

REPRESENTATIVE FOR PETITIONER:
David Whisler, Tax Representative

REPRESENTATIVE FOR RESPONDENT:
F. John Rogers, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Fort Wayne Portfolio Corporation	)	Petition Nos.:	02-072-11-1-4-00019
	)		02-072-11-1-4-00020
Petitioner,	)		02-072-11-1-4-00021
	)		02-075-11-1-4-00003
)		
	)	Parcel Nos.:	02-08-29-376-004.000-072
v.	)		02-08-29-376-004.000-072
	)		02-08-29-376-004.000-072
	)		02-11-12-201-002.000-075
)		
Allen County Assessor	)	County:	Allen
)		
Respondent.	)	Townships:	St. Joseph & Aboite
)		
	)	Assessment Year:	2011

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

October 24, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review 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. In this assessment appeal, Fort Wayne Portfolio Corporation showed that it bought the four parcels at issue for \$5,100,000. Although the Allen County Assessor claims that the sale was not a market-value transaction because the seller was atypically motivated, her evidence does little to support that claim. The Board therefore finds that the parcels' total combined assessment must be reduced to \$5,100,000.

Procedural History

2. All four parcels are located in Fort Wayne. Parcels 02-072-11-1-4-00019, -20, and -21, known collectively as Executive Centers I and II ("Executive Center"), contain two office buildings and have the following addresses: 3400 East Coliseum Boulevard, 3500 East Coliseum Boulevard, and 3601 Vance Avenue. Parcel 02-11-12-201-002.000-075, which the Board refers to as "Pointe Inverness," is located at 7030 Pointe Inverness Way.
3. Fort Wayne Portfolio filed Form 130 petitions with the Allen County Assessor challenging the parcels' assessments for 2011. On July 10, 2012, the Allen County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations upholding the assessments for the Executive Center parcels and lowering the assessment for Pointe Inverness, although not to the amount that Fort Wayne Portfolio had requested. Fort Wayne Portfolio then timely filed Form 131 petitions with the Board.
4. The Board's administrative law judge, Dalene McMillen ("ALJ"), held a hearing on July 30, 2013. Neither the Board nor the ALJ inspected the properties.
5. The following people testified under oath:

For the Petitioner: David Whisler, certified tax representative, CFO & Controller of Sturges Development Group, LLC

Brad Sturges, President of Sturges Development Group,
LLC

For the Assessor: Robert Williamson, commercial real estate deputy, Allen
County Assessor's Office

6. Fort Wayne Portfolio offered the following exhibits:

- Petitioner Exhibit 1: Summary appraisal report for Executive Center prepared by Brent Overholt of the Zacher Company,
- Petitioner Exhibit 2: Summary appraisal report for Pointe Inverness prepared by Brent Overholt of The Zacher Company,
- Petitioner Exhibit 3: July 27, 2011 letter from Dave Whisler to Stacey O'Day, and Form 131 petitions with attachments (59 pages),
- Petitioner Exhibit 4: July 3, 2013 e-mail from Rob Williamson to Dave Whisler,
- Petitioner Exhibit 5: E-mails between Dave Whisler and Cynthia Specht dated July 13 and 17, 2012,
- Petitioner Exhibit 6: Position statement and summary information from Fort Wayne Portfolio,
- Petitioner Exhibit 7: Sample letter sent out by the Assessor and the Allen County Commercial Team pursuant to Ind. Code § 6-1.1-4-39.

7. The Assessor offered the following exhibits:

For Executive Center:

- Exhibit R-1: July 3, 2013 e-mails between Dave Meyers, Dave Whisler, and Rob Williamson,
- Exhibit R-2: Property record cards for 3400 East Coliseum Boulevard, 3500 East Coliseum Boulevard, and 3601 Vance Avenue,
- Exhibit R-3: Limited Warranty Deed from MV Partners One, LLC to LaSalle Bank National Association as trustee, dated June 29, 2007,
- Exhibit R-4: Excerpt from section 251 of Office of Thrift Supervision's Executive Handbook (December 2010),
- Exhibit R-5: Copy of property records for 3500 East Coliseum Boulevard from www.loopnet.com,
- Exhibit R-6: 12 U.S.C. § 29,
- Exhibit R-7: 12 C.F.R. § 34.82,
- Exhibit R-8: One page of the sales disclosure form for Executive Center with handwritten notations, dated June 10, 2011,
- Exhibit R-9: Page 13 of 21 from *Gateway Arthur, Inc. v. Marion County Assessor*, pet. nos. 49-500-06-1-4-01084 through -89 (Ind. Bd. Tax Rev. Oct. 22, 2012)

