REPRESENTATIVES FOR PETITIONERS:
Milo Smith, Certified Taxpayer Representative

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Horizon Properties LLC,	)	Petition Nos.: 27-002-07-1-4-00229
	)	27-002-08-1-4-00012
Petitioner,	)	27-002-09-1-4-00045
	)	27-002-10-1-4-00022
	)	27-002-12-1-4-00031
	)	
v.	)	Parcel No.: 27-07-19-201-005.000-002
	)	
	)	County: Grant
	)	
Grant County Assessor,	)	Township: Center
	)	
Respondent.	)	Assessment Years: 2007, 2008, 2009, 2010 & 2012

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

June17, 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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Petitioner, Horizon Properties, LLC, convincingly challenged several aspects of an appraisal prepared by the Respondent's expert. Despite those problems, the appraiser's valuation opinions were sufficiently reliable to carry some probative weight. Absent any countervailing valuation evidence, we find that the appraiser's opinions, with some adjustments, show the property's true tax value for each year under appeal.

PROCEDURAL HISTORY

2. The Petitioner filed Form 130 petitions with the Grant County Property Tax Assessment Board of Appeals ("PTABOA") for the 2007-2010, and 2012 assessment years.

3. The PTABOA upheld the assessments. The Petitioner then timely filed Form 131 petitions with the Board.

4. On November 20, 2014, 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

5. The property under appeal includes a convenience store and detached gas-station canopy located at 209 West 38th Street in Marion. For 2007-2010, it consisted of a 73' x 48' parcel of land ("original parcel"). The legal description on the property record cards for those years was "16-18-4561 01 63' W/END Lot 28 & ALLEY VAC KNIGHT & OVERMANN 2ND ADD." *Resp't Ex. B*. In 2011, three other tax parcels (07-19-201-004-000.006, 07-19-201-004-000.025 & 07-19-201-004-000.027) were combined with the original parcel under the same parcel number. Thus, for 2012, the dimensions for the parcel under appeal were 200' x 140' (28,000 square feet or .643 acre). The legal

description on the property record card for that year was "LOTS 28, 29, 38 & 39 & ALLEY VAC KNIGHT & OVERMANN 2ND ADD." *Id.*

6. The following people were sworn as witnesses: Milo Smith, certified tax representative for the Petitioner; Grant County Assessor Tamara Martin; Nick A. Tillema, an appraiser with Access Valuation, LLC; and Anthony Garrison, Nexus Group.[1]

7. The Petitioner offered the following exhibits:

Petitioner Exhibit 1:	2008-2012 property record card ("PRC") for the parcel under appeal,
Petitioner Exhibit 3:	Eighteen pages from International Association of Assessing Officers ("IAAO") "Mass Appraisal of Real Property,"
Petitioner Exhibit 4:	One-page excerpt from IAAO – Course 102 (Income Approach to Valuation),
Petitioner Exhibit 5:	Section 13 – page 22 "Calculator Method," dated May 2006 and Section 98 – page 5 "District Comparative Cost Multipliers," dated July 2007 from Marshall Valuation Service,
Petitioner Exhibit 8:	*CVS Pharmacy, Inc. #6637-02 v. Shelby County Ass'r*, pet. nos. 73-002-07-1-4-12801 and 73-002-08-1-4-12801 (IBTR Nov. 15, 2011),
Petitioner Exhibit R4;	Copy of Ind. Code § 6-1.1-8.5,
Petitioner Exhibit R5:	Copy of 50 IAC 19,
Petitioner Exhibit R6:	Section 13 – page 22 "Calculator Method," dated May 2014 from Marshall Valuation Service,
Petitioner Exhibit R7:	Chapter 1 – pages 10-11 from the Real Property Assessment Guidelines.

8. The Respondent offered the following exhibits:

Respondent Exhibit A:	Appraisal report prepared by Nick A. Tillema, Access Valuation, LLC, dated November 5, 2014,
Respondent Exhibit B:	2002-2008, 2008-2010, and 2010-2012 PRCs for the subject property.

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

[1] Tamara Martin and Anthony Garrison were sworn but did not testify.

Board Exhibit A: Form 131 petitions,
Board Exhibit B: Hearing notices,
Board Exhibit C: Hearing sign-in sheet.

