Legal Representative's Copy

Indiana Board of Tax Review

100 North Senate Avenue, Room #N1026
Indianapolis, Indiana 46204
(317)232-3786

Final Determination

Petition Number:
49-400-06-1-4-15360

Mail To (Legal Representative):
David A. Suess
FAEGRE BAKER & DANIELS
300 N. Meridian St. #2700
Indianapolis IN, 46204

Petitioner:
Macy's Retail Holdings, Inc
f/n/a Adcor Realty Corporation
7 West Seventh Street
Cincinnati OH, 45202

You are hereby notified that upon administrative review of this appeal the Indiana Board of Tax Review has determined the assessed value of the following described property:

Assessment as of March 1, 2006

Description of Property:
Marion County
Commercial Real Estate Appeal
Parcel: 4018711

Lawrence Township

The details of the changes to the property listed on this petition can be found on the attached findings of fact and conclusions of law.

Within 15 days of the date of this notice, a party to the proceeding may request a rehearing before the Indiana Board. The Indiana Board MAY conduct a rehearing and affirm or modify the final determination. A petition for rehearing does not toll the time in which to file a petition for judicial review unless the petition for rehearing is granted (Ind. Code § 6-1.1-15-5).

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice.

Dated: 09/16/2013

Indiana Board of Tax Review

Chairman

Commissioner

Commissioner

REPRESENTATIVE FOR PETITIONER:
David Suess, Bose, McKinney & Evans, LLP

REPRESENTATIVE FOR RESPONDENT:
John C. Slatten

BEFORE THE INDIANA BOARD OF TAX REVIEW

MACY'S RETAIL HOLDINGS, INC. f/k/a LAZARUS REAL ESTATE	) Petition No.: 49-400-06-1-4-15360
Petitioner,	) Parcel No.: 4018711
v.	)
MARION COUNTY ASSESSOR	) County: Marion
Respondent.	) Assessment Year: 2006

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

September 16, 2013

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. In this assessment appeal, Macy's Retail Holding's, Inc. relied on an appraisal by Maxwell Ramsland, Jr., a highly qualified appraiser with substantial experience in valuing anchor department stores like the subject property. Because Ramsland's appraisal is by far the most persuasive evidence of the property's value, the Board finds that the assessment must be reduced to correspond with his valuation opinion.

PROCEDURAL HISTORY

2. Macy's appealed the subject property's 2006 assessment to the Marion Property Tax Assessment Board of Appeals ("PTABOA"). The PTABOA reduced the assessment, although not by as much as Macy's requested. Macy's then filed a Form 131 petition with the Board.

3. Macy's also appealed the property's 2007 and 2008 assessments. As agreed under an Appeal Management Plan, the Board set a hearing on all three appeals for May 2, 2013. Less than 30 days before that scheduled hearing, Macy's filed its Motion for Determination Concerning Burden of Proof requesting a finding that the Assessor had the burden of proof on Macy's appeals. The Assessor responded on April 26, 2013. At a May 2, 2013, prehearing conference, the Board's designated administrative law judge, David Pardo ("ALJ"), addressed that motion, making a preliminary determination that the Assessor had the burden of proof for 2006 while Macy's had the burden of proof for 2007-2008. In light of that determination, the ALJ held two separate hearings—one for 2006 and a second one for 2007-2008. These findings and conclusions address only the 2006 assessment.[1]

4. Immediately following the pre-hearing conference, on May 2 and 3, 2013, the ALJ held a hearing on Macy's appeal of the 2006 assessment. The following people testified under oath:

   For Macy's: Maxwell Ramsland, Jr., Ramsland & Vigen, Inc.

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

   Neither the ALJ nor the Board inspected the subject property.

5. When the Assessor rested, Macy's moved for what its counsel termed a "directed verdict," although he acknowledged that the trial rule governing such motions applies to

[1] On April 26, 2013, Macy's also filed a Motion in Limine to Exclude Testimony from George Spenos. Counsel for Macy's later effectively withdrew that motion indicating that he would make his objections if the Assessor called Spenos as a witness. *See Transcript of May 2, 2013 prehearing conference at 3-5.* The Assessor did not call Spenos.

jury trials. *Tr. at 196, 206-07.* In any event, Macy's asked for a ruling that the Assessor failed to meet his burden of production and an order that the subject property's 2006 assessment should be reduced to its 2005 level. *Id. at 196-208.* The ALJ overruled Macy's motion, and the Board adopts that ruling.

6. The Assessor offered the following exhibits, all of which were admitted without objection:

Exhibit R-1:	Summary Level – Reconciliation of Market Value in Use
Exhibit R-2:	Sales/Income Analysis spreadsheet
Exhibit R-3:	2006 Tax Year (01/01/05 Valuation Date) Sales Comparison Analysis
Exhibit R-7:	Excerpts from PriceWaterhouseCoopers, *Korpacz Real Estate Investor Survey Fourth Quarter 2004*
Exhibit R-8:	Excerpts from PriceWaterhouseCoopers, *Korpacz Real Estate Investor Survey Fourth Quarter 2005*
Exhibit R-9:	Excerpts from PriceWaterhouseCoopers, *Korpacz Real Estate Investor Survey Fourth Quarter 2006.*

7. Macy's offered the following exhibits:

Exhibit P-4:	Appraisal of Macy's Department Store, Castleton Square Mall prepared by Ramsland & Vigen, Inc. with exhibits A – I.
Exhibit P-9:	Demonstrative chart showing data from *Dollars & Cents of Shopping Centers/The Score 2006.*
Exhibit P-12	Excerpts from *Dollars & Cents of Shopping Centers/The Score 2006.*

