REPRESENTATIVE FOR PETITIONER:
Paul M. Jones, Jr., Ice Miller LLP

REPRESENTATIVE FOR RESPONDENT:
John C. Slatten

BEFORE THE
INDIANA BOARD OF TAX REVIEW

GATEWAY ARTHUR, INC.,	) Petition Nos.:	49-500-06-1-4-01084
	)	49-500-06-1-4-01085
Petitioner,	)	49-500-06-1-4-01086
	)	49-500-06-1-4-01087
v.	)	49-500-06-1-4-01088
	)	49-500-06-1-4-01089
	)	
	) Parcel Nos.:	49151912300700050/5005101
MARION COUNTY ASSESSOR,	)	49151912500100050/5002484
	)	49151911600300050/5028882
Respondent.	)	49151912401100050/5028886
	)	49151912301200050/5030004
	)	49151912301000050/5028885
	)	
	) County:	Marion
	)	
	) Assessment Year:	2006

October 22, 2012

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Because the subject property's assessment increased by more than 5% between March 1, 2005, and March 1, 2006, the Marion County Assessor had the burden of proving that the property's March 1, 2006 assessment was correct. The Assessor offered (1) an opinion from a deputy assessor in which the deputy significantly

misconstrued the effect of property tax liability on the property's market value-in-use, and (2) unreliable information about the sale price that Gateway Arthur and the seller purportedly allocated to the subject property out of a 36-property $423.5 million portfolio sale that occurred more than two years after the relevant valuation date. Because the Assessor's evidence was not sufficiently reliable to make a prima facie case, the Board finds that that property's March 1, 2006 assessment must be reduced to its March 1, 2005 level.

PROCEDURAL HISTORY

2. Gateway Arthur challenged the assessments for the above-referenced parcels through a letter to the Marion County Assessor. That letter was dated July 4, 2008, and file stamped July 16, 2008. The Marion Property Tax Assessment Board of Appeals ("PTABOA") failed to hold a hearing within 180 days of Gateway Arthur's letter. Thus, on June 3, 2011, Gateway Arthur filed Form 131 Petitions for Review of Assessment with the Board. *See* Ind. Code § 6-1.1-15-1(k) and (o) (allowing a taxpayer to seek review by the Board if a county PTABOA does not hold a hearing within 180 days of the taxpayer filing its notice of review with the county or township assessor).

3. Gateway Arthur also appealed the parcels' assessments for the 2007-2010 assessment years. At the parties' request, the Board's designated administrative law judge, David Pardo ("ALJ"), entered an order consolidating the petitions. Gateway Arthur, however, later filed Petitioner's Motion for Determination Concerning Burden of Proof ("Burden of Proof Motion") asking the Board to determine that Ind. Code § 6-1.1-15-17.2 operates to shift the burden of proof from Gateway Arthur to the Assessor for all five assessment years. In response to that motion, the Board found that the Assessor had the burden of proof in Gateway Arthur's appeal of the parcels' 2006 assessments, but that Gateway Arthur had the burden of proof on the remaining appeal petitions. Based on that ruling, the ALJ conducted two separate hearings—one on Gateway Arthur's appeals of the parcels' March 1, 2006 assessments, and another on the rest of Gateway Arthur's appeals.

This determination addresses only Gateway Arthur's appeals for the 2006 assessment year.

4. The ALJ heard Gateway Arthur's appeals on May 10, 2012. The following people testified under oath:

For Gateway Arthur: Rich Correll, Correll Real Estate Appraisal.

For the Assessor: Eve Beckman, Marion County Assessor's Office.

Neither the ALJ nor the Board inspected Gateway Arthur's property.

