

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

REPRESENTATIVE FOR RESPONDENT:  
John C. Slatten, Counsel for the Marion County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Washington Square Mall, LLC,	)	Petition Nos.:	49-700-06-1-4-01861
DeBartolo Realty Partnership, LP,	)		49-700-06-1-4-01862
and Simon Capital, LP,	)		49-700-06-1-4-01863
	)		49-700-06-1-4-01864
	)		49-700-07-1-4-00001
	)		49-700-07-1-4-00002
	)		49-700-07-1-4-00003
	)		49-700-07-1-4-00004
Petitioners,	)		49-700-08-1-4-00001
	)		49-700-08-1-4-00002
	)		49-700-08-1-4-00003
	)		49-700-08-1-4-00004
	)		49-700-09-1-4-00001
	)		49-700-09-1-4-00002
v.	)		49-700-09-1-4-00003
	)		49-700-09-1-4-00004
	)		49-700-10-1-4-00001
	)		49-700-10-1-4-00002
	)		49-700-10-1-4-00003
	)		49-700-10-1-4-00004
Marion County Assessor,	)		
	)	Parcel Nos.:	7034116
	)		7034117
	)		7034274
	)		7034624
	)		
Respondent.	)	County:	Marion
	)		
	)	Assessment Years:	2006 through 2010

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

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**September 24, 2012**

## **FINAL DETERMINATION**

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

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

#### **ISSUE**

1. The issue presented for consideration by the Board is whether the assessed values of the Petitioners' properties were over-stated for the 2006, 2007, 2008, 2009 and 2010 assessment years.

#### **PROCEDURAL HISTORY**

2. The Petitioners initiated their 2006 assessment appeals by filing Form 130 Petitions with the Marion County Property Tax Assessment Board of Appeals (the PTABOA) on June 7, 2007. The PTABOA issued its determination on March 22, 2011.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed their Form 131 Petitions for Review of Assessment on March 28, 2011, petitioning the Board to conduct an administrative review of the properties' 2006 assessments.
4. The Petitioners initiated their assessment appeals for 2007 by letter dated July 5, 2009. The Petitioners initiated their assessment appeals for 2008, by letter dated November 26, 2009. The Petitioners initiated their assessment appeals for 2009, by letter dated May 13, 2010, and the Petitioners initiated their assessment appeals for 2010, by letter dated November 23, 2010.
5. The PTABOA failed to hold a hearing on the Petitioners' 2007, 2008, 2009, and 2010 appeals within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1(k) ("the

county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.”)

6. The Petitioners filed Form 131 petitions with the Board on May 31, 2011, for the 2007, 2008 and 2009 assessment years and the Petitioners filed Form 131 petitions on June 3, 2011, for the 2010 assessment year. *See* Ind. Code § 6-1.1-15-1(o)(1) (“If the maximum time elapses under a subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.”)

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

7. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Carol Comer, held a hearing from March 26, 2012, through March 29, 2012, in Indianapolis, Indiana.
8. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Carla Bishop, Meritax Property Tax Consultants,  
Steve Kingsley, Vice-President of Operations, Simon Property Group,  
Peter F. Korpacz, Appraiser, MAI, CRE, FRICS,

For the Respondent:

Will Stump, Certified General Appraiser, MAI and SRA,  
Eve Beckman, Marion County Assessor’s Office.

9. The Petitioners presented the following exhibits:

Petitioner Exhibit 1 – Stump & Associates assessed values versus final values,  
Petitioner Exhibit 2 – Stump & Associates final values versus assessed value,<sup>1</sup>

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<sup>1</sup> Mr. Slatten objected to Exhibits 1 and 2 as being cumulative because the properties’ assessed values had already been determined. The Petitioners’ counsel contends the exhibits show the disparity between the assessed values and the values in Mr. Stump’s report. The ALJ admitted the exhibits over objection.

Petitioner Exhibit 3 – Criminal Incident Analysis,<sup>2</sup>  
Petitioner Exhibit 4 – Data on Village Mall,  
Petitioner Exhibit 5 – Data on Maplecrest Mall,  
Petitioner Exhibit 6 – Data on Maplewood Mall,  
Petitioner Exhibit 7 – Data on Clarksville Towne Center,  
Petitioner Exhibit 8 – Data on Ultra Plaza,  
Petitioner Exhibit 9 – Sales disclosure form for Lafayette Square Mall,  
Petitioner Exhibit 10 – Greyfield Regional Mall Study,  
Petitioner Exhibit 11 – Korpacz Appraisal Report (Confidential),  
Petitioner Exhibit 12 – Redacted version of the Korpacz Appraisal Report,  
Petitioner Exhibit 13 – Washington Square Mall Assessment Summary,<sup>3</sup>  
Petitioner Exhibit 14 – Schedule of Prospective Cash Flow,  
Petitioner Exhibit 15 – Email exchange between Paul M. Jones and John Slatten  
regarding the properties' assessed values for 2010.

10. The Respondent presented the following exhibits:<sup>4</sup>

Respondent Exhibit 1 – Property record cards for the subject properties,  
Respondent Exhibit 2 – Property record cards for the subject properties,  
Respondent Exhibit 3 – Review of the 2010 Korpacz Realty Advisors' appraisal  
(Confidential),  
Respondent Exhibit 4 – Korpacz Realty Advisors' Real Property Valuation, dated  
October 2010 (Confidential),<sup>5</sup>  
Respondent Exhibit 6 – Statement of Operations for Simon Property Group,  
January 2006 to February 2010 (Confidential),  
Respondent Exhibit 7 – Aerial photograph of the subject properties,  
Respondent Exhibit 8 – Direct capitalization method prepared by Ms. Beckman,<sup>6</sup>  
Respondent Exhibit 9 – Tenant Detail Summary (Confidential),  
Respondent Exhibit 10 – Gross lease analysis,  
Respondent Exhibit 11 – Article from *The Business Review*,  
Respondent Exhibit 12 – Article concerning sale of the Tulsa Promenade Mall,  
Respondent Exhibit 13 – News release concerning the opening of the cinema at  
Wilson Mall,

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<sup>2</sup> Mr. Slatten objected to the admission of Exhibit 3 as irrelevant. The ALJ admitted the exhibit over objection finding the objection went to the weight of the evidence rather than to the admissibility of the exhibit.

<sup>3</sup> Mr. Slatten objected to the assessment summary on the basis of accuracy and redundancy. The ALJ determined the numbers were accurate as shown in Respondent Exhibit 3 and admitted the exhibit over objection.

<sup>4</sup> The Respondent did not submit an Exhibit 5.

<sup>5</sup> Mr. Jones objected to Exhibit 4 because it was not included in the exchange of evidence and also because it was part of a confidential PTABOA proceeding. The ALJ, however, noted that it was the Petitioners' own document and admitted the exhibit over objection.

<sup>6</sup> Mr. Jones objected to the valuation analysis because it had not been exchanged prior to the hearing as required. Mr. Slatten argued the exhibit was rebuttal evidence and did not exist at the time of the evidence exchange. The ALJ admitted the exhibit over objection.

Respondent Exhibit 14 – News release concerning the acquisition of Parkwood Mall,

Respondent Exhibit 15 – Excerpts from THE APPRAISAL OF REAL ESTATE, eleventh edition.

11. The Form 131 Petitions are officially recognized as part of the record of proceedings and labeled as Board Exhibit A.
12. At the hearing, the Respondent's counsel requested permission to submit a post-hearing brief. The Petitioners' counsel requested time to respond to the Respondent's brief. The Administrative Law Judge allowed the Respondent thirty days to submit its post-hearing brief and allowed the Petitioners ten days to respond to the Respondent's brief. The Respondent failed to submit a post-hearing brief. The Petitioner submitted a post-hearing brief on May 9, 2012.
13. The properties at issue in this appeal include an enclosed regional mall on 51.41 acres of land identified as Parcel 7034116 (Parcel 4116); a discount store on 9.52 acres of land identified as Parcel 7034274 (Parcel 4274); 8.24 acres of unimproved land identified as Parcel 7034117 (Parcel 4117); and 2.49 acres of unimproved land identified as Parcel 7034624 (Parcel 4624). All four parcels comprise the Washington Square Mall located at 10202 East Washington Street in Indianapolis, Indiana.
14. The ALJ did not conduct an on-site inspection of the mall property.
15. For 2006, the PTABOA determined the assessed values of the property to be \$8,837,900 for the land and \$17,466,700 for the improvements, for a total assessed value of \$26,304,600 for Parcel 4116; \$1,803,400 for the land and \$1,119,700 for the improvements, for a total assessed value of \$2,923,100 for Parcel 4274; \$18,000 for the land for Parcel 4117; and \$283,100 for the land for Parcel 4624.
16. For 2007, the assessor determined the assessed values of the property to be \$8,838,000 for the land and \$12,699,200 for the improvements, for a total assessed value of

\$21,537,200 for Parcel 4116; \$2,861,000 for the land and \$2,934,700 for the improvements, for a total assessed value of \$5,795,700 for Parcel 4274; \$18,000 for the land for Parcel 4117; and \$683,300 for the land for Parcel 4624.