Exhibits P-4 and P-12 were admitted without objection. The ALJ admitted Exhibit P-9 over the Assessor's objection. *Tr. at 154-59.* The Board adopts the ALJ's ruling.[2]

8. The record includes the following: (1) all pleadings and documents filed in Macy's appeal, (2) all orders and notices issued by the Board or its ALJ, and (3) transcripts of the hearing and of the May 2, 2013 prehearing conference

[2] Exhibit P-9 is a demonstrative chart that illustrates sales levels from *Dollars & Cents of Shopping Centers/The Score 2006*, a report on which the Assessor's witness, Eve Beckman, relied. The relevant pages from *Dollars & Cents* were separately admitted as Exhibit P-12. The Assessor argued that Macy's counsel was misinterpreting the *Dollars & Cents* information when he used the chart to cross-examine Beckman. As explained below, Beckman—not Macy's—misinterpreted the information. Regardless, the chart accurately reflects the sales levels from *Dollars & Cents*, and the conflicting interpretations of what those sales levels mean simply go to the weight to be given to Beckman's testimony.

9. The PTABPA determined the following assessment:

Land: $2,051,700 Improvements: $24,079,900 Total: $26,131,600

10. As explained above, Macy's contends that the overall assessment should be reduced to its 2005 level of $15,182,100. Failing that, Macy's requests an assessment of $16,500,000.

FINDINGS OF FACT

A. The property

11. The subject property is located at Castleton Square Mall on the northeast side of Indianapolis. It contains an anchor department store consisting of three conjoined parts and a parking lot, all of which Macy's owns. The store was built in 1973 and was extensively re-modeled 1997-98, when acoustical tile, ceiling tile, drywall, floor covers, and similar items were replaced. All told, the store has 306,709 square feet of gross leasable area ("GLA"). *Ex. P-4 at 17-18; Tr. at 235-36.*

B. Eve Beckman's valuation opinion

12. The Assessor offered a valuation opinion from Eve Beckman, one of his employees. Beckman is a Level III certified assessor-appraiser. Before the Assessor hired her, Beckman worked as a senior manager in the Simon Property Group's property tax department and for Ernst & Young. She dealt with real estate valuation in both positions, although most of her tenure at Ernst & Young focused on personal property. She also worked as a trainee appraiser for six-to-nine months, assisting with commercial appraisals. She has since relinquished her trainee's license. *Tr. at 11-14, 81-82.*

13. Beckman did not assess the subject property. But after reviewing its property record card, she believed that the assessment comported with the requirements contained in what the Assessor's counsel described as the "DLGF's manual." *Tr. at 60.*

14. Beckman also analyzed the property's value using the income and sales-comparison approaches. She, however, did not develop the cost approach. She did not think that approach was relevant for a building like the subject store that was well maintained and that had been operating for more than a couple of years. Although Beckman testified that she tried to follow the Uniform Standards of Professional Appraisal Practice ("USPAP") as much as possible, she acknowledged that much of her report did not comply with USPAP. *See Tr. at 68, 174-75.*

15. Beckman first developed implied rent for the subject property through multiplying the property's actual reported sales by 3%. She used the property's actual sales because sales data for comparable stores was not readily available. She acknowledged that as an anchor store's sales increase, the percentage rent that it pays decreases. Thus, an anchor might pay rent equaling 3% of sales up to a certain sales breakpoint, 2% of sales up to another breakpoint, and so on. *Ex. R-2; Tr. at 17, 25, 384.*

16. Beckman initially testified that she determined that rent equaling 3% of sales was typical after reviewing many documents and articles and talking to brokers. But she admitted on cross-examination that the only market evidence she used in selecting her 3% rate was from *Dollars & Cents of Shopping Centers/ The Score 2006*, a compilation of data from the Urban Land Institute. She, however, added that her experience confirmed that rate. *Tr. at 17-18, 138.*

17. The following table lays out what Dollars & Cents reported as the median, top 10%, and top 2% levels for sales volume and rent together with Beckman's calculation of rent as a percentage of sales for each level:

	Sales/sq. ft.	**Rent/sq. ft.**	**Calculated Rent (Beckman)**
Median	$ 174.86	$3.22	1.84% (of sales/sq. ft)
Top 10%	$ 283.39	$7.24	2.55% (of sales/sq. ft)
Top 2%	$ 449.71	$13.99	3.11% (of sales/sq. ft)

Tr. at 142-145; see also Ex. P-12 at numbered p. 55. Beckman chose her 3% rate at least partly because she viewed the subject store's actual sales per square foot as falling between the top 10% and top 2%.[3] Macy's actual sales volume for the fiscal year ending on January 31, 2006 ("FY 06"), however, was [redacted]/sq. ft., which is [redacted] the median, [redacted] the top 10%, and [redacted] the top 2%. *Ex. R-2; see also, Tr. at 144, 150.*

18. Beckman nonetheless offered three additional justifications for her 3% rate. First, she testified that her rate accounted for base rent as well as percentage rent, while *Dollars & Cents* reports only base rent and the first percentage increment. *Tr. p. 183, 189.* Although that may be true for how *Dollars and Cents* reports rental *rates*,[4] the same cannot be said for how it reports *total rent per square foot*. Instead, *Dollars & Cents'* numbers for total rent per square foot include "all forms of rent—guaranteed minimum rent, percentage rent, and combinations thereof." *Ex. P-12 at 8; Tr. at 190.*

19. Second, Beckman testified that the sales figure reported for each group was actually the median for that group. For example, she interpreted $283.39/sq. ft.—the number that *Dollars & Cents* reports for the top 10%— as representing the median for all rents falling within the top 10%. *See Tr. at 183-85.* That interpretation, however, conflicts with how *Dollars & Cents* defines its statistical terms:

> **Median**. The value of the item midway in a series represents the median. Half of the individual vales in the series are above the median, and half of the values are below the median.
>
> **Top 10 percent**. The value greater than that reported by 90 percent of the tenants represents the top 10 percent.
>
> **Upper decile**. This is the same as the top 10 percent.
>
> **Lower decile**. The value less than that reported by 90 percent of the tenants represents the lower decile.

