

REPRESENTATIVE FOR THE PETITIONER: Robert McGinty, Vice President

REPRESENTATIVE FOR THE RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Eagle Land Development, LLC,	)	Petition No.:	89-030-23-1-4-00591-23
)		
Petitioner,	)	Parcel No.:	20-11-14-351-044.000-015
)		
v.	)	County:	Wayne
)		
Wayne County Assessor,	)	Township:	Wayne
)		
Respondent.	)	Assessment Year:	2023

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 3646 East Main 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, reducing the assessment to \$132,800 for land and \$167,200 for improvements for a total of \$300,000. 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, Vice President of Eagle Land Development, LLC, 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 2019-2022 historical assessed values and discussion of income and sales comparison approaches,

Petitioner Exhibit 3: Email from Zachary Price,

Petitioner Exhibit 4: 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: CoStar data sheet on the subject property,

Respondent Exhibit C: Assessor’s income analysis (**Confidential**),

Respondent Exhibit D: CoStar – Richmond Market Summary,

Respondent Exhibit E: 2020 Internal Revenue Form 8825 (“IRS-Form 8825”) “Rental Real Estate Income and Expenses of a Partnership or an S Corporation” (**Confidential**),

Respondent Exhibit F: 2021 IRS-Form 8825 (**Confidential**),

Respondent Exhibit G: 2022 IRS-Form 8825 (**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 3 and 4, emails 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.

FINDINGS OF FACT

10. The subject property is a 2,705 sq. ft. commercial retail structure located on 0.29 acres in Richmond. *Berkemeier testimony; Resp't Ex. A.*
11. The 2022 assessment was \$328,200. The 2023 assessment as determined by the PTABOA was \$300,000. *Resp't Ex. A.*

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 experienced a significant reduction in gross income, and for that reason the assessment should be reduced for 2023. *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 current assessment of \$300,000 is not an increase of more than 5% over the previous assessment of \$328,200. 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 its reduction in income. 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, although the Petitioner experienced a drop in income for the subject property, that does not necessarily mean the subject property’s assessment should be reduced unless there is market-based evidence supporting such a reduction. In this case, the Petitioner failed to provide 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>>