5. The Assessor presented the following exhibits:

Respondent's Exhibit R-1:	Property record cards and Online Property Information and Tax Payments for the subject parcels
Respondent's Exhibit R-2:	Summary Appraisal prepared by Richard Correll and Michael Schlemmer dated May 2, 2011
Respondent's Exhibit R-3:	Summary Appraisal Report prepared by Richard Correll and Michael Schlemmer dated April 27, 2012
Respondent's Exhibit R-4:	Summary of Korpacz Real Estate Investor Survey data for the fourth quarters of 2004-2009; Korpacz Real Estate Investor Surveys for fourth quarters of 2004-2009
Respondent's Exhibit R-5:	Spreadsheet with valuation analysis for the 2006 through 2010 tax years
Respondent's Exhibit R-6:	"Sales History" printout with information regarding a sale from Bradley Operating to Gateway Arthur, Inc. (2 pages) and printout with April 13, 2012 e-mail from Eve Beckman to Marlo Hayden and April 16, 2012 response from Hayden to Beckman
Respondent's Exhibit R-7:	Copies of chapter 11, pp. 229-54 from INTERNATIONAL ASS'N OF ASSESSING OFFICERS, PROPERTY VALUATION (2nd ed.)
Respondent's Exhibit R-8:	Aerial photographs of the subject property
Respondent's Exhibit R-9:	Printout with information for the subject property from CBRE
Respondent's Exhibit R-10:	October 5, 2010 e-mail from Carla Bishop to Beckman with 14 pages of attached documents concerning income and expenses
Respondent's Exhibit R-11:	Three packets of sale and listing information for various properties
Respondent's Exhibit R-12:	Summary of historical income and expenses for the subject property

Respondent's Exhibit R-13:	Release from Centro Property Group entitled "Blackstone Completes Acquisition of Centro Properties Group US
Respondent's Exhibit R-14:	*Dollars & Cents of Shopping Centers/The Score 2006* (2 pages) and Marion County Strip Centers Operating Expense Ratio Support – Redacted
Respondent's Exhibit R-15:	Indiana Sales Disclosure Forms Revisions 4-6

6. The Petitioner submitted the following exhibits:

Petitioner's Exhibit 1:	Affidavit of Suzanne K. Boehm
Petitioner's Exhibit 2:	Warranty Deed

7. The ALJ admitted Respondent's Exhibit 15—a blank copy of revisions 4-6 of Sales Disclosure Form (State Form 46021)—over Gateway Arthur's objection. Gateway Arthur objected on grounds that the Assessor had not provided Gateway Arthur with a copy of that exhibit in advance of the hearing as required by 52 IAC 2-7-1(b). The Assessor responded by asking the ALJ to take judicial notice of the form. The ALJ overruled Gateway Arthur's objection on grounds that the form illustrated Beckman's testimony, to which Gateway Arthur had not objected, and noted that the Board might be able to take official notice of the form. The Board adopts the ALJ's ruling.

8. The ALJ admitted Petitioner's Exhibits 1 and 2—Suzanne Boehm's affidavit describing the portfolio transaction through which Gateway Arthur bought the subject parcels and the warranty deed transferring those parcels to Gateway Arthur—over the Assessor's objection. The Assessor claimed that Gateway Arthur had not provided him with copies of those exhibits in advance of the hearing as required by 52 IAC 2-7-1(b). The Assessor also objected to Boehm's affidavit as hearsay. Gateway Arthur responded (1) that it had not known that the exhibits would be necessary until it received a copy of the computer printout that the Assessor offered as Respondent's Exhibit 6, and (2) that it was offering the affidavit and warranty deed for purposes of impeachment and rebuttal.

9. The ALJ overruled the Assessor's objection under 52 IAC 2-7-1(b), finding (1) that Gateway Arthur would not reasonably have known about the need to offer Boehm's affidavit and the warranty deed until after being notified that the Assessor was going to

offer the printout and receiving a copy of that printout, and (2) that the affidavit and warranty deed were therefore truly in the nature of impeachment and rebuttal. As to the Assessor's hearsay objection, the ALJ overruled it but noted that the Board cannot base its decision on hearsay that has been objected to and that does not fall within a recognized exception to the hearsay rule. The Board adopts the ALJ's rulings.

