

REPRESENTATIVE FOR PETITIONER:

Brian Cusimano, Attorney

REPRESENTATIVE FOR RESPONDENT:

Milo Smith, Certified Taxpayer Representative

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Tippecanoe County Assessor,	)	Petition Nos.: 79-026-10-1-4-00010
	)	79-026-10-1-4-00011
Petitioner,	)	
	)	Parcel Nos.: 79-07-19-429-010.000-026
	)	79-07-19-429-001.000-026 <sup>1</sup>
v.	)	
	)	County: Tippecanoe
	)	
Chauncey Hill,	)	Township: Wabash
	)	
Respondent.	)	Assessment Year: 2010

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

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**Issued: December 18, 2015**

**FINAL DETERMINATION**

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

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<sup>1</sup> Parcels 79-07-19-429-001.000-026 and 79-07-19-429-010.000-026 operate as one property, as such the total 2010 assessment is reported on parcel 79-07-19-429-010.000-026. However, Petitioner filed 131 petitions on both parcels.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### PROCEDURAL HISTORY

1. Chauncey Hill (“Respondent”) initiated 2010 assessment appeals on May 27, 2011. On July 27, 2012, the Tippecanoe County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations lowering the 2010 assessment.
2. The Tippecanoe County Assessor (“Petitioner”) disagreed with the PTABOA’s decision to reduce the assessment and timely filed Form 131 petitions with the Board on September 7, 2012.
3. On July 21, 2015, the Board’s designated administrative law judge, Dalene McMillen, held a hearing on the petitions. Neither she nor the Board inspected the property.

### HEARING FACTS AND OTHER MATTERS OF RECORD

4. The property under appeal includes a neighborhood retail shopping center and five utility sheds located at 135 South Chauncey Avenue in West Lafayette.
5. The following people were sworn as witnesses:

Milo Smith, certified tax representative  
Belinda Graber, appraiser with Appraisers Inc.  
Eric Grossman, Tippecanoe County Assessor  
James R. Green, appraiser with Terzo & Bologna, Inc.<sup>2</sup>

6. Petitioner offered the following exhibits:

Petitioner Exhibit A – Comparable assessment bar graph  
Petitioner Exhibit B – Appraisal report prepared by James Green and Kevin Hartman, Terzo & Bologna, Inc., dated July 24, 2013  
Petitioner Exhibit C – Explanation of increases of market set

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<sup>2</sup> Kevin Hartman, appraiser with Terzo & Bologna, Inc., and Max Campbell, Respondent’s project manager did not testify.

- Petitioner Exhibit D – Four pages from 2011 International Association of Assessing Officers – Course 102 (types of rent for income approach)
- Petitioner Exhibit E – Aerial map showing subject property and comparable properties
- Petitioner Exhibit F – IncomeWorks evaluation reports for comparable properties
- Petitioner Exhibit G – Tippecanoe trending narrative for 2011
- Petitioner Exhibit H – Petitioner’s written objection to the admittance of certain evidence and testimony.

7. Respondent offered the following exhibits:

- Respondent Exhibit 1 – Opinion letter of value with listings and sales of comparable properties, prepared by Belinda Graber, Appraisers, Inc., dated July 13, 2015,
- Respondent Exhibit 2 – 2010-2014 property record card (“PRC”) for the parcel under appeal,
- Respondent Exhibit 3 – Respondent’s evidence presented at PTABOA hearing,
- Respondent Exhibit 4 – Comparable assessment analysis,
- Respondent Exhibit 5 – Multiple listing sheet (“MLS”) and Tippecanoe County GIS Site Sale Report for 112-130 Northwestern Ave.,
- Respondent Exhibit 6 – MLS for 117 Northwestern Ave.

8. The following additional items are part of the record:

- Board Exhibit A – Form 131 petitions with attachments,
- Board Exhibit B – Hearing notices,
- Board Exhibit C – Hearing sign-in sheets.

9. The PTABOA determined the assessed values of the subject parcels as follows:

\$4,053,600 for Parcel No. 79-07-19-429-010.000-026; and zero (-0-) for Parcel No. 79-07-19-429-001.000-026. The two parcels are assessed and operate as one property.