17. For 2008, the assessor determined the assessed values of the property to be \$8,840,800 for the land and \$12,699,200 for the improvements, for a total assessed value of \$21,540,000 for Parcel 4116; \$2,861,000 for the land and \$2,934,700 for the improvements, for a total assessed value of \$5,795,700 for Parcel 4274; \$32,300 for the land for Parcel 4117; and \$683,300 for the land for Parcel 4624.
18. For 2009, the assessor determined the assessed values of the property to be \$8,840,000 for the land and \$12,702,700 for the improvements, for a total assessed value of \$21,542,700 for Parcel 4116; \$2,861,000 for the land and \$2,934,700 for the improvements, for a total assessed value of \$5,795,700 for Parcel 4274; \$32,300 for the land for Parcel 4117; and \$683,300 for the land for Parcel 4624.
19. For 2010, the assessor determined the assessed values of the property to be \$8,840,000 for the land, and \$27,720,100 for the improvements, for a total assessed value of \$36,560,100 for Parcel 4116; \$2,861,000 for the land, and \$2,934,700 for the improvements, for a total assessed value of \$5,795,700 for Parcel 4274; \$32,300 for the land for Parcel 4117; and \$683,300 for the land for Parcel 4624.<sup>7</sup>

### **JURISDICTIONAL FRAMEWORK**

20. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of

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<sup>7</sup> According to the Respondent's counsel, the assessor changed the assessed value for Parcel 4116 on October 29, 2010, from \$36,560,900 to \$20,321,300. The Petitioners' counsel acknowledged a correction had been made.

appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **PETITIONERS' CONTENTIONS**

21. The Petitioners contend that the assessed value of their property was over-stated for the 2006, 2007, 2008, 2009, and 2010 assessment years. The Petitioners presented the following evidence in support of their contentions:
  - A. The subject property is an enclosed retail shopping mall containing approximately 448,000 square feet of gross leasable space, commonly known as the Washington Square Mall.<sup>8</sup> *Korpacz testimony*. The Petitioners' counsel presented an appraisal of the subject property dated March 13, 2012, prepared by Peter Korpacz, a certified general appraiser, MAI, SRE, and FRICS. *Petitioner Exhibit 11*. In his report, the appraiser estimated the value of the property to be \$12,250,000 as of January 1, 2005, for the March 1, 2006, assessment year; \$14,200,000 as of January 1, 2006, for the March 1, 2007, assessment year; \$14,900,000 as of January 1, 2007, for the March 1, 2008, assessment year; \$12,000,000 as of January 1, 2008, for the March 1, 2009, assessment year; and \$9,500,000 for the March 1, 2010, assessment year. *Id.*
  - B. Mr. Korpacz testified that in preparing the appraisal, he personally inspected the property on two separate occasions; he prepared a regional overview, which included demographic and economic trends; he prepared a trade area analysis; and he reviewed comparable sales of regional malls and investor surveys to extract market-derived capitalization rates. *Korpacz testimony; Petitioner Exhibit 11*.

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<sup>8</sup> This was the gross leasable area (GLA) owned by the Petitioners as of January 1, 2005. According to Petitioners' Exhibit 11, the GLA varied every year due to the reconfiguration of leased space. From 2006 through 2010 the GLA ranged from 443,520 square feet to 447,898 square feet. The GLA of the entire shopping center was 921,350 square feet in 2006 and increased to 964,512 square feet in 2007, with the addition of a theater.

Mr. Korpacz also testified that he interviewed the mall manager and company executives regarding the performance of the property, tenant history, rental rates, and competition in the area; and he compiled the necessary documents to complete the appraisal. *Id.*

- C. Mr. Korpacz testified that he inspected the exterior of the mall, including the building's roof, and the interior of the building, including the inline space and the mall common areas, and found significant problems due to the mall's age and deferred maintenance. *Korpacz testimony*. According to Mr. Korpacz, the parking lot needs repaving and the deterioration of the pavement has caused damage to the property's underground wiring. *Id.*; *Petitioner Exhibit 11, Tab 14*. In addition, Mr. Korpacz testified that water puddles on the roof and the roof leaks into the interior mall space. *Id.* Further, the building's heating and air conditioning units are over thirty years old. *Id.* Mr. Korpacz contends that a considerable amount of money needs to be spent on maintenance – which would impact what a buyer would pay for the property. *Id.*
- D. In his analysis, Mr. Korpacz also included an overview of the regional and the local market conditions that would impact the subject property and his value conclusions for each year under appeal. *Petitioner Exhibit 11, pp. 18-29*. According to Mr. Korpacz, changes in population, number of households, and employment in the property's market area are expected to be below both the national and the Metropolitan Statistical Area (MSA) levels and economic and demographic growth is expected to be much slower in the future. *Id.* Thus, Mr. Korpacz testified, the mall will not attract many national tenants or fashion stores, but instead will attract discount-oriented tenants. *Id.* Moreover, reconstruction of U.S. 40 limited access to the mall which caused the mall's customer base to further dwindle. *Id.* In addition, Mr. Korpacz testified, there are five regional malls and one open-air center within a fifteen-mile radius of the subject property, which compete with each other for customers. *Id.*



- E. Mr. Korpacz testified that the property is an older regional mall built in 1974. *Korpacz testimony*. A Target store was built in 1999 and \*\*Junior Anchor 2\*\* was added in 2004. *Id.* According to Mr. Korpacz, during the relevant time period, Washington Square Mall had three anchors: Sears, Target, and Macy's. *Id.*; *Petitioner Exhibit 11, pp. 38-40*. Macy's, however, closed in 2008. *Id.* The Mall also had two junior anchors: \*\*Junior Anchor 1\*\* and \*\*Junior Anchor 2\*\*, both owned by the mall; and two outlot parcels with a theater and a Bridgestone/Firestone store. *Id.* There were also 96 inline stores. *Id.*
- F. Mr. Korpacz testified that operating agreements were in place with all three anchor stores for the assessment years under appeal, but the stores' use agreements had expired – which allowed the tenants to take their name off the building and put someone else in their space for the term of the lease. *Korpacz testimony; Petitioner Exhibit 11 at 38*. Mr. Korpacz contends that when a mall has a problem with either a use agreement that has expired or an operating agreement expiring in the near term, investors are nervous about that investment. *Id.* Mr. Korpacz also noted that each of the stores was performing very poorly compared to other locations in terms of sales per square foot and profits. *Id.*
- G. Mr. Korpacz testified that the junior anchors fared better than the department stores at the mall. *Korpacz testimony; Petitioner Exhibit 11, pp. 40-41*. According to Mr. Korpacz, \*\*Junior Anchor 1's\*\* sales were relatively stable. *Id.* While there was not much growth, there was not any serious decline in the store's sales during the relevant time period. *Id.* \*\*Junior Anchor 2\*\*, on the other hand, started in 2004 with \$3.3 million in sales which increased to \$8.4 million by 2007, but then dropped significantly in 2008 and 2009. *Id.* Mr. Korpacz contends that \*\*Junior Anchor 2's\*\* agreement with the mall allowed it to terminate its lease if it failed to achieve a certain level of sales; and on February 15, 2010, \*\*Junior Anchor 2\*\* did, in fact, send a letter to management exercising its right to terminate the lease effective February 15, 2011. *Id.* Mr. Korpacz contends this added further risk to the financial viability of the mall. *Id.*

- H. Mr. Korpacz next looked at the inline stores, which he contends are a critical portion of any regional mall because they generate most of the revenue for the mall owner. *Korpacz testimony*. Mr. Korpacz testified that inline occupancy rates were exceedingly low at the mall: 68.2% in 2004; 57.3% in 2005; 68.5% in 2006; 70.6% in 2007; 58.7% in 2008; and 65.1% in 2009. *Id.*; *Petitioner Exhibit 11, pp. 41-42*. According to Mr. Korpacz, the total inline sales declined 40.5% over the relevant period. *Id.* More troubling, Mr. Korpacz testified, the mall lost seventeen national tenants since 2006, which he contends is a clear sign the mall was deteriorating. *Id.*
- I. Mr. Korpacz further contends that many investors would consider Washington Square Mall to be a greyfield mall or at least a mall heading for that designation. *Korpacz testimony; Petitioner Exhibit 11 at 43*. According to Mr. Korpacz, greyfield malls are older, economically obsolete regional malls. *Id.* The determination of whether a mall is a greyfield mall is measured in total sales per square foot. *Id.* The 2001 study defining greyfield malls determined properties with sales of \$150 per square foot and below are greyfield malls. *Id.* However, if the study was updated, Mr. Korpacz argues, the criteria for a greyfield mall would probably be properties with sales below \$200 or \$250 per square foot because retail sales levels at malls in general have risen since 2001. *Korpacz testimony*.
- J. Mr. Korpacz testified that the property's occupancy costs are another risk factor for an investor. *Korpacz testimony*. Occupancy costs reflect total rent and any reimbursements paid to the landlord as a percentage of tenant sales. *Id.*; *Petitioner Exhibit 11, pp. 42-43*. According to Mr. Korpacz, investors like occupancy costs that are lower than normal because they have an opportunity to make more revenue. *Id.* Also, a lower rate indicates a higher likelihood that the tenants are profitable at that location. *Id.* Mr. Korpacz contends that acceptable occupancy costs for a mall with a D classification ranged from 9% to 11% prior to January 1, 2010, and ranged from 11.5% to 12% after January 1, 2010. *Id.* The

occupancy costs at the subject property, however, fluctuated from a high of 13.8% in 2002 to a low of 11.4% in 2006. *Id.* Moreover, occupancy costs increased from 2007 to 2009. *Id.*

