

REPRESENTATIVE FOR THE PETITIONER: Robert McGinty, President/CEO

REPRESENTATIVE FOR THE RESPONDENT: Marilyn Meighen, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Eagle Developing Corporation,	)	Petition No.:	89-030-23-1-4-00593-23
	)		
Petitioner,	)	Parcel:	89-18-05-110-401.000-030
	)		
v.	)	County:	Wayne
	)		
Wayne County Assessor,	)	Township:	Wayne
	)		
Respondent.	)	Assessment Year:	2023

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**July 29, 2024**

**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:

**INTRODUCTION**

1. The Petitioner appealed the 2023 assessment of its commercial property in Wayne County. Because the Petitioner had the burden of proof and failed to provide reliable, market-based evidence supporting any value for the subject property, we order no change to the assessment.

**PROCEDURAL HISTORY**

2. The Petitioner appealed the 2023 assessment of its property located at 12 SW 5th Street in Richmond on May 4, 2023.

3. After holding a hearing, the Wayne County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination on September 22, 2023, sustaining the assessment at \$91,500 for land and \$543,500 for improvements for a total of \$635,000. The Petitioner timely appealed to the Board.
4. On April 30, 2024, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Robert McGinty, President/CEO of Eagle Developing Corporation and Bradley Berkemeier, a consultant for Nexus Group, testified under oath.
6. The Petitioner offered the following exhibits:
  - Petitioner Exhibit 1: Petitioner’s discussion on 2021 Real Property Assessment Manual page 10, income approach,
  - Petitioner Exhibit 2: The subject property’s 2014-2023 historical assessed values and discussion of income and sales comparison approaches,
  - Petitioner Exhibit 3: Email from Zachary Price, and letter from Spero Health dated December 26, 2023,
  - Petitioner Exhibit 4: Email from Zachary Price,
  - Petitioner Exhibit 5: 2015 email from Timothy Smith, Wayne Township Assessor and 2022 email from Brian Cusimano.
7. The Respondent offered the following exhibit:
  - Respondent Exhibit A: 2023 subject property record card,
  - Respondent Exhibit B: Two photographs of the subject property,
  - Respondent Exhibit C: Income analysis using subject property data **(Confidential)**,<sup>1</sup>
  - Respondent Exhibit E: Assessor’s income analysis,
  - Respondent Exhibit F: CoStar property summary report for 10-24 SW 5<sup>th</sup> Street,
  - Respondent Exhibit G: CoStar underwriting report – shopping center for 10-24 SW 5th Street,
  - Respondent Exhibit H: 2020 Indiana Department of Revenue “Apportionment of Income for Indiana” Schedule E **(Confidential)**,

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<sup>1</sup> Respondent Exhibit D was listed on the Respondent’s exhibit coversheet but was not offered into evidence.

- Respondent Exhibit I: 2021 Indiana Department of Revenue “Apportionment of Income for Indiana” Schedule E (**Confidential**),
- Respondent Exhibit J: 2022 Indiana Department of Revenue “Apportionment of Income for Indiana” Schedule E (**Confidential**).

8. The record also includes the following: (1) all pleadings and documents filed in this appeal, (2) all orders, and notices issued by the Board or ALJ; and (3) the digital recording of the hearing.

### **Objections**

9. The Assessor objected to Petitioner’s Exhibits 4 and 5, email correspondences between employees of the Petitioner and representatives of the Assessor, because they contain evidence of settlement negotiations. Our Supreme Court has held that “[t]he law encourages parties to engage in settlement negotiations in several ways” and “it prohibits the use of settlement terms and settlement negotiations to prove liability or invalidity of a claim or its amount.” *Dep’t of Local Gov’t Fin. v Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). For that reason, we sustain the objections and exclude the exhibits from evidence, as well as the testimony and argument about those exhibits.<sup>2</sup>

### **FINDINGS OF FACT**

10. The subject property consists of two mixed-use office/retail structures with a total of approximately 15,874 sq. ft. located on 0.96 acres in Richmond. *Berkemeier testimony; Resp’t Exs. A & B.*
11. The 2022 assessment was identical to the 2023 assessment under appeal—both were \$635,000. *Resp’t Ex. A.*

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<sup>2</sup> The Assessor also made an objection to the relevance of a portion of Petitioner’s Exhibit 5. Because we have already excluded the exhibit, this objection is moot.