10. On the Form 131 petitions, Petitioner requested the value of the two parcels revert to \$7,158,000 – the property’s original assessment for 2010.

## Objection

11. Petitioner objected to Respondent's Exhibit 1 – opinion letter of value using actual income and expenses from Belinda Graber. According to Respondent, on or about May 5, 2014, it tendered responses to discovery, whereby it objected to providing its rent rolls and income and expense statements for January 1, 2007, through December 31, 2010, because the information is not admissible on the grounds of relevancy. Petitioner argued that Respondent should be estopped from presenting arguments or evidence regarding the income and expenses because it rendered the information irrelevant and, in doing so, waived the argument that the information was a shortcoming of the appraisal report offered by Petitioner. *Cusimano argument*.
12. Respondent claimed at the time Petitioner served discovery, its representative did not realize that the rent roll, income, and expense information would be needed to rebut Petitioner's appraisal report and that is the reason it was not provided. *Smith testimony*.
13. The Board is sympathetic to Petitioner's position with regard to this issue. Regardless of whether or not Respondent should be technically barred from presenting its arguments or evidence under the doctrine of estoppel, Respondent's objection to providing that information on the grounds of irrelevance and subsequently presenting the same information itself arguably violates the general principles of fairness. On the other hand, when Respondent originally objected to providing the information at issue, there is no evidence that Petitioner made any formal effort to press the issue.
14. In any event, the Board notes that its ruling on this objection has no effect on its final determination. In other words, even if the Board excluded the exhibit at issue, the final determination would be the same. The objection is overruled.

## SUMMARY OF PETITIONER’S CONTENTIONS

15. The subject property is a neighborhood strip center with long term “mom & pop,” regional, and national tenants. It is in a retail section near Purdue University with significant vehicle and foot traffic. *Grossman testimony.*
  
16. In 2009, commercial and industrial properties in the county, especially Wabash Township, were undervalued using replacement costs (i.e. cost approach). For this reason, Petitioner implemented a program known as IncomeWorks to equalize commercial and industrial properties<sup>3</sup> and to value properties using the income approach. IncomeWorks predicts rents, vacancies, expenses, and calculates a capitalization rate from aggregate data. It also allows the user to store information like independent rent studies and CoStar rent studies. The income approach produced levels of assessments from \$140 to \$200 per square foot for un-anchored neighborhood strip centers in the subject area. According to Petitioner, the first time the subject property was valued using the income approach was in 2010, which resulted in a value of \$7,158,000.<sup>4</sup> *Grossman testimony; Pet’r Ex. A, C, E & F; Bd. Ex. A.*
  
17. Because of the increase in the 2010 assessment, Respondent appealed to the PTABOA. The PTABOA found in favor of Respondent and reduced the value back to its replacement cost of \$4,053,600. According to Petitioner, the PTABOA’s reduction of the subject property caused unequal assessments among like properties considered to be in the same “competitive market set.” Therefore, Petitioner appealed the PTABOA’s decision for 2010 to the Board. *Grossman testimony; Pet’r Ex. A, D & E.*

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<sup>3</sup> Petitioner testified that while the Department of Local Government Finance (“DLGF”) does not approve a county’s methodology in determining assessments, they were aware in 2009 of the county’s intentions to use IncomeWorks and the income approach in their mass assessment of commercial and industrial properties. The DLGF required the IncomeWorks technique to be included in the county’s trending narrative that was submitted with the county’s annual ratio study. *Grossman testimony; Pet’r Ex. G.*

<sup>4</sup> During the hearing, both parties testified the 2010 assessment was \$7,100,000, however, the Notification of Final Assessment – Form 115 shows the value as \$7,158,000. *See Board Ex. A.*