- K. Based on the above issues, Mr. Korpacz developed an opinion of value for the Washington Square Mall for each of the assessment years at issue in this appeal.
- L. For March 1, 2006, Mr. Korpacz testified that he developed the sales comparison approach based on nine comparable properties that sold between 2004 and 2006. *Korpacz testimony; Petitioner Exhibit 11, pp. 48-52.* According to Mr. Korpacz, the properties had sales per square foot that ranged from \$107 to \$290 and each mall was classified as a C+ or D grade mall. *Id.* Mr. Korpacz testified that he analyzed the characteristics of the comparable properties, such as market conditions, mall size, inline and anchor stores, tenant quality, retail sales, contract or market rent, and net operating income per square foot. *Id.* According to Mr. Korpacz, he compared the properties “qualitatively” by determining if they were inferior, superior, or similar to the subject property and he valued the subject property between the sale price per square foot of the lowest superior property and the sale price per square foot of the highest inferior property. *Id.* Mr. Korpacz then charted the relationship between the net operating income per square foot and the price per square foot and determined that the subject property would sell for about \$27 per square foot, or \$12,000,000 as of March 1, 2006. *Id. at 52; Korpacz testimony.*
- M. Mr. Korpacz also determined the value of the subject property for 2006 based on the yield capitalization method of the income approach to value. *Korpacz testimony; Petitioner Exhibit 11, pp. 53-62.* Mr. Korpacz testified that he used market rents and occupancy rates to determine the property’s fee simple value. *Id.* In estimating the market rents for the inline tenants at the mall, Mr. Korpacz testified that he analyzed recent lease abstracts, he examined the actual spaces, and he reviewed leasing plans. *Id.* In addition, Mr. Korpacz testified that he

reviewed the terms of recently signed leases at Lafayette Square Mall, which is also located in Indianapolis and suffers from similar issues as the subject property. *Id.* Based on those leases, Mr. Korpacz determined that the leases at market value would be “gross leases” and he estimated the rent for the inline tenants to be \$200 per square foot for kiosks, \$45 per square foot for inline spaces between 1 and 999 square feet; \$20 per square foot for inline spaces between 1,000 and 3,999 square feet; \$10 per square foot for inline spaces between 4,000 and 9,999 square feet, (which would increase \$1.50 per square foot in the fourth year of the analysis); and \$10 per square foot for inline spaces 10,000 square feet and greater, (which would increase \$0.50 in the sixth year of the analysis); for every assessment year except 2010, in which he determined the market rent for inline spaces 10,000 square feet and greater would be \$5 per square foot. *Id.* Mr. Korpacz assumed that for the junior anchors, \*\*Junior Anchor 1\*\* would pay \$5.20 per square foot with no increase over the life of the analysis and \*\*Junior Anchor 2\*\* would pay \$10.25 per square foot with a \$0.50 per square foot increase in the fifth and tenth years of the analysis, and those tenants paying a percentage of retail sales in lieu of base rent would continue to pay percentage rent which would increase 2% per year. Finally, Mr. Korpacz assumed that the rent received from temporary tenants would increase 2% per year and existing vacant space would remain vacant, but he excluded income from the department stores and out parcels “because they were not part of this appraisal.” *Id.*

- N. Mr. Korpacz assumed that miscellaneous rent would start at approximately the 2006 level and increase 2% per year and “other income” would be \$30,000 in 2006 and increase 2% per year thereafter. *Korpacz testimony; Petitioner Exhibit 11, pp. 53-62.* Because he assumed that market value leases of inline spaces would be “gross leases,” Mr. Korpacz assumed that the inline tenants would not pay common area maintenance (CAM) expenses or real estate taxes, but anchor tenants would contribute to CAM and junior anchors would contribute to real estate taxes. *Id.* Mr. Korpacz also assumed that 60% of the utility expense would

be reimbursed and 90% of the advertising and promotional expenses would be reimbursed. *Id.*

- O. Similarly, Mr. Korpacz assumed operating expense values would start close to their 2006 budgeted amounts and would increase 2% each year. *Korpacz testimony; Petitioner Exhibit 11, pp. 53-62.* He also assumed a 5% management fee for the property and a structural reserve of \$0.50 per square foot which would increase 2% per year. *Id.* In addition, Mr. Korpacz assumed the mall owner would offer a concession in the amount of \$10 per square foot for leasing inline spaces between 4,000 and 9,999 square feet in size and a concession of \$75 per square foot for leasing inline spaces that are 10,000 square feet and larger. *Id.* Finally, Mr. Korpacz assumed that only 60% of the existing tenants would renew their leases and that there would be an eight month vacancy on each space between leases. *Id.*
- P. Based on these assumptions, Mr. Korpacz estimated a net operating income of \$1,412,109 for the property for the 2006 assessment year. *Korpacz testimony; Petitioner Exhibit 11, pp. 53-62.*
- Q. In order to determine the capitalization rates for his analysis, Mr. Korpacz testified that he analyzed the real estate investment parameters of various institutional investors as reported in the *Korpacz Real Estate Investor Survey* and *RERC Winter 2006 Real Estate Report*. *Korpacz testimony; Petitioner Exhibit 11, pp. 61-62.* According to Mr. Korpacz, the RERC survey showed that discount rates for third-tier regional malls<sup>9</sup> in the Midwest ranged from 11% to 13.5% and terminal capitalization rates ranged from 9% to 10%. *Id.* The Korpacz report, which Mr. Korpacz testified does not provide a detailed breakdown, indicated that discount rates for regional malls ranged from 7% to 11% and terminal capitalization rates ranged from 6.5% to 10%. *Id.* Mr. Korpacz contends that,

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<sup>9</sup> Third-tier regional malls are defined as older properties with functional inadequacies and/or marginal locations.

because Washington Square Mall is a Class D regional mall with increasing occupancy costs, declining sales, and increasing vacancy, it would be at or above the high end of the range. *Id.*

- R. Based upon his analysis, Mr. Korpacz determined that a 12% discount rate and a 13% terminal rate reflected the characteristics of the subject property and the risks perceived by investors. *Petitioner Exhibit 11 at 62.* Discounting ten years of projected cash flow at the discount rate and discounting the reversion, which Mr. Korpacz calculated to be the 11<sup>th</sup> year's cash flow less a 2% commission, at the terminal capitalization rate, Mr. Korpacz estimated the value of the subject property to be \$13,000,000 as of March 1, 2006. *Id.*
- S. Similarly, Mr. Korpacz developed a value for the subject property based on the direct capitalization method. *Korpacz testimony; Petitioner Exhibit 11, pp. 62-65.* For the direct capitalization method, Mr. Korpacz testified that he used all the same rent and expense assumptions as he used in the yield capitalization method; however, in the direct capitalization method, he excluded any reimbursement for property taxes as revenue and he excluded real estate taxes as an expense because they are loaded into the capitalization rate. *Id.* Based on these assumptions, Mr. Korpacz calculated a net operating income of \$1,993,459 for the property for 2006. *Id.*
- T. Mr. Korpacz testified that he again used investor surveys and a comparable sales analysis to determine the capitalization rate for 2006. *Korpacz testimony; Petitioner Exhibit 11, pp. 62-64 and Tab 19.* According to Mr. Korpacz, the RERC survey indicated a capitalization rate of 8.5% to 10% for third-tier malls in the Midwest and the Korpacz survey showed a range of 8.5% to 11% for C+ malls. *Id.* Further, three Class D malls sold during the relevant time period with overall rates ranging from 12.37% to 18.93%. *Id.* Because the subject mall is a Class D mall, Mr. Korpacz contends, the capitalization rate would be at or above the high end of the capitalization ranges. *Id.* Therefore, Mr. Korpacz testified, he

used a capitalization rate of 14% and added the tax rate for an adjusted rate of 16.60%, which resulted in an estimated value of \$12,000,000 for the subject property for March 1, 2006, using the direct capitalization method. *Id.*

- U. Mr. Korpacz reconciled his estimated values from the yield capitalization method, the direct capitalization method, and the sales comparison approach to a value of \$12,500,000 for the subject property for 2006. *Korpacz testimony; Petitioner Exhibit 11, pp. 62-64 and Tab 19.* To trend the March 1, 2006, value to the January 1, 2005, valuation date, Mr. Korpacz testified that he looked at the changes in the regional mall sale capitalization rates for the first quarter of 2006 and the last quarter of 2004. *Korpacz testimony; Petitioner Exhibit 11, pp. 66-67.* He also looked at the average change in retail property overall capitalization rates regionally and nationally and the changes in price per square foot for retail properties regionally and nationally. *Id.* According to Mr. Korpacz, the data averaged 5.59%. *Id.* Using a 6% trending adjustment, Mr. Korpacz estimated the value of the subject property to be \$12,250,000 as of the January 1, 2005, valuation date.<sup>10</sup> *Id.*
- V. For the March 1, 2007, assessment date, Mr. Korpacz again looked at economic and regional trends, property information and the property's operating performance. *Korpacz testimony.* According to Mr. Korpacz, the economy was contracting from 2005 to 2006 and gross sales at the property went down. *Id.* However, the inline occupancy at the subject mall increased due to the addition of Steve & Barry's to the tenant list and occupancy costs improved somewhat in 2006. *Id.* Mr. Korpacz also testified that the gross leasable area of the mall changed slightly because tenants moved in and out and the space was reconfigured. *Id.*

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<sup>10</sup> The Board notes that a 6% "trending" adjustment would appear to be \$750,000 rather than the \$250,000 that the Petitioners' appraiser calculated.

