

REPRESENTATIVE FOR PETITIONER:

Neil Wingate

REPRESENTATIVE FOR RESPONDENT:

F. John Rogers, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

East Michigan Financial Trust,)	Petition No.: 02-070-02-1-5-03060
)	Parcel: 65-2027-0064
Petitioner,)	
)	
v.)	
)	Allen County
Adams Township Assessor,)	Adams Township
)	Assessment Year: 2002
Respondent.)	

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

July 17, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law.

Issue: Does the current assessment reflect the market value-in-use of the property?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Petitioner initiated an assessment appeal with the Allen County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 21, 2004.
2. The PTABOA issued notice of its decision on June 13, 2005.
3. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on June 30, 2005.
4. The Board issued a notice of hearing to the parties dated March 6, 2007.
5. The Administrative Law Judge, Paul Stultz, held an administrative hearing on the petition on April 17, 2007.
6. The following persons were sworn as witnesses at the hearing:
For the Petitioner - Neil Wingate, Trust beneficiary,
For the Respondent - Debbie Thomas, Township Assessor,
Teresa West, Deputy Township Assessor.
7. The property is a residential dwelling located at 4611 Standish Drive in Fort Wayne.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The total assessed value as determined by the PTABOA is \$30,700 (land \$8,800 and improvements \$21,900).
10. The Petitioner contends the total assessed value should be \$20,000.

11. The following exhibits were presented for the Petitioner:
- Petitioner's Exhibit 1 – List of comparable sales,
 - Petitioner's Exhibit 2 – Radabaugh Sale Contract of Real Estate,
 - Petitioner's Exhibit 3 – Allen County Income Valuation Worksheet,
 - Petitioner's Exhibit 4 – Form 131,
 - Petitioner's Exhibit 5 – Written notice of appeal to Township Assessor,
 - Petitioner's Exhibit 6 – Power of Attorney,
 - Petitioner's Exhibit 7 – Subject property record card.
12. The following exhibits were presented for the Respondent:
- Respondent's Exhibit 1 – Notice of hearing,
 - Respondent's Exhibit 2 – Respondent's position statement,
 - Respondent's Exhibit 3 – Subject property record card,
 - Respondent's Exhibit 4 – Property record cards of five comparable properties,
 - Respondent's Exhibit 5 – Plat map of subject neighborhood,
 - Respondent's Exhibit 6 – None,
 - Respondent's Exhibit 7 – Radabaugh contract,
 - Respondent's Exhibit 8 – Quotation from 2002 Real Property Assessment Manual,
 - Respondent's Exhibit 9 – Notification of Final Assessment Determination,
 - Respondent's Exhibit 10 – Mail delivery receipt to East Michigan Trust on April 9, 2007,
 - Respondent's Exhibit 11– *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006),
 - Respondent's Exhibit 12 – PTABOA Findings and Conclusions for the subject appeal.
13. The following additional items are officially recognized as part of the record of proceedings:
- Board Exhibit A –Petition,
 - Board Exhibit B – Notice of Hearing dated March 6, 2007,
 - Board Exhibit C – Hearing Sign In Sheet,
 - Board Exhibit D - Notice of Appearance.

OBJECTION

14. The Respondent objected to all of the Petitioner's exhibits because the Petitioner did not provide a list of witnesses and exhibits or provide copies of documentary evidence to the Respondent before the hearing as required by 52 IAC 2-7-1.
15. Mr. Wingate testified that he believed the appeal would be conducted using small claims rules. This claim is inconsistent with the Petitioner's election to opt-out of small claims procedures as indicated on the Form 131. Furthermore, the notice of this hearing clearly advised the parties about their obligation to exchange lists at least fifteen business days before the hearing and to exchange evidence and witness summaries at least five business days before the hearing.
16. The pre-hearing exchange rules are an area where there is a substantial difference between small claims procedures and those that apply to other cases. Under the procedural rules for plenary cases, a party must provide a list of witnesses and exhibits at least fifteen business days prior to the hearing. A party must provide copies of documentary evidence or summaries of statements of testimonial evidence to the other parties at least five business days prior to the hearing. If a party chooses to rely on the mail, the deadline is three days earlier. 52 IAC 2-7-1.
17. All parties must comply with these rules. Although the Respondent objected to the admission of all exhibits, the Respondent also offered documents that are the same as both Petitioner's Exhibit 2 and Exhibit 7. Petitioner's Exhibit 4 and Exhibit 5 were both filed with the Respondent before the hearing. Petitioner's Exhibit 6 is merely the Power of Attorney for Mr. Wingate to speak on behalf of the Petitioner. The objection is overruled as to Exhibit 2, Exhibit 4, Exhibit 5, Exhibit 6 and Exhibit 7. The objection is sustained as to Petitioner's Exhibit 1 and Exhibit 3. Accordingly, this case is determined without consideration of these two exhibits.

PETITIONER'S CASE

18. The subject property was one of twenty parcels purchased together for a total price of \$396,924 on or about May 15, 2002. *Wingate testimony; Resp't Ex. 7.* Dividing this total by twenty provides an average value-in-use for each parcel of approximately \$20,000. *Wingate testimony.*
19. This purchase was an arms-length transaction. Therefore, the sales price is an accurate indication of the property's value. *Wingate testimony.*

RESPONDENT'S CASE

20. The Petitioner's bulk purchase of twenty properties is not a valid indication of value. *Rogers argument.*
21. The sale price was not trended to the January 1, 1999, valuation date. *Rogers argument.*
22. Five comparable property sales range in value from \$33,900 to \$51,000. *West testimony; Resp't Ex. 4.* All of the comparable properties are within blocks of the Petitioner's parcel. *Resp't Ex. 5.*

ANALYSIS

23. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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).
24. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It means "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); MANUAL at 2. There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

25. Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how that value demonstrates, or is relevant to, the subject property's value as of January 1, 1999. *Id.*
26. The Petitioner averaged the total 2002 purchase price of twenty parcels to calculate the proposed value of the parcel under appeal. The Petitioner failed to establish this methodology is in accordance with generally accepted appraisal principles. Petitioner did not demonstrate the average sales price of the twenty parcels establishes the subject property's true tax value. Accordingly, this evidence has no probative value.
27. The Petitioner failed to establish how the May 15, 2002, sales price might be relevant to the required valuation date of January 1, 1999. This failure is another reason that evidence of the 2002 purchase price is not probative.

28. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

SUMMARY OF FINAL DETERMINATION

29. The Petitioner failed to present a prima facie case. The Board finds in favor of the Respondent.

This Final Determination of the above captioned matter is issued on the date first written above.

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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>