

RESPONDENT.)
)

March 1, 2009
March 1, 2010

October 22, 2012

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Gateway Arthur, Inc. offered an expert opinion from two appraisers who estimated the market value-in-use of the six parcels at issue as a single economic unit for each assessment year under appeal. Their opinion was more persuasive than what the Assessor offered: (1) a valuation 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 portfolio sale involving 36 properties. Nonetheless, the appraisers failed to account for property taxes paid directly by tenants to taxing authorities, which caused the appraisers to underestimate the property's value by approximately \$1,000,000 for each year. The Board therefore finds that the property's true tax value for each year under appeal was \$1,000,000 more than what the appraisers estimated. Because that is still far less than what the property was assessed for in each year, those assessments must be changed.

PROCEDURAL HISTORY

2. Gateway Arthur challenged the assessments of the above-referenced parcels for assessment years 2007-2010 by filing letters with the Marion County Assessor dated July 5, 2009, November 30, 2009, April 6, 2010, and October 25, 2010. The Marion County Property Tax Assessment Board of Appeals ("PTABOA") failed to hold a hearing within 180 days of those letters. 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 2006 assessment year. 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 the assessment years under appeal. In response to that motion, the Board found that the Assessor had the burden of proof in Gateway Arthur's appeals 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 2007 through 2010 assessment years.

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

For Gateway Arthur: Richard 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. Gateway Arthur offered the following exhibits:

Petitioner's Exhibit 1: Summary Appraisal Report by Richard Correll and Michael Schlemmer dated April 27, 2012
Petitioner's Exhibit 2: Affidavit of Suzanne K. Boehm
Petitioner's Exhibit 3: Warranty Deed

6. The Assessor offered the following exhibits:

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- 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 Rich Correll and Michael Schlemmer, dated May 2, 2011
- Respondent's Exhibit R-3: Spreadsheet with valuation analysis for the 2006 through 2010 tax years
- Respondent's Exhibit R-4: Summary of Korpacz Real Estate Investor Survey data for fourth quarters of 2004-2009; Korpacz Real Estate Investor Surveys for the fourth quarters of 2004-2009
- Respondent's Exhibit R-5: *Dollars & Cents of Shopping Centers/The Score 2006* (2 pages) and Marion County Strip Centers Operating Expense Ratio Support – Redacted
- 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: October 5, 2010 e-mail from Carla Bishop to Beckman with 14 pages of attached documents concerning income and expenses
- Respondent's Exhibit R-8: Aerial photographs of subject property
- Respondent's Exhibit R-9: Three packets of sale and listing information for various properties

7. The ALJ admitted Petitioner's Exhibits 2 and 3—Suzanne Boehm's affidavit describing a portfolio transaction through which Gateway Arthur bought the subject parcels and the warranty deed transferring the subject parcels to Gateway Arthur—over the Assessor's objections. 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). Gateway Arthur responded (1) that it had not known that those 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 exhibits for purposes of impeachment and rebuttal.
8. The ALJ overruled the Assessor's objection, finding (1) that Gateway Arthur would not reasonably have known about the need to offer the affidavit and 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. The Board adopts the ALJ's ruling.

9. 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.

10. For the assessment dates under appeal, Gateway Arthur's property was assessed as follows:

March 1, 2007

Parcel	Land	Improvements	Total
5002484	\$2,769,000	3,588,200	\$6,357,200
5005101	\$21,600	\$0	\$21,600
5028882	\$4,583,900	\$5,792,500	\$10,376,400
502885	\$397,500	\$5,100	\$402,600
502886	\$245,800	\$1,900	\$247,700
5030004	\$21,000	\$0	\$21,000
Total			\$17,426,500

March 1, 2008

Parcel	Land	Improvements	Total
5002484	\$3,065,800	\$3,588,800	\$6,654,000
5005101	\$56,200	\$0	\$56,200
5028882	\$4,938,000	\$5,792,500	\$10,730,500
502885	\$397,500	\$5,100	\$402,600
502886	\$245,800	\$1,900	\$247,700
5030004	\$21,000	\$0	\$21,000
Total			\$18,112,000

March 1, 2009

Parcel	Land	Improvements	Total
5002484	\$3,065,800	\$3,588,200	\$6,654,000
5005101	\$56,200	\$0	\$56,200
5028882	\$4,938,000	\$5,792,500	\$10,730,500
502885	\$397,500	\$5,100	\$402,600
502886	\$245,800	\$1,900	\$247,700
5030004	\$21,000	\$0	\$21,000
Total			\$18,112,000