10. All pleadings and documents filed in Gateway Arthur's appeals as well as all orders and notices issued by the Board or its ALJ are part of the record, as is the digital recording of the Board's hearing.

11. For March 1, 2006, Gateway Arthur's property was assessed as follows:

Parcel	**Land**	**Improvements**	**Total**
5002484	$2,769,000	$3,605,200	$6,374,200
5005101	$21,600	$0	$21,600
5028882	$4,583,900	$5,800,900	$10,384,800
502885	$397,500	$5,100	$402,600
502886	$245,800	$1,900	$247,700
5030004	$21,000	$0	$21,000
Total			**$17,451,900**

12. Gateway Arthur contends that the assessment of the property as a whole should be reduced to its 2005 level of $10,504,100.

FINDINGS OF FACT

A. The property

13. The six parcels under appeal are located off of U.S. 31 and County Line Road in Marion County. Gateway Arthur operates the property as a whole under the name The Shoppes at County Line. The property consists of the following:

- Parcel 503004. This is a small parcel that has a pylon sign for stores contained in the Shoppes at County Line as well as for h.h. gregg, which is not part of the property owned by Gateway Arthur.
- Parcel 502885. This is a private road off of U.S. 31 that gives access to the Shoppes at County Line and to other properties within the broader commercial development where Gateway Arthur's parcels are located.
- Parcel 5005101. This is a small retention pond.
- Parcel 502886. This is a private road that gives access to the Shoppes at County Line off of Hardegan Street.
- Parcel 5002484. This parcel contains a 54,384-square-foot building that previously housed a Kroger and now has an Incredible Pizza.
- Parcel 502882. This parcel contains two buildings: (1) a 193,846-square-foot building divided between a single-tenant space of approximately 101,000 square feet that is rented by Old Time Pottery, and other smaller spaces rented by various other stores, and (2) a 32,283-square-foot store rented by Office Max.

Resp't Ex. R-1; Resp't Ex. R-3 at 7; Beckman testimony.

14. All told, the property has 280,513 square feet of building space and 269,721 square feet of net rentable area. *Resp't Ex. R-3 at 7.* Under their "net" leases, the subject property's tenants pay their utilities plus a pro rata portion of the common area maintenance ("CAM"), taxes, and insurance. *Id. at 25*.

15. For purposes of these findings and conclusions, the Board refers to the six parcels together as "the subject property." When referring to the parcels in smaller groups, the Board will call the access road off U.S. 31, the parcel with the sign, and the retention pond the "outer parcels," and the access road off Hardegan Street and the two parcels with buildings the "Shoppes."

16. As indicated by a warranty deed, Gateway Arthur acquired the subject property on February 19, 2007. *Pet'r Ex. 2*. The acquisition was part portfolio sale in which various of the pension fund's wholly owned subsidiaries acquired 36 properties. The total sale price was $423.5 million. *Pet'r Ex. 1*. As explained by Suzanne Boehm, the Senior Chief Accounting Officer of Emmes Asset Management Company, LLC, which advises the pension fund and manages the subject property, Gateway Arthur would not have acquired the property on a stand-alone basis. *Pet'r Ex. 1*. There is nothing in the record to show that the subject property was separately marketed or listed for sale by the owner before the portfolio sale. *See Pet'r Ex. 1*.

17. As explained in an e-mail from Marlo Hayden, the supervisor of the department that enters information from sales disclosures into Marion County's computer system, the county does not have any of the actual sales disclosure forms from years before 2007. *Resp't Ex. R-6.* A printout from the county's computer system lists November 17, 2006, as both the "sale date" and the "deed date." *Resp't Ex. R-6*. The printout has an incomplete parcel number on the first page and lists parcels 5028882, 5028885, and 5028886 under the heading "other parcels." The printout also contains a box with "disclosure verified" alongside. That box is unchecked. *Id*. The Assessor also offered a document entitled "Perry Township Assessor Ownership Transfer History/Log" attached to the property record cards for the subject property. That log contains a handwritten notation showing a transfer to Gateway Arthur on February 19, 2007, a "file date" of March 9, 2007, and a sale price of $21,000,000 for "6" parcels, although two of the parcel numbers are only partially written. *Resp't Ex. R-1*.