10. The PTABOA determined the following assessments for the parcel under appeal:

Year	Land	Improvements	Total
2007	$ 9,600	$798,000	$807,600
2008	$ 9,600	$721,000	$730,600
2009	$ 9,600	$721,000	$730,600
2010	$ 9,600	$734,500	$744,100
2012	$45,400	$673,300	$718,700

The record does not show the assessments for the three related parcels in the years before they were combined with the parcel under appeal.

11. On its Form 131 petitions, the Petitioner did not request any specific assessments. At the hearing, it requested that the value revert to $289,600—the property's assessment for 2006.

BURDEN OF PROOF

12. Generally, a taxpayer appealing the assessment of its property must prove the assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving the assessment under appeal is correct. I.C. § 6-1.1-15-17.2 (a) and (b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase…." I.C. § 6-1.1-15-17.2(d). If the assessor fails to meet her burden of proving the assessment is correct, it must be

reduced to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

13. The property was assessed for $289,600 in 2006. The 2007 assessment of $807,600 represents an increase of far more than 5%. The Respondent therefore has the burden of proving that the 2007 assessment was correct. Under Ind. Code § 6-1.1-15-17.2(d), our determination of who has the burden for 2008 through 2010 necessarily depends on the outcome of each preceding year's appeal. The property's assessment actually decreased between 2011 and 2012, dropping from $739,100 to $718,700. And the Petitioner has not appealed 2011. Thus, the Petitioner has the burden of proof for 2012 regardless of how we decide the other years under appeal. That being said, to the extent the parties offer probative valuation evidence, sorting through who has the burden of proof is largely a theoretical exercise. We instead must determine what we find to be the most persuasive evidence of the property's value.

RESPONDENT'S CONTENTIONS

14. The Assessor hired Nick Tillema, a certified general appraiser, to appraise the property.[2] Tillema is also a Member of the Appraisal Institute, Senior Residential Appraiser, Certified Commercial Investment Member, a real estate broker, and an attorney. He has taught various appraisal courses for the Appraisal Institute and Indiana University. He focuses on assignments involving property taxes, eminent domain, and conservation easements. *Tillema testimony; Resp't Ex. A at 133-37.*

15. Tillema described the subject property as a 3,192-square-foot convenience store and gas station with a 2,700 square foot canopy over three dual-sided gas pumps sitting on an irregularly shaped lot of approximately 200' x 140'. He listed the legal description as: "LOTS 28, 29, 38 &39 & ALLEY VAC KNIGHT 7 OVERMAN 2nd ADD." That

[2] Jayne Flatt, a trainee in Tillema's office, did many of the "physical calculations" and typed the appraisal report. *Tillema testimony; Resp't Ex. A at 116.*

corresponds to the legal description on the property record card for 2012. The buildings were constructed in 1999. *Tillema testimony; Resp't Ex. A at 34-50.*

16. Tillema appraised the property's true tax value. He explained that, unlike market value, true tax value is not a matter of what a typical buyer and seller would understand a property's value to be, but rather what the seller thinks the property is worth. To illustrate, he pointed to hypothetical farmland adjacent to industrial land in an area best suited to industrial property. Under true tax value, the property must still be valued as a farm rather than as industrial land. Conversely, an industrial property might be so specialized that it is worth more to the seller than what the market says. *Tillema testimony; Resp't Ex. A.*

17. Tillema prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He developed all three generally accepted valuation approaches—the cost, sales-comparison, and income approaches. He did a separate analysis for each assessment date. For 2007-2009, he determined the property's market value-in-use as of the assessment date and then expressed that as a value as of January 1 for the immediately preceding year. For 2010 and 2012, he valued the property as of March 1, 2010, and March 1, 2012, respectively. *Tillema testimony; Resp't Ex. A at 12.*

18. Although Tillema does not believe that an estimate of true tax value requires it, he analyzed the property's highest and best use both as if vacant and as improved. He determined that retail was its highest and best use as if vacant and that its current use as a convenience store with fuel sales was its highest and best use as improved. *Tillema testimony; Resp't Ex. A at 51-55.*

19. Tillema began his analysis under the cost approach by looking at Grant County land sales from February 2003 to January 2011. He found that land appreciation was minimal-to-non-existent during the years under appeal. For his 2007-2009 analyses, Tillema chose three comparable sites that sold in 2004 and 2005. Based on those sales, he estimated a

site value at $280,000. For 2010 and 2012, he chose three comparable sites that sold in 2005, 2010, and 2011, and estimated a site value of $250,000. *Tillema testimony; Resp't Ex. A at 57-70 & 118-22.*