Ex. P-12 at numbered p. 8. Thus, as the following excerpt from *Dollars & Cents* further

[3] When asked whether she concluded 3% was appropriate based on her opinion that Macy's sales fell between the top 10% and top 2%, Beckman answered: "Not necessarily, no. That was not the only factor." *Tr. at 144.*

[4] *Dollars & Cents* offers the following regarding how it reports "Rate of Percentage Rent": "When a tenant's lease requires stepped increases in rent based on increasing sales levels, only the initial percentage is reported." *Ex. P-12 at numbered p. 8.*

demonstrates, the top 10% and top 2% are simply cut-off points designed to eliminate extreme values at the upper end:

> In using this report, the reader must understand that the results are presented as median and decile amounts. This method measures the range of responses by eliminating the high and low values from the wide range of data submitted by the participants, thus proving the most useful information.
>
> . . .
>
> Table 1-4 provides an example of how the median and decile amounts are computed. The values are first arranged in order of the lowest value to the highest value. The median (or middle item) is the value below and above which an equal number of values exists. The upper and lower deciles are the values between which 80 percent of all values fall. . . .Therefore, extreme values do not appear in the range shown by the deciles, but a high percentage of the centers is included in the range defined by the deciles.
>
> *Id. at numbered p. 11.*

20. Finally, Beckman explained that subject property's sales volume for FY 06 was the lowest for all the years for which she had information. The volume had been as high as $[redacted]/sq. ft. before then, was $[redacted]/sq. ft. in FY 07, and was roughly $[redacted]/sq. ft. in each of the next two years. According to Beckman, she was simply trying to use a stabilized volume. *Tr. at 185; see also Ex. R-2.*

21. Beckman next deducted expenses equaling 3% of her implied rent. She took those expenses from *Dollars & Cents,* which her experience led her to believe were reasonable. She, however, only included insurance and the costs of maintaining the HVAC system. The combined expenses that she used came from the upper decile section of three separate tables and ranged from 2.89% to 3.36%. *Tr. 27-29, 160-62; Ex P-12 at numbered pages 33, 39, 51; Ex. R-2.* Beckman explained that anchor department stores are leased on a "triple net" basis, meaning that most operating expenses pass through to tenants and that the expenses she used are the only ones that landlords typically bear. *Tr. at 186.*

22. But the *Dollars & Cents* tables that Beckman used to determine her expenses also contain the following categories of landlord expenses: "Systems equipment maintenance: Other," and "Other building maintenance/repair." *Ex. P-12 at numbered pages 33, 39, 51.* Beckman similarly failed to include management fees as an expense because she believes that those fees are generally very small for single-tenant triple-net properties. The three *Dollars & Cents* expense tables offered at the hearing, however, include median management fees ranging from 1.16% to 1.93% of receipts. The upper decile range from those tables is 3.24% to 4.17% of receipts. *Ex. P-12 at 33, 39, 51; Tr. at 165.*

23. Beckman similarly decided against deducting anything from her implied gross rent to account for vacancy or collection loss. Because anchor department stores generally sign long-term leases, she does not believe that potential vacancies should be accounted for on an annual basis. Also, her source for determining a capitalization rate—the *Korpacz Real Estate Investor Survey*—did not contain data on vacancies for single-tenant buildings. *Tr. at 381-82, 388-89; Ex. R-2.*

24. After deducting expenses, Beckman settled on net operating income of $[redacted]. She then capitalized that income using a rate of [redacted]%, which was the average overall rate for all triple-net single-tenant leases that *Korpacz* reported for the fourth quarter of 2004. Beckman, however, acknowledged that the *Korpacz* data includes rates for various property types other than anchor department stores. *Tr. at 30; Ex. R-7 at 32.* She also looked at reports for Indianapolis and Chicago properties. Although some of the data from those reports pointed to a lower rate, Beckman noted that the reports included smaller stores that are "very hot right now for investors." *Tr. at 31.* She therefore chose to go with the higher rate from *Korpacz.* When she used that rate to capitalize her imputed net operating income, she arrived at a value of $[redacted]. *Id. at 31, 169-70; Ex. R-2.*

25. For her sales-comparison analysis, Beckman focused on sales of the following five anchor department stores, which she took from appraisals of a Nordstrom department store in downtown Indianapolis:

- A Marshall Field from Dublin Ohio
- A Lord & Taylor from Tampa Florida
- A Lord & Taylor from Alpharetta Georgia
- A Yonkers from West Des Moines Iowa
- A Marshall Field from Mishawaka Indiana

Ex. R-3; Tr. at 37-47, 90-91.