March 1, 2010

Parcel	Land	Improvements	Total
5002484	\$2,760,000	\$2,785,800	\$5,545,800
5005101	\$56,200	\$0	\$56,200
5028882	\$4,938,000	\$5,792,500	\$10,730,500
502885	\$397,500	\$4,600	\$402,100
502886	\$245,800	\$1,700	\$247,500
5030004	\$21,000	\$0	\$21,000
Total			\$17,003,100

11. Gateway Arthur contends that the property as a whole should be assessed as follows:

Year	Total Assessment
2007	\$12,800,000
2008	\$13,800,000
2009	\$12,900,000
2010	\$10,300,000

FINDINGS OF FACT

A. The property

12. 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. Owners of the other properties appear to have an access easement over this road.
- 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 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; Pet'r Ex. 1 at 7; Beckman testimony; Correll testimony. All told, the property has 280,513 square feet of building space and 269,721 square feet of rentable area. *Pet'r Ex. 1 at 7.*

13. 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."
14. The property's leases are "net," meaning that the tenants pay their own utilities plus a pro-rata portion of the common-area maintenance ("CAM"), taxes, and insurance. *Correll testimony; Pet'r Ex. 1 at 25.* While most of the tenants apparently reimbursed Gateway Arthur for real estate taxes during the years covered by these appeals, the

tenants in the space first occupied by Kroger and then by Incredible Pizza paid their share of real estate taxes directly to local authorities. The Board reaches this conclusion for two reasons. First, the subject property's income and expense statements for 2004-2007 list real estate taxes as a line-item expense for the multi-tenant building and the Office Max building, but not for the Kroger/Incredible Pizza building. But for fiscal years 2008-2009, covering the period when Kroger had vacated the building, the statements list real estate taxes of \$50,791 (2008) and \$378,602 (2009). *Resp't Ex. R-7*. Second, Correll testified that Incredible Pizza had complained about having to pay its taxes directly. *Correll testimony*.

15. The subject property's improvements were originally built as an enclosed mini mall in 1976. Eventually, the property was re-developed from a mini-mall. The building that previously housed Kroger and now houses Incredible Pizza was built in 1992. Kroger vacated the property in 2008. Gateway Arthur then spent approximately [REDACTED] in tenant improvements to get Incredible Pizza into the space. *Correll testimony; see also Pet'r Ex. 1 at 8*.
16. As indicated by a warranty deed, Gateway Arthur acquired the subject property on February 19, 2007. *Pet'r Ex. 3*. 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. 2*. 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. 2* 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. 2*.
17. As explained in an e-mail from Marlo Hayden, the supervisor of the department that enters information from sales disclosures into the Marion County's computer system, the county does not have any of the actual sales disclosure forms from years before 2007.

Beckman testimony; Resp't Ex. R-6. A printout from the 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 its first page and lists parcels 5028882, 5028885, and 5028886 under the heading "other parcels." *Id.* 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. Valuation opinion from the Correll appraisers

18. Emmes hired Richard Correll and Michael Schlemmer ("Correll appraisers") of Correll Commercial Real Estate Services to appraise the subject property for the following valuation dates: January 1, 2005, January 1, 2006, January 1, 2007, January 1, 2008, and March 1, 2010. For purposes of these findings, the Board is concerned mainly with the Correll appraisers' opinion of the property's value as of the last four dates.
19. Correll has been an appraiser for 26 years and has valued a variety of commercial assets in approximately 30 states. He has been located in Indianapolis since 1994. Correll has worked with retail malls and strip centers, neighborhood centers, community centers, specialty centers and power centers. And he has dealt with both "stabilized assets" that are clean institutional-grade properties as well as with rougher properties, some of which were completely vacant. *Correll testimony.*
20. The Correll appraisers included all six parcels in their appraisal because Gateway Arthur bought them together and used them as a single economic unit. *See Correll testimony; Pet'r Ex. 1.* And the appraisers certified that they prepared their appraisal in conformity

with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Pet’r Ex. 1 at 15.*

21 The Correll appraisers actually prepared two versions of their report—the first on May 2, 2011, and the second almost a year later on April 27, 2012. They prepared the second version to correct errors in the original report. *Correll testimony.* At the Board’s hearing, Correll identified those corrections as follows:

- The appraisers included all six parcels whereas the original report had listed only five parcels. They had missed the sixth parcel—the retention pond—because the county records had misspelled the owner’s name.
- They included tenant reimbursements for property taxes in the property’s income. They had not included those reimbursements in their original report.
- They changed references to one of the subject property’s tenants from “Office Depot” to “Office Max.”
- Where the appraisers felt that they could explain something a little better or change a sentence, they did so.