18. Petitioner hired James Green and Kevin Hartman, certified general appraisers, to appraise the property.<sup>5</sup> Mr. Green graduated from Ball State University. He started as an appraiser trainee with Terzo & Bologna in 2003. He obtained his general appraiser's license in approximately 2009. He focuses on commercial appraisals, which include light industrial properties, multi-family properties, shopping centers, and malls, and appraises approximately 45 to 55 properties per year. Since 2003 he has performed over 100 appraisals on retail shopping centers such as the property under appeal. *Green testimony.*
19. Mr. Green described the subject property as a 51,139 square foot inline multi-tenant retail shopping center with an estimated gross leasable area of 50,000 square feet. The shopping center is un-anchored in the sense that it does not contain a 30,000 to 50,000 square foot "big box" store. The subject property is occupied by the "term B space shops" which are shops averaging 2,500 square feet. It is "L" shaped with a common corridor. It has strong visibility along several arterials in West Lafayette. It is located in the center of Purdue University's shopping district and has strong exposure to vehicle and foot traffic. The building was constructed in 1979. *Green testimony; Pet'r Ex. B at 10-12.*
20. Mr. Green appraised the property's true tax value. He provided the market value-in-use of the fee simple estate of the property as of March 10, 2010 and described the use as a shopping center. He did not derive or conclude a highest and best use of the property. *Green testimony; Pet'r Ex. B at 3.*
21. Mr. Green prepared the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He developed two of the three generally accepted valuation approaches – the sales comparison approach and the income approach. The cost approach was not developed because the property is older. It would be difficult to derive a depreciation factor, and it is unknown how many renovations have occurred.

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<sup>5</sup> Mr. Hartman supervised the analytical process, provided technical and analytical counseling, and performed the final review of the appraisal report. *Green testimony; Pet'r Ex. B at 35.*

Because of these factors, the cost approach is unreliable. *Green testimony; Pet'r Ex. B at 1.*

22. The income capitalization approach to value is the preferred method for an investor in determining an income-producing property's value. The Board and the Indiana Tax Court have held that market data, rather than individual data, must be used in applying that approach. Green therefore relied on income and expenses from multi-tenant retail shopping centers in West Lafayette. *Green testimony; Cusimano Argument (citing Schooler v. Boone County Ass'r, pet. no. 06-003-07-1-5-00444 (IBTR May 7, 2010); Grant County Ass'r v. Kerasotes Showplace Theatres, LLC, 955 N.E.2d 876 (Ind. Tax Ct. 2011); and Shelby County Ass'r v. CVS Pharmacy, Inc. #6637-02, 994 N.E.2d 350 (Ind. Tax Ct. 2013).*
23. Mr. Green began his analysis under the income approach by stating that he requested Respondent's rent roll, income, and expenses, but they were not provided. Nevertheless, he explained that simply looking at the market rather than the subject property's leases gives a true market value-in-use of the property. Other things may influence the rents. For example, the leases may be lower than market as an improvement allowance, or tenants may be given a break on their rent. Such things could cause the property to be undervalued or overvalued depending on the circumstances. *Green testimony; Pet'r Ex. B at 25.*
24. Mr. Green began his income analysis by talking to brokers in the area and driving around and obtaining data from Petitioner. First, he estimated the subject property's gross leasable area at 50,000 square foot. He then chose competitors that were located in the Purdue University shopping district. *Green testimony; Pet'r Ex. B at 2 & Annex.*
25. Mr. Green used six triple net lease comparables. A triple net lease is described as a lease where the expenses, such as, taxes, insurance, and common area maintenance are passed through to the tenant. He also noted that some of the comparable properties were mixed-use properties where the first floor was retail space and the upper floor was multi-family

use. In such instances, some common area maintenance was paid by the multi-family tenants, rather than the retail tenants. Therefore, he made a qualitative adjustment and concluded the comparable properties were slightly superior to the subject property. In addition, where the comparable property was of mixed use, only the income from the retail portion was used in the analysis. *Green testimony; Pet'r Ex. B at 25.*

