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:
49-400-07-1-4-03938

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, 2007

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

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

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:
49-400-08-1-4-11393

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, 2008

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

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 Nos.: 49-400-07-1-4-03938
	) 49-400-08-1-4-11393
Petitioner,	)
	) Parcel No.: 4018711
v.	)
	)
MARION COUNTY ASSESSOR	) County: Marion
	)
Respondent.	) Assessment Years: 2007, 2008
	)

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

September 16, 2013

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. In these assessment appeals, 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 for the 2007 and 2008 assessment years, the Board finds that those assessments must be reduced to correspond with his valuation opinion.

PROCEDURAL HISTORY

2. Macy's appealed the subject property's 2007 and 2008 assessments to the Marion Property Tax Assessment Board of Appeals ("PTABOA"). The PTABOA reduced those assessments, although not by as much as Macy's requested. Macy's then filed Form 131 petitions with the Board.

3. On May 3, 2013, the Board held a hearing on Macy's appeals through its designated administrative law judge, David Pardo ("ALJ"). 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 property.

4. Macy's also appealed the property's 2006 assessment. As laid out in 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 for all three assessment years. The Assessor responded on April 26, 2013. At a May 2, 2013 pre-hearing 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 and that Macy's had the burden of proof for the remaining two years.[1] 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 2007-2008 assessments.[2] *See Tr. (2007-08) at 7-10.*

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[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 pursue 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.

[2] As explained below, the parties incorporated all of the evidence from the hearing on the 2006 assessment into the hearing on the 2007-2008 assessments. The transcript from the 2006 hearing is bound in two volumes, but the pages are numbered consecutively from 1 to 433. The Board will simply cite to page numbers for that portion of the record. The Board will use the following format when citing to testimony offered only at the hearing on the 2007-2008 assessments: Tr. (2007-08) at (page number).

5. 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-5:	Responses and Objections of Marion County Assessor to Petitioner's First Request for Admissions and First Set of Interrogatories to the Marion County Assessor.
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, P-5 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.[3]

6. The Assessor offered the following exhibits:

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-4:	2007 Tax Year (01/01/06 Valuation Date) Sales Comparison Analysis.
Exhibit R-5:	2008 Tax Year (01/01/07 Valuation Date) Sales Comparison Analysis.
Exhibit R-6:	Spreadsheet with comparable sales.
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.*
Exhibit R-11:	Property record card for the subject property.

The ALJ admitted Exhibits R-1 through R-9 without objection. The ALJ admitted Exhibit R-11 over Macy's objection. *Tr. (2007-08) at 47-49*. The Board adopts the ALJ's ruling.[4]

[3] 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.

7. 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) the transcripts for the hearings on all three assessment years,[5] and (4) the transcript of the May 2, 2013 prehearing conference.

8. The PTABOA determined the following assessments

Year	Land	Improvements	Total
2007	$3,417,500	$22,714,100	$26,131,600
2008	$3,417,500	$26,131,600	$29,549,100

9. Macy's contends that the overall assessments should be reduced to $17,800,000 for 2007 and $18,200,000 for 2008.

FINDINGS OF FACT

A. The property

10. 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 remodeled in 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.*

[4] Exhibit R-11 is the subject property's record card. Macy's argued that the card is irrelevant because Macy's had agreed to what the original assessments were for both assessment years. These are assessment appeals. It is almost axiomatic that the official record of the property's assessments is relevant, if for no other reason than to provide background.

[5] The incorporated transcript from the hearing on the 2006 assessment is appended to transcript from the hearing on the 2007-2008 assessments.

