

REPRESENTATIVE FOR PETITIONER:  
Jay Curts, Coots, Henke & Wheeler P.C.

REPRESENTATIVE FOR RESPONDENT:  
Marilyn Meighen, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Lantern Partners, LLC,	)	Petition No.:	29-006-10-1-4-00198
	)		
Petitioner,	)	Parcel No.:	1514120009001002
	)		
v.	)	County:	Hamilton
	)		
Hamilton County Assessor,	)	Township:	Delaware
	)		
Respondent.	)	Assessment Year:	2010

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

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**January 21, 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. Lantern Partners, LLC offered two rudimentary income capitalization analyses to support its claim that the subject property was assessed too high. Because Lantern failed to show

that those analyses comply with generally accepted appraisal principles, the Board finds for the Hamilton County Assessor.

### **Procedural History**

2. Lantern appealed the subject property's 2010 assessment. On June 19, 2012, the Hamilton County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the assessment, although not by as much as Lantern wanted. Lantern then filed a Form 131 petition with the Board.
3. The Board's designated administrative law judge, Dalene McMillen ("ALJ"), held a hearing on September 9, 2014. Neither she nor the Board inspected the property.
4. The Assessor, Robin Ward, and her director of commercial and industrial assessment, Terry McAbee, were sworn as witnesses. Lantern did not call any witnesses. Lantern's counsel, Jay Curts, made statements about various facts that were not otherwise in evidence. Because Mr. Curts was not sworn as a witness, the Board disregards those statements.
5. Lantern offered the following exhibits, the first three of which were admitted without objection:
  - Petitioner Exhibit 1: Lantern Properties, LLC Historical Rent Roll
  - Petitioner Exhibit 2: Lantern Properties, LLC Income Statement (adjusted to reflect fmV) 1/1/11-6/30/11,
  - Petitioner Exhibit 3: Lantern Properties, LLC Income Statement (adjusted to reflect fmV) 7/1/11-12/31/11,
  - Petitioner Exhibit 4: August 16, 2012 letter from John M. Compton of J.M Compton, Inc to Jay Curts regarding a summary appraisal of the subject property,
  - Petitioner Exhibit 5: Page 96 from Compton's summary appraisal report,
  - Petitioner Exhibit 6: May 31, 2013 closing statement for the subject property prepared by Meridian Title Corporation.

6. The Assessor offered the following exhibits, all of which were admitted without objection:
  - Respondent Exhibit A: 2010 property record card for the subject property,
  - Respondent Exhibit B: LoopNet listing sheet for the subject property, dated May 1, 2008,
  - Respondent Exhibit C: CoStar listing sheet for the subject property, dated June 12, 2012,
  - Respondent Exhibit D: Income capitalization calculation,
  - Respondent Exhibit E: Integra Realty Resources, Inc. capitalization rates.
  
7. The following additional items are part of the record:
  - Board Exhibit A: Form 131 petition,
  - Board Exhibit B: Hearing notice, dated August 1, 2014,
  - Board Exhibit C: Hearing sign-in sheet,
  - Board Exhibit D: September 9, 2014 e-mail from Jay Curts and Lantern's Motion to Continue Hearing for Redetermination of Assessment,
  - Board Exhibit E: September 9, 2014 letter from Board's appeals coordinator regarding the denial of Lantern's motion to continue.
  
8. The property under appeal is a multi-story office complex located at 10500 Kincaid Drive in Fishers.
  
9. The PTABOA determined the following assessment:

Land: \$3,280,200	Improvements: \$11,725,100	Total: \$15,005,300
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10. Lantern requested a total assessment of \$10,500,000.

### **Objections**

11. The Assessor objected to Petitioner's Exhibits 4-6—a cover letter from Jon Compton regarding his summary appraisal report for the subject property (Pet'r Ex. 4), a one-page excerpt from that report (Pet'r Ex. 5), and a May 2013 closing statement relating to Lantern's sale of the property (Pet'r Ex. 6). According to the Assessor, Lantern violated the Board's exchange rule by failing to provide her with an exhibit list or copies of the

exhibits before the hearing.<sup>1</sup> She also objected to Petitioner's Exhibits 4 and 5 on grounds that they are hearsay and that they represent only small portions of a larger appraisal report. The ALJ took the objections under advisement.