Id. Although most of the corrections did not affect the Correll appraisers’ value conclusions, including the property tax reimbursements led the appraisers to increase their value estimates by roughly \$1,000,000 for each year. *Correll testimony; see also, Pet’r Ex. 1 and Resp’t Ex. R-2.*

22. According to Correll, the subject property has some challenges. It has below-average visibility and access; traffic on U.S. 31 can be dense, and if a driver misses the access point, he must immediately try to get to the property off of County Line Road. On the other hand, the property has benefitted from its proximity to the Greenwood Park Mall. In light of the subject property’s re-development from a mini-mall into what it is today, Correll does not believe that it really fits any of the definitions outlined by the International Counsel of Shopping Centers (“ICSC”)—a world-wide association of retail participants. But ICSC’s definitions allow for a hybrid center, which is what the property is: it has elements of both a power center and a community center. Even then, the

property has problems with its configuration. And the pension fund that owns Gateway Arthur spent [REDACTED] on the vacant box store that Kroger had vacated just to bring that space up to standard for a new tenant. *Correll testimony.*

23. That being said, Correll believes that the subject property's performance has been pretty good for what the property is. And the property held its own through the years covered by these appeals even through the financial collapse in the larger economy. That goes for the retail market in Johnson County as well,¹ which weathered the storm pretty well compared to what happened in other sectors. Indiana didn't go crazy, so Indiana properties did not fall as hard as properties in some other areas. And the commercial real estate market did not experience the same crisis as the residential market. *Correll testimony.*

24. The Correll appraisers analyzed the subject property using the sales-comparison and an income approaches. When they prepared their report, the appraisers knew that the property had been bought as part of a portfolio sale involving 36 properties. That has since been clarified, and at the time of the Board's hearing, Correll knew that the portfolio sale occurred in February 2007 and the total sale price. But Correll did not know anything more about the sale than that. Correll explained that appraisers are always interested in a property's sales history if the sales are individual-asset sales. But when a sale is part of a bulk purchase, it becomes much more difficult to deal with. Appraisers rarely can use portfolio sales in sales-comparison analyses because they cannot get clarity as to an individual property's influence on the gross sale price. Even if the parties report an allocated sale price, that allocation is often based on variables that do not really relate to the individual property's quality. *Correll testimony.*

25. For their sales-comparison analysis, the Correll appraisers examined data from the sales of other retail centers. Although the appraisers looked at more than 50 sales, they ultimately selected four sales and one listing. The sales were from Greensburg, Indiana,

¹ The subject property is near the line between Marion and Johnson counties.

Clarksville, Indiana, Indianapolis, Indiana, and Columbus, Ohio, and they occurred between April 2004 and November 2008. The listing was for a property from Huntington, Indiana and was from March 2010. *Correll testimony; Pet'r Ex. 1 at 38.*

26. All of the sales involved shopping centers that the Correll appraisers viewed as comparable to the subject property in terms of age, size and location. The Correll appraisers then adjusted the sale prices to account for differences between the sold properties and the subject property and arrived at the following values for the subject property:
- January 1, 2006: \$11,500,000
 - January 1, 2007: \$12,000,000
 - January 1, 2008: \$11,500,000
 - March 1, 2010: \$10,000,000
27. Correll explained that, in making adjustments, an appraiser must decide what the biggest influence on a property's sale price is. The Correll appraisers ended up putting their adjustments under the category of age and condition. While one might argue whether those adjustments are apportioned correctly, the Correll Appraisers kept it simple because they were not ultimately relying on their sales-comparison analysis as a benchmark for the subject property's value. They instead relied on that approach (1) to show that there was a market for properties like the subject property, (2) to confirm roughly what prices were per square foot, (3) to get information about things like occupancy rates and to extract capitalization rates, and (4) to test the reasonableness of their conclusions under the income approach. *Correll testimony; Pet'r Ex. 1 at 50-56.*
28. Indeed, Correll explained that investors rely almost exclusively on the income approach in determining how much to pay for an investment property like the subject property. For their analysis under that approach, the Correll appraisers examined the subject property's income and expense statements from 2004-2010 and reviewed the leases and rents for that period. They then looked at market rents for comparable properties and determined

that the subject property's actual income and expenses were within market ranges for the same type of property.