20. According to his appraisal report, Tillema used the Marshall & Swift cost tables for an average cost, Class C convenience store to determine the subject store's replacement cost. On cross-examination, the Petitioner pointed out that the Marshall Valuation Service tables from May 2014 show a base rate of $84.63/sq. ft. for an "average" building, as opposed $105.16/sq. ft., which was the base rate that Tillema used in his analyses and that corresponds to a "good" building in the tables.[3] In describing the building's design and functionality in his report, Tillema indicated that it "possesses average to good appeal." He described its condition as "[a]verage—the building appears well maintained and provides a good appearance relative to competing buildings within its market." *Resp't Ex. A at 74-78; Pet'r Ex. 6*.

21. At hearing, Tillema explained that his report should have listed the building as good, and that it fits the description of a good building in the Marshall Valuation Service tables. The description for an average store refers to a typical chain store with acoustical tile, vinyl composition on the floors, some snack preparation area, and adequate lighting, while a good store is typically a better chain store, with good acoustic vinyl tile, carpeting, best lighting, outlets, and restrooms. When he walked through the store, he got the impression that it should be good instead of average. According to Tillema, how he views a building's condition within the market and the condition he uses when looking at Marshall & Swift cost data are not necessarily the same thing. A store can be in average condition but still be good in terms of "quality of price." *Tillema testimony*; *Resp't Ex. A at 74-78; Pet'r Ex. R6.*

[3] The Marshall Valuation Service tables appear to be the same tables Tillema referred to as the Marshall & Swift cost tables.

22. In any event, Tillema used various multipliers from Marshall & Swift to adjust the base rate before multiplying that rate by the store's area to determine its replacement cost new. He used the age/life method to calculate physical depreciation. He did not find any functional obsolescence, but he deducted 10% for external obsolescence, explaining that other retailers in the area had twice the traffic count of the subject property. He then added the site value and the depreciated costs of the site improvements, such as the canopy, fuel pumps and dual-sided dispensers, paving, fencing, landscaping, lighting, and signage. Although Tillema acknowledged that site improvements depreciate faster than buildings, he applied a flat rate of 25% for each year, explaining that he did not believe the site improvements had materially depreciated further during the intervening years between 2007 and 2012. *Tillema testimony; Resp't Ex. A at 70-78.*

23. At hearing, Tillema acknowledged that there appeared to be a discrepancy in how he calculated the paving's replacement cost. His report indicates 21,000 square feet of paving at $2.17/sq. ft. for a total cost of $71,610. That is mathematically incorrect; the correct product of those multipliers is $45,570. But Tillema testified that he needed to check his records to confirm if the error was mathematical or if he had instead incorrectly reported either the amount of paving or its unit price. Similarly, Tillema agreed that if fuel pumps and dual-sided dispensers were personal property, he should not have included them in his calculations. In the end, however, Tillema testified that he stood by the numbers in his appraisal report. *Tillema testimony; Resp't Ex. A at 74-78.*

24. Tillema then adjusted the total land value and depreciated improvement costs upward by 18% for entrepreneurial profit. Tillema acknowledged that appraisers disagree about whether entrepreneurial profit applies to land. But he explained that there are investors in the gas station/convenience store industry who find properties, buy them, and then build improvements to suit the buyers, so that entrepreneurial profit is calculated on the whole package. He based his estimation of 18% on his firm's ongoing survey of property managers, real estate investors, brokers, and developers. The survey indicated a range of 12.5% to 25%. *Tillema testimony; Resp't Ex. A at 70-78.*

25. For his sales-comparison analyses, Tillema used 10 sales of convenience stores with fuel pumps from across Indiana. The properties sold between July 2003 and March 2009. He generally used the three or four sales closest to the assessment date for each year. He adjusted the sale prices to account for various ways in which the properties differed from the subject property, including differences in location, building area, age, and access, and he reconciled the adjusted sale prices to arrive at the subject property's value for each year. Although Tillema did not end up adjusting any sale prices for differences in the number or type of fuel pumps, he considered that as one potential area for adjustment. *Tillema testimony; Resp't Ex. A at 79-99, 123-32.*