26. Beckman agreed that on-site inspections are important to appraisal work. Although she visited the subject property, she neither inspected any of the store's areas that were closed to the public nor met with management to discuss the property. But she has never seen a Macy's store with a leaking roof or mechanical room in disrepair. Similarly, although Beckman testified that she likely had visited her comparable properties while working for Simon, those visits pre-dated 1999 and were unconnected to evaluating how the properties compared to the subject property. Beckman got her information about the sales from internet searches and also possibly from Securities and Exchange Commission documents and press releases. Aside from a few press releases relating to department store name changes, however, she did not print or retain any of those documents for her records. And she did not verify the sale terms. *Tr. at 89-95, 176.*

27. Beckman adjusted each sale price to reflect differences between the comparable property and the subject property in terms of time-related market conditions, building size, land-to-building ratio (parking area), and location. She applied a uniform 5%-per-year inflation adjustment to bring the sale prices from the sale dates to the January 1, 2005 valuation date at issue in this appeal. Although Beckman testified that she considered both her experience and "a number of resources" in arriving at that 5%-per-year adjustment, she neither identified those resources nor performed any calculations to arrive at that percentage. *Ex. R-3*; *Tr. at 39, 96.*

28. As a general principle, Beckman agreed that there are economies of scale for department stores. Based on that principle, she weighted the size difference between the subject store and her comparable stores by first expressing that size difference as a percentage and then multiplying that number by 25%. Beckman acknowledged that she did not look at any specific market data to support her 25% weighting adjustment, relying instead simply on her experience. *Tr. at 96-100; see also, Ex. R-3.*

29. Beckman did even less to explain how she determined her location adjustments. She did not perform any calculations; she instead simply "input" her adjustment into a row on her spreadsheet. *Tr. at 104.* Although she claimed to have considered web sites for malls, information from the Better Business Bureau, average income, and population density, she kept none of that information and did not produce it in response to discovery requests. *Id. at 104-05.*

30. While Beckman's spreadsheet has columns for age and condition adjustments, she made neither. As for condition, she explained: "These properties are kept up very well. They are maintained all the time." *Tr. at 40.* When challenged about the lack of support for her conclusion that all anchor department stores are maintained equally, Beckman testified that she reviewed "historical data in the corporate [press releases] from Edgar and annual reports and such from owners of these properties." *Tr. at 109.* In an earlier deposition, however, Beckman testified that she did not have any "specific information" on the condition of the properties, and that while she reviewed corporate websites in late 2012 and early 2013, she did not look at any websites from 2005-2007. *Tr. at 109-10.* She instead relied on her experience with Simon, which told her that things do not deteriorate "to that point." *Id.*

31. Beckman agreed that appraisal texts approve of adjusting sale prices where the age of a comparable building differs from the age of the building being appraised. Indeed, she admitted to having made such adjustments in other assignments. Yet despite the fact that all but one of her comparable stores was at least 20 years newer that the subject store, she decided against making any age-related adjustments. Once again, she relied on her belief

that anchor department stores are constantly remodeled and upgraded to meet current trends in fashion, lighting, and other things. *Ex. R-3; Tr. at 111, 120-23, 179.*

32. Beckman's adjusted sale prices ranged from $45.66/sq. ft. to $73.86/sq. ft. She concluded to a value equaling the highest price per square foot indicated by any of her comparables, which came from the sale of the Lord & Taylor in Alpharetta, Georgia—a store that is just one-third of the subject store's size and age. Beckman chose that sale primarily because she believed Alpharetta was the most similar location to Castleton and the sale required the lowest net adjustment (-6%). When she applied the Alpharetta store's adjusted sale price of $74.86/sq. ft. to the subject store's GLA, she arrived at a value of $22,652,800. *Exs. R-2 - R-3; Tr. at 43-44, 47.*

33. Because anchor department store buyers are most concerned with return on investment, Beckman gave the greatest weight to her conclusions under the income approach. She therefore estimated the subject property's value at $18,434,200. In her view, that estimate reflects the property's value as of January 1, 2005, because she took her capitalization rate from *Korpacz's* report for the last quarter of 2004. *Ex. R-2; see also, Tr. at 35, 48-49.*

C. Ramsland appraisal

34. Macy's hired Ramsland to appraise the subject property. Ramsland has decades of experience valuing malls and anchor department stores. He is a member both of the Appraisal Institute and of the Counselors of Real Estate. He is also a member of the Real Estate Counseling Group of America, a group comprised of just 30 appraisers and academics nationwide. He has published peer-reviewed articles on various appraisal topics, including the proper use and application of regression analysis in property valuation. *Tr. at 212-17.*

35. Ramsland and Shannon Luepke, an appraiser in Ramsland's office who has a degree in statistics, prepared an appraisal report estimating the subject property's market-value-in-

use for the 2006 assessment date at $16,500,000 (valuation date of January 1, 2005).[5] They certified that their appraisal complied with USPAP. *Ex. R-4; Tr. at 220.* Although they worked jointly on the appraisal, Ramsland oversaw Luepke "every step of the way." *Tr. at 220.*

36. Ramsland inspected the subject property and spoke with the store manager. He considered and developed all three generally recognized valuation approaches—the cost, sales-comparison, and income approaches. Although Ramsland ultimately did not rely on his conclusions under the cost approach, he believed that the approach was informative and relevant. Initially, Ramsland concluded that the property's current use—as an anchor department store—was its highest and best use. He then determined a land value and used Marshall Valuation Service's segregated cost program to estimate both a replacement cost new and depreciated cost for the improvements, ultimately arriving at a value of $19,600,000. *Ex. P-4 at 20-31, 75; Tr. at 218-41.*

37. Ramsland then turned to the income approach. To estimate market rent, he used leases for 13 department stores from throughout the country that he felt were comparable to the subject store. *Ex. P-4 at. 37-51; Tr. at 252-57.* He selected those properties "because they are mature properties, are located in similar market areas, or are of similar quality to the [subject property]." *Ex. P-4 at 37.* In accordance with USPAP, his report contains demographic information for both the subject store's market area and the market areas for his 13 comparable stores. *Tr. at 261; Ex. P-4 at 52.*