- Exhibit R-10: Page 17 of 19 from *Charles L. and Verlene Schooler v. Boone County Assessor*, pet. no. 06-003-07-1-5-00444 (Ind. Bd. Tax Rev. May 7, 2010),
- Exhibit R-11: Page 8 of 10 from *Standard Bank & Trust Company Trustee #19400 v. Lake County Assessor*, pet. nos. 45-026-07-1-5-00032 and -33 (Ind. Bd. Tax Rev. Sep't 8, 2011),
- Exhibit R-12: Page 10 of 12 from *CVS Corp. #6252-02 v. Vanderburgh County Assessor*, pet. no. 82-020-09-1-4-07415 (Ind. Bd. Tax Rev. April 8, 2012),
- Exhibit R-13: Rob Williamson's qualifications and education,
- Exhibit R-14: Respondent's position statement.

For Pointe Inverness:

- Exhibit R-1: July 3, 2013 e-mails between Dave Meyers, Dave Whisler, and Rob Williamson,
- Exhibit R-2: Property record card for 7030 Pointe Inverness Way,
- Exhibit R-3: Limited Warranty Deed from MV Partners One, LLC to LaSalle Bank National Association, as Trustee, dated June 29, 2007,
- Exhibit R-4: Excerpt from section 251 of Office of Thrift Supervision's Executive Handbook (December 2010),
- Exhibit R-5: Copy of property records for 7030 Pointe Inverness Way from www.loopnet.com,
- Exhibit R-6: 12 U.S.C. § 29,
- Exhibit R-7: 12 C.F.R. § 34.82,
- Exhibit R-8: One page of the sales disclosure form for Pointe Inverness with handwritten notations, dated June 10, 2011,
- Exhibit R-9: Page 13 of 21 from *Gateway Arthur, Inc. v. Marion County Assessor*, pet. nos. 49-500-06-1-4-01084 through -89 (Ind. Bd. Tax Rev. Oct. 22, 2012)
- Exhibit R-10: Page 17 of 19 from *Charles L. and Verlene Schooler v. Boone County Assessor*, pet. no. 06-003-07-1-5-00444 (Ind. Bd. Tax Rev. May 7, 2010),
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- Exhibit R-12: Page 10 of 12 from *CVS Corp. #6252-02 v. Vanderburgh County Assessor*, pet. no. 82-020-09-1-4-07415 (Ind. Bd. Tax Rev. April 8, 2012),
- Exhibit R-13: Rob Williamson's qualifications and education,

Exhibit R-14: Respondent’s position statement.¹

8. The record includes the following additional items:

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

9. The PTABOA determined the following assessments:

Parcel	Land	Improvements	Total
Executive Center			
3400 East Coliseum Blvd.	\$592,900	\$1,163,800	\$1,756,700
3500 East Coliseum Blvd.	\$489,100	\$2,512,900	\$3,002,000
3601 Vance Avenue	\$382,100	\$19,200	\$401,300
Pointe Inverness			
7030 Pointe Inverness Way	\$592,100	\$2,921,900	\$3,514,000
Total Combined Assessment			\$8,674,000

10. On its Form 131 petitions, Fort Wayne Portfolio requested the following assessments:

Address	Land	Improvements	Total
Executive Center			
3400 East Coliseum Blvd.	\$474,300	\$288,700	\$763,000
3500 East Coliseum Blvd.	\$391,300	\$1,675,000	\$2,066,300
3601 Vance Avenue	\$362,900	\$19,200	\$382,100
Pointe Inverness			
7030 Pointe Inverness Way	\$473,700	\$1,414,900	\$1,888,600
Total Combined Assessment			\$5,100,000

11. At the Board’s hearing, Fort Wayne Portfolio requested a total assessment of \$5,900,000, with \$3,450,000 allocated to Executive Center and \$2,450,000 allocated to Pointe Inverness.