26. Turning to the income approach, Tillema had access to the Petitioner's master lease, which includes twelve locations. Because that lease did not delineate rent for the individual properties, he averaged the total rent. But he did not solely rely on that contract rent; he also looked at rent for comparable properties. For each year, the average contract rent was on the low end of the range indicated by the comparable data. He attributed that to the fact that the property was leased as part of a group rather than by itself. He therefore settled on market rent for each year that was very close to the average for his comparable properties. From that projected gross income, Tillema subtracted an amount for vacancy and collection loss. To estimate that loss, he looked to his market analysis and to a source entitled "U.S. Retail Market Recovering." Because the property's rent was determined on a net basis, he posited vacancy and collection losses at the low end of the indicated range for each year. *Tillema testimony; Resp't Ex. A at 100-112.*

27. Tillema next subtracted expenses. Under net leases, which he explained are typical in the market for this property type, the owner is normally only responsible for a management fee, which Tillema estimated at 3% of effective gross income. Tillema determined an overall capitalization rate from the sales of like-sized comparable properties and divided

it into his projected net operating income to arrive at a value for each year. *Tillema testimony; Resp't Ex. A at 100-12.*

28. After analyzing the property under each valuation approach for all the years under appeal, Tillema reached the following conclusions:

Year	**Cost**	**Sales-Comparison**	**Income**
2007	$730,000	$800,000	$790,000
2008	$730,000	$800,000	$770,000
2009	$730,000	$735,000	$750,000
2010	$670,000	$700,000	$650,000
2012	$650,000	$700,000	$650,000

See Resp't Ex. A at 114.

29. In reconciling those conclusions, Tillema explained that the cost approach was the best indication of value both in terms of his theoretical understanding of Indiana's true tax value standard and in practical terms based on recognized valuation procedures. He therefore gave the most weight to his conclusions under that approach. He gave less weight to his conclusions under the other two approaches, explaining:

> Sales Comparison Approach
> The sales comparison approach can be used to value any real property interest provided sales of similar interests or estates exist. As noted, the market for this type of property is relatively thin because of the limited number of gas station/convenience store sales in the United States. Buyers of this type of investment are concerned with a number of different factors but the prices include more than just the real estate and improvements. There is no reliable method to differentiate or segment the various factors within such a sale price. As such, this approach lacks a certain degree of credibility. Those sales that are thought to reflect the typical buyer's reaction in the market place are presented in this analysis and provide an alternative approach to estimate true tax value[.]

> Income Approach
> This approach to true tax value is very limited. A delicate part of the Income Approach is the ability to separate the income generated by a property to the land, improvements and business value. Rental situations of buildings like the subject have been detailed and the resulting net income stream analyzed as it compares to the subject. Capitalization rates have been discerned from the market. Therefore, the Income Approach, like the Sales Comparison Approach, adds limited credibility to the Cost Approach.

Resp't Ex. A at 113.

30. Tillema settled on the following values, which mirrored his conclusions under the cost approach, as his ultimate valuation opinion for each year:

Year	**Value**
2007	$730,000
2008	$730,000
2009	$730,000
2010	$670,000
2012	$650,000

Tillema testimony; Resp't Ex. A at 114-15.

31. Tillema acknowledged making some typographical errors. He incorrectly described the effective valuation date in some instances. Both in his transmittal letter and on page 4 of his report, he gave the wrong numbers for his valuation opinions. He cited an incorrect statute and administrative rule when describing Grant County's authority for assessing the property.[4] Finally, in the "Comments" section on the data sheets for four of his comparable sales, he incorrectly indicated that the properties were from Columbus. The correct locations are listed at the top of the data sheets and in his sales-comparison grids. *Tillema testimony; Resp't Ex. A at 9 and 129-32; Pet'r Exs. R4-R5.*

[4] He referred to Ind. Code § 6-1.1-8.5 and 50 IAC 19. Those provisions deal with assessing large industrial facilities in Lake County.

32. The Respondent argues that despite what she characterizes as some non-critical errors, Tillema's USPAP-compliant appraisal accurately shows the property's true tax value for each year under appeal. *Cusimano argument; citing Kooshtard Property 1, LLC v. Monroe County Ass'r*, pet. nos. 53-0105-12-1-4-00080, 53-015-12-1-4-00081 & 53-015-12-1-4-00082 (IBTR May 2015); *Howard County Ass'r v. Kokomo Mall, LLC*, 14 N.E.3d 895 (Ind. Tax Ct. 2014).

