartigan selected comparable commercial office properties within a five-mile radius. Because Indianapolis was still in the midst of the

recession that began in 2008, he had trouble locating sales that were not affected by foreclosure or real estate owned (REO) status. Mr. Hartigan concluded these types of sales reflected the economic times of March 2011. Therefore, he used two REO sales, even though the Marion County Assessor determined they were invalid for trending, while asserting that both had been on the market for well over 1,000 days. Mr. Hartigan settled on five comparable properties overall, and made adjustments for the conditions of the sale, as well as things like age, land-to-building ratio, site size, construction type, and building size and condition. He also adjusted for the previously discussed assumption of an easement agreement. *Hartigan testimony (Tr. at 47, 53, 54, 56); Pet'r Ex. 1.*

21. Mr. Hartigan concluded all five of the comparable sales represented their leased fee interest, meaning there was a lease in place that encumbered the overall bundle of rights. Because he was unable to verify the leases that were in place, he assumed that the leases were reflective of market value at the time of sale. After all of his adjustments, Mr. Hartigan concluded to a March 1, 2011, value for EHOP of approximately \$35 per square foot, or \$1,570,000, using the sales-comparison approach. *Hartigan testimony (Tr. at 54, 55, 65); Pet'r Ex. 1.*
22. Mr. Hartigan also developed the income approach, and because the property is income-producing, he placed “primary weight” on this approach. He considered EHOP to be a general office building rather than a medical office because it lacks features typically found in a medical office, such as additional plumbing features and multiple chairs. *Hartigan testimony (Tr. at 66, 68); Pet'r Ex. 1.*
23. To properly value the fee simple interest, Mr. Hartigan went to the marketplace to identify comparable rental properties. Mr. Hartigan noted EHOP’s rent roll included many older leases and the property suffered from a significant amount of vacancy. EHOP’s leases generally ranged between \$10 and \$14.50 per square foot. In analyzing comparable rentals, he looked at leases from 2009-2012. He found that those leases were generally between \$8 and \$10 per square foot. *Hartigan testimony (Tr. at 69, 70, 71); Pet'r Ex. 1.*

24. Using the comparable properties' rental rates and EHOP's rent roll as a test of reasonableness, Mr. Hartigan derived a market rate on a modified gross basis. He settled on a rate of \$12.50 per square foot, although he asserted that "it could have been lower given the market conditions at this time." Mr. Hartigan computed a total gross income on his reconstructed operating statement of \$560,612. *Hartigan testimony (Tr. at 73, 75); Pet'r Ex. 1.*
25. Next, Mr. Hartigan determined the vacancy and collection loss by looking at the comparable properties, as well as EHOP's historical data. EHOP's data indicated a 50% vacancy rate, which was above the market average. Thus, Mr. Hartigan concluded a vacancy and collection loss rate of 30%. He stabilized at an effective gross income of \$392,428. This amount is higher than EHOP's actual effective gross income for 2010 and 2011. *Hartigan testimony (Tr. at 75, 76); Pet'r Ex. 1.*
26. Next, Mr. Hartigan analyzed the comparable properties' expense data, while again considering EHOP's historical data. Mr. Hartigan considered things such as common area expenses, general and administrative costs, management fees, utilities, and insurance. He also accounted for structural reserves. He estimated expenses of \$222,412, leaving approximately \$170,000 for net operating income (NOI). This is also significantly higher than the NOI reported by EHOP's ownership. *Hartigan testimony (Tr. at 79-85); Pet'r Ex. 1.*
27. To convert NOI to value, Mr. Hartigan developed a capitalization rate. National investor surveys indicated the third-quarter 2010 average rate of 9.44% for office properties. Mr. Hartigan also developed a rate of 8.89% using the band-of-investment method. Through direct comparison he found an average rate of 9.23%. Mr. Hartigan stabilized below that average at 9%. Finally, he loaded the capitalization rate with a 2.27% tax rate, arriving at a loaded capitalization rate of 11.27%. *Hartigan testimony (Tr. at 87, 88, 89, 91); Pet'r Ex. 1.*
28. Mr. Hartigan applied his 11.27% capitalization rate to the NOI of \$170,000, and estimated EHOP's value using the income approach at \$1,500,000. Hartigan relied on



the income approach because EHOP is an income-producing property. He used the sales-comparison approach only as a test of reasonableness. His reconciled value for EHOP as of March 1, 2011, is \$1,500,000. *Hartigan testimony (Tr. at 91, 92); Pet'r Ex. 1.*