B. Eve Beckman's valuation opinion

18. The Assessor offered a valuation opinion from Eve Beckman, one of his employees. Beckman is a Level III certified assessor-appraiser. She also held a trainee appraiser's license, which she has since relinquished. Before working for the Assessor, Beckman worked as a senior manager in the Simon Property Group's property tax department. She also worked with an appraiser for less than a year. When Beckman held her trainee's license, she assisted with commercial appraisals. *Beckman testimony*.

19. According to Beckman, all of Gateway Arthur's parcels were correctly assessed based on the Department of Local Government Finance's "Manual." *Beckman testimony*. Beckman explained that the Manual applies a mass-appraisal version of the cost approach, which can be, but is not always, a good reflection of a property's market value-in-use. When a property's assessment is appealed, the Assessor's office takes a closer look than just doing a mass appraisal. Beckman therefore used the sales-comparison and income approaches to estimate a value for the Shoppes.

20. Beckman, however, did not include the outlying parcels in her analysis. According to Beckman, those parcels should be valued separately because they benefit the entire development, not just the subject property. Although one could use the access road off U.S. 31 to get to the Shoppes, those parcels are also accessible from Hardegan Street, which connects with County Line Road. So, Beckman believes that the access road really serves the four businesses between U.S. 31 and the Shoppes. Similarly, while the pylon sign serves the Shoppes, it also serves those other businesses. *Beckman testimony*.

21. Beckman used the income approach to estimate the Shoppes' market value-in-use as of January 1, 2005. Her analysis is reflected on a one-page spreadsheet. Beckman relied on income and expense data from Gateway Arthur's certified tax representative, Carla Bishop. From that information, Beckman extracted an overall occupancy rate of 84.5%,

which she believed reflected the market. In determining the property's gross income, Beckman used its actual rent as well as miscellaneous reimbursements called for by triple net leases, such as reimbursements for CAM and property taxes. *Beckman testimony; Resp't Ex. R-5.*

22. Turning to expenses, Beckman settled on 25% of income. She based that number on the property's actual expenses. Beckman found that those expenses were consistent with the market after (1) examining information contained in *Dollars & Cents of Shopping Centers/The Score 2006*, a publication in which the Urban Land Institute collected nationwide data for various types of shopping centers, and (2) analyzing expense ratios for strip centers throughout Marion County. *Beckman testimony; Resp't Exs. R-5, R-14.* Although Beckman was not explicit about whether her expense ratio included property taxes, the exhibits that she relied on show that it did not. The *Dollars & Cents of Shopping Centers/The Score 2006* reported expense ratios that were "Net of RE Taxes" and "Net of RE Tx Influence." *Resp't Ex. R-14.* Similarly, Beckman's analysis of operating expenses for Marion County strip centers contains the following heading: "Reported Expenses as % of Gross Income (Net of RE Tx and Cap Impr, TI & Lsg Comm's where sufficient detail allows recognition of such)." *Id.*

23. Beckman then capitalized the net operating income ("NOI") that she derived based on her income and expense assumptions. She used a capitalization rate of 8.17%, which she took from the *Korpacz Real Estate Investor Survey* for the fourth quarter of 2004. That rate was a national average of overall rates for power centers, and Beckman did not adjust that rate for local sales. *Beckman testimony; Resp't Ex. R-4.* Beckman believed that the Shoppes should be classified as a power center because the Old Time Pottery building has approximately 101,000 square feet, and larger stores tend to be a draw for smaller ones. Beckman also pointed to the old Kroger space, which has another 52,000 square feet. *Beckman testimony.*