26. Mr. Green's income analysis used leasing information from March 2009 to November 2012. He adjusted each comparable's lease to reflect the March 1, 2010, valuation date. Next, he assumed that the subject property carried a typical 5 year lease with 1 percent annual escalations in tenant rents, so each comparable was adjusted accordingly. The other adjustments included location, size, age, condition, quality type improvements, frontage, visibility, and other economic factors, such as favorable renewal options or no tenant improvement allowance. *Green testimony; Pet'r Ex. B at 26-28.*
27. After applying the adjustments to the comparable properties, Mr. Green found that comparables 1 and 2 were significantly inferior to the subject property, while comparable 3 was significantly superior. Comparables 4 and 6 were inferior. Comparable 5, located at Wabash Landing, is the most similar to the subject property. Green concluded the subject property's market rent would be \$18.50 per square foot. In addition to the base rent, the property generates other income from application fees, late fees, bank accounts, and miscellaneous charges. The comparable properties showed other income that ranged from 0.3 to 4.6 percent of the estimated gross income. Based on the comparable properties, Green estimated the subject property's other income at 1 percent of the effective gross rent. *Green testimony; Pet'r Ex. B at 28 & 30.*
28. CoStar research indicated a vacancy rate of 8 percent and a 1 percent collection loss for the subject property. Next, other typical expenses were analyzed, such as administrative expenses that totaled \$0.25 per square foot, management fees of 5 percent, other taxes, "CAM" at \$2.00 per square foot, and insurance at \$0.28 per square foot. *Green testimony; Pet'r Ex. B at 19, 28 & 30.*

29. Mr. Green determined the capitalization rate from analyzing his multi-tenant retail properties from October 2008 to December 2009, which showed a range from 8.02 percent to 11.42 percent. The next source he consulted was a Price Waterhouse Cooper survey for the first quarter of 2010 for non-institutional grade national strip shopping centers. The capitalization rates ranged from 7.75 percent to 12.40 percent, with a mean of 11.49 percent.
30. To narrow the focus to the Midwest region, Mr. Green used the “*RERC Real Estate Report*” (“RERC”) survey for the first quarter of 2010 for first tier and second tier neighborhood community shopping centers. First tier shopping centers are newer quality construction in good locations with capitalization rates ranging from 7.30 percent to 11 percent and a mean of 9.10 percent. Second tier properties are aging, former first tier properties in good to average locations, with capitalization rates ranging from 8 percent to 12 percent and a mean of 9.70 percent. He concluded the second tier RERC survey best represented the subject property’s age, condition and location for a capitalization rate of 9.75 percent. Next the West Lafayette City-WLSC-B District real estate tax rate of 2.3327 percent was added to the capitalization rate. He concluded 12.08 percent to be the overall “loaded” capitalization rate. *Green testimony; Pet’r Ex. B at 29-30.*
31. Mr. Green divided the 12.08 percent capitalization rate into his projected net operating income of \$987,138 to arrive at value of \$8,170,000 for March 1, 2010. *Green testimony; Pet’r Ex. B at 30.*
32. For his sales comparison analyses, Green used five sales of “inline” retail shopping centers from the Indianapolis and Fishers area. The properties sold between May 2007 and April 2008. He adjusted the sales prices to account for various ways in which the properties differed from the subject property, including location, size, age/condition, functional utility, land to building ratio and time of sale. He also adjusted for economic characteristics, such as, governmental restrictions or legal limitations imposed by zoning. After all of the qualitative adjustments were made to the comparable properties, Green

concluded that the value of the subject property was \$8,250,000 based on the sales comparison approach. *Green testimony; Pet'r Ex. B 30-33 & Annex.*