38. After verifying all relevant information, Ramsland determined a median ([redacted]/sq. ft.) and mean ([redacted]/sq. ft.) sales volume. He then projected rent for each comparable store using the mean sales volume to determine a rental range (in dollars per square foot) at a 99% confidence level. The mean sales volume was higher than the store's actual sales of [redacted]/sq. ft. for 2006. Nonetheless, Ramsland used the higher number because that is what he believed the market dictated. *Ex. P-4 at 51, 54-56; Tr. at 257-65.*

[5] They also estimated the property's value as of January 1, 2006, and January 1, 2007, in connection with Macy's appeals for those assessment years. *See Ex. R-4.*

39. Based on that $[redacted]/sq. ft. sales volume, the indicated rental range was $[redacted]/sq. ft. to $[redacted]/sq. ft., which Ramsland stabilized at $5.10/sq. ft. He stabilized at that level because the subject store is older and larger than most department stores, and older or larger stores typically generate lower rent per square foot. He then multiplied his stabilized rate by the store's GLA to arrive at market rent of $1,564,216. *Ex. P-4 at 54, 62; Tr. at 264-66.*

40. Next, Ramsland deducted three types of expenses: vacancy and collection loss, management fees, and replacement reserves. Both the Appraisal Institute and the International Association of Assessing Officers ("IAAO") approve of allowing some vacancy and collection loss to recognize that annual rents are typically less than potential gross income. And Ramsland cited multiple examples of anchor department store vacancies, including three in the Indianapolis area. *Tr. at 276, 372-73; Ex. P-4 at 55.*

41. Ramsland used the following method to approximate vacancy and credit loss. He examined the median sales data (in 2006 dollars) reported by *Dollars & Cents* for 1987 through 2006 to determine the amount by which sales fluctuated from year to year. He next calculated the mean, standard deviation, and coefficient of variance for the sales. Based on that analysis, he determined that sales fluctuated 3.11% annually around the mean, which he stabilized at 3%. He therefore calculated his vacancy and collection loss at 3% of gross rent. *Ex. P-4 at 55-56; Tr. at 277-80.*

42. Ramsland acknowledged that his approach is not a generally accepted method for calculating vacancy and collection loss. But he explained that there are only roughly six appraisers in the country who "really work in the area of anchor department stores," and each estimates vacancy and collection loss a little differently. *Tr. at 279.* For example, some appraisers simply apply what Ramsland described as the "obligatory 5 percent that appraisers generally use." *Id.* By contrast, Ramsland testified that his approach complies with USPAP because it comes from market data and an authoritative source. *Id. at 279-80.*

43. For his management fee, Ramsland used 2% of effective gross income, which he took from *Korpacz*. Although *Korpacz* does not report data from anchor department stores as a separate category, it does offer data for single-tenant properties, including national power centers. Management fees for those types of properties range from 2% to 3%. Based on his knowledge and understanding of anchor department stores, Ramsland used the low end of that range. *Ex. P-4 at 56, Ex. G; Tr. at 280-82, 293-95.*

44. Ramsland's final expense was reserves for items that landlords typically must replace in anchor department stores. He identified three categories of replacement reserves: roof cover, site improvements, and an annual carpet allowance. He only allowed \$.05/sq. ft. for carpeting because landlords and tenants usually split those costs. Cumulatively, he used a stabilized annual reserve allowance of \$0.30/sq. ft., or \$92,013. Ramsland noted that for the first quarter of 2006, *Korpacz* reported reserves for national power centers ranging from \$.10/sq. ft. to \$.40/sq. ft., with an average of \$.18/sq. ft. *Ex. P-4 at 56-57, 62; Tr. at 283-86.*

45. To develop a capitalization rate, Ramsland looked at market-derived rates from sales of anchor department stores and at data from *Korpacz* for a variety of property types with similar risk-profiles. He also calculated a rate using the Ellwood Mortgage-Equity Technique. After considering that data, and in light of subject property's actual sales volume, Ramsland concluded to a capitalization rate of 8.0%. He then divided that rate into his net operating income to arrive at a value of \$17,400,000 as of March 1, 2006. *Ex. P-4 at 57-61; Tr. at 286-96.*

46. Ramsland analyzed 10 sales of comparable properties for his sales-comparison analysis. Either he or someone at his office verified all sale terms. Ramsland then adjusted the sale prices to account for differences between his comparable properties and the subject property in terms of sale date, building age, building area, land-to-building ratio, condition, and location. He explained that appraisers use various qualitative and quantitative techniques to adjust comparable sale prices. But in his view, regression

analysis is the best technique. Ramsland testified that regression analysis has generally been accepted and approved in appraisal texts, noting that he co-authored a peer-reviewed article on the technique for *The Appraisal Journal*, which was cited in the 12th and 13th editions of THE APPRAISAL OF REAL ESTATE. *Ex. P-4 at 67-72, Ex. F; Tr. at 299-309.* When asked whether the appraisal profession recognizes his technique, Ramsland testified: "They have been slow in coming through, but they have been coming through." *Tr. at 308.*

47. For his regression analysis Ramsland used a universe of 68 department store sales from 1987-2011. He derived price adjustments attributable to independent variables (*e.g.*, sale date, age, square footage, etc.) and then applied those adjustments to his 10 comparable sales. According to Ramsland, the dependant variable (sale price) was 95.2% explained by the independent variables with a 99% confidence level. *Ex. P-4 at 71-72, Exhibit F; Tr. at 309-20.*