¹ The Assessor offered separate exhibits for Executive Center and Pointe Inverness. Unless otherwise indicated, however, the Board’s citations to the Assessor’s exhibits include the same numbered exhibit for both properties. For example, citation to “Ex. R-5” refers both to Ex. R-5 for Executive Center and to Ex. R-5 for Pointe Inverness.

Objections

12. The parties made several objections, all of which the ALJ took under advisement.

A. The Assessor's objections

13. The Assessor first objected to Petitioner's Exhibit 4, an e-mail from Rob Williamson, a commercial deputy in the Assessor's office, to Dave Whisler, Fort Wayne Portfolio's representative. The Assessor argued that the e-mail and testimony should be excluded because they embody settlement discussions.
14. The Board sustains the Assessor's objection. The e-mail is couched as a settlement offer. It begins with the following: "After discussing the 2011 appeals at length with the Assessor and other representatives we would like to offer the following proposal[,]" and concludes with "[i]f you could please let me now your response to this settlement offer by the 12th of July I would greatly appreciate it." *Pet'r Ex. 4*.
15. Indiana courts strongly favor settlement agreements. *Klebes v. Forest Lake Corp.*, 607 N.E.2d 978, 982 (Ind. Ct. App. 1993). Those agreements allow courts to operate more efficiently and the parties to resolve their disputes through mutual agreement. *Natare Corp. v. Aquatic Renovation Systems, Inc.*, 987 F. Supp. 695, 700 (S.D. Ind. 1997). Indiana law therefore provides several incentives for parties to engage in settlement negotiations. Most importantly for this case, it prohibits parties from using statements made in settlement negotiations to prove liability for, or the 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); Ind. Evid. Rule 408. Indeed, the Indiana Tax Court has refused to afford consummated settlement agreements any precedential effect in property tax appeals, because to do so "would have a chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom." *Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 505 (Ind. Tax Ct. 2001) (granting State Board of Tax Commissioners' motion to strike a portion of the taxpayers' brief that referred to the settlement of a related appeal).

16. The Assessor next made a hearsay objection to appraisal reports for Executive Center and Pointe Inverness (Pet'r Exs. 1 & 2) and to testimony from Sturges and Whisler about those reports.
17. The Board's procedural rules allow it to admit hearsay, albeit with a significant caveat: if the hearsay is properly objected to and does not fall within a recognized exception to the hearsay rule, the Board cannot base its determination solely on that evidence. 52 IAC 2-7-3. Both the appraisal reports and the witnesses' testimony about the content of those reports are hearsay. *See* Ind. R. Evid. 801(c) (defining hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."). And Fort Wayne Portfolio did not argue that the reports or related testimony fell within any recognized exception to the hearsay rule. Nonetheless, the Board has admitted similar evidence in countless appeals, and where not objected to, it has relied on that evidence in reaching a determination. The Board therefore overrules the Assessor's objection. In accordance with its procedural rules, however, the Board does not base its determination of Fort Wayne Portfolio's appeals on either the appraisal reports or testimony about those reports.
18. Finally, the Assessor objected to Sturges's testimony that the parcels' assessments for 2012 were "agreed upon *via* these appraisals." The Assessor argued that Sturges's testimony was hearsay and that the steps the Assessor took to value the properties in 2012 have no bearing on their values for 2011.
19. The Board sustains the objection. Sturges tried to circumvent the Assessor's hearsay objection to the appraisal reports by testifying that the Assessor agreed to the values from those appraisals in later years. But as the Assessor correctly pointed out, each assessment year generally stands alone, and evidence of a property's assessment in one year is not necessarily probative of its true tax value in another year. *E.g., Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (*citing Glass Wholesalers*,

Inc. v. State Bd. of Tax Comm'rs, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) (“Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. Thus, evidence as to the Main Building’s assessment in 1992 is not probative as to its assessed value three years later.”). Fort Wayne Portfolio did not explain how the properties’ 2012 assessments relate to their true tax value in the preceding year.

20. More importantly, Sturges’s testimony appears to reference an agreement to settle appeals of the properties’ 2012 assessments. Thus, the reasons for excluding settlement discussions about Fort Wayne Portfolio’s current appeals apply equally to any settlement discussions about, or consummated settlement of, Fort Wayne Portfolio’s 2012 appeals.