24. Beckman did not load her capitalization rate by adding an effective property tax rate. According to Beckman, when trying to determine a property's value for taxation purposes, there is a consensus that real estate taxes should be removed as an expense. Those taxes should then be accounted for by adding the tax rate to a "going-in" rate. *Beckman testimony.* In that way, the effect of real estate taxes on the property's value is removed when the appropriate amount of those taxes is itself in dispute. *Id.* But when one extracts a capitalization rate from the market, such as Beckman did when she used the *Korpacz* information, that rate is premised on real estate taxes having been included as an expense. According to Beckman, one would have to deduct a local effective tax rate for each sale to get a going-in rate. And Beckman characterized that as often impossible to do when using national surveys. So, in Beckman's view, the rate taken from a survey should not be loaded with an effective tax rate—to do so would be "double dipping" on the property tax expense. *Id.*

25. When Beckman applied her 8.17% capitalization rate to the property's NOI, she arrived at a value of $18,472,445. *Beckman testimony; Resp't Exs. R-4 – R-5.*

26. Beckman also analyzed the Shoppes' value using the sales-comparison approach. Beckman, however, did not offer a written summary of her analysis. Instead, she pointed to the following six sales and listings from an exhibit that contains information for 233 properties from across the country:

- A 215,000-square-foot building from Boone, North Carolina that was built in 1996 and was listed for $93.02 per square foot as of May 2, 2010. That property had been on the market for 813 days.
- A 247,246-square-foot building from Cleveland, Ohio that was built in 1971 and renovated in 1995 and that was listed for $159.82 per square foot. That property had been on the market for 1,776 days.
- A 17,500-square-foot building on Keystone Avenue in Indianapolis that was built in 1978 and sold for $59.43 per square foot on December 21, 2010.

- A 3,080-square-foot building on Madison Avenue in Indianapolis that was built in 1987 and sold for $121.75 per square foot on September 23, 2011.
- A 16,500-square-foot building on Madison Avenue that was built in 1997 and sold for $93.94 per square foot on October 31, 2008.
- A 39,451-square-foot building on Madison Avenue that was built in 2001 and renovated in 2009 and that sold for $63.37 on January 22, 2008.

Beckman testimony; Resp't Ex. R-11.

27. Beckman acknowledged that the sales were not from 2005 and 2006, but she explained that data from that far back was not readily available. And while one of the sales was from December 2010, for example, Beckman felt that it was "within reason" for her purposes given the economic downturn that began in 2008. *Beckman testimony*. Beckman also indicated that there were other sales that she could refer to, but explained that the sales she identified offered an idea of what she was talking about. *Id.*

28. When asked whether she adjusted the sale prices from her comparable sales to account for things like size, location, and the sale date, Beckman responded:

> Yes I did….You have to adjust for the time of the sale, the size of the property, the location of the property…there are all kinds of adjustments that fall under what we call a grid. [A]s far as that, in looking at these, I did that but it was more of a mental exercise. I did not put it on an exhibit…just for comparable nature, but I felt that in looking at these values and the lack of data from 05 and 06 at this point in time looking back in time that…justified that range where we were.

Beckman testimony.

29. Beckman also felt that the allocated sale price from the 2007 portfolio sale was an indication of the Shoppes' market value. According to Beckman, who dealt with mass sales and purchases when she worked at Simon, parties to bulk sales have incentives to accurately allocate the overall sale price between individual properties. In some states, notably Illinois and California, taxes are paid on real estate transfers, and the parties have to fill out declarations to provide local jurisdictions with records of the sale prices. And

Beckman explained that buyers perform due diligence before entering into portfolio sales and therefore know the investment potential for each individual property. She also testified that buyers might get a discount when buying in bulk, but that she would have to ask an investor. *Beckman testimony*.