29. The Correll appraisers did not include real estate taxes as an expense. As Correll explained, appraisers know that if they are appraising a property for a tax appeal, they cannot include real estate taxes as an expense because the taxes themselves are in dispute. If an appraiser uses taxes as an expense, his value estimate will be too low. Of course, taxes must still be accounted for. To do that, appraisers add the net tax rate for a property to the "pure" rate from the market to get a loaded capitalization rate, which they then divide into the property's net operating income ("NOI"). *Correll testimony.*

30. In their original report, the Correll appraisers also excluded from income reimbursements for real estate taxes that the property owner received from tenants. As already explained, Correll acknowledged that excluding those reimbursements was an error. According to Correll, it is likely a market reality that properties such as the subject property receive tax reimbursements from tenants. *Correll testimony.* Income and expense statements for the subject property reported reimbursements separately for calendar years 2004-2006, but when Gateway Arthur bought the property and changed to fiscal year reporting, those tax reimbursements were included with the CAM reimbursements as a lump sum. *Id.; Pet'r Ex. 1 at 59.* In any case, although the Correll appraisers included tax reimbursements as a line item in their revised report, they failed to include them when calculating the property's total income for calendar years 2004-2006. *Correll testimony; Beckman testimony; Pet'r Ex. 1 at 59.* Correll described that as a "reporting error" and noted that tax reimbursements were included in the appraisers' stabilized income and expense statements. *Correll testimony; Pet'r Ex. 1 at 60.*

31. The Correll Appraisers leaned toward the property's actual data in developing those stabilized income and expense statements for each year. But they were careful in projecting property tax reimbursements. As Correll explained, if taxes are rising dramatically, using actual reimbursements would raise the appraisers' valuation

conclusions as well, and it is illogical that a property's value would increase millions of dollars simply because tax reimbursements go from \$200,000 per year to \$1,200,000 per year. So, the Correll appraisers projected tax reimbursements at a level that they thought was reasonable under "market-based thinking." *Correll testimony*. They therefore settled on tax reimbursements as a percentage of net income (9%), which they found to be supported both by the market and by the property's actual reimbursements from the earlier years of their analysis where property taxes were more "in line." *Id.*; *see also, Pet'r Ex. 1 at 60.*

32. The Correll appraisers next turned their attention to developing an appropriate capitalization rate. They first extracted overall rates ("OARs") from the four sales that they used in their sales-comparison analysis. Those OARs ranged from 8.46% to 10.86%. The appraisers then considered data from *Realty Rates Investor Survey*, which showed a range of 6.30% to 12.37%, with an average of 9.09%. Based on those two sources, the Correll appraisers selected OARs that ranged between 9.50% and 10.00% for the valuation dates in question. *Correll testimony; Pet'r Ex. 1 at 61.* Although the Correll appraisers chose a different rate, Correll noted that a regional property manager at Emmes who was around during the portfolio acquisition and deals with the subject property, believed that the property would sell at an 11% capitalization rate if it were put on the market now. *Correll testimony.*
33. The Correll appraisers then loaded their OARs with a net tax rate for each year. Correll explained that, unlike the Assessor's witness, Eve Beckman, the Correll appraisers did not use the *Korpacz Real Estate Investor Survey* in determining their OARs. But they know that many people do use *Korpacz*, and they interviewed Peter Korpacz, who started the survey. Korpacz explained that his survey parallels other investor surveys, none of which reflect capitalization rates that are loaded with tax rates or that have anything to do with tax rates at all. Instead, those surveys reflect the risk-reward analysis that investors use when buying real estate. Thus, when appraising real estate for tax appeals, appraisers

exclude taxes on the property being appraised as an expense and then load those survey rates (or rates that they extract from the market) with a net tax rate. *Correll testimony.*

34. The Correll appraisers therefore loaded their OARs for each year with the subject property's net tax rate. When they applied their loaded rates to the property's NOI for each year, they came up with the following values:

Valuation Date	1/1/2006	1/1/2007	1/1/2008	3/1/2010
Stabilized NOI	\$1,518,400	\$1,613,700	\$1,475,800	\$1,260,400
Market CAP Rate	9.50%	9.25%	9.00%	10.00%
Net Tax Rate	2.37%	2.46%	2.46%	2.23%
Loaded Rate	11.87%	11.71%	11.46%	12.23%
Value (rounded)	\$12,800,000	\$13,800,000	\$12,900,000	\$10,300,000

Pet'r Ex. 1 at 62.