## **B. EHBC**

29. EHBC is a two building multi-tenant general office complex built around 1988. Together the buildings include 71,174 square feet of gross building area and 71,117 square feet of net leasable area. The buildings are located on a 6.796 acre rectangular-shaped interior lot with ample parking. Mr. Hartigan's methodology for completing EHBC's appraisal is very similar to that of EHOP's. He also accounted for the difference of property rights conveyed. Like EHOP, Mr. Hartigan considered EHBC to be general office because the bulk of the tenants used it for general office and the buildings lack additional fixtures and chairs normally found in a medical office building. *Hartigan testimony (Tr. at 94, 96, 98, 99); Pet'r Ex. 2.*
30. Again, Mr. Hartigan considered the cost approach, but he did not develop it. In selecting comparable properties for his sales-comparison approach, two important characteristics he considered were proximity to EHBC and proximity to the highway. He selected the same five comparable properties as he did for the EHOP appraisal, but noted EHBC is larger than all five comparable properties. The methodology for adjustments was similar to EHOP's appraisal, except that no adjustment for characteristics of a multi-building design were required. For EHBC, he paid particular attention to differences in age, construction type, and condition. *Hartigan testimony (Tr. at 95, 104, 105, 106); Pet'r Ex. 2.*
31. The average price of the comparable properties before adjustments was \$46.64 per square foot. After adjustments were made, the average was \$45.88. For March 1, 2011, Mr. Hartigan settled on a value for EHBC of \$45 per square foot. While that is lower than both averages, Mr. Hartigan felt that was appropriate because of the age and condition of EHBC. His indicated value using the sales-comparison approach was \$3,200,000. *Hartigan testimony (Tr. at 107, 108); Pet'r Ex. 2.*

32. Mr. Hartigan also prepared an income capitalization approach. EHBC's rent roll indicated significant vacancy and some higher rents based on leases that were signed prior to the market crash of 2008. Leases signed before that time ranged from \$14.50 to \$15 per square foot, while leases signed in 2009 and 2010 ranged from \$11 to \$12 per square foot. Mr. Hartigan's comparable properties generally had more recent leases, ranging from \$9 to \$13 per square foot, except for one outlier that was identified as a full-service gross lease. He derived a market rate, on the modified gross basis, of \$12.50 per square foot, an amount higher than the median, and on the high end of the reasonable range. *Hartigan testimony (Tr. at 108-112); Pet'r Ex. 2.*
33. Mr. Hartigan then looked at comparable properties for an appropriate estimate of vacancy and collection loss. He stabilized at 32.5%, well below EHBC's historical average, and below several other buildings in the area. He calculated an effective gross income of \$614,451, a value significantly higher than EHBC's 2010 and 2011 actual data. *Hartigan testimony (Tr. at 113); Pet'r Ex. 2.*
34. Next, Mr. Hartigan reviewed the comparable properties' expenses. He used EHBC's actual expenses as a test of reasonableness. He again considered reserve requirements, as well as common area maintenance, general and administrative costs, management fees, and utilities. In this instance, EHBC's historical expense data was lower than the market, so he relied more on the property's historical data. He derived an expense estimate of \$255,026. This resulted in an NOI of \$359,425. *Hartigan testimony (Tr. at 114-119); Pet'r Ex. 2.*
35. Finally, Mr. Hartigan used the same methodology as above to derive the same 11.27% loaded capitalization rate he used for EHOP. The resulting value, approximately \$3,200,000, was the same as his sales-comparison approach, and therefore his final estimate of value as of March 1, 2011, for EHBC. *Hartigan testimony (Tr. at 119, 120); Pet'r Ex. 2.*