B. Eve Beckman's valuation opinion

11. 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.*

12. Beckman analyzed the subject 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.*

13. Under the income approach, Beckman first implied a rent level for the subject property through multiplying the store's actual reported sales by 3%. She used the store's actual sales because sales data for comparable stores was not readily available. She, however, 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.*

14. 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. Beckman, however, added that her experience confirmed that rate. *Tr. at 17-18, 138; Tr. (2007-08) at 56.*

15. 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%.[6] The store's actual sales volumes for the fiscal years ending on January 31, 2007 ("FY 07") and January 31, 2008 ("FY 08"), however, were [redacted] sq. ft. and [redacted]/sq. ft., respectively. Those numbers are below the top 10%, and nowhere near the top 2%. *Ex. R-2; see also, Tr. at 150-54.*

16. Beckman nonetheless offered two additional justifications for choosing her 3% rate. 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*,[7] 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.*

17. Beckman also 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

[6] 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.*
[7] *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.*

reported 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 (bold in original). Thus, as the following excerpt from *Dollars & Cents* further 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*.

18. 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.*

19. 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 33, 39, 51.* She 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.*

20. 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.*

21. After deducting expenses, Beckman settled on net operating income of $[redacted] for 2007 and $[redacted] for 2008. She then capitalized that income using rates of [redacted]% and [redacted]%, respectively. Those were the average overall rates for all triple-net single-tenant leases that *Korpacz* reported for the fourth quarters of 2005 and 2006. 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 lower rates, she noted that the reports included smaller stores that are "very hot right now for investors." *Tr. at 31.* Beckman therefore chose to go with the higher rates from *Korpacz*. When she used those rates to capitalize her imputed net operating income, she arrived at values of $[redacted] (2007) and $[redacted] (2008). *Ex. R-2; see Tr. at*

31, 169-70; Tr. (2007-08) at 59-60.

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

- 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
- A Dillards from Evansville, Indiana
- A Macy's from Frisco, Texas

Exs. R-4 – R-5; Tr. at 37-47, 90-91.

23. 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 any of the sale terms. *Tr. at 89-95, 176.*

24. 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, 2006, and January 1, 2007 valuation dates at issue in these appeals. 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-4 – R-5*; *Tr. at 39, 96.*

25. 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, Exs. R-4 – R-5.*

26. 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 104-07.*

27. 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.*

28. 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 comparables 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. *Exs. R-4 - R-5; Tr. at 111, 120-23, 179.*

29. Beckman's adjusted sale prices ranged from $50.34/sq. ft. to $77.55/sq. ft. for 2007 and $52.87/sq. ft. to $81.24/sq. ft. for 2008. In each instance, she concluded to a value equaling the highest price per square foot, 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 (1) she believed that Alpharetta was the most similar location to Castleton, and (2) the sale required the lowest net adjustment (-6%). When Beckman applied the Alpharetta store's adjusted sale prices to the subject store's GLA, she arrived at values of $23,785,500 for 2007 and $24,918,100 for 2008. *Exs. R-2, R-4 – R-5; Tr. at 43-44, 47.*

30. Because buyers of anchor department stores 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 $23,808,900 (2007) and $25,849,200 (2008). In her view, those estimates reflect the property's values as of January 1, 2006, and January 1, 2007, because she took her capitalization rates from *Korpacz's* reports for the last quarters of 2005 and 2006. *Ex. R-2; see also, Tr. at 35, 48-49.*

C. Ramsland appraisal

31. 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 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 appraisal topics, including the proper use and application of regression analysis in property valuation. *Tr. at 212-17.*

32. 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 at $17,800,000 for the 2007 assessment (valuation date of as of January 1, 2006) and $18,200,000 for the 2008 assessment (valuation date as of January 1, 2007). 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.*

33. 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 values of $19,400,000 (2007) and $18,700,000 (2008). *Ex. P-4 at 20-31, 75; Tr. at 218-41; Tr. (2007-08) at 17-21.*

34. Ramsland then turned to the income approach. He first looked at historical rent and sales information reported in *Dollars & Cents* to provide context. 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. 35-51; Tr. at 249-57.* 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, Ramsland's 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.*