- W. Mr. Korpacz testified that in preparing a sales comparison analysis for March 1, 2007, he dropped the older sales from the sales comparison grid he used for 2006 and added two more recent sales. *Korpacz testimony; Petitioner Exhibit 11, pp. 68-71.* According to Mr. Korpacz, based on his analysis, he estimated a value of \$45 per square foot for the Petitioner's property, resulting in an estimated value of \$20,000,000 as of March 1, 2007. *Id.*
- X. Mr. Korpacz also applied the yield capitalization method to value the subject property for 2007. *Korpacz testimony; Petitioner Exhibit 11, pp. 71-73.* According to Mr. Korpacz, he estimated the property's income and expenses for the year using the same assumptions that he applied to the 2006 assessment year. *Id.* Further, after reviewing the investor surveys for the relevant time period, Mr. Korpacz estimated the discount rate and termination capitalization rate to be the same as in 2006. *Id.* Based on these assumptions, Mr. Korpacz concluded the value of the subject property using the yield capitalization method was \$15,000,000 for 2007. *Id.*
- Y. Finally, Mr. Korpacz calculated a value for the subject property using the direct capitalization method. *Korpacz testimony; Petitioner Exhibit 11, 73-75.* After updating the income and expenses for the time period, Mr. Korpacz arrived at a net operating income of \$2,376,648. *Id.* Based on four sales, Mr. Korpacz determined the overall capitalization rate to be 14% and then loaded the tax rate of 2.89%. *Id.* Based on these assumptions, Mr. Korpacz concluded the value of the subject property using the direct capitalization method was \$14,000,000 for 2007. *Id.*
- Z. Mr. Korpacz reconciled his sales comparison, yield capitalization and direct capitalization values for the subject property to \$14,500,000 and trended the March 1, 2007, value to the January 1, 2006, valuation date by 2%, which he calculated by using the same method he used for the previous assessment year. *Korpacz testimony; Petitioner Exhibit 11, 73-77.* Mr. Korpacz determined the



2007 value of the subject property trended to January 1, 2006, was \$14,200,000. *Id.*

- AA. For 2008, Mr. Korpacz again looked at changes in the economic trends and demographics, and the changes in the property that affected the property's value. *Korpacz testimony; Petitioner 11, 11-17.* Mr. Korpacz contends that 2007 was a transition year for real estate. *Id.* According to Mr. Korpacz, the peak of the market occurred in the first half of 2007 and prices began to decline in the second half of 2007. *Id.* In August of 2007, the commercial mortgage-backed securities market stopped providing financing for real estate transactions, which started the downturn. *Id.* Mr. Korpacz testified that retail sales for the anchor stores in 2007 were still positive but lower than they had been in 2006. *Id.* \*\*Junior Anchor 1's\*\* retail sales decreased slightly while \*\*Junior Anchor 2's\*\* sales increased and occupancy held at about 70%. *Id.* Further, the gross leasable area of the mall declined slightly due to the reconfiguration process, but Mr. Korpacz testified there was no change in the condition of the property. *Id.*
- BB. Mr. Korpacz testified that, in preparing his sales comparison analysis for March 1, 2008, he dropped some of the older sales and added more recent sales – in particular, Lafayette Square Mall, which he felt was the most comparable property among all of the sales. *Korpacz testimony; Petitioner Exhibit 11, pp. 78-82.* The eight sales he analyzed for the 2008 assessment year averaged \$57 per square foot. *Id.* Believing this value to be too high for the subject property, Mr. Korpacz limited his analysis to the Class C and Class D malls, because he believed they were more comparable in quality to the subject mall. *Id.* Based on his analysis of those three sales, Mr. Korpacz estimated the value of the property to be \$37 per square foot, or \$16,500,000, as of March 1, 2008. *Id.*
- CC. Mr. Korpacz again applied the yield capitalization method for 2008. *Korpacz testimony; Petitioner Exhibit 11, pp. 83 and 84.* Mr. Korpacz estimated income and expenses based on a review of the property's historical income and expenses

and he estimated the property's market rents based on a review of recent leasing activity using the same assumptions as he developed for the 2006 assessment year. *Id.* Mr. Korpacz testified that the discount rates for third-tier malls in the Midwest were between 10% and 12.5% in the RERC Winter 2008 *Real Estate Report* and terminal capitalization rates ranged from 8.50% to 10.50%. *Id.* Similarly, the Fourth Quarter 2007 *Korpacz Real Estate Investor Survey* indicated discounts rates for regional malls ranged from 7% to 11% and terminal capitalization rates ranged from 6% to 11%. *Id.* However, because of the 19.5% decline in sales at the mall between 2006 to 2007 and because of the expected negative impact of Macy's closing in January 2008, Mr. Korpacz estimated the discount rate at 13% and the terminal rate at 14%. *Id.* Based on these assumptions, Mr. Korpacz estimated the value of the subject property to be \$16,000,000 as of March 1, 2008. *Id.*

- DD. Finally, Mr. Korpacz calculated a value for the subject property using the direct capitalization method. *Korpacz testimony; Petitioner Exhibit 11, pp. 84-87.* After updating the income and expenses for the time period using the same assumptions as he developed for 2006, Mr. Korpacz arrived at a net operating income of \$2,529,143. *Id.* Based on comparable sales and the real estate investor surveys, Mr. Korpacz determined the overall capitalization rate to be 15% and then added the tax rate of 2.70%. *Id.* Applying the capitalization rate to the net operating income resulted in an estimated value of \$14,500,000 for 2008. *Id.*
- EE. Mr. Korpacz reconciled his sales comparison, yield capitalization and direct capitalization values for the subject property to \$15,500,000 for 2008 and trended the March 1, 2008, value to the January 1, 2007, valuation date using the same method he used for the 2006 assessment year. *Korpacz testimony; Petitioner Exhibit 11, pp. 88-89.* Mr. Korpacz determined the 2008 value of the subject property trended to January 1, 2007, was \$14,900,000. *Id.*

- FF. Mr. Korpacz contends that 2008 was an extraordinarily negative year in terms of real estate values. *Korpacz testimony*. According to Mr. Korpacz, it was the first full year of the “Great Recession” when the GDP, retail sales, and business spending all turned negative and 3.6 million jobs were lost. *Id.*; *Petitioner Exhibit 11, pp. 12-17*. In terms of property performance, Mr. Korpacz testified, the mall was left with two anchors and both experienced a decline in sales. *Id.* The junior anchor, \*\*Junior Anchor 1,\*\* had a slight increase in sales, but sales for \*\*Junior Anchor 2\*\* decreased significantly. *Id.* Inline mall sales were relatively stable, but the occupancy fell below 60%, which Mr. Korpacz argues is extremely low for a regional mall. *Id.*
- GG. In preparing his sales comparison approach for March 1, 2009, Mr. Korpacz testified that he again dropped the older sales from his sales comparison grid and added more recent sales. *Korpacz testimony; Petitioner Exhibit 11, pp. 90-93*. According to Mr. Korpacz, the seven relevant sales ranged in value from \$16.67 per square foot to \$144.63 per square foot, averaging \$76.39 per square foot. *Id.* Based on his analysis, Mr. Korpacz concluded that the value of the subject property was \$32 per square foot, or \$14,000,000 for 2009. *Id.*
- HH. Mr. Korpacz also applied the yield capitalization method for 2009. *Korpacz testimony; Petitioner Exhibit 11, pp. 94 and 95*. According to Mr. Korpacz, he estimated income and expenses for the year based on a review of the property’s historical income and expenses and estimated market rents based on a review of recent leasing activity using the same assumptions as he developed for the 2006 assessment year. *Id.* He found that the discount rates for third-tier malls in the Midwest were between 10% and 14% in the RERC Winter 2009 *Real Estate Report* and terminal capitalization rates ranged from 8.3% to 13%. *Id.* Similarly, the Fourth Quarter 2008 *Korpacz Real Estate Investor Survey* indicated discount rates for regional malls ranged from 7% to 11%, and terminal capitalization rates ranged from 6% to 10%. *Id.* However, because of Macy’s closing and the departure of Steve & Barry’s which caused occupancy levels and sales to decrease

significantly, Mr. Korpacz estimated the discount rate at 14% and the terminal rate at 15%. *Id.* Based on these assumptions, Mr. Korpacz estimated the value of the subject property to be \$11,500,000 as of March 1, 2009. *Id.*

- II. Mr. Korpacz also calculated a value for the subject property for 2009 using the direct capitalization method. *Korpacz testimony; Petitioner Exhibit 11, pp. 95-98.* After updating the income and expenses for the time period, Mr. Korpacz arrived at a net operating income of \$1,979,596. *Id.* Based on comparable sales and the real estate investor surveys, Mr. Korpacz determined the overall capitalization rate to be 16% and then added the tax rate of 2.57%. *Id.* Applying the capitalization rate to the net operating income, resulted in an estimated value of \$10,500,000 for 2009. *Id.*
- JJ. Mr. Korpacz reconciled his sales comparison, yield capitalization and direct capitalization values for the subject property to \$11,000,000 for 2009 and trended the March 1, 2009, value to the January 1, 2008, valuation date using the same method he developed for the 2006 assessment year. *Korpacz testimony; Petitioner Exhibit 11, pp. 99-100.* Mr. Korpacz determined the 2009 value of the subject property trended to January 1, 2008, was \$12,000,000. *Id.*
- KK. Mr. Korpacz testified that in June 2009 the economy began to recover but there was still a significant loss of jobs and the unemployment rate skyrocketed. *Korpacz testimony; Petitioner Exhibit 11, pp. 11-17.* According to Mr. Korpacz, total retail sales were off by 7.5% - which represented a significant drop in consumer spending. *Id.* At the subject property, Mr. Korpacz testified that there was a slight increase in inline occupancy but that was only because the mall leased a large space to **\*\*a tenant\*\*** for only **\*\*\$\_\_\_\_\*\*** per square foot in an attempt to keep the mall's occupancy above the level that would allow **\*\*Junior Anchor 2\*\*** to exercise its right to terminate its lease. *Korpacz testimony; Petitioner Exhibit 11, pp. 38-46.* Despite the mall owners' efforts, however, **\*\*Junior Anchor 2\*\*** notified the Petitioners on February 15, 2010, that it was

terminating its lease effective February 15, 2011. *Id.* More importantly, the inline stores experienced a significant downturn in 2009; sales decreased from \$21.33 million to \$16.86 million and the sales per square foot dropped from \$172.55 to \$142.92. *Id.* In addition, space leased to temporary tenants declined. *Id.* According to Mr. Korpacz, given the huge decline in sales and occupancy, the continued problem with Macy's being unoccupied, and the inability of the mall owners to attract national tenants to the property, the market would view the property as a greyfield mall by 2010. *Id.*