12. The Board sustains the Assessor's objection to all three exhibits based on the first asserted ground—Lantern's failure to comply with the Board's pre-hearing exchange rule. Under that rule, a party must provide all other parties (1) copies of its documentary evidence at least five business days before the hearing, and (2) a list of witnesses and exhibits at least 15 business days before the hearing. 52 IAC 2-7-1(b). Those requirements are designed to avoid surprises and to promote organized, efficient, and fair consideration of cases. Failure to comply may be grounds for excluding evidence. 52 IAC 2-7-1(f).
13. Lantern offered no excuse for failing to comply with the Board's pre-hearing exchange rule. And it did not counter the Assessor's claim of surprise. In any case, as explained in the Board's discussion of the merits, the excluded exhibits would carry no probative weight even if the Board were to admit them.

### **Burden of Proof**

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

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<sup>1</sup> The Assessor did not object to Petitioner's Exhibits 1-3 because Lantern had offered them at the PTABOA hearing.

15. 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 that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(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).<sup>2</sup>
16. The subject property's assessment actually decreased between 2009 and 2010, dropping from \$18,571,400 to \$15,005,300. Thus, neither of the circumstances triggering the burden-shifting statute applies, and Lantern has the burden of proof.

#### **Summary of Lantern's Contentions**

17. The subject property is a multi-story office building constructed for Irwin Mortgage, which occupied the building from March 1, 2008, through May 31, 2011. Several other tenants occupied the building from June 1, 2011, forward. *Pet'r Exs. 1-3.*
18. Lantern submitted income and expense statements for January 1, 2011, through June 30, 2011, and for July 1, 2011, through December 31, 2011. The first statement shows income of \$944,484 and expenses of \$328,439. The expenses consist of "Building Operations" (\$328,290), "Bank Charges" (\$54), "Accounting Fees" (\$95), and "Personal Property Tax" (\$1,244). Lantern doubled the income and expenses and came up with annual net income of \$1,232,090. It then capitalized that income using a rate of 10% to arrive at an estimated fair market value of \$12,320,900. *Pet'r Exs. 2-3.*

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<sup>2</sup> Those provisions may not apply if there was a change in improvements, zoning, or use, or if the property was valued using the income capitalization approach in the prior appeal. I.C. § 6-1.1-15-17.2(c) and (d).

19. The second statement shows income of \$1,040,013 from six tenants, including an amount attributable to Irwin Mortgage from a post-petition bankruptcy claim, and expenses of \$512,670. The main difference in the expenses between the first and second statement is that the second statement includes \$184,850 for real estate taxes. Once again, Lantern doubled the income and expenses to come up with annual net income of \$1,054,686. It applied the same 10% capitalization rate to reach an estimated fair market value of \$10,546,858. *Pet'r Exs. 2-3.*
20. According to Lantern, the decline in monthly rent, after Irwin Mortgage was replaced by other tenants, shows that the property's market value decreased over time. Lantern therefore argues that the 2010 assessment should be reduced to \$10,500,000. *Curts argument.*

### **Summary of the Assessor's Contentions**

21. The income capitalization approach to value is the preferred method for determining an income-producing property's value. The Indiana Tax Court has held that market data, rather than individual data, must be used in applying that approach. The Assessor's witness, Terry McAbee, therefore examined the property's historic income and expenses as well as data from other multi-story office buildings in Fishers. *McAbee testimony; Meighen argument (citing to Indiana MHC, LLC v. Scott County Assessor, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013)).*
22. Mr. McAbee used rent of \$17.96 per square foot, which he found was in line with the market. That translates to gross income of \$1,888,968.<sup>3</sup> He reduced that amount by 10% to account for vacancy. Once again, he took that rate from the market. He next subtracted \$.30 per square foot for reserves, which he took from a book in the Assessor's office that deals with office buildings. He also subtracted expenses of \$328,439, which