C. Eve Beckman's opinion

35. 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 for approximately one year, although she has since relinquished it. Before working for the Assessor, Beckman worked as a senior manager in Simon Property Group's property tax department. *Beckman testimony.*
36. Beckman did not include the outer parcels in her analysis. According to Beckman, those parcels should be valued separately because they benefit the entire development, not just the Shoppes. 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.*

37. Beckman first used the income approach to estimate the Shoppes' market value-in-use as of the various valuation dates at issue, and her analysis is reflected on a one-page spreadsheet. Beckman relied on income and expense data that Gateway Arthur's certified tax representative, Carla Bishop, provided to her. 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-3.*

38. Turning to expenses, Beckman settled on a ratio equaling 25% of income. She supported that ratio with redacted information from various properties throughout Marion County along with information from *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. According to Beckman, that publication supports an expense ratio anywhere between 25% and 27%, and the property's actual expenses ranged from approximately 26% to 29%. On cross-examination, Beckman acknowledged that her 25% ratio did not include real estate taxes. *Beckman testimony; Resp't Ex. R-5.*

39. Beckman then capitalized the net income that she derived based on her income and expense assumptions. She used capitalization rates from *Korpacz Real Estate Investor Survey* for the fourth quarter of each year preceding the valuation dates at issue. So, for example, in estimating the Shoppes' true tax value for March 1, 2007, which has a valuation date of January 1, 2006, Beckman used Korpacz's capitalization rate for the fourth quarter of 2005. She did not adjust those rates for local sales. But she explained that *Korpacz* does not deal with all the retail centers across the nation in one big barrel; it instead deals with different regions and different types of centers. The rate that she actually selected for each year, however, was the average rate for national power centers. *Beckman testimony; Resp't Ex. R-4.*

40. Beckman did not load her capitalization rate by adding an effective property tax rate. Beckman justified her decision by explaining that most surveys include real estate taxes as an expense. So, in her view, any OAR extracted from a sale price and NOI inherently includes an effective tax rate, and to further load that OAR with an effective tax rate would be “double dipping.” *Beckman testimony.*

41. When Beckman applied her capitalization rates to the property’s NOI for each year, she came up with the following values:

Valuation Date	1/1/2006	1/1/2007	1/1/2008	3/1/2010
NOI	\$1,528,768	\$1,588,358	\$1,339,468	\$1,631,873
CAP Rate	7.36%	7.14%	7.13%	8.60%
Value	\$20,771,301	\$22,245,914	\$18,786,364	\$18,975,270

Resp’t Ex. R-3.

42. 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 an exhibit that contains sale and listing information for 233 properties from throughout the country, saying that she looked through that information and disregarded sales that were inapplicable. Beckman did not prepare an adjustment grid; she instead simply reviewed the available sales to gauge a range of values on a per-unit basis. She concluded a value of \$60-\$70 per square foot for the Shoppes. Her income-approach estimates of \$69-\$70 per square foot were within that range, as were the parcels’ assessments, which equated to \$61-\$66 per square foot. *Beckman testimony; Resp’t Ex. R-3.*

43. Beckman also considered the allocated sale price from the 2007 portfolio sale. According to Beckman, somebody “in ownership” was tracking whether the properties

involved in the transaction were performing or not, and she did not believe that whoever filled out the sales disclosure form just pulled a number out of a hat. *Beckman testimony.*

44. Ultimately, Beckman settled on her conclusions under the income approach as representing her opinion of the Shoppes' market values-in-use as of the various assessment dates at issue.
45. In addition to giving her own valuation opinion, Beckman critiqued the Correll appraisers' valuation opinions. As explained above, Beckman believed that, by loading their OARs with a net tax rate, the Correll appraisers were "double dipping." She also identified three other issues: (1) the Correll appraisers' failure to include real estate tax reimbursements in their original report, (2) their mathematical error in failing to include those reimbursements when totaling the property's income for calendar years 2004-2006, and (3) their failure to include in their revised report any amount for taxes that tenants in the Kroger/Incredible Pizza space paid directly to local officials. As to the last issue, Beckman testified that the taxes paid by Kroger and Incredible Pizza could have been \$120,000 per year. By excluding those from the property's operating income, Beckman believed that the Correll appraisers underestimated the property's value by \$1,000,000 or more each year. *Beckman testimony.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

46. 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, 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.