- LL. In valuing the Petitioners' property for March 1, 2010, Mr. Korpacz developed the sales comparison approach based on the six most recent sales available. *Korpacz testimony; Petitioner Exhibit 11, pp. 101-104.* The price per square foot for the comparable sales ranged from \$16.67 to \$144.63, with an average of \$59.25. *Id.* Based on a comparison of the subject property's net operating income with the other properties in his analysis, Mr. Korpacz estimated the property's value at \$31 per square foot, or \$14,000,000 for March 1, 2010. *Id.*
- MM. Mr. Korpacz also applied the yield capitalization method for 2010. *Korpacz testimony; Petitioner Exhibit 11, pp. 105-107.* Mr. Korpacz testified that he estimated income and expenses for the year based on a review of the property's historical income and expenses and estimated market rents based on a review of recent leasing activity using the same assumptions as he developed for the 2006 assessment year. *Id.* For 2010, however, Mr. Korpacz estimated the value of the leases of inline spaces 10,000 square feet and greater at \$5.00 per square foot, increased the vacancy between leases to nine months, and increased the property's structural reserves because of the condition of the mall. *Id.*
- NN. Mr. Korpacz testified that the discount rates for third-tier malls in the Midwest were between 10% and 14% in the RERC Winter 2010 *Real Estate Report* and terminal capitalization rates ranged from 9.3% to 13%. *Id.* Similarly, the Fourth Quarter 2009 *Korpacz Real Estate Investor Survey* indicated discount rates for

regional malls ranged from 7% to 17%, and terminal capitalization rates ranged from 6.25% to 12%. *Id.* However, because Macy's remained vacant, \*\*Junior Anchor 2\*\* had exercised its option to terminate its lease, and the Petitioners had negotiated restructured leases with many of the national retailers to be "percentage of retail sales leases," Mr. Korpacz estimated the discount rate at 14% and the terminal rate at 15%. *Id.* Based on these assumptions, Mr. Korpacz estimated the value of the subject property to be \$9,000,000 as of March 1, 2010. *Id.*

OO. Finally, Mr. Korpacz calculated a value for the subject property for 2010 using the direct capitalization method. *Korpacz testimony; Petitioner Exhibit 11, pp. 107-109.* After updating the income and expenses for the time period, Mr. Korpacz arrived at a net operating income of \$1,815,746. *Id.* Based on comparable sales and the real estate investor surveys, Mr. Korpacz determined the overall capitalization rate to be 16% and then added the tax rate of 2.36%. *Id.* Applying the capitalization rate to the net operating income, resulted in an estimated value of \$10,000,000 for 2010. *Id.*

PP. Mr. Korpacz reconciled his sales comparison, yield capitalization and direct capitalization values for the subject property to \$9,500,000 for the March 1, 2010, assessment date. *Petitioner Exhibit 11, p. 110.* Because the valuation date for the March 1, 2010, assessment was March 1, 2010, however, Mr. Korpacz testified, he did not need to trend the property's 2010 value. *Id.*

QQ. In response to the Respondent's evidence, Ms. Bishop testified that she researched the five properties that the Respondent's appraiser used in his market analysis. *Bishop testimony; Petitioner Exhibits 4-8.* According to Ms. Bishop, the Village Mall in Danville, Illinois, is 104 miles from the subject property and the nearest competing mall is 42 miles away. *Id.* In addition, the inline area for this mall is only 23.25% of the gross leasable area and the anchors were owned by the mall. *Id.* Mr. Stump's second comparable property, Maplecrest Plaza, is 59 miles

from the subject property and is a grocery store-anchored center which was part of a five-property portfolio purchase. *Id.* Maplewood Plaza, Mr. Stump's third sale, is also grocery-anchored center. *Id.* It is located 128 miles from the subject property. *Id.* Similarly, Clarksville Town Center is 114 miles from the subject property. *Id.* It is anchored by an Office Depot and a grocery store and has only 21,037 square feet of inline gross leasable area. *Id.* Finally, Ultra Plaza, another grocery store-anchored center, was marketed with an adjoining parcel. *Id.* It only has 24,417 square feet of leasable area for small shops and is located 164 miles from the Petitioners' property. *Id.*

RR. Mr. Korpacz contends that retail properties are generally subdivided into a number of categories, but the three primary ones are grocery store-anchored neighborhood centers, community strip-type centers and regional malls. *Korpacz testimony.* According to Mr. Korpacz, in looking at comparable leases or comparable sales for a regional mall, appraisers look at the sales and leases for regional malls; not sales or leases of grocery store-anchored malls or community centers because regional malls are enclosed and have different issues, expenses, and risks. *Id.*

SS. Similarly, Mr. Kingsley testified that enclosed malls are different than other categories of retail properties because they are built on the premise of fashion department stores or full-line department stores complimented by fashion retail. *Kingsley testimony.* The driving force is women's ready-to-wear. *Id.* According to Mr. Kingsley, strip centers and grocery store-anchored centers are convenience-driven and those with larger footprint stores, like Big Lots or Aarons, are less likely to have a lot of area dedicated to small retail. *Id.* Further, the physical layout of an enclosed mall is different and the operating expenses are very different because the interior of a mall has to be cleaned, heated and cooled and the common areas have to be landscaped. *Id.*

- TT. In his post-hearing brief, the Petitioners' counsel argues that the Respondent had the burden of proof for the 2006 assessment date and failed to establish a prima facie case that the property's assessment was correct. *Petitioner's Brief*. Moreover, Mr. Jones argues, Mr. Stump's analysis for each assessment year should be given little weight. *Id.* According to Mr. Jones, Mr. Stump looked at the wrong assessed values for the 2007 and 2008 appeals and he used the wrong real estate taxes. *Id.* Mr. Stump also used the wrong discounted cash flow analysis to value 2007 and 2008 because he did a four-year analysis and capitalized on the fourth year rather than the fifth year. *Id.* In addition, Mr. Jones argues, Mr. Stump used actual rents, rather than market rents, and did not trend the property's values to the proper valuation dates in his appraisal report. *Id.*
- UU. Mr. Jones further argues that the Respondent's sales comparison approach lacks depth. *Petitioner's Brief*. According to Mr. Jones, only one of the sales in the report occurred as of March 1, 2006. *Id.* Moreover, Mr. Stump testified that he did not use the sale of Lafayette Square because it was in a different trade area and the crime statistics were different, but then he used properties that were much further away and were not even malls. *Id.* Contrary to Mr. Stump's assertions, however, Mr. Kingsley, who had management responsibilities for both malls, testified that Washington Square Mall and Lafayette Square Mall were very similar malls. *Id.*; *citing Kingsley testimony*. According to Mr. Kingsley, both malls were challenged properties in challenged submarkets. *Id.* Both malls had vacant anchors and a higher than normal number of local tenants. *Id.* And both malls are in ethnically diverse areas with significant crime issues. *Id.*

### **RESPONDENT'S CONTENTIONS**

22. The Respondent contends that the Petitioners' appraiser's conclusions of value for the property are far too low and proposed different values for each assessment year at issue. The Respondent presented the following evidence in support of its contentions:



- A. The Respondent offered a review appraisal prepared by Will L. Stump. *Respondent Exhibit 3*. Mr. Stump is a general certified appraiser with the MAI and SRA designations. *Stump testimony; Id.* Mr. Stump testified that he reviewed the 2010 appraisal prepared by Peter Korpacz for the Petitioners' PTABOA hearing. *Stump testimony; Respondent Exhibit 4*. In his appraisal review, Mr. Stump disagreed with Mr. Korpacz's value conclusions and therefore determined the value of the subject property as of January 1, 2005, for the March 1, 2006, assessment date; as of January 1, 2006, for the March 1, 2007, assessment date; as of January 1, 2007, for the March 1, 2008, assessment date; and as of January 1, 2008, for the March 1, 2009, assessment date. *Id.*
- B. In reviewing Mr. Korpacz's appraisal, Mr. Stump testified that he found several statements with which he disagreed. *Stump testimony*. According to Mr. Stump, Mr. Korpacz contends that the subject property is in fair condition. *Id.*; *Respondent Exhibit 3 at 9; Respondent Exhibit 4 at 29*. However, Mr. Stump testified that he inspected the mall on February 13, 2012, and found the property to be clean and well-maintained and in average to good condition. *Stump testimony; Respondent Exhibit 3 at 9*. Similarly, Mr. Stump disagrees that the six malls Mr. Korpacz cites as competitive properties are, in fact, comparable. *Stump testimony*. Mr. Stump contends that the Fashion Mall and Circle Centre are far superior to the subject property because they command higher rents, have superior tenant profiles and superior demographics. *Id.* Conversely, he argues, Lafayette Square Mall is inferior to the subject property because it has declining retail sales, declining occupancy, a history of criminal activity, and is located in a different trade area. *Id.*; *Respondent Exhibit 3 at 8 and 9*.
- C. Mr. Stump contends that in terms of operating performance, he disagrees with Mr. Korpacz's contentions that the property had decreasing retail sales, high vacancy levels, and should be classified as a "D" mall. *Stump testimony; Respondent Exhibit 4, 34-38*. According to Mr. Stump, the junior tenants had increasing sales

from 2004 to 2007 and the inline tenants had increasing sales every year between 2004 and 2006. *Stump testimony; Respondent Exhibit 3 at 9.* Further, he argues, the overall mall occupancy increased from 2004 to 2009. *Id.* Mr. Stump argues that based on the property's historical occupancy, the inline stores' retail sales of between \$125 and \$199 per square foot for 2004 to 2007, and the fact that the anchor stores were in place for the years in question, the mall falls into the "C" category. *Id. at 12.*