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<sup>3</sup> Mr. McAbee originally testified that he did not use the property's historic rent. On cross-examination, however, he acknowledged that his rent estimate matched the historic rent from Lantern's first income and expense statement and that the historic rent was at market level. *McAbee testimony.*

match Lantern’s historical expenses for January 1, 2011, through June 31, 2011. That left net operating income of \$1,334,463. *McAbee testimony; Resp’t Ex. D; Pet’r Ex. 2.*

23. Mr. McAbee capitalized the net operating income using a rate of 8.5%—the rate listed by Integra Realty Resources, Inc. for a suburban Indianapolis office building. That yielded a value of \$15,699,565, or \$126.71 per square foot. *McAbee testimony; Resp’t Exs. D-E.*
24. The Assessor also submitted two listings for the subject property—one from LoopNet and the other from CoStar. LoopNet listed the property for \$22,231,528 or \$177.44 per square foot on May 1, 2008. It described the building as class “A” and offered it at an 8.5% capitalization rate. CoStar listed portions of the property for rent at \$18.95 per square foot. According to the Assessor, those listings support the rent estimate and capitalization rate that Mr. McAbee used in his analysis. *McAbee testimony; Resp’t Exs. B-C.*
25. By contrast, Lantern’s analyses are flawed. They relied on information from after the 2010 assessment date, and Lantern offered little support for its capitalization rate. *Meighen argument.*

### **Analysis**

26. 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 2 (incorporated by reference at 50 IAC 2.4-1-2). A party’s evidence in a tax appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared according to Uniform Standards of the Professional Appraisal Practice often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the subject or 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).

27. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the 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 2010 assessments, the valuation date was March 1, 2010. I.C. § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).
28. Lantern failed to make a prima facie case for reducing the subject property's assessment. It called no witnesses and offered only six exhibits, three of which the Board excludes pursuant to the Assessor's objection. The remaining exhibits lay out two rudimentary analyses of the property's value under the income capitalization approach, without even identifying who performed those analyses.
29. Lantern offered little to explain or support the analyses' various components. For example, both analyses use the property's historic income without showing how that income relates to the market. *See Indiana MHC, LLC v. Scott County Assessor*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (“[T]o provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income, expenses, and occupancy rates for the subject property, but the income, expenses and occupancy rates of comparable properties in the market as well.”). The Assessor's witness arguably cured that problem for one analysis, conceding that Irwin Mortgage paid market rent when it was the property's sole tenant. But estimating gross rent is only one component of the income capitalization approach—one must still determine net operating income by, among other things, accounting for vacancy and collection loss and appropriate expenses. Each analysis lists more than \$300,000 in operating expenses without identifying any of the individual expenses that comprise that figure. And Lantern offered no admissible evidence to show how the 10% capitalization rate used in each



analysis was determined. *See Grabbe v. Carroll County Assessor*, 1 N.E.3d 226, 231 (Ind. Tax Ct. 2013) (upholding determination that income approach lacked probative value where taxpayer failed to provide evidence demonstrating why 20% capitalization rate was proper).

30. The result would be the same even if the Board had overruled the Assessor's objections and admitted Petitioner's Exhibits 4-6. The one-page excerpt from Mr. Compton's appraisal report partially explains his choice of a similar capitalization rate. Without more, however, the Board cannot meaningfully evaluate the reliability of Mr. Compton's choice. The same is true for Mr. Compton's ultimate valuation conclusion of \$12,000,000, which he references in the two-page cover letter to his appraisal report. In any case, he addressed the property's capitalization rate and overall value as of June 2012. Lantern did not offer any evidence to explain how those conclusions related to the property's value as of March 1, 2010—the relevant valuation date for this appeal.<sup>4</sup> The same is true for the last excluded exhibit—the closing statement showing that Lantern sold the property for \$8,000,000 on May 31, 2013.

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

31. Lantern failed to make a prima facie case for reducing the assessment. The Board therefore finds for the Assessor.

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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<sup>4</sup> At most, Lantern showed that, as of June 1, 2012, the property was generating monthly rent from several tenants at rates close to what those tenants paid in second half of 2011, but less than what Irwin Mortgage paid in 2010. *See Pet'r Exs. 1-3; Curts argument*. Lantern, however, did not even attempt to show whether the leases were at market rates for 2011 or 2012.

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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>>.