### C. MMP II

36. MMP II is a two-story multi-tenant medical office building connected to a hospital, in average condition, and was built in 1992. The property has 57,750 square feet of gross building area and 55,232 square feet of net leasable area. MMP II is situated on a 5.12 acre, mostly rectangular corner site, with ample parking. Again, Mr. Hartigan developed the sales-comparison and income approaches to value, but not the cost approach because of the subjectivity of depreciation and because cost is not a driving factor in the valuation of this type of property. In valuing MMP II, Mr. Hartigan made an additional extraordinary assumption that there is an easement agreement between it and two neighboring office properties. *Hartigan testimony (Tr. at 122, 123, 124, 128, 129); Pet'r Ex. 3.*
37. In developing his sales-comparison approach, Mr. Hartigan used the same five comparable properties he did for EHOP and EHBC, and added one additional sale. The additional property is a medical office building, similar in size to MMP II that sold for \$4,175,000, or \$78.74 per square foot, in October 2011. Again, Mr. Hartigan thought location was an important factor in selecting comparable properties, along with a similar use as a medical office building. *Hartigan testimony (Tr. at 137, 138, 139); Pet'r Ex. 3.*
38. Next, Mr. Hartigan adjusted for differences in property rights conveyed, and for differences in physical features. He adjusted for things such as land-to-building ratio, building size, age, and condition. After adjustments, the average price per square foot was \$51.60, and the median price per square foot was \$58.78. Mr. Hartigan settled on a value of \$70 per square foot, or \$4,040,000, as of March 1, 2011.<sup>5</sup> *Hartigan testimony (Tr. at 139, 140, 142); Pet'r Ex. 3.*
39. Mr. Hartigan also developed an income approach for MMP II, using a similar methodology as he did for EHOP and EHBC. He obtained the rent roll for MMP II, and found tenants to be “more medical in nature” than the tenants of EHOP or EHBC. Mr. Hartigan determined a vacancy rate of 26.7%. He selected comparable rentals that are

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<sup>5</sup> Mr. Hartigan did not give any additional explanation on how he arrived at the \$70 per square foot value.

within close proximity of MMP II and determined a market rent of \$21.50 per square foot. *Hartigan testimony (Tr. at 146, 147); Pet'r Ex. 3.*

40. Mr. Hartigan found the market's vacancy and collection loss was much higher than MMP II's actual data. MMP II was 73.28% occupied, while the market average was only 53.29%. He acknowledged that many of the properties were general office, and therefore not directly comparable. The medical office comparable exhibited a 21.39% vacancy rate. Mr. Hartigan therefore settled on a vacancy rate of 26% for MMP II. He derived an effective gross income of \$973,702, slightly below the historical data. *Hartigan testimony (Tr. at 148, 149, 150); Pet'r Ex. 3.*
41. Mr. Hartigan then looked at both the comparable properties' and MMP II's expense data to determine a reasonable expense. He again looked at common area maintenance, general and administrative expense, management expense, utilities, and structural reserves. He concluded expenses of \$502,099, reflecting an NOI of \$471,603. *Hartigan testimony (Tr. at 152-155); Pet'r Ex. 3.*
42. Finally, Mr. Hartigan developed a capitalization rate. For MMP II, he determined a rate of 9.5%. This amount is 0.5% higher than the rates of EHOP and EHBC, because of the higher risk associated with MMP II's higher rental rates as a medical office. Mr. Hartigan loaded the capitalization rate with the same 2.27% tax rate, and derived a loaded rate of 11.77%. Thus, the value indicated by the income approach was \$4,010,000. Mr. Hartigan relied mainly on the income approach for his reconciled March 1, 2011, value for MMP II of \$4,010,000. *Hartigan testimony (Tr. at 156, 157, 158); Pet'r Ex. 3.*

#### **D. MMP I**

43. MMP I is a two-story multi-tenant medical office building built in 1990. For the same reasons as MMP II, Hartigan considered MMP I as medical office rather than general office. This property has 39,960 square feet of gross building area and 38,135 square feet of net leasable area. The building is situated on a 4.26 acre irregularly-shaped corner site. As of March 1, 2011, the site included three parcels, and Mr. Hartigan's appraisal includes all three parcels. Again, Mr. Hartigan made an extraordinary assumption that an

easement agreement exists with two adjacent office properties. As with the other three properties, he developed the sales-comparison and income capitalization approaches, but not the cost approach. *Hartigan testimony (Tr. at 159, 160, 164, 167); Pet'r Ex. 4.*