- D. Mr. Stump further argues that he would not consider Washington Square Mall to be a greyfield mall. *Stump testimony; Respondent Exhibit 3 at 11.* According to Mr. Stump, the study that Mr. Korpacz co-authored found a greyfield mall to be determined by a lack of productivity measured in total sales per square foot, with the threshold for retail sales being \$150 per square foot or less. *Id.* Mr. Stump argues that Washington Square Mall's retail sales never fell below \$150 per square foot for any of the tax years that he looked at. *Id.*
- E. Similarly, Mr. Stump testified that he did not concur with Mr. Korpacz's sales comparison approach because none of the sales he used for 2006 were Indiana properties. *Stump testimony; Respondent Exhibit 3 at 13.* According to Mr. Stump, the subject property's net operating income per square foot of gross leasable area was \$5.64 and the average overall occupancy was 83.79% for the January 1, 2005, valuation date. *Id.* In his report, Mr. Korpacz stated that the Promenade Mall in Tulsa, Oklahoma, was most comparable to the subject property even though the net operating income per square foot of gross leasable area was \$3.45, which is nearly half of Washington Square Mall's net operating income per square foot; and the occupancy level at the Promenade Mall was only 74%, which is far less than the subject property's overall occupancy. *Id.* In addition, Mr. Stump noted that, of the fifteen sales in Mr. Korpacz's Exhibit D, the average net operating income was \$5.85 per square foot, the average occupancy was 79.42%, and the average sale price was about \$64 per square foot of gross leasable area. *Stump testimony; Respondent 4, Exhibit D.* Mr. Stump

contends the subject property's occupancy for all the tax years in question was higher. *Stump testimony; Respondent Exhibit 3 at 13*. Further, the net operating income per square foot for 2006, 2007, 2008 and 2009 was \$5.64, \$7.60, \$9.10, and \$7.33 respectively, or an average of \$6.59 for the four tax years Mr. Stump reviewed. *Id.*

- F. Mr. Stump further argues that Mr. Korpacz's position that the rents and expenses should be analyzed on a gross lease basis where Simon Property Group collects no recoveries for its common area maintenance expenses or real estate taxes is contrary to the evidence. *Stump testimony*. According to Mr. Stump, the Petitioners actually recovered 42.97% to 51.71% of the expenses at the mall during the years in question. *Id.; Respondent Exhibit 3 at 17*. In addition, Mr. Stump contends there is no basis for assuming that the existing leases do not represent market rent. *Id.* According to Mr. Stump, Simon Property Group is one of the most competent and experienced mall operators in the country and it is unconscionable to assume the actual rents for each year are not consistent with market rents. *Id.* And taking such a position, Mr. Stump argues, resulted in Mr. Korpacz under-stating the property's income by a significant amount. *Stump testimony; Respondent Exhibit 3 at 18*. According to Mr. Stump, for 2006, the property's actual net income was \$3.4 million, but Mr. Korpacz determined the net income to be \$1,650,973, which is only 48% of what was actually collected. *Id.*
- G. Moreover, Mr. Stump contends that the six properties Mr. Korpacz relied upon to establish his base capitalization rate for the direct capitalization method for 2006 were not comparable to the subject property. *Stump testimony; Respondent Exhibit 3 at 19; Respondent Exhibit 4 at 56*. According to Mr. Stump, four of the six properties were Class D malls and only two of the malls were Indiana properties – both of which suffered high tenant turnover and vacancy rates. *Id.* Mr. Stump contends that the base rate of 13% determined in the Korpacz appraisal cannot be supported by Mr. Korpacz's Indiana sales and, although Mr.

Korpacz cited to national surveys for capitalization rates, he basically ignored them for the quarters in questions. *Id.*

- H. Mr. Stump further contends that Mr. Korpacz's "loaded" capitalization rate assumed that all leases would be "gross leases," with the landlord receiving no expense recoveries from tenants. *Stump testimony; Respondent Exhibit 3 at 19.* However, Mr. Stump argues, that assumption is not supported by the actual expense recoveries experienced by the owner at the subject property for the years in question. *Id.*
- I. Finally, Mr. Stump admits a discounted cash flow analysis is an appropriate method of valuing the property, but Mr. Stump argues that Mr. Korpacz's attempt to project income and expenses out eleven years to 2016, when the first date of value is January 1, 2005, is too speculative. *Stump testimony.* According to Mr. Stump, there are numerous subjective items in a discounted cash flow analysis, such as capital improvements and tenant improvements, which make a huge difference in a property's present value depending on what year the expenditure is entered. *Id.*
- J. Similarly, the Respondent's witness, Ms. Beckman, contends that the Petitioners' appraisal should be given little weight. *Beckman testimony.* According to Ms. Beckman, she reviewed the lease abstracts and the tenant detail reports that were labeled gross leases in Mr. Korpacz's initial report in Exhibit H. *Id.; Respondent Exhibit 9 and 10.* Ms. Beckman testified that she found very few of the leases to be gross leases. *Beckman testimony.* For example, the \*\*Tenant A\*\* lease includes recoveries for trash removal, for advertising and media, for operating costs, and for property taxes and the leases for \*\*Tenant B\*\* and \*\*Tenant C\*\* include recoveries for real estate taxes. *Id.; Respondent Exhibit 9 and 10.* Ms. Beckman testified that she compared the total area of the stores whose leases were gross leases to the total area owned by the Petitioners. *Id.* According to Ms. Beckman, stores with gross leases accounted for only 17% of the area owned by

the mall owner. *Id.*; *Respondent Exhibit 8*. Thus, Ms. Beckman concluded, the Petitioners' appraiser's assumption that all leases would be "gross leases" is not appropriate. *Id.*

K. Moreover, Ms. Beckman testified, in his discounted cash flow analysis, Mr. Korpacz's total expenses did not match the amounts in each of his columns. *Beckman testimony*. According to Ms. Beckman, the difference was about \$50,000 to \$60,000 per year, which she argues could have a significant effect on the property's value over time. *Id.* Ms. Beckman contends that calculating a discounted cash flow analysis using different scenarios such as net operating income before capital expenses versus net operating income after capital expenses, or using prior years' net operating income instead of a gross lease assumption, can result in a value swing of \$7 or \$8 million. *Id.*; *Respondent Exhibit 8*.

L. Finally, Ms. Beckman testified that she researched the sales in the Mr. Korpacz's 2010 report. *Beckman testimony*. According to Ms. Beckman, the Colonie Center sale that Mr. Korpacz listed at \$80 million was part of a joint venture in which a pension fund contributed 75% of the \$101.5 million dollar value of the mall. *Id.*; *Respondent Exhibit 11*. Ms. Beckman testified that she could not locate information on the sale of the Tulsa mall which Mr. Korpacz identified as selling for \$30.5 million in March 2004. *Id.* However, Ms. Beckman testified that a press release on January 1, 2006, stated the mall was being purchased for \$58.6 million. *Beckman testimony*; *Respondent Exhibit 12*.

M. The Respondent also presented its own analysis of the mall's values for the tax years at issue. *Slatten argument*. According to the Respondent's appraiser, he first developed the direct capitalization method to value the Petitioners' property, giving primary emphasis to the property's actual income and expenses. *Stump testimony*. According to Mr. Stump, the actual rents reported by the Petitioners are consistent with market rents because the leases were negotiated by an

experienced landlord and involved experienced tenants. *Id.*; *Respondent Exhibit 3 at 22*. Mr. Stump reviewed two surveys from “Dollars and Cents of Shopping Centers” that indicated expense ratios with real estate taxes included were 36.5% and 37.9%; however, the property’s actual expense ratio for year-end 2006, including real estate taxes, was 53.5%. *Id.* Mr. Stump admitted it was difficult to compare the subject property’s itemized expenses with “Dollars and Cents” because of the way the expenses are categorized, but concluded that the property’s expenses were reasonable. *Id.* Thus, using the actual income and expenses reported by the Petitioners, Mr. Stump calculated the net operating income of the property to be \*\*\$\_\_\_\_\_\*\* for the January 1, 2005, valuation date; \*\*\$\_\_\_\_\_\*\* for the January 1, 2006, valuation date; \*\*\$\_\_\_\_\_\*\* for the January 1, 2007, valuation date; and \*\*\$\_\_\_\_\_\*\* for the January 1, 2008, valuation date. *Id.*; *Respondent Exhibit 3 at 23*.

N. Mr. Stump contends the expenses reported by the Petitioners did not include a provision for replacement reserves, which is a legitimate expense normally considered by investors. *Stump testimony; Respondent Exhibit 3 at 26*. According to Mr. Stump, he referenced investor surveys and found that replacement reserves averaged between \$.18 and \$.20 per square foot per year for the years at issue in his report. *Id.* Mr. Stump testified that he used \$.25 per square foot because of the age of improvements. *Id.* Thus, Mr. Stump adjusted the net operating income to be \*\*\$\_\_\_\_\_\*\* for January 1, 2005; \*\*\$\_\_\_\_\_\*\* for January 1, 2006; \*\*\$\_\_\_\_\_\*\* for January 1, 2007; and \*\*\$\_\_\_\_\_\*\* for January 1, 2008, for the property. *Respondent Exhibit 3 at 27*.