35. After verifying all relevant information, Ramsland determined a median ($[redacted]/sq. ft.) and mean ($[redacted]/sq. ft.) sales volume. Those were above the subject store's actual sales volume for FY 06. In FY 07 and FY 08, however, the store's sales increased partly because an L.S. Ayres at Castleton Mall closed. The sales for those two years were $[redacted]/sq. ft. and $[redacted]/sq. ft., which Ramsland stabilized at $[redacted]/sq. ft. and $[redacted]/sq. ft., respectively. He then projected rent for each comparable using those stabilized sales volumes to determine a rental range (in dollars per square foot) at a 99% confidence level. *Ex. P-4 at 51, 54-56, 63-66; Tr. at 257-65; Tr. (2007-08) at 21-28.*

36. Based on those stabilized sales volumes, the indicated rental range for 2007 was $[redacted]/sq. ft. to $[redacted]/sq. ft., which Ramsland stabilized at $5.40/sq. ft. For 2008, the range was $[redacted]/sq. ft. to $[redacted]/sq. ft., which he stabilized at $5.60/sq. ft. Ramsland stabilized at those levels 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 rates by the store's GLA to arrive at market rents of $1,656,229 (2007) and $1,717,570 (2008). *Ex. P-4 at 63-66; Tr. at 264-66; Tr. (2007-08) at 21-28.*

37. 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.*

38. 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; Tr. (2007-08) at 21-28.*

39. 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 he 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.*

40. 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; see also, Tr. (2007-08) at 21-28.*

41. 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 typically 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, 64, 66; Tr. at 283-86; see also, Tr. (2007-08) at 21-28.*

42. 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. The *Korpacz* information was from the first quarter of 2006. He also calculated a rate using the Ellwood Mortgage-Equity Technique. Again, he took his mortgage and equity yield rates for that calculation from the first quarter of 2006. After considering that data, and in light of the subject property's actual sales volume for 2006, Ramsland concluded to a stabilized capitalization rate of 8.0% for 2006. He used the same rate for 2007 and 2008, although he noted in his appraisal report that capitalization rates had "ticked up modestly" for 2007. When he capitalized his net operating incomes using that 8% rate, he arrived at values of \$18,500,000 as of March 1, 2007, and \$19,300,000 as of March 1, 2008. *Ex. P-4 at 57-66; Tr. at 286-96; see also, Tr. (2007-08) at 21-28.*

43. Ramsland analyzed 10 sales of comparable properties for his sales-comparison analysis. Either he or someone at his office verified all sale terms. He 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. Ramsland explained that appraisers use various qualitative and quantitative techniques to adjust comparable sale prices. But in his view, regression analysis is the best technique. He testified that regression analysis has generally been accepted and approved in appraisal texts. In fact, he co-authored a peer-reviewed article on the technique for *The Appraisal Journal*, which is 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; Tr. (2007-08) at 28-32.* 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.*

44. 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. He found that 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; Tr. (2007-08) at 29-32.*

45. 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. *Tr. at 364-69, 374-76.*[8]

46. After adjusting his comparable sale prices, Ramsland determined that the subject property would find reasonable market acceptance at $58 to $62/sq. ft. ($17.8 million to $19 million) for 2007 and at $59 to $64/sq. ft. ($18.1 million to $19.6 million) for 2008. *Ex. P-4 at 72-73; Tr. (207-08) at 30-31.*

47. Ramsland ultimately gave the most weight to his conclusions under the income approach, which he felt were supported by his sales-comparison analysis. He therefore settled on

[8] 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.

values of $18,500,000 for March 1, 2007, and $19,300,000 for March 1, 2008. *Ex. P-4 at 74-75; see also, Tr. at 322-23; Tr. (2007-08) at 31-32.*

48. Finally, Ramsland trended his value estimate to reflect the subject property's value as of the valuation dates for the 2007 and 2008 assessment years. 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. For the period between January 1, 2006, and March 1, 2007, all three indices showed an increase, with the CIPU's 3.8% increase being the lowest. For the period between January 1, 2007, and March 1, 2008, the CPIU and NCREIF indices showed increases of 5.5% and 7.5%, respectively, while the Moody's index showed a decrease of 5.7%. Ramsland ultimately concluded that the CPIU was the best metric and applied it to arrive at values of $17,800,000 as of January 1, 2006, and $18,200,000 as of January 1, 2007. *Ex. P-4 at 75-79; Tr. at 323-26; Tr. (2007-08) at 32-33.*