44. Similar to the three other properties here, MMP I was part of the July 11, 2008, sale previously discussed. The amount of the sale allocated to MMP I was \$5,350,000. Mr. Hartigan does not consider the allocated sale price indicative of MMP I's market value-in-use as of March 1, 2011, for two reasons. First, it is part of a portfolio sale with investment criteria built into the sale price. Second, the sale took place just before the economic crash of 2008 when investors had little idea of what was about to happen. *Hartigan testimony (Tr. at 162, 163); Pet'r Ex. 4.*
45. In his sales-comparison approach, Mr. Hartigan used the same comparable properties that he used for MMP II. He again accounted for the difference in property rights conveyed, as all of the comparable properties represented sales of their leased fee interest. He adjusted for things such as building size, land-to-building ratio, age, and condition. He concluded an indicated value using the sales-comparison approach of \$75 per square foot, or \$3,000,000. *Hartigan testimony (Tr. at 168, 169, 171); Pet'r Ex. 4.*
46. Mr. Hartigan also prepared an income approach. In reviewing MMP I's rent roll, Mr. Hartigan noted a lease signed in July 2010 for \$21 per square foot, and determined that it was "a pretty good indicator" of the market at March 1, 2011. The leases signed before the 2008 market crash reflected higher lease amounts of approximately \$23 to \$24 per square foot. Mr. Hartigan settled on a market rent of \$21.50 per square foot. *Hartigan testimony (Tr. at 171, 172); Pet'r Ex. 4.*
47. Again, the comparable properties had a significantly higher vacancy rate than MMP I. Mr. Hartigan gave considerable weight to MMP I in stabilizing at a 20% vacancy rate, an amount lower than the comparable properties. He then deducted expenses similar to the other properties, considering common area maintenance, general and administrative costs, management expenses, utilities, insurance, and structural reserves. He stabilized

NOI at \$351,490, significantly higher than the historical data. *Hartigan testimony (Tr. at 173-176); Pet'r Ex. 4.*

48. Finally, Mr. Hartigan determined the capitalization rate. As with MMP II, he determined a 9.5% rate, slightly higher than the first two properties discussed because of the higher risk associated with higher rents.<sup>6</sup> After loading the rate with the 2.27% tax rate, Mr. Hartigan determined a loaded rate of 11.77%. The indicated value using the income approach was \$3,000,000, the same amount derived from the sales-comparison approach. Thus, Mr. Hartigan's final estimate of value for MMP I as of March 1, 2011, was \$3,000,000. *Hartigan testimony (Tr. at 177-180); Pet'r Ex. 4.*

#### **RESPONDENT'S CONTENTIONS**

49. The subject properties are correctly assessed. The Petitioner presented flawed evidence in support of its position. The Petitioner's appraisal made extraordinary assumptions that are not supported. For example, Mr. Hartigan failed to search for building permits when preparing his appraisals. When there is a new building or renovations to an existing building in the county, the Assessor's office can access the building permits from a public computer system to determine what has been done. In doing so, the Respondent concluded that much of the work done on the subject properties between 2008 and 2012 would qualify as remodeling and renovations rather than general repairs and maintenance, although the Respondent acknowledged permits can be obtained for things that do not increase value. *Dodds testimony and argument (Tr. at 237, 245, 246).*
50. There are several permits for MMP II indicating renovations were done. A 2009 structure permit indicates 6,500 square feet was remodeled, at a value of \$350,000. A 2009 electrical permit indicates \$40,000 worth of work was done, and a 2010 electrical permit indicates another \$11,000. A 2010 structure permit for \$135,000 indicates that 4,820 square feet was remodeled. There is also a 2012 structure permit, for \$138,000, a heating and cooling permit for \$3,000, and an electrical permit for \$12,000. These

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<sup>6</sup> Because of a typographical error, Mr. Hartigan's appraisal erroneously lists the capitalization rate at 9%. But the final value computation is correctly based on the 9.5% rate. *Hartigan testimony (Tr. at 178, 179); Pet'r Ex. 4.*

permits indicate extensive renovations, which would affect the condition of the property. *Dodds testimony and argument (Tr. at 237, 239-242); Resp't Ex. E1.*

51. As for EHBC, a 2008 permit shows an interior commercial remodel of 5,000 square feet at a value of \$113,000. There is a heating and cooling permit and an electrical permit for the same year, for \$2,400 and \$5,000, respectively. There are 2008 and 2009 plumbing permits for \$13,000 and \$4,800, respectively. There is a 2009 structure permit for \$60,000 and a 2009 electrical permit for \$8,000. Because of the large expenses involved, as well as the number of plumbing permits, these appear to be remodels. *Dodds testimony (Tr. at 242, 243, 244, 247); Resp't Ex. E2.*
52. There are similar permits for EHOP. There is a 2008 structure permit for \$14,600. There is a 2008 electrical permit for \$2,000, and a 2008 heating and cooling permit for \$900. There is a 2012 interior remodel electrical permit for \$20,000, and a 2012 plumbing permit for \$17,172. These renovations at least kept the property in fair to good condition. *Dodds testimony (Tr. at 248, 249, 250); Resp't Ex. E3.*
53. In support of the current assessment, the Respondent presented his own market based evidence, information regarding the July 11, 2008, sale of the properties and three trended appraisals. First, the Respondent examined the 2008 sale. The Respondent utilized two measures to relate the sale price to the relevant valuation date. One is the Consumer Price Index (CPI), and the other is the Commercial Property Price Index (CPPI). The Respondent's witness, Greg Dodds, explained in detail how he utilized each to arrive at trended values for sales and appraisals. *Dodds testimony (Tr. at 251, 252, 253, 255, 256); Resp't Ex. Q2, Q3.*
54. Mr. Dodds trended the portfolio sales that included each property to the relevant assessment dates under appeal as follows:

	<b>EHOP</b>	<b>EHBC</b>	<b>MMP II</b>	<b>MMP I</b>
July 11, 2008 allocated sale price	\$3,315,000	\$5,830,000	\$7,050,000	\$5,350,000
March 1, 2011 CPI value	\$3,318,900	\$5,836,900	\$7,058,300	\$5,356,300
March 1, 2011 CPPI value	\$2,182,600	\$3,838,500	\$4,641,700	\$3,522,400
March 1, 2012 CPI value	\$3,416,000	NA	\$7,264,800	NA
March 1, 2012 CPPI value	\$2,232,300	NA	\$4,747,500	NA
March 1, 2013 CPI value	\$3,470,500	NA	\$7,380,600	NA
March 1, 2013 CPPI value	\$2,352,300	NA	\$5,002,700	NA

*Dodds testimony (Tr. at 256-263); Resp't Ex. Q4.*

55. Similarly, where applicable, Mr. Dodds trended the May 20, 2008, appraisals of each property forward to the assessment dates as follows:

	<b>EHOP</b>	<b>EHBC</b>	<b>MMP II</b>	<b>MMP I</b>
May 20, 2008 appraisal value	\$2,800,000	NA	\$7,400,000	\$5,500,000
March 1, 2011 CPI value	\$2,888,300	NA	\$7,633,500	\$5,673,500
March 1, 2011 CPPI value	\$1,784,400	NA	\$4,716,000	\$3,505,200
March 1, 2012 CPI value	\$2,964,900	NA	\$7,835,900	NA
March 1, 2012 CPPI value	\$1,825,000	NA	\$4,823,600	NA
March 1, 2013 CPI value	\$3,008,600	NA	\$7,951,400	NA
March 1, 2013 CPPI value	\$1,923,000	NA	\$5,082,300	NA

*Dodds testimony (Tr. at 256-263); Resp't Ex. Q4.*

56. Also, Mr. Dodds testified that, where applicable, he used both indices to trend the June 1, 2009, stabilized value forward to the relevant assessment dates, computing the following values:

	<b>EHOP</b>	<b>EHBC</b>	<b>MMP II</b>	<b>MMP I</b>
June 1, 2009 stabilized value	\$3,300,000	NA	\$8,700,000	NA
March 1, 2011 CPI value	\$3,418,900	NA	\$9,013,600	NA
March 1, 2011 CPPI value	\$2,719,200	NA	\$7,168,800	NA
March 1, 2012 CPI value	\$3,509,600	NA	\$9,252,600	NA
March 1, 2012 CPPI value	\$2,781,200	NA	\$7,332,400	NA
March 1, 2013 CPI value	\$3,561,300	NA	\$9,388,900	NA
March 1, 2013 CPPI value	\$2,930,700	NA	\$7,726,500	NA

*Dodds testimony (Tr. at 256-263); Resp't Ex. Q4.*

57. Finally, Mr. Dodds computed the book value less lease intangibles. The book value for EHOP appears to include only one of the seven buildings, and the book value for EHBC



appears to include only one of the two buildings. Nonetheless, Mr. Dodds listed the following values:

	<b>EHOP</b>	<b>EHBC</b>	<b>MMP II</b>	<b>MMP I</b>
March 1, 2011 book value	\$437,650	\$2,403,565	\$5,392,444	\$3,269,944
March 1, 2012 book value	\$411,521	NA	\$5,301,760	NA
March 1, 2013 book value	\$403,090	NA	\$4,990,528	NA