C. Correll's critique of Beckman's analyses

30. Richard Correll, who Emmes hired to appraise the subject property, testified at the Board's hearing. On cross examination, Correll acknowledged that he and Michael Schlemmer had prepared both an original and a revised appraisal report estimating the property's market value-in-use for the valuation dates associated with all five assessment years under appeal. The revised report corrected a few errors from the original report, the main one being that Correll and Schlemmer had originally failed to include property tax reimbursements from tenants in determining the subject property's NOI. That correction raised their estimate by approximately $1,000,000 for each valuation date. For the January 1, 2005 valuation date that applies to the subject property's March 1, 2006 assessment, Correll and Schlemmer ultimately estimated the property's market value-in-use at $12,600,000. *Correll testimony; Resp't Exs. R-2 – R-3*.

31. Correll focused most of his testimony on what he viewed as errors in Beckman's analysis. As to Beckman's selection of a capitalization rate, Correll explained that surveys such as *Korpacz* send out forms and interview investors about what their criteria are for risk and return when buying real estate. Those survey rates do not somehow included local tax rates. To make sure that was true, Correll called Peter Korpacz, who started the *Korpacz* survey and later sold it to Price Waterhouse. Korpacz confirmed that the survey's rates are not loaded for taxes. Doing what Beckman did—excluding property taxes as an expense and then capitalizing NOI with a survey-derived rate—substantially over-values a property. Instead, when appraising a property for tax-appeal purposes, all commercial real estate appraisers select a capitalization rate that they believe represents the pure risk-return relationship for the property they are appraising

and then load that capitalization rate with a net tax rate. They then divide that loaded rate into the property's stabilized NOI, which has been determined by excluding property taxes as an expense. *Correll testimony*.

32. Correll also addressed Beckman's testimony that portfolio sales might involve discounts. According to Correll, some participants have bought debt on vast sums of real estate during the economic climate of the last four or five years, and that might reflect a "discount thought process." *Correll testimony*. But Gateway Arthur bought the subject property during better economic times. And generally speaking, in the decade leading up to the economic crisis, portfolio sales generally brought greater prices than the sum of the individual assets involved in the sales. That was true for a variety of reasons. For example, if an investor could get a portfolio above $400 million during that time, the investor could qualify as a potential real estate investment trust and take the portfolio to the liquid markets. *Correll testimony.*

33. Similarly, according to Correll, the portion of a portfolio transaction's overall sale price that is allocated to a given property might be influenced by a variety of concerns that go beyond the property's value or capitalization rate. For example, the allocated sale price could be motivated by tax issues or by internal management concerns, such as wanting to have a certain amount of management over a given amount of value. *Correll testimony*.

34. Correll also disagreed with Beckman's classification of the subject property as a power center. The property does have some ingredients of a power center as defined by the International Council for Shopping Centers ("Council"). But power centers generally have big discount "category killers" that are linked in a row. *Correll testimony*. Correll explained that a "category killer" is a one-category big-box store, like Best Buy. *Id*. Old Time Pottery is not really a power-center-type tenant. In fact, a tenant like Old Time Pottery does not put the subject property in any one classification. Power centers did not really emerge until the 1990s, and the subject property was originally built in 1976 as an enclosed mini mall, which is now an obsolete format. The Council's definitions and

commentary allow for hybrids, which is what the property really is. That does not invalidate using the expenses for certain other classifications, but an appraiser should not use expenses exclusively from one classification. *Id.*

35. Finally, Correll disagreed with Beckman's opinion that the outer parcels should be valued separately from the Shoppes. According to Correll, the six parcels together are one economic unit. He sees this type of layout often. Over the course of 40 years, a road is deeded to the city or a strip of land is taken by the city leaving a segmented property. But all the parcels remain part of the same economic unit. Correll was a little surprised that the access road off of U.S. 31 had not deeded to the city, and he assumed that h.h. gregg probably had an access easement over it, which is common. In any case, while the sign parcel and access road have value, that value is in connection with the six parcels as one economic unit. *Correll testimony*.