D. Beckman's analysis of Ramsland's appraisal

49. In addition to forming her own valuation opinion, Beckman offered her opinion about aspects of Ramsland's appraisal, although she acknowledged that she did not perform a USPAP-compliant review. She first took issue with Ramsland's analysis under the income approach, which she characterized as reducing sales volume to a fixed base rent per square foot and then applying that rent to the subject property. She felt that such an approach understated the property's value and that her approach of multiplying the property's sales volume for each year by a fixed percentage was more appropriate. She also pointed out that while the subject store's sales increased by [redacted]% between FY 06 and FY 07, Ramsland's stabilized rent increased only 5.88%. *Tr. (2007-08) at 53-54, 72-73.*

50. Given her belief that anchor department stores seldom go dark, Beckman similarly disagreed with Ramsland's decision to deduct vacancy and collection loss. In any case, she disagreed with how he calculated his proxy for that loss. In light of the subject

property's considerable sales volume, Ramsland's calculation led him to deduct over $46,000 annually for something that Beckman felt might not happen. Beckman similarly questioned 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. But Ramsland calculated a management fee based on a percentage of income, which led him to deduct an annual expense of more than $30,000 for each year. Ramsland's decision to use the same capitalization rate for all three years further troubled Beckman. *Tr. at 381, 389, 396; see also, Tr. at 391; Tr. (2007-08) at 53-54.*

51. 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 also took exception to the age of the sales that Ramsland included in his regression analysis. *Tr. at 392-95.*

52. Finally, Beckman disagreed with using the CPIU to trend the subject property's value from the assessment dates to the appropriate valuation dates, because the CPIU has nothing to do with real estate markets. And she felt that Ramsland's use of the CPIU, which indicated an increase between years, contradicted his decision to use the same capitalization rate for all three years. *Tr. at 392-96; Tr. (2007-08) at 53-54.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

53. 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.[9] That statute shifts the burden to the Assessor in certain cases:

> This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) *over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date* for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana Board of Tax Review or to the Indiana Tax Court.

I.C. § 6-1.1-15-17.2 (emphasis added).

54. Macy's contends that the Assessor should have the burden of proof for both assessment years. In making its claim, Macy's acknowledges that in neither instance does the assessment under review represent and increase of more than 5% over what the county or township Assessor determined for the immediately preceding assessment date. *See Tr. pre-hearing conf. at 14.* But the assessment did increase substantially between 2005 and 2006. And as explained above, the ALJ determined that the Assessor had the burden of proof in Macy's appeal of the 2006 assessment. Macy's therefore argues that sound policy dictates shifting the burden to the Assessor for later years as well. Otherwise, Macy's argues, an assessor can abuse the system by greatly increasing an assessment in one year and then holding it relatively stable in later years without having to shoulder the burden of proving that those later assessments are correct.

55. The Board need not decide whether Macy's fears are justified or if its view of public policy is sound because the statute's plain language precludes Macy's proffered interpretation. Where a statute's language is clear, the Board lacks the authority to construe it for purposes of limiting or extending its operation. *See Joyce Sportswear Co. v. State Bd. of Tax Comm'rs,* 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997). There is nothing ambiguous about the Ind. Code § 6-1.1-15-17.2's reference to the "immediately

[9] 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.

preceding assessment date." The Board therefore adopts the ALJ's ruling that Macy's has the burden of proof in its appeals of the 2007-2008 assessments.

B. Evidence in Assessment Appeals

56. 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.

57. 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 2007 and 2008 assessments, the valuation dates were January 1, 2006, and January 1, 2007, respectively. *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

58. Ramsland, a highly qualified appraiser with significant experience in appraising anchor department stores, offered his opinion that the subject property's market value-in-use was $17,800,000 and $18,200,000 as of the relevant valuation dates for the 2007 and 2008 assessments. 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 analyses. And he explained his analyses in significant detail, offering market data to support most of his key judgments.