48. On cross-examination, Ramsland acknowledged that he was familiar with an article from *The Appraisal Journal* in which the author indicated that using building area multiple times in a regression analysis is problematic. But Ramsland explained that the author was addressing a case study in which another appraiser, who cited Ramsland's own article from *The Appraisal Journal*, had model specification errors. The appraiser had variables that were 95% insignificant, which is something that Ramsland said he would never do. In any case, Ramsland did not see any of the underlying data that the other appraiser used.[6] *Tr. at 364-69, 374-76.*

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[6] Although the Assessor ultimately did not offer the article as an exhibit, Macy's made a hearsay objection to the Assessor questioning Ramsland about statements from the article. The ALJ took the objection under advisement. *See Tr. at 359-65.* The Board overrules Macy's objection. The statements from the article about which the Assessor questioned Ramsland are hearsay. While the Indiana Rules of Evidence recognize an exception for statements from periodicals that contradict an expert's testimony, the party proffering the statements must show that they are reliable authority. Ind. R. Evid. 803(19). The Assessor did not do much to establish the reliability of any statements from the article, aside from showing that the article was published in the *Appraisal Journal*, a journal in which Ramsland himself has published what he described as peer-reviewed articles. Nonetheless, the Board's rules allow it to admit hearsay, with the caveat that the Board cannot base its determination solely on hearsay that is properly objected to and that does not fall within a recognized exception to the hearsay rule. As explained below, the statements from the article have little effect on the Board's determination.

49. After adjusting his comparable sale prices, Ramsland determined that the subject property would find reasonable market acceptance at $54/sq. ft. to $58/sq. ft., or $16.6 million to $17.8 million. *Ex. P-4 at 72, 74.*

50. Ramsland ultimately gave the most weight to his conclusion under the income approach, which he felt was supported by his sales-comparison analysis. He therefore settled on a value of $17,400,000 as of March 1, 2006. *Ex. P-4 at 75*; *see also, Tr. at 322-23.*

51. Finally, Ramsland trended his value estimate to reflect the subject property's value as of the January 1, 2005 valuation date that applies to 2006 assessments. He considered three potential indices: (1) the U.S. Department of Labor, Bureau of Statistics Consumer Price Index (all urban consumers—"CPIU"); (2) the Moody's/Real CPPI (Retail) Index, and (3) the National Council of Real Estate Investment Fiduciaries ("NCREIF") National Property Index. Ultimately, he concluded that the CPIU was the best metric because it reflected the difference in the value of the dollar's purchasing power from one period to the next and was less severe than the other indices. Ramsland applied the CPIU index to his March 1, 2006 value estimate to arrive at a value of $16,500,000 as of January 1, 2005. *Ex. P-4 at 75-79; Tr. at 323-26.*

D. Beckman's analysis of Ramsland's appraisal

52. In addition to forming her own opinion of the subject property's value, Beckman offered her opinion about aspects of Ramsland's appraisal, although she acknowledged that she did not perform a USPAP-compliant review. According to Beckman, she and Ramsland ultimately used similar net operating incomes and capitalization rates in their respective analyses under the income approach, although they took different paths to those conclusions. But given her belief that anchor department stores seldom go dark, she took issue with Ramsland's decision to deduct vacancy and collection loss. She also took issue with how Ramsland calculated his proxy for that loss—she did not see any connection between annual changes in sales and vacancy or collection loss. In any case, Beckman was troubled by the fact that Ramsland deducted over $46,000 annually for something Beckman felt might not even happen. *Tr. at 381, 389, 391, 396.*

53. Beckman similarly disagreed with Ramsland's decision to deduct a management fee. In her view, managing a single-tenant anchor department store does not involve much time. For example, the roof or HVAC system might need to be replaced every 10-to-15 years. Because Ramsland calculated a management fee based on a percentage of income, however, he deducted an annual expense of more than $30,000. *See Tr. at 391; Ex. P-4 at 62.*

54. Turning to Ramsland's sales-comparison approach, Beckman agreed that regression analysis is a good statistical tool to determine parameters for a large number of properties. But she did not think that it was appropriate to apply such an analysis to a single property. She was also troubled by the age of the sales that Ramsland included in his regression analysis. *Tr. at 392-95.*

55. Finally, Beckman disagreed with using the CPIU to trend the subject property's value from March 1, 2006, to January 1, 2005, because the CPIU has nothing to do with real estate markets. *Tr. at 392-96.*

Conclusions of Law and Analysis

A. Burden of Proof

56. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that the assessment is wrong 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). 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.[7] That statute shifts the burden of proof to the Assessor in cases where the assessment under review has increased by more than 5% over the value that the county or township assessor determined for the same property in the immediately preceding assessment year. *See* I.C. § 6-1.1-15-17.2.

57. In light of Ind. Code § 6-1.1-15-17.2, Macy filed a Motion for Determination Concerning Burden of Proof, asking the Board to find that the Assessor had the burden of proof. Because the assessment under review—the PTABOA's determination of $26,131,600)—represents an increase of far more than 5% over the value that the Assessor determined for 2005 ($15,182,100), the ALJ agreed with Macy's and preliminarily determined that the Assessor had the burden of proof. The Board agrees. While the Assessor argues that the burden-shifting statute should apply only to appeals of assessments made after July 1, 2011, the Board has issued many decisions rejecting that argument and holding that the statute applies to all appeals that were pending on or after the statute's effective date. *E.g., Echo Lake, LLC v. Morgan County Assessor*, pet. nos. 55-016-09-1-4-00001 *et. al.* (Ind. Bd. of Tax Rev., Nov. 4, 2011); *Hukill v. Monroe County Assessor*, pet. no.53-009-1-4-00221 (Ind. Bd. Tax Rev., Aug. 15, 2012)

[7] 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.