PETITIONER'S CONTENTIONS

33. The Petitioner successfully appealed the property's 2003 assessment to the Tax Court, but the Respondent did not apply that change to the 2004 or 2005 assessments. According to the Petitioner, the change from 2003 should have carried forward until 2006, when Indiana started annually adjusting values. Although the Petitioner acknowledged that those previous assessments years are not under appeal, its representative, Milo Smith, claims that he did not have the opportunity to appeal those years and the current appeals are the first time he has had the chance to make a record of his arguments about those assessments. *Smith argument*.

34. The property's assessment was changed using "SV." Smith testified that he was unsure what that reference stood for; he assumed it meant either the property's sale price or "sound value." The Petitioner believes that the Respondent needs to start making those adjustments to all properties so convenience stores throughout the county can be assessed uniformly. In any case, the Petitioner argues that the Respondent needed to prove the property's value using mass appraisal techniques rather than through an appraisal, which the Respondent did not use when she originally valued the property. *Smith testimony and argument.*

35. According to Smith, the information in the master lease is based on sale-leaseback transactions. Because those transactions can include value not attributable to the real estate, they are difficult to use as a valid indicator of a property's market value-in-use.

Smith testimony (citing CVS Pharmacy, Inc. #6637-02 v. Shelby County Ass'r, pet. nos. 73-002-07-1-4-12801 and 73-002-08-1-4-12801 (IBTR Nov. 15, 2011)); *Pet'r Ex. 8.*

36. Tillema acknowledged that site improvements depreciate at a faster rate than other improvements. Yet he did not increase the amount of depreciation for the subject property's site improvements between the years covered in his appraisal. *Smith argument; Tillema testimony; Resp't Exs. 74-74.*

37. Finally, Tillema and Respondent's counsel have acknowledged errors in Tillema's appraisal report. For example, he included fuel pumps and dual-sided pumps, which according to Smith are personal, rather than real, property. For support, Smith pointed to an excerpt from the 2002 Real Property Assessment Guidelines – Version A that lists "pumps and motors" as personal property. Tillema also erred in calculating the cost for paving and used the base rate for a good class C convenience store despite describing the store as average. Those errors are significant. But even if they involved only a few dollars, a taxpayer cannot be forced to pay taxes on items that are not assessable. *Smith testimony and argument; Pet'r Exs. R6-R7.*

38. For those reasons, the Petitioner argues that the Respondent failed to meet her burden of proof and the assessments should therefore revert to the 2006 level of $289,600. *Smith argument.*

ANALYSIS

A. True Tax Value and Evidence in Assessment Appeals

39. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as "the market value-in-use of a property for its current use, as reflected by utility received by owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2); *see also* 2011 REAL Property ASSESSMENT 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. Ass'r*, 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, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *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).

40. The General Assembly recently enacted a statute laying out specific limitations on using comparable sales to determine the true tax value for "commercial nonincome producing real property, including sale leaseback property." I.C. § 6-1.1-4-44(a). The statute applies to 2014 assessments forward, as well as to assessments for which appeals are pending before a county PTABOA or the Board. *Id*. Under that statute:

> (d) In determining the true tax value of real property under this section which has improvements with an effective age of ten (10) years or less under the rules of the [DLGF] a comparable real property sale may not be used if the comparable real property:
>
> (1) has been vacant for more than one (1) year as of the assessment date or in the case of industrial property vacant for more than five (5) years;
>
> (2) has significant restrictions placed on the use of the real property by a recorded covenant, restriction, easement, or other encumbrance on the use of the real property;
>
> (3) was sold and is no longer used for the purpose, or a similar purpose, for which the property was used by the original occupant or tenant; or
>
> (4) was not sold in an arm's length transaction

I.C. § 6-1.1-4-44(d).

B. Tillema's Appraisal

41. The Assessor offered an appraisal prepared by Tillema, a licensed appraiser, which Tillema certified that he prepared in accordance with USPAP. He applied all three generally recognized valuation approaches, although he gave the greatest weight to his conclusions under the cost approach, and he valued the property as of the appropriate valuation date for each year. *See* 50 IAC 21-3-3 (establishing valuation date as January 1 of the year immediately preceding the assessment date for 2007-2000); *see also*, I.C. § 6-1.1-4-4.5 (f) (making the assessment and valuation dates the same beginning with the 2010 assessment year). Thus, at first blush, Tillema's appraisal is highly probative.