47. 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 § 6-1.1-15-17.2.² 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. Although the subject property's assessment increased by more than 5% between 2005 and 2006, the increases between the remaining years were far less than 5%. In fact, the assessment actually decreased in some of those years. Thus, although Gateway Arthur originally argued that the Assessor had the burden of proof in all of Gateway Arthur's appeals, the Board found otherwise in its Order on Motion Concerning Burden of Proof, which is hereby incorporated into these findings and conclusions. In that order, the Board found that the Assessor had the burden of proof in Gateway Arthur's appeals of the subject parcels' March 1, 2006 assessments, but that Gateway Arthur had the burden of proof in its appeals of the parcels' assessments for 2007-2010, which are the years covered by these findings and conclusions.

B. Gateway Arthur proved by a preponderance of the evidence that the subject property was assessed for more than its true tax value.

48. 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 USPAP 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

² 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.

comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

49. 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 the 2007, 2008, and 2009 assessment years, those valuation dates were January 1, 2006, January 1, 2007, and January 1, 2008, respectively. *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). For 2010, the assessment date and valuation date were the same—March 1, 2010. *See* I.C. 6-1.1-4-4.5.
50. Gateway Arthur relied on valuation opinions from the Correll appraisers, who reached their conclusions after applying two generally accepted approaches to value and who certified that they prepared their appraisal in conformity with USPAP. And Correll testified at great length both about the data that he and Schlemmer examined in preparing their appraisal and about the reasoning behind various judgments that they made. On the whole, the Correll appraisers' valuation opinions were persuasive.
51. And contrary to what the Assessor argues, the Correll appraisers sufficiently related their valuation opinions to the relevant valuation date for each year. The Assessor makes much of statements in some of the Board decisions that he characterizes as requiring assessors to determine a property's value based on the property's physical condition and market factors as those things existed on the assessment date and then trend that value to the appropriate valuation date. *See Slatten argument (citing Woods Edge Apartments, LP v. Center Twp. Assessor*, pet nos. 18-032-04-1-4-00134 and 18-032-05-1-4-00134 (Ind. Bd. Tax Rev. Sep't 25, 2007)). According to the Assessor, by using income from the

calendar year leading up to the valuation date instead of income from around the assessment date, the Correll appraisers failed to account for the market conditions on the assessment date.

52. The Assessor, however, misreads the Board's decisions. The notion that a property should be valued based on market factors that existed on the assessment date and then trended to reflect a value as of the appropriate valuation date comes from a memorandum issued by the Department of Local Government Finance in connection with the 2002 general reassessment. The Board, however, has never held that such a process is the *only* way to relate a property's market value-in-use to the appropriate valuation date. Using market income and capitalization rates from around the valuation date, especially when that valuation date is only a little more than a year before the assessment date and, as Correll testified, the market for the property in question was relatively stable, is an acceptable method. To the extent that another way might lead to even more accurate values, the burden was on the Assessor to show what those values were. And the Assessor did not do that.
53. The Board is similarly unmoved by Beckman's claim that the Correll appraisers should not have valued the six parcels as a single economic unit. As Correll explained, Gateway Arthur and Emmes use the parcels as a single unit. Neighboring properties might benefit from easements over the access road off U.S. 31 or their ability to use the sign parcel. But that does not mean that those parcels are somehow excluded from the same economic unit as the Shoppes parcels.
54. On the other hand, the Assessor did point to issues with the Correll appraisers' valuation opinions that affect the reliability of those opinions. For example the Correll appraisers were careless in failing to include real estate tax reimbursements in their original report and then, in their second report, in failing to include those reimbursements when totaling the property's income. But those errors did not affect the appraisers' ultimate value conclusions. The exclusion of the tax reimbursements from the property's total income

was simply a reporting error. The Correll appraisers included tax reimbursements when completing their stabilized income and expense statements, and those stabilized statements were what the appraisers actually used to arrive at the NOI that they capitalized.