33. In reconciling his conclusions, Mr. Green explained that the cost approach was not developed because the subject property is older and a typical investor would not use this approach to value this type of investment given current economic conditions. The sales comparison approach was developed to test the reasonableness of the income approach. The sales comparison approach was given less weight because several adjustments were required with regard to the comparable properties and lack of comparable retail shopping center sales in the subject property's immediate market area. He settled on the value conclusion derived from his income approach of \$8,170,000. *Green testimony; Pet'r Ex. B at 33-34.*
34. Mr. Green stated that in reviewing Ms. Graber's sales listings, he noted that most of the sales were not available as of the date of the report, many of properties were smaller, and many of the properties were not fully leased and were therefore un-stabilized. One comparable building consisted of 350,000 square feet while the subject property consists only of 50,000 square feet.
35. Nevertheless, the sale of 2200 Elmwood Avenue lends support to Petitioner's appraisal report. CoStar showed the 2013 sale was a sheriff's sale, but the sales history shows that on October 5, 2007, it sold for \$165.17 per square foot. The comparable property is in a superior location but has an inferior tenant mix compared to the subject property. The appraisal report valued the subject property at \$163.40 per square foot. *Green testimony; Pet'r Ex. B; Resp't Ex. 1.*
36. Mr. Green's appraised value of \$8,170,000 supports Petitioner's original assessment of \$7,158,000. Thus, Petitioner is requesting his original assessment of \$7,158,000 be reinstated for 2010. *Grossman testimony.*

## SUMMARY OF RESPONDENT'S CONTENTIONS

37. Respondent contends the original 2010 PRC valued the property at \$3,821,700 using the Department of Local Government's ("DLGF") approved Real Property Assessment Guidelines ("Guidelines"). At some point Petitioner applied the income approach using IncomeWorks and increased the 2010 assessed value to \$7,158,000, which was not approved by the DLGF. Respondent argues the Guidelines are the proper way to determine assessed values in the State of Indiana. The PTABOA agreed and lowered the 2010 assessed value to \$4,053,600. *Smith testimony (citing Lee & Sally Peters v. Boone County Assessor, 49T10-1207-TA-42 (Ind. Tax Ct. 2015); Resp't Ex. 2-3.*
38. Respondent noted that at the PTABOA hearing, the Petitioner submitted an IncomeWorks calculation where he valued the subject property at \$15.00 per square foot and applied an 8.50 percent capitalization rate to arrive the \$7,158,000 (rounded) value. Respondent argues Petitioner's net rent is too high for the subject property. The subject property is a gross rent property where the owner, as opposed to the tenants, pays the property taxes. In addition, Petitioner's capitalization rate should have been increased by approximately 2.3 percent to account for the taxes. Thus, these two issues would cause The IncomeWorks calculation to overvalue the property. *Smith & Graber testimony; Rasp's Ex. 3.*
39. Respondent submitted the 2010 assessed values of three similar shopping centers located in the subject property's neighborhood. They provided the property owner, address, size, total assessed value, land assessed value, and the shopping center's total square feet.<sup>6</sup> Based on this information, a price per square foot for each of the three comparable properties was calculated. The analysis shows the price per square foot ranged from \$46.83 to \$93.59, with an average of \$66.52. The subject property was assessed using

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<sup>6</sup> In response to question, Mr. Smith testified that he did not inspect the properties. He further confirmed that the comparable property at 1016-1020 Sagamore Parkway West was a shopping center with a large anchor store. Petitioner claimed the comparable property located at 946-950 Navajo Drive West is an office building, while Mr. Smith claims it is classified as a shopping center. *Smith testimony; Cusimano argument.*

IncomeWorks at \$7,158,000 or \$140.91 per square foot. Petitioner argued this difference demonstrates the assessments are not uniform and the subject property is over-valued.

*Smith testimony; Rasp's Ex. 4.*

40. Ms. Graber prepared an appraisal report in 2012 that was never completed because the PTABOA ruled in Respondent's favor and lowered the assessed value. Instead, she presented a consultation letter, whereby she first prepared a "pro forma" operating statement like the one used by Petitioner's appraisers, however, she inserted the actual income and expenses. Next, she prepared another income approach using the property's actual income and expenses. Finally, she researched local sales and listings. Graber also testified that she analyzed Respondent's 2010 through 2014 income and expenses, which indicated the subject property is stable. *Graber testimony; Resp't Ex. 1.*
41. Ms. Graber constructed an income statement showing the subject property's actual income and expenses for 2010, but used capitalization rate in the appraisal offered by the Petitioner. She compared it to the pro forma calculation performed by Petitioner's appraisers. She stated the difference between the two calculations was that Petitioner's appraisal indicated the property's value at \$8,169,846, while she used the property's actual income and expenses to arrive at a value of \$6,724,532. *Graber testimony; Resp't Ex. 1.*
42. Ms. Graber's next calculation also used the subject property's actual income and expenses. She averaged capitalization rates as reported by Realtyrates.com to arrive at a rate of 10.85 percent. Next, she added in the "tax additor" of 2.3327 percent, to arrive at an overall rate of 13.1827 percent. She divided the 13.1827 percent by the property's net operating income of \$812,505, to arrive at a capitalized value of \$6,163,419. *Graber testimony; Resp't Ex. 1.*
43. To support her capitalization rate, Ms. Graber submitted two sales. The first property located at 112-130 Northwestern Avenue had a capitalization rate of 8.2 percent and a second property, located at 117 Northwestern Avenue, had a capitalization rate of 11.75