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

59. The Assessor, however, challenged some of those judgments. For example, his witness, Beckman, criticized several aspects of Ramsland's analysis under the income approach. First, Beckman claimed that Ramsland's methodology of determining a rent per square foot and then applying that to the subject property ignored the significance of sales as a driver of rents. The Board disagrees. Ramsland determined his rental rates after consulting *Dollars & Cents* for contextual information and examining the subject property's sales volumes as well as sales volumes for comparable anchor department stores. He similarly examined the specific lease terms for those comparable properties. That is a far more reliable methodology than Beckman's decision to simply multiply the subject property's sales by a flat percentage that she took from the *Dollars & Cents* tables.

60. Second, Beckman pointed out that Ramsland's stabilized rent increased between 2006 and 2007 at a much lower rate than the rate by which subject property's sales increased during the same period. But that scenario is consistent with what Ramsland described as a fundamental reality about the structure of anchor department store leases: as sales increase so does rent, but at a decreasing rate. The lease data from Ramsland's comparable properties supports that proposition.

61. Third, Beckman disagreed 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. 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 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, thought, 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. Finally, Beckman disagreed with Ramsland's decision to use the same capitalization rate for all three years that he addressed. Ramsland did little to explain that decision. The data and calculations that he referenced in his appraisal report related to 2006. Indeed, he said almost nothing about what, if anything, changed in ensuing years other than to note that the rate "ticked up modestly" between 2006 and 2007. *Ex. P-4 at 63.* On the other hand, the Assessor offered nothing to show that capitalization rates changed significantly

between the years at issue. Indeed, although they did not span exactly the same dates, the rates that Beckman took from *Korpacz* varied by only .26%.

65. Turning to Ramsland's sales-comparison analysis, Beckman challenged his 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 12th and 13th editions of THE APPRAISAL OF REAL ESTATE.

66. The Assessor did try to impeach Ramsland's regression analysis using an article from the *Appraisal Journal*. That 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 critiqued. 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.

67. Finally, the Assessor criticized Ramsland's use of the CPIU to trend his March 1, 2007 and March 1, 2008 value estimates back to the relevant valuation dates. 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 with little support. That is an even larger adjustment than the 3.8% index that Ramsland used for 2007 and only .5% less than what he used for 2008.

2. Beckman's valuation opinion is less reliable than Ramsland's opinion

68. The Assessor, however, did not just attack Ramsland's opinion, he offered Beckman's valuation opinion as well. Beckman analyzed the subject property's value using the income and sales-comparison approaches. But various shortcomings make her opinion far less reliable than Ramsland's.

69. The Board turns first to Beckman's sales-comparison analysis. Beckman gave no support for some of the adjustments that she made to her comparable properties' sale prices. In other instances, she pointed only to her experience. 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 her comparable stores in connection with the valuation assignment at issue. Also, Ramsland explained that the type of maintenance Beckman cited does not change the useful life of a store's "bone structure." *Tr. at 236.*

70. Like Ramsland, however, Beckman ultimately relied most heavily on her conclusions under the income approach, and she offered more support for the various judgments that she made in applying that approach. She derived her imputed rent from the subject property's actual sales and from market data reported in *Dollars & Cents*. 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 on how Macy's actually fared in managing the subject property. *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 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 an accurate valuation.

71. 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 stores.

72. 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 volumes of $[redacted] (FY 07) and $[redacted] (FY 08), 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.

73. 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 account 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.*

74. 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.

75. Beckman did not dispute that replacement reserves are a legitimate expense. Nevertheless, she did not separately deduct any amount for those reserves. The Board is not persuaded by her claim that her 3% expense ratio somehow accounted 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.

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 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.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the subject property's assessment must be changed to $17,800,000 for 2007 and to $18,200,000 for 2008.

Ted J. Holaday

Chairman, Indiana Board of Tax Review

Betsy J. Brand

Commissioner, Indiana Board of Tax Review

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>.