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

36. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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). If the taxpayer meets that burden, the respondent county assessor must offer evidence to impeach or rebut the taxpayer'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.

37. Effective July 1, 2011, however, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2.[1]

[1] HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

That statute shifts the burden to the Assessor in cases where the assessment under appeal has increased by more than 5% from its previous year's level.

> This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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 to the Indiana tax court.

I.C. § 6-1.1-15-17.2.

38. There is no dispute that the subject property's assessment increased by more than 5% between March 1, 2005, and March 1, 2006. And that is true both for the property as a whole and for the individual parcels. But the parties disagree about whether Ind. Code § 6-1.1-15-17.2 applies to this proceeding. In Gateway Arthur's view, Ind. Code § 6-1.1-15-17.2 should apply because the hearing was held after the statute's original effective date. The Assessor, by contrast, argues that the statute should only apply to appeals of assessments that were made in 2012 or later. The Board fully addressed the parties' arguments in its Order on Motion Concerning Burden of Proof, which the Board hereby incorporates into these findings and conclusions. In that order, the Board agreed with Gateway Arthur and found that Ind. Code § 6-1.1-15-17.2 applies to Gateway Arthur's appeal of the subject property's March 1, 2006 assessment. The Assessor therefore has the burden of proof.

B. The Assessor failed to meet his burden of proof

39. Indiana assesses real property based on its true tax value. For most property types, the standard of true tax value is defined in the 2002 Real Property Assessment Manual 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See id*. A market-

value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). A party 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.

40. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *See id*. ("[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value."). For March 1, 2006 assessments, the valuation date was January 1, 2005. *See* 50 IAC 21-3-3(b) (2009) (making the valuation date for assessments after March 1, 2005, January 1 of the year preceding the assessment date).

41. The Assessor pointed to three things to support the six parcels' assessments: (1) the assessments themselves, which Beckman testified were determined using a mass-appraisal version of the cost approach; (2) Beckman's valuation opinion for the Shoppes parcels, and (3) the purported $21,000,000 allocated sale price from the 2007 portfolio sale.

42. To the extent that the Assessor relies on Beckman's conclusory testimony that the parcels were assessed correctly under the mass-appraisal version of the cost approach represented by the Real Property Assessment Guidelines for 2002 – Version A and the administrative regulations governing annual adjustments, he misunderstands his burden of proof. The Assessor needed to show through the types of market-based evidence described in the Manual that the assessments actually reflect the parcels' market values-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (pointing to

the Manual in explaining what types of evidence can be used to demonstrate a property's market value-in-use).

43. By offering Beckman's valuation opinion and evidence concerning an allocated sale price for the subject property, the Assessor at least attempted to offer market-based evidence. On closer examination, however, neither of those items is sufficiently reliable to be probative of the subject property's market value-in-use.

44. The Board turns first to Beckman's valuation opinion. Beckman analyzed the property's value using the sales-comparison and income approaches. Her sales-comparison approach was almost entirely conclusory. Beckman apparently relied on some unidentified number of sales or listings contained in a packet that includes information for 233 properties. Of the six properties that she actually highlighted, two were from out of state and had been listed for lengthy periods without selling. Of the remaining four properties, the largest building was only 39,451 square feet compared to approximately 270,000 square feet of rentable space spread among the subject property's three buildings. Yet, Beckman did not explain how she adjusted any of the list or sale prices to account for differences in size, sale date or location, testifying instead that "there are all kinds of adjustments that fall under what we call a grid. [A]s far as that, in looking at these, I did that but it was more of a mental exercise." *Beckman testimony*.

45. Although Beckman's analysis under the income approach was a little more detailed, it was still fairly cursory. And Correll pointed to problems that detract significantly from the reliability of her conclusions. First, Beckman relied solely on national surveys to determine her capitalization rate without even examining capitalization rates from more local sales. And she used the survey rates for power centers even though, as Correll persuasively explained, the subject property is more of a hybrid type of center.