*Dodds testimony (Tr. at 256-263); Resp't Ex. Q4.*

58. The Respondent contends that because it is undisputed the property was being used at its highest and best use, the market value of the property is equal to its market value-in-use, and therefore the banking appraisal, book value, and the 2008 sale are “informative.” *Gastineau argument* (citing *Hurricane Food, Inc. v. White River Twp. Ass'r*, 836 N.E.2d 1069, 1074-75 (Ind. Tax Ct. 2005); *Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005)).
59. The Respondent argues Mr. Hartigan’s appraisals should be disregarded because they violate various USPAP standards. Specifically, the Respondent alleges Mr. Hartigan failed to consider the 2008 portfolio sales. Mr. Hartigan failed to conspicuously state his extraordinary assumption regarding the condition of the properties, which is a violation because that assumption might have affected the assignment results. Mr. Hartigan was unaware of the scope of renovations made to the properties between 2008 and 2012. And, in the Respondent’s view, Mr. Hartigan incorrectly classified EHOP and EHBC as general office buildings rather than medical office buildings, as he “misunderstood the use of those properties.” *Gastineau argument (referencing Pet'r Ex. 1, 2, 3, 4).*

#### **BURDEN OF PROOF**

60. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute creates two exceptions to that rule.

61. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
62. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.
63. Here, the Petitioner, who was represented by counsel, accepted the burden of proof for the 2011 appeals. We agree as to the 2011 appeals, and the burden will remain with the Petitioner. The Petitioner went on to argue the Respondent should have the burden of proof for the specific properties under appeal for 2012 and 2013. For the properties under appeal for 2012 and 2013, the burden of proof will be determined by the results of the previous year’s appeals.

#### ANALYSIS

64. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing

officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

65. Regardless of the method used, a party must explain how its evidence relates to 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. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2011, 2012, and 2013 assessments, the assessment and valuation dates were March 1 of each respective year. *See* Ind. Code § 6-1.1-4-4.5(f) (2010).
66. For the 2011 appeals, the parties to this appeal both offered certified appraisals and evidence related to the sales of the properties. The Board must weigh the evidence to determine the correct assessment for each property and year under appeal.
67. The Board turns first to the Petitioner's 2011 appraisals for all four properties because the Petitioner accepted the burden. The appraisals were all prepared by Andrew Hartigan, a certified commercial appraiser. Mr. Hartigan certified his appraisals were all prepared in accordance with USPAP. He testified that he valued the properties as a fee simple interest based on market rents, market expenses, and market capitalization rates. He did state that he was unable to verify the leases for his purportedly comparable properties and therefore assumed that they were being leased at market rates. His final estimates of value were derived from the income approach to value and are all supported by his sales-comparison analyses. Mr. Hartigan provided detailed testimony explaining both his sales-comparison and income approaches to value. He also went into great detail regarding his underlying assumptions and analysis. His reconciled values for March 1, 2011, are as follows: \$1,500,000 for EHOP; \$3,200,000 for EHBC; \$4,010,000 for MMP II; and \$3,000,000 for MMP I.
68. The Board has previously held an appraisal performed in conformance with generally recognized appraisal principles is often the preferred way to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. Here, however, the Respondent argued the

appraisals are flawed for various reasons. Specifically, the Respondent alleged Mr. Hartigan failed to consider the 2008 portfolio sales of the properties. Mr. Hartigan failed to conspicuously state his extraordinary assumption regarding the condition of the properties, a USPAP violation according to the Respondent, because that assumption might have affected the assignment results. Mr. Hartigan was unaware of the scope of renovations made to the properties between 2008 and 2012. And finally, Mr. Hartigan incorrectly classified EHOP and EHBC as general office buildings rather than medical office buildings.

69. First, the record clearly indicates Mr. Hartigan did at least consider the 2008 portfolio sales of the properties. But he concluded that because the amounts allocated were likely based on factors other than market value, and more for investment purposes. Ultimately he concluded the allocated amounts were not a true representation of market value-in-use. In other words, while he did consider the allocated sale prices, he did not give them much weight. Mr. Hartigan, as a licensed appraiser, is well-qualified to make such a determination. His decision was thoroughly explained and well-reasoned. Here, we will give more weight to Mr. Hartigan's professional opinion than we will to the Respondent's position.
70. The Respondent's contentions regarding Mr. Hartigan's assumptions about the condition of the properties and whether he was aware of renovations to the properties made between 2008 and 2012 are related arguments. There were several building permits for all four properties issued between 2008 and 2012. The Respondent argues these permits show the properties were significantly renovated, and Mr. Hartigan underestimated the condition as of March 1, 2011. According to the Respondent, the condition was better than average. Mr. Hartigan countered that argument, testifying that while he was not aware of all the repairs, the repairs more likely than not indicate the properties were in less than average condition prior to March 1, 2011. The record contains little, if any, evidence to determine which argument is accurate.
71. Generally, one weakness of a retrospective appraisal is that the appraiser cannot turn back the clock and view the property exactly as it existed on the valuation date in question.