42. On closer inspection, however, several problems detract from the appraisal's reliability. Tillema admitted to an error in connection with the paving's replacement cost. Although he claimed the error might have been in how he reported either the amount of paving or its unit cost rather than in his calculation, there is nothing to support an inference that the error was anything other than mathematical. Tillema therefore used a depreciated value for the paving that was $23,000 (rounded after applying depreciation and entrepreneurial profit) higher than it should have been.[5]

43. In a similar vein, the parties agree that the report contains a discrepancy regarding the base price Tillema used to determine the building's replacement cost. Tillema claims that he properly used the base price for a good building and his error was in describing the building as average. The Petitioner, by contrast, argues that Tillema properly characterized the building as average and erred by using the wrong base price. The difference in the base price is $20.53/sq. ft., or $65,531 for the entire store (before any cost multipliers, depreciation, or adjustment for entrepreneurial profit).

[5] 21,000 sq. ft. x $2.17/sq. ft = $45,570. Thus, the difference between the replacement cost Tillema used and the correct replacement cost was $26,040 ($71,610 - $45,570). Applying 25% depreciation to that amount yields $19,530, which increases to $23,045 when adjusted upward by 18% for entrepreneurial profit.

44. The potentially corroborating evidence is ambiguous. We find Tillema's assertion that a store can be in average condition but have better-than-average design quality, which is what the cost tables appear to address. And Tillema's appraisal report describes the store as having "average to good appeal" when addressing its design and functionality. That description supports both parties' suppositions.

45. We therefore turn to the May 2014 Marshall Valuation tables, which give the following descriptions for Class C convenience stores:

Type	**Exterior Walls**	**Interior Finish**	**Lighting, Plumbing and Mechanical**	**Heat**
Good	Brick, best block, stucco, good store front and ornamentation	Typically better chain stores, good acoustic, vinyl tile and carpet	Good lighting and outlets, restrooms, standard fixtures	Package A.C.
Average	Brick or block, some mansard, parapet ornamentation	Typical chain store, acoustic tile, vinyl composition, some snack prep. area	Adequate lighting and outlets, small employees' restroom	Forced air

Pet'r Ex. R6. Some of the store's features, such as its vinyl flooring and acoustic tile appear to fit into both categories. Similarly, its exterior walls are textured concrete block. Because the portions of the tables introduced into evidence do not provide criteria to distinguish between "block" and "best block," we cannot determine which category those walls most resemble. Tillema's photographs of the storefront show a parapet with the tenant's logo. That appears to match the description for an average store's exterior. On the other hand, the store has restrooms that appear to be more than small employee restrooms, and it has central air conditioning. Although that may not be "Package A.C.," it is more than forced-air heat. Thus, the restrooms and climate control appear to be more consistent with the description for a good store.

46. Based on that evidence, we cannot say with confidence that Tillema's error was in using the wrong base price instead of incorrectly reporting the property's appropriate category under the cost tables. Regardless, the error significantly affects the reliability of his conclusions.

47. The Petitioner also claims that the fuel pumps and dual-sided dispensers are personal property and that Tillema therefore erred in including them in his appraisal. For purposes of property taxation, real property includes "a building or fixture situated on land located within this state." I.C. § 6-1.1-1-15(2). The statutory definition for personal property includes certain enumerated items, as well as all "other tangible property (*other than real property*) which: (A) is being held as an investment; or (B) is depreciable personal property." I.C. § 6-1.1-1-11 (emphasis added). Thus, if the pumps in question are fixtures, they are real property; if not, they are personal property.

48. A piece of equipment is typically viewed as personal property. *Dinsmore v. Lake Electric Co., Inc*., 719 N.E.2d 1282, 1286 (Ind. Ct. App. 1999). To determine whether an article "has become so identified with real property as to become a fixture," Indiana courts apply a three-part test that considers the following: "1) actual or constructive annexation of the article to the realty, 2) adaptation to the use or purpose of that part of the realty with which it is connected, and 3) the intention of the party making the annexation to make the article a permanent accession to the freehold." *Id*. Intention is the chief test and "may be determined by the 'the nature of the article, relation and situation of the parties making the annexation, and the structure, use, and mode of the annexation.'" *Mergenthaler Linotype Co*. 216 Ind. 573, 25 N.E.2d 444, 448 (1940); *see also Dinsmore*, 719 N.E.2d at 1286. If there is any doubt as to intent, the property should be considered as personal. *Id*.