B. Fort Wayne Portfolio’s objections

21. Fort Wayne Portfolio made a hearsay objection to Exhibit R-5, a printout from Loopnet.com. As with Petitioner’s Exhibits 1 and 2, the Board overrules the objection and admits Exhibit R-5. Once again, however, the Board does not base its determination on those exhibits.
22. Fort Wayne Portfolio also objected to Exhibits R-9 through R-12, which are excerpts from four Board determinations. The Board overrules the objection. While the Assessor offered the excerpts as exhibits, they are not evidentiary. The Assessor could just as easily have cited the Board to the determinations in question. By offering the excerpts, the Assessor merely extended a courtesy to Fort Wayne Portfolio and the Board.

Parties’ Contentions

A. Summary of Fort Wayne Portfolio’s Case

23. Miller Valentine & Company, which later changed its name to MV Partners One, LLC, developed Executive Center and Pointe Inverness in the late 1980s. Approximately 20 years later, when market rents and occupancy levels were high, MV Partners One obtained non-recourse financing for the properties through General Electric Credit Equities (“GE Credit”). According to Whisler, GE Credit is a subsidiary of General

Electric Corporation and is not regulated by any banking authority. MV Partners One defaulted on its loan, and in November 2006, GE Credit took possession of the properties through receivership proceedings. LaSalle Bank National Association was appointed as trustee of the receivership. But LaSalle Bank never owned either property. *Whisler testimony; Pet'r Ex. 6.*

24. In 2010, GE Credit determined that it wanted to reduce its total exposure in office properties and therefore contracted with CBRE, a national real estate company, to sell the properties. CBRE marketed the properties to more than 200 local and national investors for approximately one year. Those efforts generated five offers. On June 10, 2011, GE Credit sold the properties to Fort Wayne Portfolio for a total of \$5,100,000. *Whisler testimony; Pet'r Ex. 6.*
25. Fort Wayne Portfolio had originally contemplated financing the purchase with Tower Bank & Trust Company. Tower Bank therefore hired Brent Overholt, a certified MAI general appraiser, to appraise both properties. Overholt estimated the leased-fee values of Executive Center and Pointe Inverness at \$3,450,000 and \$2,450,000, respectively as of April 1, 2011. *Whisler testimony; Pet'r Exs. 1-2.*
26. Although Overholt appraised a leased-fee interest in the properties, Fort Wayne Portfolio contends that the value of the fee-simple interest in the properties would not be much different because Overholt estimated market rents for the properties that were close to their actual average rents. According to the appraisals, Executive Center's average rent was \$14.66 to \$15.64 per square foot of occupied space and Pointe Inverness's average rent was \$17.25 per square foot. Depending on the size of the space being leased and the duration of the base-rent term, Overholt estimated that market rent ranged from \$13.07 to \$15.84 per square foot for Executive Center and from \$15.00 to \$16.00 per square foot for Pointe Inverness. The average market rent for suburban office space ranged from \$14.50 to \$19.00 per square foot. *Whisler testimony; Sturges testimony; Pet'r Ex. 1 at 42, 78, 110-113; Pet'r Ex. 2 at 40, 68, 94-95.*

27. Although the Assessor rejected the appraisals because they valued a leased-fee, rather than a fee-simple interest in the properties, the Assessor has consistently requested lease and financial information for income producing properties when determining their assessments. By doing so, the Assessor values properties based on a leased-fee interest. *Sturges testimony: Pet'r Ex. 7.*
28. Finally, Executive Center's two buildings are located ten feet from each other, are the same size and shape, and are built from the same material; yet the Assessor assessed one building at \$1,756,700 and the other at \$3,002,000. By itself, that disparity shows the Assessor erred in valuing the property. *Sturges testimony.*