46. More importantly, Beckman grossly misconstrued the impact of property taxes on the subject property's market value-in-use. Beckman did not include real estate taxes in her

25% expense ratio, and as Correll explained, the capitalization rate that she took from *Korpacz* was not loaded for taxes. Viewed in isolation, that might not be fatal to Beckman's credibility. The record indicates that the subject property's tenants were responsible for property taxes under their leases and actually reimbursed Gateway Arthur for those taxes. Thus, taxes were not an expense, or were a pass-through expense. Had Beckman simply capitalized the property's NOI without dealing with property taxes at all, the resulting value might not have been nearly as distorted.

47. But that is not how Beckman proceeded; she instead included the tenant reimbursements as income. Having done that, Beckman could no longer treat property taxes as a pass-through expense—although Gateway Arthur received the reimbursements, it had to pay an equal amount to taxing authorities. Beckman therefore needed to account for those property taxes by loading her capitalization rate, and her failure to do so greatly distorted her value conclusion. Had Beckman loaded her capitalization rate with the net tax rate that Correll used in his appraisal, she would have come up with a value of $14,387,025, which is over $4,000,000 less than what she arrived at by counting property tax reimbursements as income while ignoring the actual tax liability as an expense.[2]

48. As to the allocated sale price, Beckman did not attempt to explain how that allocated price related to the subject property's value as of the relevant valuation date, which was more than two years before the sale. For that reason alone, the sale price lacks probative value.

49. Regardless, the Assessor did not offer reliable evidence to prove what the allocated sale price actually was. The $21,000,000 figure that Beckman cited comes from a computer printout. That printout reflects data entered into a computer by an unidentified person from a sales disclosure statement that no longer exists. The printout does not indicate that anyone verified the disclosure. It also contains several errors and omissions, such as

[2] Beckman found NOI of $1,509,199 and used an unloaded capitalization rate of 8.17%. Using Correll's net tax rate of 2.32%, the loaded rate would have been 10.49%. *See Resp't Exs. R-3, R-5*. Thus, $1,509,199 ÷ .1054 = $14,387,025.

incorrectly listing the "sale" and "deed" dates and omitting several parcels that were included in the sale. The transfer history log attached to the subject parcels' property record cards lists the correct deed date, and it refers to all six parcels (although two of the parcel numbers are incomplete). But there is no evidence in the record as to who completed the transfer log, when it was completed, or the information on which it was based.

50. Even if the Board were to credit the printout as accurately reflecting the price that was listed on the original sales disclosure form, there is nothing in the record about the basis underlying that allocation. As Correll testified, parties to portfolio sales have various motives when deciding what portion of the total sale price they will allocated to individual properties. And many of those motives do not directly relate to the property's market value-in-use. Although Beckman differed on that point, her testimony was not as persuasive as Correll's.

51. At the end of the day, there are too many problems with the purported $21,000,000 allocated sale price for the Board to give that price any probative weight. Indeed, even when Beckman grossly overestimated the property's market value-in-use by using a low OAR and including real estate tax reimbursements in the property's income without accounting for those taxes as an expense, she still arrived at value of only $18,472,400, which is over $2,500,000 less than the purported $21,000,000 allocated sale price.

52. Thus, the Assessor failed to make a prima facie case that the subject property's assessment was correct, either when viewed as a combined unit or as individual assessments. The Board therefore finds that each parcel's assessment must be reduced to its March 1, 2005 level. That translates to a combined assessment of $10,504,100 for the subject property as a whole.

CONCLUSION

53. Pursuant to Indiana Code § 6-1.1-15-17.2 the Assessor had the burden of proof, and the Assessor failed to prove that the subject property's March 1, 2006 assessment was correct. Accordingly, each parcel's assessment must be changed to its March 1, 2005 level.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the March 1, 2006 assessments for Gateway Arthur's parcels must be reduced to their March 1, 2005 levels.

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.