B. Evidence in Assessment Appeals

58. Indiana assesses real property based on its true tax value. For most property types, the 2002 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." MANUAL at 2. A party's evidence in an assessment 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). Parties may also offer construction costs or sales information for the property under appeal, assessment or sales information for comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5; I.C. § 6-1.1-15-18.

59. In any event, for evidence to have probative value, a party must explain how that evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006) ("[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 2006 assessments, the valuation date was January 1, 2005. *See* 50 IAC 21-3-3(b) (2009) (making the valuation date for post-2005 assessments January 1 of the year preceding the assessment date).

C. The Board is Persuaded by Ramsland's Valuation Opinion

60. The parties offered a significant amount of evidence over the better part of two days. But the Board's conclusion boils down to this: Ramsland, a highly qualified appraiser with significant experience in appraising anchor department stores, valued the subject property at $16,500,000 as of the relevant valuation date for the 2006 assessment. His opinion is by far the most persuasive evidence in the record. He thoroughly analyzed the property's value under all three generally recognized valuation approaches, taking care to verify important information, such as the terms of sales and leases that he used in his analysis. And he explained his analysis in significant detail, offering market data to support most of his key judgments.

1. The Assessor did not significantly discredit Ramsland's opinion

61. The Assessor, however, challenged some of those judgments. For example, his witness, Beckman, criticized several aspects of Ramsland's analysis under the income approach. Beckman took issue with Ramsland's decision to deduct management fees and vacancy and collection loss in estimating net operating income. But Ramsland explained that the Appraisal of Institute and IAAO both require appraisers to deduct at least something for those expenses. Indeed, the publication from which Beckman took her own expenses, *Dollars & Cents*, includes management fees as an expense. And Beckman acknowledged that anchor department stores all go dark at some point, meaning that the store's owner will have to deal with vacancy. The Board is persuaded that Ramsland was warranted in deducting some amount from the subject property's potential gross income to account both for management fees and for vacancy and collection loss.

62. Beckman also challenged the size of Ramsland's adjustments. As she explained, day-to-day management of a single-tenant building leased on a triple-net basis may not take a significant amount of time. Yet because Ramsland calculated the expense at 2% of sales, he actually deducted more than $30,000 for those fees. Nonetheless, Ramsland used the low end of *Korpacz*'s range of management fees for power centers. He therefore had at least some market-based support for his deduction, albeit not as strong as the support for many of his other decisions.

63. Ramsland's calculation of a proxy for vacancy and collection loss gives the Board a little more pause. As Ramsland himself admitted, his methodology—determining the annual fluctuation in sales around a mean—is not generally accepted by his peers. That methodology has some logical appeal—it accounts for fluctuations in rent collections that prudent investors likely would anticipate. But it is also one sided. As Ramsland's calculations show, the fluctuation includes sales volumes both above and below the mean, yet his deduction accounts solely for those below the mean. Perhaps Ramsland accounted for fluctuations above the mean elsewhere in his analysis. If that is the case,

however, he did not explain where. Ultimately, though, Ramsland's decision to deduct at least something for vacancy and collection loss appears sound, and the questions surrounding his methodology in calculating a proxy for those losses does not detract significantly from his opinion's reliability.

64. Beckman also challenged Ramsland's use of multiple regression analysis to quantify adjustments to his comparable properties' sale prices. Her criticism centered more on the soundness of applying such an analysis to a single property than on any issues with Ramsland's underlying mathematics. But other than testifying that she had not seen multiple regression analysis used in the way Ramsland used it, Beckman did little to show that Ramsland departed from generally accepted appraisal practices. Indeed, Ramsland testified that while far from being universally accepted, his methodology is sound under generally accepted appraisal principles and that his article in the *Appraisal Journal* laying out that methodology has been cited in both the 12^{th} and 13^{th} editions of THE APPRAISAL OF REAL ESTATE.

65. The Assessor did try to impeach Ramsland's regression analysis using an article from the *Appraisal Journal*. The article's author found specification errors in a multiple regression analysis performed by another appraiser who had cited to Ramsland's earlier article. Of course, as Macy's pointed out, the author was not there to testify, and Ramsland had not seen underlying data used by the appraiser whose work the author reviewed. At best, the Assessor showed that Ramsland's methodology is not universally accepted. But that fact does not significantly undermine Ramsland's conclusions under the sales-comparison approach. Even if it did, he did not rely heavily on those conclusions in forming his ultimate valuation opinion.

66. Finally, the Assessor criticized Ramsland's use of the CPIU to trend his March 1, 2006 value estimate back to January 1, 2005. The Board has been expansive in recognizing methods for trending values in assessment appeals. And as Macy's pointed out, using the consumer price index is one those methods. Indeed, Beckman uniformly adjusted sale

prices by 5% per year in her sales-comparison analysis, albeit without much support. Ramsland used the same adjustment when he applied the CPIU.

2. Ramsland's valuation opinion is more persuasive than any of the Assessor's evidence

67. Against Ramsland's opinion, the Assessor offered: (1) the assessment itself, which Beckman testified met the requirements of the "DLGF Manual" and regulations; and (2) Beckman's valuation opinion. Beckman's testimony about the assessment has little or no probative value; at most, it amounts to a claim that someone in the Assessor's office followed the Real Property Assessment Guidelines for 2002 – Version A and other administrative regulations. The Tax Court has previously rejected that type of evidence. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that a strict application of the regulations was not enough for the taxpayers to meet their burden of proof and pointing to the Manual in explaining what types of evidence can be used to demonstrate a property's market value-in-use). Even if such an approach were generally allowable, Beckman's testimony would still lack probative value. Beckman offered only her conclusory opinion that the assessment complied with the Guidelines and regulations; she did not walk the Board through the calculations and judgments underlying that assessment.