### PETITIONER'S CONTENTIONS

12. The Petitioner argued that based on the 2021 Real Property Assessment Manual the Assessor should have valued the subject property using the income approach instead of the sales-comparison approach. In addition, the Petitioner argued that the sales-comparison approach does not account for when a commercial property has high vacancy and reduced income. McGinty testified that the subject property is an investment property and therefore should have been valued based on the income it produced for the owner. *McGinty testimony; Pet'r Exs. 1 & 2.*

### RESPONDENT'S CONTENTIONS

13. The Assessor argued that the Petitioner needed to support its case with probative evidence and only when that occurs does the Assessor have the duty to support the assessment with substantial evidence. In addition, the Assessor claimed that the Petitioner failed to provide any market-based evidence showing the market value-in use of the property for the 2023 assessment year.
14. The Assessor also presented an income analysis developed by Bradley Berkemeier, a Level III Assessor-Appraiser. Using data from the area, Berkemeier estimated market rent, vacancy and collection loss, expenses, and a capitalization rate. This resulted in a value of \$ [REDACTED] under the income approach. Berkemeier also developed a similar analysis using the Petitioner's actual income and expenses, concluding to a value of \$ [REDACTED]. *Berkemeier testimony; Resp't Exs. B-G.*

### BURDEN OF PROOF

15. Generally, the taxpayer has the burden of proof when challenging a property tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." Indiana Code § 6-1.1-15-20(a) (effective March 21, 2022).

16. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b). Subject to certain exceptions, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.*
17. If the burden has shifted, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).
18. Here, the assessment under appeal and the prior year's assessment were both \$635,000, so the assessment did not increase by more than 5%. Thus, the Petitioner has the burden of proof.

#### ANALYSIS

19. The Indiana Board of Tax Review is the trier of fact in property tax appeals, and its charge is to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence before it." I.C. § 6-1.1-15-20(f). The Board's conclusion of a property's true tax value "may be higher or lower than the assessment or the value proposed by a party or witness." *Id.* Regardless of which party has the initial burden of proof, either party "may present evidence of the true tax value of the property, seeking to decrease or increase the assessment." I.C. § 6-1.1-15-20(e).
20. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). Instead, true tax value is found under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.

21. In order to meet its burden of proof, a party “must present objectively verifiable, market-based evidence” of the value of the property. *Piotrowski v. Shelby Cty. Assessor*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal “methodology” of the “assessment regulations.” *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). This is because the “formalistic application of the Guidelines’ procedures and schedules” lacks the market-based evidence necessary to establish the market value-in-use of a specific property. *Piotrowski*, 177 N.E.3d at 133.
22. Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is ‘similar’ or ‘comparable’ simply because it is on the same street are nothing more than conclusions ... [and] do not constitute probative evidence.” *Marinov v. Tippecanoe Cty. Assessor*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property’s value as of the valuation date. *O’Donnell v. Dept. of Local Gov’t. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006).
23. Here, the Petitioner primarily argued that the assessment should be reduced based on the income it receives for the subject property. As discussed above, true tax value is defined as the “utility received by the owner or by a similar user.” 2021 REAL PROPERTY ASSESSMENT MANUAL at 2. In addition, I.C. § 6-1.1-31-6(e) states that true tax value does not mean the value of the property to the user. Thus, the specific income the Petitioner receives does not by itself dictate the value of the subject property. Instead, the Petitioner needed to prove the value of the subject property using market-based evidence. Here, the Petitioner failed to provide any market-based evidence supporting any value for the subject property. Instead, it criticized how the Assessor developed the original assessment. A taxpayer challenging the assessed value of its property generally cannot

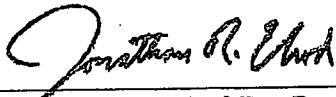
meet its burden by simply contesting the methodology used to compute the assessment. Instead, parties must offer evidence that complies with generally accepted appraisal principles to show the property's market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Because the Petitioner failed to offer any evidence supporting any value for the subject property, it failed to make a prima facie case for any change in the assessment.

24. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dept. of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### SUMMARY OF FINAL DETERMINATION

25. We order no change to the 2023 assessment because the Petitioner failed to provide any evidence supporting a different value.


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>