O. Mr. Stump testified that he developed a market-driven capitalization rate based on the overall rates for four retail properties that sold between December of 2005 and November of 2008 in Indiana and Illinois. *Stump testimony; Respondent Exhibit 3 at 24*. According to Mr. Stump, the properties are Class C properties that had tenant expense recoveries similar to the subject property. *Id.* The overall capitalization rates ranged from 8% to 10.83% and averaged 9.02%. *Id.* In

addition, Mr. Stump testified, he researched three investor surveys for the tax years in question and found the average from all of the sources for each year. *Stump testimony; Respondent Exhibit 3, 25 and 26.* Mr. Stump used the highest average capitalization rates from the investor services in his calculations, which were very similar to the 10.85% overall rate for the fifteen sales in Exhibit D of Mr. Korpacz's appraisal. *Id.* Thus, Mr. Stump concluded, the overall rates were 11% for January 1, 2005; 10.25% for January 1, 2006; 10.50% for January 1, 2007; and 12% for January 1, 2008. *Respondent Exhibit 3 at 27*

- P. Applying his capitalization rates to the net operating income, Mr. Stump estimated the value of the subject property to be \$22,015,000 as of January 1, 2005, for the March 1, 2006, assessment date; \$32,150,000 as of January 1, 2006, for the March 1, 2007, assessment date; \$24,000,000 as of January 1, 2007, for the March 1, 2008, assessment date; and \$25,750,000 as of January 1, 2008, for the March 1, 2009, assessment date. *Respondent Exhibit 3 at 27.*
- Q. Although Mr. Stump contends that an extended discounted cash flow analysis is unreliable, he prepared a short analysis for the tax years in question to confirm the 2006 value that he derived using the direct capitalization method. *Stump testimony; Respondent Exhibit 3, 28 and 29.* According to Mr. Stump, he based his first year in the analysis, January 1, 2005, on year end numbers for 2004 and the last year in the analysis, January 1, 2008, on year end numbers for 2007. *Id.* Mr. Stump testified that he consulted investor surveys for the relevant time periods and found the discount rates ranged from 7% to 12%. *Id.* Based on this information, Mr. Stump chose a discount rate of 11.75% for the cash flows and a reversionary rate of 12.75%. *Id.* Mr. Stump contends that "the reversion takes place at the end of 2007 by capitalizing the year end 2007 net operating income and deducting 4% for selling costs." *Respondent Exhibit 3 at 29.* The discounted cash flow analysis resulted in a value of \$22,447,342, which Mr. Stump argues, is similar to the \$22,015,000 he estimated using the direct capitalization approach for 2006. *Stump testimony; Respondent Exhibit 3, 28 and 29.*

- R. Finally, Mr. Stump developed a sales comparison approach to value based on five sales that occurred between 2005 and 2008 in Indiana and Illinois. *Stump testimony; Respondent Exhibit 3, 30-32*. According to Mr. Stump, the comparable properties are similar to the subject property based on the year of each mall's construction, the year each mall was renovated, overall occupancy levels at the malls, and mall ratings. *Id.* Mr. Stump contends the sale prices ranged from \$43 a square foot to \$72 a square foot, or an average of \$54.55 per square foot of gross leasable area. *Id.* Mr. Stump concluded that the subject property's value would be between \$52 per square foot and \$72 per square foot, or \$23,348,000 to \$32,328,000 for the assessment years in question. *Id.* Thus, Mr. Stump concluded, the income capitalization and the sales comparison approaches support each other. *Respondent Exhibit 3 at 37*.
- S. In response to cross examination, Mr. Stump contends that the value he estimated for January of each year would also apply to March of the year because he argues no analyst is smart enough to value two months' difference in a property's value. *Stump testimony*. Thus, Mr. Stump contends that if the Board decides that the effective date should be March 1, 2007, rather than January 1, 2006, for the 2007 assessment year, then the value of the subject property would be the number in the column for the 2008 assessment year, or \$24 million. *Id.* Similarly, for the March 1, 2008, assessment, his value for the property would be \$25,750,000 – which is his estimated value of the property as of January 1, 2008. *Stump testimony*. Mr. Stump admitted that if the Board adopted this interpretation, his analysis would not value the property in 2009 or 2010. *Id.*
- T. In order to adjust Mr. Stump's 2007 and 2008 values to the proper valuation dates, Ms. Beckman testified that she applied Mr. Korpacz's trending values. *Beckman testimony*. Using Mr. Stump's \$24 million value on January 1, 2007, for the March 1, 2007, assessment date, Ms. Beckman testified that she trended it back 2%, resulting in a value of \$23,520,000 for January 1, 2006. *Id.* Ms.



Beckman testified that she performed the same analysis on Mr. Stump's January 1, 2008, value of \$25,750,000 for the March 1, 2008, assessment date. *Id.* Using Mr. Korpacz's 4% trending factor, she calculated a value of \$24,720,000, as of January 1, 2007. *Id.*

- U. Ms. Beckman testified that she also developed a value for the subject property for 2009 and 2010 based on the Petitioners' appraiser's direct capitalization analysis. *Beckman testimony.* According to Ms. Beckman, for 2009, she used the data from Mr. Korpacz's 2012 report and adjusted the calculation to account for the Petitioners' actual expense reimbursement of \*\*\$\_\_\_\_\_\*\*. *Id.; Respondent Exhibit 8.* Ms. Beckman testified that she used the same going-in capitalization rate, 16%, as Mr. Korpacz, but because she had accounted for the reimbursement of taxes, she removed the effective tax rate. *Beckman testimony; Respondent Exhibit 8.* Based on these assumptions, Ms. Beckman calculated the value of the property as of March 1, 2009, to be \$18.3 million. *Id.* Ms. Beckman further testified that she trended that value back to January 1, 2008, by a negative 8% using the same methodology as Mr. Korpacz to arrive at a value of \$19.9 million. *Id.* Ms. Beckman testified that she followed the same procedure for 2010 and calculated a value of \$17 million for the properties as of March 1, 2010. *Id.; Respondent Exhibit 8.*
- V. Mr. Slatten argues that Mr. Korpacz submitted an appraisal that the Respondent reviewed, but then submitted another appraisal just five days before the hearing. *Slatten argument.* According to Mr. Slatten, it is important to track the differences between the first appraisal and the second report because they show the problems with the Petitioners' evidence. *Slatten argument.* Mr. Slatten contends that the use of gross leases in the new appraisal was a change from the initial appraisal. *Id.* Moreover, Mr. Slatten argues that the Petitioners' appraiser changed his definition of a greyfield mall from \$150 and below to a much higher range. *Id.*

## ANALYSIS

23. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market-value-in-use appraisal prepared according to USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 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 property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
24. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3. For the March 1, 2007, assessment, the valuation date was January 1, 2006. *Id.* For the March 1, 2008, assessment, the valuation date was January 1, 2007, and for the March 1, 2009, assessment, the valuation date was January 1, 2008. *Id.* The March 1, 2010, assessment, however, values property as of the assessment date. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
25. The Petitioners' counsel argues that the subject property was over-assessed during the relevant assessment years based on the property's appraised values. *Jones argument.* In support of this contention, Mr. Jones submitted an appraisal prepared by Peter Korpacz that estimated the value of the Petitioners' property for the 2006 through 2010 assessment years. *Petitioner Exhibit 11.* Mr. Korpacz is an Indiana certified appraiser with MAI, SRE, and FRICS designations, who attested that he prepared the Petitioners' appraisal in accordance with the uniform standards of professional appraisal practices. *Id.* Mr. Korpacz used the income approach and sales comparison approach to value the property

and estimated the property's value to be \$12,250,000 as of January 1, 2005, for the March 1, 2006, assessment; \$14,200,000 as of January 1, 2006, for the March 1, 2007, assessment; \$14,900,000 as of January 1, 2007, for the March 1, 2008, assessment; \$12,000,000 as of January 1, 2008, for the March 1, 2009, assessment; and \$9,500,000 as of March 1, 2010, for the March 1, 2010, assessment. *Id.*

26. Likewise, the Respondent presented an appraisal prepared by Will L. Stump. *Respondent Exhibit 3*. Mr. Stump is a general certified appraiser with MAI and SRA designations. *Id.* Mr. Stump reviewed the 2010 appraisal report prepared by Peter Korpacz and prepared an independent opinion of value for the Petitioners' property for the 2006 through 2009 assessment years based on the income approach and the sales comparison approach to value. *Id.* Mr. Stump determined the value of the property to be \$22,015,000 as of the January 1, 2005, valuation date for the March 1, 2006, assessment; \$32,150,000 as of the January 1, 2006, valuation date for the March 1, 2007, assessment; \$24,000,000 as of the January 1, 2007, valuation date for the March 1, 2008, assessment; and \$25,750,000 as of the January 1, 2008, valuation date for the March 1, 2009, assessment. *Id.*
27. Both parties submitted appraisals prepared in accordance with the uniform standards of professional appraisal practices that were sufficiently related to the applicable valuation dates. The Petitioners' appraisal valued the subject property as of each assessment date and trended the values back to the proper valuation dates and the Respondent's appraiser valued the property as of the relevant valuation dates. Both approaches have been accepted by the Board as sufficient to raise a prima facie case. An appraisal performed in accordance with generally recognized appraisal principles is often enough to establish a prima facie case that a property's assessment is over-valued. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 479 (Ind. Tax Ct. 2003). Therefore, because both parties submitted evidence sufficient to raise a prima facie case, it is unnecessary to analyze which party had the burden of proof in each assessment year. The Board must therefore weigh the evidence presented by the parties and determine the

most persuasive evidence of the property's value for the 2006 through 2010 assessment years.

28. For the sales comparison approach to value, the Petitioners' appraiser, Mr. Korpacz, analyzed sales of Class C and Class D regional malls that occurred within the relevant time frames for the assessment dates. Mr. Korpacz analyzed nine sales that occurred in 2004 and 2005 for the 2006 assessment; eight properties that sold between 2005 and 2007 for the 2007 assessment; eight properties that sold between 2006 and 2008 for the 2008 assessment; seven sales that occurred in 2007 and 2008 for the 2009 assessment; and six sales that occurred in 2007 and 2008 for the 2010 assessment. Mr. Korpacz qualitatively adjusted the sales based on whether the properties were inferior, similar, or superior to the subject property. He also analyzed the relationship of the net operating income per square foot to the sale price per square foot of the comparable properties. According to Mr. Korpacz, there is a direct relationship between the net operating income of a property and its sale price on a square foot basis. Based on this analysis, Mr. Korpacz estimated the value of the subject property to be \$27 per square foot for 2006; \$45 per square foot for 2007; \$55 per square foot for 2008; \$32 per square foot for 2009 and \$31 per square foot for 2010. However, for the 2008 assessment year, Mr. Korpacz did not agree with the value arrived at by his net operating income analysis. He therefore limited the data to the three Class D malls that had sold during the relevant time period, which lowered the estimated value from \$55 per square foot to \$37 per square foot for the property. This attempt to revise the data could be seen as "cherry-picking" the sales data to achieve a specific value. But Mr. Korpacz revised his data for only a single year and the Board gives some credence to his explanation that the analysis resulted in a value that simply did not reflect the property's market value-in-use for that year.