49. The pumps and dispensers appear to have been annexed to the real property and adapted to its use. But there is little evidence about whether the parties who annexed those items to the property intended to make them a "permanent accession to the freehold." That uncertainty argues for viewing the pumps and dispensers as personal property.

50. Our analysis does not end there, however. The DLGF has promulgated a rule addressing how to classify property as real or personal for purposes of taxation:

> (a) The following guide is intended to assist in the identification of property as either real or personal. The use of a unit of machinery, equipment, or a structure determines its classification as real or personal property. If the unit is directly used for manufacturing or a process of manufacturing, it is personal property. If the unit is a land or building improvement, it is real property.
>
> (b) Land improvement – Real.
> Retaining walls, piling and mats for general improvement of site, private roads, walks, paved areas, culverts, bridges, viaducts, subways and tunnels, fencing, reservoirs, dikes, dams, ditches, canals, and drainage.
> Fixed river, lake, or tidewater wharves and docks. Permanent standard gauge railroad trackage, bridges, and trestles. Walls forming storage yards and fire protection dikes. Note that on-site utility piping, such as sanitary and storm sewers, potable water and fire prevention lines, and gas lines are considered as on-site improvement costs and are valued with the land.
> …
> (d) Miscellaneous
> …
> Pumps and motors – Personal
> …
> Tanks:
> Storage only (except as indicated below) above or below ground – Real.
> Used as a part of a manufacturing process – Personal.
> Underground gasoline tanks at service stations – Personal….

50 IAC 4.2-4-10. The 2002 Real Property Assessment Guidelines – Version A contains similar language and examples. 2002 GUIDELINES, ch. 1 at 7-13.

51. The DLGF's guidance on the issue is ambiguous. While it identifies "pumps and motors" as personal property, that reference may relate only to pumps employed in the manufacturing process. Indeed, use as part of the manufacturing process is the DLGF's touchstone for classifying equipment as personal property. On the other hand, fuel pumps and dispensers are part of delivering fuel from underground gasoline tanks, which the DLGF explicitly recognizes as personal property. And the Guidelines do not appear to contain any cost schedules for assessing those items as real property. Perhaps for those reasons, the Respondent did not assess the pumps and dispensers at issue as real property.

52. Under those circumstances, we agree with the Petitioner that the fuel pumps and dispensers should be classified as personal property. For each year covered by his appraisal, Tillema used a depreciated cost, as adjusted upward for entrepreneurial profit, of $47,300 (rounded) for those items.[6]

53. The Petitioner leveled two more criticisms at Tillema's cost-approach analyses—his adjustment for entrepreneurial profit and his decision not to increase the site improvements' depreciation from year to year. As to the first criticism, Tillema generally explained that his decision to apply entrepreneurial profit comported with principles accepted by at least some members of his profession, and the Petitioner did not offer anything to rebut that proposition. Tillema also generally explained his quantification, which the Petitioner likewise did not challenge. We do find some merit in the Petitioner's second criticism. But Tillema's failure to increase the depreciation rate had little effect on his ultimate valuation opinion.

54. While the Petitioner has shown significant problems with Tillema's analysis under the cost approach, it did little to challenge his analyses under the other two approaches. At most, Smith testified that rents for the subject property and the 11 other properties covered under the master lease were the products of sale-leasebacks. But Tillema ultimately placed little weight on the master lease in determining market rent. And while the subject property may be covered by Ind. Code § 6-1.1-4-44 for at least some of the years under appeal,[7] there is nothing in the record to indicate that Tillema used any sales in his sales-comparison analysis that would run afoul of that section's limitations.[8] Of course, Tillema's report also indicates that the income and sales-comparison approaches had only limited credibility in valuing the subject property.

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[6] The total cost new for the pumps and dispensers was $53,500. Tillema applied 25% depreciation and adjusted the depreciated cost upward by 18% for entrepreneurial profit. *See Resp't Ex. A at 74-78.*

[7] Smith testified that all of the properties covered by the master lease were part of sale-leaseback transactions. Similarly, the convenience store was built in 1999, so its actual age was 10 years or less for several of the assessment dates under appeal. *See Resp't Ex. B*.