percent. She also acknowledged the two properties were 2,640 and 3,644 square feet respectively. *Graber testimony; Resp't Ex. 5-6.*

44. Next, Ms Graber searched CoStar for sales and listings of shopping centers in the area between the years of March 1, 2008, and March 1, 2015. The listed properties showed per square foot prices ranging from a low of \$20.57 to a high of \$816.00 in 2015. She claims that while she would not have used the listings in an appraisal, they do give a feel of the market in the area and in 2015 the real estate market is better than it was in 2010. She acknowledged that the listings were five years after March 1, 2010. *Graber testimony; Resp't Ex. 1, 5 & 6.*
45. Ms. Graber claims the comparable sales, on the other hand, could be adjusted for location and age to be used in an appraisal report establishing a value for the subject property. There were 17 sales from 2008 through 2015 that showed per square foot prices ranging from a low of \$18.48 to a high of \$267.97. She noted that due to national economic conditions, values from 2010 to 2015 are depressed in most markets and have dropped. The subject property, on the other hand, had a per square foot value of \$142.00 based on 50,000 square feet of leasing area. *Graber testimony; Resp't Ex. 1, 5 & 6.*
46. In response to questioning, Ms. Graber acknowledged some of the listings and sales were not comparable properties or properties that could be used in appraisal of the subject property. For example, the property located at 2200 Elmwood Avenue was a sheriff's sale. The property at 311 Sagamore Parkway was on the market for 194 days. Sale 18, shown as a shopping center, was on the market for 1,365 days. The property located at 2842 US Highway 231 was sold to McDonalds USA, LLC as a presumed land sale. In addition, some of the listings and sales were much smaller than the subject property. *Graber testimony; Resp't Ex. 1.*
47. Based on the actual income and expenses, Respondent argues that the 2010 assessment should be \$6,100,000. *Smith testimony.*

## Analysis

48. In Indiana, real property is assessed based on its “true tax value,” which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (“MANUAL”) at 2 (incorporated by reference at 50 IAC 2.4-1-2). Parties to an assessment appeal may offer relevant evidence that is consistent with the true tax value standard. A market value-in-use appraisal prepared according to USPAP often will suffice. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
49. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2010 assessments, the valuation date was March 1, 2010. I. C. § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).
50. Both parties agreed the PTABOA’s value of \$4,053,600 is not accurate for the assessment as of March 1, 2010. Petitioner claims the market value-in-use of the property is \$7,158,000. Respondent, on the other hand, claims the value should be \$6,100,000. Petitioner offered sufficient evidence to show the true tax value for the year under appeal. As explained below, Respondent did not significantly rebut or impeach the Petitioner’s evidence.