Therefore, an appraiser must make assumptions about the condition of the property. That is the case here. The Board has some concerns that Mr. Hartigan appears to have relied almost exclusively on the property owners' own statements that the properties were in average condition as of March 1, 2011. Those concerns are somewhat allayed by the fact that Mr. Hartigan valued the properties using the income approach, and considered the actual income in doing so. Had Mr. Hartigan materially underestimated the condition, the income from the properties likely would have risen somewhat during the years in question, or appeared out of line with comparable properties he determined to be in similar condition. The Board finds that Mr. Hartigan's value estimates were reasonably reliable.

72. Finally, the Respondent argued Mr. Hartigan incorrectly classified EHOP and EHBC as general office buildings rather than medical office buildings. Again, we accept Mr. Hartigan's explanation of his conclusions regarding these classifications. He considered EHOP to be a general office building rather than a medical office because it lacks features typically found in a medical office, such as additional plumbing features and multiple chairs. And he considered EHBC to be general office because the bulk of the tenants used it for general office, as well as the lack of additional fixtures and chairs normally found in a medical office building.<sup>7</sup>
73. Selecting comparable properties is something that appraisers must do.<sup>8</sup> Appraisers identify the relevant characteristics of the property being appraised and select other properties that share as many of those characteristics as possible. The Board recognizes this process requires appraisers to exercise judgment and often involves issues that are a matter of opinion, rather than questions with a definitive answer. The Respondent offered no substantial evidence that Mr. Hartigan's judgment is not reasonable.

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<sup>7</sup> The meaning of "chairs" in this context is unclear.

<sup>8</sup> The Respondent did not argue Mr. Hartigan utilized inappropriate comparable properties, nor did the Respondent raise issues with Mr. Hartigan's various calculations in his analyses.

74. The Board now turns to the Respondent's appraisals. Those three appraisals expressly value the leased fee interest of the properties as of May 20, 2008.<sup>9</sup>
75. The Respondent's appraisals are several years removed from the relevant valuation dates.<sup>10</sup> In an effort to cure this problem, the Respondent presented evidence from Greg Dodds. Mr. Dodds testified that he trended the values to the relevant valuation date using both the CPI and the CPPI. But nothing in the record indicates what Mr. Dodds' qualifications are, or why any weight should be given to his value conclusions. Additionally, Mr. Dodds failed to establish that his analysis conforms to general accepted appraisal practices. On the other hand, Mr. Hartigan, a certified commercial appraiser, presented appraisals that conformed with USPAP. For these reasons, we find the Petitioner's appraisals to be more probative.
76. The Respondent also presented other evidence attempting to support its value, including evidence of the Petitioner's 2008 purchase of the properties as part of a portfolio sale, and the Petitioner's "book value" of the properties. For similar reasons, the Board finds this evidence also lacks probative value.<sup>11</sup>
77. The sale at issue here was a portfolio sale, and the sale price of each property was an allocation based on the entire portfolio. The record lacks any indication about the basis for the allocations. As Mr. Hartigan suggested, the allocation may have been based on the Petitioner's own investment criteria, and therefore may have included something other than the real property itself. Whatever the case, there is no evidence that the allocation was based on the market value-in-use of each property. For the sale to be probative, the Respondent needed to prove what factors were considered in arriving at the values, and that those factors represented the properties' market value-in-use. *See Grant Co. Ass'r v. Kerasotes Showplace Theatres, LLC*, 955 N.E.2d 882 (Ind. Tax Ct. 2011).

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<sup>9</sup> It appears the appraiser(s) relied mainly on the income approach and properties' actual income and expenses. The appraiser(s) did not appear as witnesses to explain their methodology, and the Respondent failed to present credible testimony explaining the appraisals' conclusions. Parties are required to "walk the Indiana Board . . . through every element of the analysis." *Indianapolis Racquet Club, Inc., v. Washington Twp. Ass'r*, 802 N.E. 2d 1018, 1022 (Ind. Tax Ct. 2004).