68. Beckman's own valuation opinion is more substantial, if ultimately unconvincing. Beckman analyzed the subject property's value using the income and sales-comparison approaches. And she adhered to those approaches in form, if not always in substance. Nonetheless, various shortcomings make her opinion far less reliable than Ramsland's. For example, she gave no support for some of her adjustments to her comparable properties' sale prices. In other instances, she pointed only to her experience. And her claim that she did not need to adjust for significant age differences because anchor department stores are well maintained is unconvincing, particularly in light of the fact that she did not inspect any of the comparable stores in connection with the valuation assignment at issue. Also, as Ramsland explained, the type of maintenance that Beckman cited does not change the useful life of a store's "bone structure." *Tr. at 236.*

69. Of course, like Ramsland, Beckman ultimately relied most heavily on her conclusion under the income approach, and she offered more support for the various judgments that she made in applying that approach. Thus, she derived her imputed rent from the subject property's actual sales and market data reported in *Dollars & Cents*. And she took her capitalization rate from *Korpacz*. But while sales may be the driver for rents, the focus should be on the market rather than solely on Macy's actual experience. *See Indiana MHC, LLC v. Scott County Assessor*, 987 N.E.2d 1122, 1185-86 (Ind. Tax Ct. 2013) ("[T]o provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income, expenses, and occupancy rates for the subject property, but the income, expenses and occupancy rates of comparable properties in the market as well.") (emphasis in original). Beckman did little to check Macy's sales against the market for comparable anchor department stores in similar locations. Although she testified that she did not have sales-volume information for comparable properties readily available, that fact does not make the information any less important to reaching an accurate valuation.

70. Also, while both Beckman and Ramsland acknowledged that *Dollars & Cents* is an authoritative source, that fact does not mean simply taking rental data from that report without further analysis leads to a particularly reliable value estimate for a given store. The Board is more persuaded by Ramsland's approach in which he consulted *Dollars and Cents* data for context but estimated market rent based on sales volumes and rental rates for specific comparable anchor department stores.

71. In any case, Beckman appears to have misinterpreted how *Dollars & Cents* reports its data. She imputed rent to the subject property based on 3% of its sales volume. She chose that rate largely based on her calculation of rent as a percentage of sales for the top 10% and top 2% of sales volumes reported in *Dollars & Cents*. The subject property's sales, however, were actually [redacted] those cut-offs. Beckman tried to allay that concern by claiming that the numbers for the top 10% and top 2% were are not really cut-offs but rather medians of the sales reported by all the stores falling within the top 10%

and top 2%. Thus, she reasoned that the top 10% includes sales volumes falling below the reported figure of $283.39/sq. ft. But as explained above, her claim flies in the face of how *Dollars and Cents* describes its reporting methodology.

72. Beckman alternately justified her 3% figure on grounds that she was accounting for base rent together with all percentage rent, while *Dollars and Cents'* numbers accounted only for base rent and the first percentage rate tied to sales above a designated cut-off. Again, her interpretation contradicts *Dollars & Cents*, which explains that its reporting of total rent per square foot includes "all forms of rent—guaranteed minimum rent, percentage rent, and combinations thereof." *Ex. P-12 at 8; Tr. at 190.* Beckman's final justification—that her 3% figure was designed to stabilize a rental stream in light of the subject property's sales history, which included higher volume both before and immediately after FY 06—fares no better. The subject property's sales volume [redacted] approached the cut-off for *Dollars & Cents'* top 10%. Under Beckman's own calculation, rent for the top 10% was only 2.55% of sales per square foot—well below her 3% figure.

73. Beckman's estimate of expenses also lacks credibility. While her qualms about the size of Ramsland's deduction for management fees are at least debatable, those qualms do not justify completely excluding management fees as an expense. The same is largely true for her decision to ignore vacancy and collection loss, although she offered at least some support for that decision by explaining that several investors listed in *Korpacz* did not account for vacancy and credit loss when investing in single-tenant buildings.

74. Also, Beckman did not dispute that replacement reserves are a legitimate expense. Nonetheless, she did not separately deduct any amount for those reserves. And the Board is not persuaded by her claim that her 3% expense ratio was somehow designed to account for replacement reserves. At most, she testified that her 3% ratio allowed for additional landlord expenses, such as those associated with the parking lot. But given that the insurance, HVAC, and roof expenses that she took from the *Dollars & Cents* tables ranged from 2.89% to 3.11%, her claim appears to be an after-the-fact justification.

75. As with most of the other elements in Beckman's analysis, her choice of a capitalization rate was less persuasive than Ramsland's. Ramsland (1) extracted an overall rate from the market, (2) calculated a rate using the Ellwood Mortgage-Equity Technique, and (3) checked those rates against what was reported in *Korpacz* for properties with similar risk profiles. By contrast, Beckman simply took her rate from *Korpacz*.

76. In short, Ramsland is a more-qualified and experienced expert who based his decisions on significant research and market data. By contrast, Beckman failed to point to market data for many of her underlying judgments. Even where she relied on market data, she simply took that data from national publications without further analyzing it in the context of the subject property's specific characteristics. Finally, Beckman was simply a less reliable witness than Ramsland. She was far more guarded with her answers than Ramsland, and Macy's repeatedly impeached her with prior inconsistent statements from her depositions. *See Tr. at 74, 109, 404, 406.* Taken as a whole, the Board has little trouble concluding that Ramsland's valuation opinion is the most reliable evidence of the subject property's market value-in-use and that the property's 2006 assessment must be reduced to $16,500,000—the amount that Ramsland estimated.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines that the subject property's assessment for 2006 must be changed to $16,500,000.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.