B. Summary of the Assessor's Case

29. In the Assessor's view, the sale price for Executive Center and Pointe Inverness carries little weight. First, because it was a portfolio sale, the overall price does little to show the value of the individual parcels. The original sales disclosure form listed a single sale price of \$5,100,000 for all four parcels. The form was amended² to allocate a portion of the total sale price to each of the four parcels, but that allocation could have been influenced by considerations unrelated to each property's value, such as wanting to have a certain amount of management over a given amount of value. *Williamson testimony; Exs. R-8 – R-9.*
30. Second, the transaction was a distressed sale with an atypically motivated seller. GE Credit held mortgages on both properties. In November of 2006, GE Credit began foreclosure proceedings, which led MV Partners One to transfer the properties to LaSalle Bank through a deed in lieu of foreclosure. Under the deed, LaSalle Bank took title as

² The Assessor did not offer a clean copy of the original sales disclosure form. Instead, she offered what Williamson referred to as the amended forms, which appear to be copies of the original form with handwritten notations. Thus, on the amended form for Executive Center, the original reference to what appears to have been four parcels is crossed out and replaced with the number "3." *Resp't Ex. 8.* Similarly, the handwritten number "3,453,000" appears beside the typewritten sale price of \$5,100,000 with the reference "per nicole Graves." The amended form for Pointe Inverness contains similar handwritten notations. *See id.*

trustee under “that certain Pooling and Servicing Agreement dated as of November 27, 1998, for Commercial Mortgage Certificates.” According to the Assessor, Executive Center and Pointe Inverness became real estate owned (“REO”) properties once they were deeded to LaSalle Bank. *Williamson testimony; Exs. R-1 – R-3.*

31. The Office of Thrift Supervision defines an REO property as “a property that is in the possession of a savings association as a result of a foreclosure.” *Ex. R-4.* Because Executive Center and Pointe Inverness were deeded to LaSalle Bank in lieu of foreclosure, they qualify as REO properties. In fact, Loopnet, a website used by brokerage professionals to list and advertise commercial property, described the sale from GE Credit to Fort Wayne Portfolio as a “Bank sold/REO Sale.” *Williamson testimony; Resp’t Exs. R-3 - R-5.*
32. There are statutory and regulatory limits on how long a national bank may hold REO property. For example, 12 U.S.C. § 29 provides that no national banking association “shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due it, for a longer period than five years....” *Ex. R-6.* Similarly, the Code of Federal Regulations says the following about other real estate owned (“OREO”) property: “A national bank shall dispose of OREO at the earliest time that prudent judgment dictates, but not later than the end of the holding period (or an extension thereof) permitted by 12 U.S.C. 29.” *Ex. R-7 (12 C.F.R. § 34.82).*
33. GE Credit sold Executive Center and Pointe Inverness in June of 2011, which Williamson characterized as being at the end of the five-year holding period for REO property. Thus, he believes that GE Credit was acting under duress rather than as a typically motivated seller. *Williamson testimony.*
34. Finally, the appraisal reports valued a leased-fee interest in the two properties. Williamson disagreed with Whisler’s claim that the values of the leased-fee and fee-simple interests in the properties were the same. A property’s fee-simple value is its value without encumbrances, while a leased-fee value accounts for leases as an

encumbrance. Where the leases are unfavorable, the two values can be different. In that vein, the Board has issued several determinations rejecting valuations based on leased-fee interests. *Williamson testimony (citing Exs. R-9 – R-11)*. But when asked whether Executive Center or Pointe Inverness had leases that called for rents different from market rents, Williamson responded, “I have not produced any evidence to show that they fall into either category.” And when asked whether he had any basis for demonstrating a difference between the properties’ leased-fee and fee-simple interests, he again responded, “I have not developed any separate values, no.”

Discussion

A. Burden of Proof

35. Generally, a taxpayer seeking review of an assessment has the burden of proving both that the assessment is wrong and what the correct assessment is. *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). The taxpayer must explain how each piece of evidence relates to his requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis.”). 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.

B. Analysis

36. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance defines as the property’s market value-in-use. Evidence in an assessment appeal must be consistent with that standard. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI 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 or 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. *See id.* at 506; *see also*, Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to show an appealed property's market value-in-use).