[8] Although the hearing occurred before Ind. Code § 6-1.1-4-44's passage, the Petitioner did not make any post-hearing claim that the newly enacted statute affected the validity or weight of Tillema's appraisal.

55. Thus, on one hand, Tillema's appraisal has various typographical and reporting errors, some of which are minor, and some of which, including the internal discrepancies regarding his ultimate valuation conclusions and his misidentification of the cost schedule he was applying, are more deeply troubling. Viewed as a whole, those errors raise questions about the care with which Tillema formed his opinions. He also made relatively significant substantive errors in applying the cost approach—the approach to which he gave the greatest weight. On the other hand, he generally complied with USPAP and supported his opinions, albeit to a limited degree, by applying two other generally accepted appraisal approaches.

56. We ultimately find Tillema's valuation opinions probative, if only barely, of the true tax value of the property he appraised for each year. As explained above, that property was the same as the property under appeal for 2012. In the other years, however, he appraised three tax parcels in addition to the parcel under appeal. Neither side addressed that discrepancy. The Petitioner, however, did not claim that the three additional parcels were used separately from the parcel under appeal in those earlier years. We therefore infer that for all years at issue, the parcels were used together as a single property.

C. The Petitioner's Case

57. The Petitioner did not offer its own valuation evidence to counter Tillema's appraisal. It instead pointed to the flaws we have already discussed and argued that the Respondent should not be allowed to offer an individual appraisal as evidence, but rather should be required to prove the property's value solely through applying mass-appraisal techniques. That is not the law. The Tax Court has repeatedly held that an appraisal can be compelling evidence of a property's true tax value. *See e.g. Eckerling,* 841 N.E.2d at 678. The Petitioner also made some arguments about the assessments in earlier years that are not under appeal. Those arguments are irrelevant to our decision.

58. Nonetheless, the Petitioner raises one point with which we agree: it should not be assessed for items, like the fuel pumps and dual-sided dispensers, that are not assessable as real property. Indeed, to do so would potentially subject the Petitioner to double taxation.[9] Two of Tillema's three valuation approaches explicitly include the pumps and dispensers. We therefore subtract $47,300—the amount attributable to the items' depreciated cost (as adjusted for entrepreneurial profit)—from his opinions.

D. Conclusions

59. Because the Respondent has offered the only probative evidence of value, sorting through who has the burden of proof for each year is unnecessary. Based on Tillema's appraisal, we find that the combined assessments for the subject parcel and the three parcels that apparently were used in conjunction with the subject parcel but that are not under appeal, must be changed to the following amounts for 2007-2010:

Year	**Amount**
2007	$682,700
2008	$682,700
2009	$682,700
2010	$622,700[10]

60. In 2012, the parcel under appeal included the parcels that previously had been separately assessed. Thus, for that year, the parcel under appeal's assessment must be changed to $602,700.[11]

[9] We say "potentially," because the Petitioner did not offer any evidence to show whether it reported the pumps and dispensers on its personal property returns.
[10] For 2007-2009, Tillema's valuation opinion was $730,000. Subtracting $47,300 (the depreciated cost of the pumps and dispensers as adjusted for entrepreneurial profit) leaves $682,700. For 2010, Tillema's valuation opinion was $670,000. Subtracting $47,300 for the pumps and dispensers leaves $622,700.
[11] For 2012, Tillema's valuation opinion was $650,000. Subtracting $47,300 for the pumps and dispensers leaves $602,700.

61. These appeals once again illustrate the danger inherent in a party simply trying to poke holes in the opponent's valuation evidence without offering any valuation evidence of its own. *See French Lick Twp. Trustee Ass'r, v. Kimball Int'l, Inc.* 865 N.E.2d 732, 739 n.13 (Ind. Tax Ct. 2007) ("As evidenced by this case, assessing officials should be prepared to defend their assessments by providing their own evidence of value at the administrative level, rather than counting on a taxpayer's failure to make a prima facie case."). The Petitioner pointed to significant flaws in Tillema's appraisal. But those flaws were not enough to completely deprive his valuation opinions of probative weight. Had the Petitioner offered valuation evidence of its own, the problems with Tillema's appraisal might have tipped the scales in the Petitioner's favor. As it is, we are left with Tillema's opinions as the only probative evidence on which to base our decision.

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

_____
Chairman, Indiana Board of Tax Review

_____
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>