55. But Beckman also pointed to another, more significant omission. The Correll appraisers ignored real estate taxes that Kroger and Incredible Pizza paid directly to taxing officials. And that omission likely affected the appraisers' ultimate value conclusions. Granted, the Correll appraisers did not include tax reimbursements dollar for dollar in their stabilized income and expense statements. They instead found that reimbursements equaling 9% of NOI were within the market and were consistent with the actual reimbursements from the first few years of their analysis. But if one includes the payments that were made directly to local officials, those reimbursements would have been greater than 9% of NOI.

56. Those direct payments should have been included. By loading their OARs with net tax rates, the Correll Appraisers accounted for property tax expenses in their value estimates. Because Gateway Arthur leased out the property under net leases, however, it did not actually realize much in the way of property tax expenses; instead, those expenses passed through to the tenants, at least for the space that was occupied. And that is true whether tenants reimbursed Gateway Arthur or paid taxes directly. Thus, failing to include the direct payments distorted the appraisers' value estimates in the same way that failing to include the reimbursements distorted the appraisers' estimates in their original report. Indeed, although Correll addressed other points raised by the Assessor in his rebuttal testimony, he said nothing to dispute Beckman's claim that he should have included the direct payments as reimbursement income.

57. Unfortunately, that begs the question: To what extent did omitting the direct payments affect the Correll appraisers' value conclusions? To answer that question, one would need to know, at a minimum (1) the amount of taxes that Kroger paid directly during the

first three years of the Correll appraisers' analysis, and (2) whether, when those payments were included as reimbursements, the total real estate tax reimbursement income would still reflect the market. Nobody provided very specific information on those points. Beckman, however, testified that Kroger paid approximately \$120,000 per year in taxes. When capitalized using the Correll appraisers' loaded rates for each year, that income translates to value increases ranging from \$981,193 to \$1,047,120.

58. But even when one recognizes the Correll appraisers' error in failing to include tenants' direct tax payments as income, their valuation opinions are probative of the property's market value-in-use and suffice to rebut the presumption that the subject property was accurately assessed. The Board therefore must weigh those opinions against the Assessor's valuation evidence.
59. The Assessor relied on two main items to support the Shoppes' assessments: (1) Beckman's valuation opinions for the Shoppes parcels, and (2) the allocated sale price from the 2007 portfolio sale.
60. Beckman's valuation opinions are not very reliable. First, her sales-comparison analysis 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 the approximately 270,000 square feet of rentable space spread among the subject property's three buildings. Yet Beckman did not even attempt to adjust her purportedly comparable sale and listing prices. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers' comparative sales information lacked probative value where they failed to explain how the properties compared to their property and how any relevant differences affected the properties' market values-in-use).

61. Although Beckman's analysis under the income approach was more detailed, it was still problematic. First, she used capitalization rates from a survey that reflected the average OARs for national power centers without even examining capitalization rates from local sales. And as Correll persuasively explained, the subject property is more properly considered a hybrid center than purely a power center.
62. More importantly, Beckman grossly misconstrued the impact of property taxes on the subject property's market value-in-use. Beckman did not include property 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 some or all of the subject property's tenants were responsible for property taxes under their leases and either reimbursed Gateway Arthur for those taxes or paid them directly. Thus, Gateway Arthur did not actually realize those expenses. But Beckman added the reimbursements to the property's rental income. By doing so, the taxes could no longer be treated like a pass-through expense—although Gateway Arthur received the reimbursements, it had to pay an equal amount to taxing authorities.
63. That tax expense therefore had to be accounted for, and Beckman's failure to do so greatly distorted her value conclusions. Beckman's analysis for the January 1, 2006 valuation date illustrates the point. Had Beckman loaded her capitalization rate with the relevant net tax rate and divided that loaded rate into what she determined to be the property's NOI, she would have arrived at a value of \$15,711,901, which is over \$5,000,000 less than the value that she came up with by counting property tax reimbursements as income while ignoring the tax liability as an expense.³
64. As to the allocated sale price, Beckman did not attempt to explain how that sale price related to the Shoppes' value as of the relevant valuation dates. While the sale occurred

³ Beckman found NOI of \$1,528,776 and used an unloaded capitalization rate of 7.36%. *Resp't Ex. R-3*. Using Correll's net tax rate of 2.37%, which the Assessor did not attempt to dispute, the loaded rate would have been 9.73%. Thus, $\$1,528,776 \div .0973 = \$15,711,901$.

less than two months after the January 1, 2007 valuation date that applies to the property's March 1, 2008 assessment, it is much further removed from the other valuation dates at issue. On the other hand, Correll testified to the relative stability both of the subject property and the Johnson County retail-property market as a whole during the years covered by Gateway Arthur's appeals. Thus, if Beckman's failure to explain how the allocated sale price related to most of the valuation dates at issue was the only evidentiary problem with that sale price, that sale price arguably might have some measure of probative value.