<sup>10</sup> The Respondent did not provide an appraisal for EHBC.

<sup>11</sup> This evidence was also trended by Mr. Dodds. The Board is troubled again by the fact that we are unaware of Mr. Dodds' qualifications and he failed to indicate that he followed generally accepted appraisal practices.

78. Similarly, the Respondent failed to establish that the book value is probative. There is no evidence the accounting records reflect values that represent market value-in-use. In fact, given that the Respondent's appraisals value the leased fee interest of the properties, the Board concludes it is more likely the appraisal values, sale price allocations, and book values reflect the investment value rather than market value-in-use. Thus, the evidence lacks probative value.
79. The Respondent failed to adequately address or respond to this issue, even in its post-hearing brief. In its brief, the Respondent argued that the sale, appraisals, and book values are "informative" because the property was, for the years at issue, being used at its highest and best use, and therefore market value is equal to market value-in-use. The Respondent cited *Hurricane Food* and *Kooshtard Property VI* in support of its position. But this argument misses the point. The Respondent's evidence appears to reflect the investment value, not the market value-in-use. The Board finds nothing in these Tax Court holdings, or anywhere else in the Respondent's evidence and argument, adequately addressing that issue.
80. Consequently, for 2011, the Board finds the Petitioner's appraisals prepared by Mr. Hartigan, while not perfect, are the most probative evidence on the record as to the properties' values. For 2011, the Board adopts the values indicated in Mr. Hartigan's appraisals, and the assessments should be as follows: \$1,500,000 for EHOP; \$3,200,000 for EHBC; \$4,010,000 for MMP II; and \$3,000,000 for MMP I.
81. The Petitioner also appealed the 2012 and 2013 assessments for EHOP and MMP II. Because the Petitioner was successful in its 2011 appeal, and the 2012 assessments are in excess of the 2011 level, the Respondent has the burden to prove the 2012 assessments for EHOP and MMP II are correct. *Ind. Code* § 6-1.1-15-17.2(d).
82. For the same reasons as discussed above, the Respondent's evidence lacks probative value. Therefore, the Respondent failed to make a prima facie case that the 2012 assessments for EHOP and MMP II are correct. Consequently, the 2012 assessments revert back to the level determined for 2011: \$1,500,000 for EHOP; and \$4,010,000 for

MMP II. Because the Petitioner did not request a lower value, this ends the Board’s inquiry for 2012.

83. The same set of circumstances apply for EHOP and MMP II for 2013. The Respondent had the burden, and for the same reasons failed to make a prima facie case. The 2013 assessments again revert back to \$1,500,000 for EHOP and \$4,010,000 for MMP II.

**SUMMARY OF FINAL DETERMINATION**

84. The Board finds for the Petitioner. The Board orders the assessments to be reduced to the following amounts:

	<b>Parcel No.</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>EHOP</b>	6012052	\$1,500,000	\$1,500,000	\$1,500,000
<b>EHBC</b>	6023033	\$3,200,000	NA	NA
<b>MMP II</b>	6019992	\$4,010,000	\$4,010,000	\$4,010,000
<b>MMP I</b>	Total of all three parcels	\$3,000,000	NA	NA

The Indiana Board of Tax Review issues the Final Determination of the above captioned matter on the date 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

## ATTACHMENT

<b>Address</b>	<b>Assessment Year</b>	<b>Parcel No.</b>	<b>Petition No.</b>
3881 Eagle Creek Parkway	March 1, 2011	6012052	49-600-11-1-4-00457-16
3881 Eagle Creek Parkway	March 1, 2012	6012052	49-600-12-1-4-01039-16
3881 Eagle Creek Parkway	March 1, 2013	6012052	49-600-13-1-4-01038-16
6620 Parkdale Place	March 1, 2011	6023033	49-600-11-1-4-00459-16
6820 Parkdale Place	March 1, 2011	6019992	49-600-11-1-4-00455-16
6820 Parkdale Place	March 1, 2012	6019992	49-600-12-1-4-01034-16
6820 Parkdale Place	March 1, 2013	6019992	49-600-13-1-4-01035-16
6920 Parkdale Place	March 1, 2011	6018605	49-600-11-1-4-00456-16
6920 Parkdale Place	March 1, 2011	6019997	49-600-11-1-4-00454-16
6920 Parkdale Place	March 1, 2011	6021122	49-600-11-1-4-00453-16