51. Petitioner offered an appraisal prepared by Mr. Green that he certified was in accordance with USPAP. He applied two generally recognized valuation approaches—the income approach and the sales comparison approach, although he gave the greatest weight to his conclusion under the income approach. He decided the cost approach did not apply because the property is older and it would be difficult to determine a depreciation factor and how many renovations have occurred. He walked the Board through his income approach and generally explained the gross rent, expenses, net operating income, and capitalization rate. The appraisal determined the value of the subject property was \$8,170,000 as of March 1, 2010. Thus, his appraisal is sufficient to make a prima facie case.
52. Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). At that point, Respondent must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 479 (Ind. Tax Ct. 2003).
53. Respondent offered Mr. Smith’s analysis, in which he used assessment data for three shopping centers and argued the subject property should be assessed at a rate equal to the average price per square foot of the three properties. Parties may offer evidence of comparable assessments to prove the value of a property under appeal, but comparability must be determined using generally accepted assessment and appraisal practices. I.C. § 6-1.1-15-18. Conclusory statements that a property is “similar” or “comparable” to another property are not enough. *Indianapolis Racquet Club, Inc. v. Marion County Assessor*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014); *see also, Long*, 821 N.E.2d at 471. Instead, one must compare the relevant characteristics of the purportedly comparable properties to those for the property under appeal and explain how any differences affect the values. *Id.* at 471. The testimony regarding the average price of the three shopping centers being \$66.52 per square foot, however, presents no probative evidence with regard to the market value-in-use of the subject property.

54. Ms. Graber prepared two income approach valuations using Respondents' actual income and expenses from its 2010 tax return. For the first valuation, she added reserves for replacement and used Petitioner's appraisal's capitalization rate to arrive at value of \$6,724,532. The second income approach valuation also added reserves for replacement. For the capitalization rate she used the averaged rates as reported by Realtyrates.com and submitted two single tenant sales for support. She then added in the "tax additor" to arrive at a final rate. She determined the capitalized value to be \$6,163,419.
55. In valuing a property under the income approach, it is appropriate to consider the historic and projected income and expense data of the property in question. It is also necessary to consider that same kind of data from other comparable properties in order to make accurate, realistic projections about the income stream a property should be expected to produce. Where the income and expense data for subject property is out of step with what the market data shows, generally accepted appraisal principles require further examination and analysis. For example, considering both types of income and expenses helps protect against distortions and inaccurate value estimates that might be caused by extraneous factors (such as bad management or poor business decisions) that have nothing to do with the inherent value of a property. *See Indiana MHC, LLC v. Scott County Assessor*, 987 N.E.2d 1182, 1186 (Ind. Tax Ct. 2013).
56. In this case, Ms. Graber failed to compare the subject property's income and expenses to the same kind of data from comparable properties in the market. She argued Respondent's actual income and expenses should be used to establish the property's value rather than market income and expenses. She presented no probative evidence or authority to support this contention other than her opinion. But her unsubstantiated conclusions do not constitute probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Plus, while Graber was identified as a licensed appraiser, the record is devoid of evidence that her income approaches to value calculations comply with generally accepted appraisal principles.

57. Ms. Graber also offered listings and sales of various sizes and use-type retail properties. The 2015 listings showed properties listed from \$20.57 to \$816.00 per square foot. The sales from 2008 through 2015 showed per square foot pricing from a low of \$18.48 to a high of \$267.97.
58. Similarly, Ms. Graber failed to explain or demonstrate that the listings and sales of retail properties in the area were similar or comparable to the subject property. She did not explain how they were relevant in disproving Petitioner's appraised value. Accordingly, the Board concludes that Respondent failed to rebut or impeach Petitioner's appraisal.
59. Petitioner's appraisal that was prepared by a licensed appraiser in accordance with USPAP. It determined the value of the property was \$8,170,000 as of March 1, 2010, and was sufficient to make a prima facie case. Although, the appraisal valued the property at \$8,170,000, Petitioner did not ask for the subject property's assessed value to be increased to that amount, but rather asked for the PTABOA determination of \$4,053,600 to be voided and the original assessment of \$7,158,000 be applied. The Board accepts the Petitioner's request.

#### **SUMMARY OF FINAL DETERMINATION**

60. Petitioner appealed the PTABOA's determination and, as such, bore the burden of proving the PTABOA's 2010 value was incorrect. Petitioner established a *prima facie* case that the assessed value should be at least \$7,158,000 for March 1, 2010. Respondent failed to impeach or rebut the Petitioner's evidence. The Board finds for Respondent and orders the assessment to be increased to \$7,158,000.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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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>>.