65. But that is not the only evidentiary problem with the allocated sale price. The Assessor did not offer reliable evidence to prove what the allocated sale price actually was. The \$21,000,000 figure that Beckman cited to 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 incorrectly listing the "sale" and "deed" dates and omitting several parcels that were included in the sale. The transfer history log attached to the property record cards lists the correct deed date, and 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.

66. Even if one assumes that the printout or transfer log accurately reflect the price that was listed on the original sales disclosure form, there is nothing in the record about the basis underlying the allocation. Plus, as Correll testified, parties to portfolio sales have various motives when deciding what portion of the overall sale price to allocate to individual properties. And not all of those motives directly relate to the property's market value-in-use. One, however, must be careful not to overstate that concern. The entity that bought the subject property, Gateway Arthur, is a party to this litigation. And Emmes, which was also involved in the sale, hired the Correll appraisers. Thus, Gateway Arthur and the Correll appraisers were in the best position to explain whether the allocation was

motivated by factors other than a desire to reflect the portion of the sale price that they felt was attributable to the subject property's real estate value.

67. At the end of the day, however, there are too many problems with the purported \$21,000,000 allocated sale price for that price to be given 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 values that were less than \$21,000,000 for three of the four years at issue.
68. In any case, the Board is more persuaded by the Correll appraisers' valuation opinions than it is by any of the other evidence. The appraisers more faithfully applied generally accepted appraisal principles than did Beckman. And they investigated the property's condition, market position, and operating history in far greater depth than did Beckman, who did little in that regard. Between their revised report and Correll's testimony, they offered a detailed and persuasive explanation of their analyses.
69. As explained above, however, the Correll appraisers' valuation opinions did have one significant flaw—they failed to include taxes that tenants of the Kroger/Incredible Pizza space paid directly to local officials. And if one uses Beckman's estimate of those payments, that omission led the Correll appraisers to underestimate the property's value by approximately \$1,000,000 for each year. The Board therefore finds that the subject property's true tax value was the following amount for each assessment year at issue in these appeals:

Assessment Date	True Tax Value
March 1, 2007	\$13,800,000
March 1, 2008	\$14,800,000

March 1, 2009	\$13,900,000
March 1, 2010	\$11,300,000

70. The Board proceeds with caution in reaching this conclusion. Appraisal is more art than science, and an appraiser's valuation opinion is not simply a mathematical calculation. Thus, one cannot always substitute different data into an appraiser's analysis and say that nothing else in that analysis would have changed. Nonetheless, on these facts, the preponderance of the evidence shows that subject property's market value-in-use is no more than what the Correll appraisers estimated for each year, augmented by \$1,000,000 to account for their omission of property taxes paid directly by tenants to local officials.

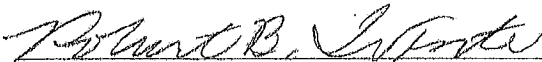
CONCLUSION

71. The Correll appraisers' valuation opinion was more persuasive than what the Assessor offered: (1) Beckman's valuation opinion in which she significantly misconstrued the effect of property tax liability on the subject 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 \$423.5 million portfolio sale involving 36 properties. Nonetheless, the Correll appraisers failed to account for property taxes paid directly by tenants to taxing authorities, which caused the appraisers to underestimate the property's value by approximately \$1,000,000 for each year. The Board therefore finds that the property's true tax value for each year under appeal was \$1,000,000 more than what the appraisers estimated. Because that is still far less than what the property was assessed for in each year, those assessments must be changed.

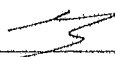
FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the combined assessment for the six parcels under appeal should be changed to the following amounts for the tax years under appeal:

Assessment Date	True Tax Value
March 1, 2007	\$13,800,000
March 1, 2008	\$14,800,000
March 1, 2009	\$13,900,000
March 1, 2010	\$11,300,000


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>.