29. Mr. Korpacz also valued the subject property using the income approach to value. Mr. Korpacz testified that he based his income approach on "market rates" for the property. According to Mr. Korpacz because many of the existing leases were executed ten or fifteen years earlier, those leases would not reflect the value of the property during the relevant time period. Therefore, Mr. Korpacz analyzed the most current leases entered

into at the property and at Lafayette Square Mall to determine the average rent for several categories of retail spaces. Based on those leases, Mr. Korpacz estimated that retail space would rent for \$200 per square foot for kiosks, \$45 per square foot for inline spaces between 1 and 999 square feet; \$20 per square foot for inline spaces between 1,000 and 3,999 square feet; \$10 per square foot for inline spaces between 4,000 and 9,999 square feet, (which would increase \$1.50 per square foot in the fourth year of his analysis); and \$10 per square foot for inline spaces 10,000 square feet and greater, (which would increase \$0.50 in the sixth year of his analysis); for every assessment year except 2010, in which he determined the market rent for inline spaces 10,000 square feet and greater would be \$5 per square foot. However, Mr. Korpacz appears to have ignored the rents from Lafayette Square Mall despite contending that he considered the mall to be comparable. According to the Petitioners' appraiser's supporting documents, at Lafayette Square, kiosk space averaged \$233.33 per square foot and inline spaces between 1 and 999 square foot rented for approximately \$80 per square foot on average. *Petitioner's Exhibit 11, Attachment 21*. Had Mr. Korpacz considered the lease rates at Lafayette Square Mall, he might have increased the "market rent" for Washington Square Mall accordingly.

30. Further, while some of the current leases provided recovery for various expenses, Mr. Korpacz testified, those agreements were reached with national tenants who were interested in maintaining a national portfolio of properties with the Petitioners. Because of the condition of the mall, Mr. Korpacz argues, it would not be purchased by an international property development company like Simon Property Group. Instead the property would be purchased by a speculator who would have to find a new focus for the property's use. Therefore, Mr. Korpacz contends, the new owner would not be able to secure leases with national tenants on the same terms and the new leases would all be "gross leases."
31. Mr. Korpacz calculated ten years of projected cash flow and a reversion in the eleventh year. To determine the discount rate and the terminal capitalization rate, Mr. Korpacz researched two investor survey publications. Although he chose rates at the high end of

the range, or in some cases, above the range in the investor surveys, Mr. Korpacz testified that because the property is a Class D mall with occupancy costs that exceed industry standards, that also has increasing vacancy and declining retail sales, it was reasonable to assume that the mall would be at or above the high end of the range reflecting the mall's below-average competitive quality.

32. Mr. Korpacz also applied the direct capitalization method of the income approach using the same assumptions. Despite assuming that the junior tenants would contribute to real estate taxes, however, Mr. Korpacz calculated the property's net operating income without any real estate recovery. Similarly, despite estimating the utility costs at \$360,000 for example in 2006, which Mr. Korpacz assumed to be \$320,000 reimbursable by the tenants and \$40,000 non-reimbursable, and despite estimating utility expense recovery to be \$192,000 in another section of his report, Mr. Korpacz only credited \$183,000 for utility expense reimbursement in his analysis.
33. Further, while Mr. Korpacz's capitalization rate exceeded the published ranges, it was within the range of comparable sales for the 2006 and 2007 assessment years. However, by 2008, Mr. Korpacz's capitalization rate even exceeded the capitalization rates he derived from comparable sales. While Mr. Korpacz testified that the condition and characteristics of the property led him to select a higher capitalization rate, Mr. Korpacz rated Lafayette Square Mall and Vernon Park Mall as inferior to Washington Square Mall in his sales comparison analysis, yet chose a capitalization rate in excess of the capitalization rate derived from both the Lafayette Square Mall and Vernon Park Mall sales.
34. Finally, Mr. Korpacz reconciled his values for each year. Mr. Korpacz developed a trending factor based on changes in the overall capitalization rates and trended his values to the appropriate valuation dates, except for the March 1, 2010, assessment which did not require trending.

35. The Respondent's appraiser, Mr. Stump, also valued the subject property using the income approach and the sales comparison approach to value. In his income approach, Mr. Stump concluded that the property's actual rents were consistent with market rent because Simon Property Group is one of the most experienced mall operators in the country. However, he provided no support for his assumption other than a broad statement that the Petitioners are experienced and well-known mall operators. Moreover, the Respondent failed to address the Petitioners' evidence that many of the leases were executed ten or fifteen years prior to the relevant assessment dates and therefore would not reflect the value of the property as it existed at the time of each assessment. Further, while the Respondent's appraiser referred to published sources, the comparable sales Mr. Stump used to calculate his capitalization rate were all significantly smaller than the subject property and, in most cases, the properties were strip centers – which the evidence suggests are fundamentally different in value and cost structure than an enclosed mall.
36. In his sales comparison approach to value, Mr. Stump used five sales of Class C retail properties located in Indiana and Illinois that occurred between 2005 and 2008. Mr. Stump testified that the properties were similar based on the malls' construction and remodeling dates and the overall occupancy rates. However, like the comparable sales he used to calculate his capitalization rates, most of the properties Mr. Stump used for his sale comparable analysis were grocery store-anchored strip centers. Moreover, from those sales, Mr. Stump calculated an average sale price per gross leasable area and the average net operating income per gross leasable area for the comparable properties and determined a range of \$52 to \$72 per square foot for the property for the 2006 through 2009 assessment dates. Thus, Mr. Stump contends, the property's value ranged from \$23,348,000 to \$32,328,000 during the relevant time period, which he argues supports his income approach analysis. However, Mr. Stump failed to calculate a specific value for the property for any of the assessment years at issue.
37. Here, Mr. Korpacz developed specific values for the subject property for each assessment year under appeal. His sales comparison analysis was based on timely sales of regional malls deemed comparable to the subject property that were qualitatively adjusted to

determine the likely sale price in terms of a price per square foot for the Washington Square Mall. Mr. Korpacz further refined his sales comparable values by graphing each property's sale price with its net operating income per square foot of gross leasable area. And despite the fact that Mr. Korpacz rejected the value he determined for 2008 and re-graphed the data using only Class D malls, the Board finds this to be a reasonable method for determining the value of the mall.

38. Conversely, Mr. Stump used sales of retail properties that were not regional malls. Mr. Stump used grocery store-anchored retail centers and community centers that are not comparable to enclosed regional malls and failed to make any adjustments for differences in the properties. Further, Mr. Stump did not determine a specific value for any year but simply contends that the range of values from the five sales from 2005 through 2008 supports his income approach to value for each year. Thus, the Board gives little weight to the Respondent's sales comparison approach.
39. The income approach analysis, however, is more difficult. The Petitioners' appraiser used capitalization rates that were not supported by his evidence and he made income and expense assumptions that seemed designed to value the property at the lowest possible rate.<sup>11</sup> The Respondent's appraiser, however, made no attempt to account for the prevalence of long term leases at rents that no longer represented the market rate at the property. In addition, the Respondent's approach relied upon the sale of properties that were not comparable to the subject property to develop a capitalization rate. Because of the lengthy and detailed explanations that Mr. Korpacz provided for each of his assumptions and the lack of explanation that Mr. Stump gave for his analysis, the Board therefore gives more weight to the Petitioners' appraiser's income analysis.

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<sup>11</sup> The Respondent invited the Board to consider the Petitioners' appraiser's values in an earlier version of his appraisal report. However, the Board finds that many of the same assumptions were applied in Mr. Korpacz's 2010 appraisal report. The main difference in the appraisals appears to be that the 2010 report valued the property as of the valuation date and the 2012 report valued the property as of the assessment date and trended the value back to valuation date. The 2012 report also added the 2010 assessment year.



40. Moreover, the Board notes that the Respondent's appraiser made no attempt to value the property for the March 1, 2010, assessment date. The Respondent's witness, Ms. Beckman, provided an "income approach analysis" for the 2009 and 2010 assessment years. In her analysis, Ms. Beckman argued that she disagreed with Mr. Korpacz's value conclusions for 2009 and 2010 primarily because of the gross lease assumption and the high capitalization rates Mr. Korpacz used. Despite her arguments, however, Ms. Beckman used the same capitalization rate as Mr. Korpacz; she just did not add the effective tax rate. Ms. Beckman contends it was not necessary to add the tax rate because she accounted for the reimbursement of the taxes. However, even considering the leases in place during the relevant time period, the taxes were not reimbursed 100% for any assessment year. For example, in 2008 the property's income and expense statement shows an actual real estate tax expense of \$1,646,554,<sup>12</sup> but a reimbursement of only \$446,548.
41. Further, while Ms. Beckman's analysis may not differ significantly from the calculations made by a certified appraiser in an appraisal report, the appraiser's assumptions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with the uniform standards of professional appraisal practice. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Here, however, there is no evidence that Ms. Beckman is a certified appraiser; she did not establish that she has any particular expertise in applying generally accepted appraisal principles; and she did not certify that she complied with USPAP in performing her valuation analysis. Consequently, the Board places greater weight upon Mr. Korpacz's testimony and analysis as to this issue.

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<sup>12</sup> The real estate tax expense for 2008 is considerably higher than the tax expense for 2007, which was \$616,045. This may be due to tax consulting fees, which Mr. Korpacz contends are included in the real estate tax expense. *Petitioner Exhibit 11 at 58.*

## CONCLUSION

42. The weight of the evidence supports the Petitioners' values for the subject property for each tax year at issue. The Board therefore holds that the value of the properties at issue in this appeal total \$12,250,000 for the March 1, 2006, assessment year; \$14,200,000 for the March 1, 2007, assessment year; \$14,900,000 for the March 1, 2008, assessment year; \$12,000,000 for the March 1, 2009, assessment year; and \$9,500,000 for the March 1, 2010, assessment year.

## FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed values of the Petitioners' properties should be lowered for each assessment year.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- Appeal Rights -

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