37. In any event, for evidence to have probative value, a party must explain how it relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006) (“[E]vidence regarding the value of property in 1997 and 2003 has no bearing upon 2002 assessment values without some explanation as to how these values relate to the January 1, 1999 value.”). For the assessment year under appeal, the assessment and valuation dates were both March 1, 2011.
38. Fort Wayne Portfolio relies on the Overholt's hearsay appraisal reports and on the price for which it bought Executive Center and Pointe Inverness. As explained above, the Board cannot base its determination solely on the hearsay, so it turns to the sale price for the two properties. A property's sale price can be compelling evidence of its market value-in-use. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to a property's purchase price than to its appraised value was proper and supported by the evidence). Fort Wayne Portfolio bought Executive Center and Pointe Inverness for \$5,100,000 as part of a single transaction after CBRE had actively marketed the properties for a year. And the sale occurred less than four months after the relevant March 1, 2011 valuation date. Fort Wayne Portfolio therefore made prima facie case that the two properties were worth a combined total of no more than \$5,100,000.
39. The Assessor challenged the sale price on two grounds: (1) that the seller, GE Credit, was atypically motivated due to statutory and regulatory limits on how long it could hold the property, and (2) that the transaction was a portfolio sale with no probative evidence

showing how to allocate the sale price among the four parcels under appeal. Neither of those challenges persuades the Board.

40. As to the first ground, the Assessor claims that Executive Center and Pointe Inverness qualified as REO property and were therefore subject to federal statutes and regulations prohibiting national banks from holding such property for more than five years. The Assessor argues that GE Credit acted under duress when it sold the properties because the five-year holding period was close to expiring.
41. The Assessor's position, however, rests on a faulty premise—that GE Credit was required to sell the properties within five years. The statute that the Assessor cites—12 U.S.C. § 29—provides an exclusive list of purposes for which a national banking association may purchase, hold, and convey real estate, including property that an association “shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts to it.” 12 U.S.C. § 29. The statute further provides “[n]o such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years except as otherwise provided in this section.” *Id.*
42. But 12 U.S.C. § 29, which is part of the National Bank Act, applies only to national banking associations. The same is true for the regulation that the Assessor cites, which governs “other real estate owned.” 12 C.F.R. § 34.82 (referring to the period in which a “national bank” must dispose of “OREO”). While it appears that a national banking association, LaSalle Bank,³ took title to the properties as trustee for a “pooling and servicing agreement” in 2007, the Assessor's own exhibits show that LaSalle Bank transferred the properties to GE Credit in 2008. *See Ex. R-2*. GE Credit is the entity that sold the properties to Fort Wayne Portfolio for \$5,100,000. And the Assessor offered

³ The parties offered no evidence regarding how LaSalle Bank was chartered. But its full name is LaSalle Bank National Association. National banks generally can be identified by the word “national” in their name. *Weiner v. Bank of King of Prussia*, 358 F. Supp. 684, 687 (E.D. Pa, 1973) (*citing* 12 U.S.C. § 22, which requires a national banking association's organizational certificate to include the word “national.”).

nothing to show that GE Credit is a national banking association. Indeed, the only evidence that the Assessor offered to support the notion that Executive Center and Pointe Inverness were subject to the National Bank Act are hearsay printouts from Loopnet's website characterizing the transaction between GE Credit and Fort Wayne Portfolio as a "Bank sold/REO Sale." *Ex. R-5.*

43. Even if one assumes that GE Credit is a national banking association and was therefore required to sell the properties within five years, the evidence does little to show that the requirement affected GE Credit's motivation as a seller. Although Williamson characterized the sale as having occurred shortly before the end of the National Bank Act's five-year holding period, GE Credit actually sold the properties only four years after they were transferred to LaSalle Bank, and only three years after GE Credit acquired title. And GE Credit actively marketed the properties through a national real estate company for approximately a year before selling them. The Assessor offered nothing to dispute that such a marketing period was commercially reasonable for the type of property at issue.
44. Turning to the Assessor's second claim, the Board agrees that there is no competent, probative evidence to support any particular allocation of the sale price between Executive Center and Pointe Inverness, much less to support an allocation among the four individual parcels comprising those properties. Although the amended sales disclosure forms purport to allocate the sale price between Executive Center and Pointe Inverness, there is nothing to show the basis underlying that allocation. Regardless, the evidence shows that the combined market value-in-use of the properties is \$5,100,000.⁴ The assessments must therefore be changed so that they total no more than \$5,100,000. The

⁴ Although the Assessor objected to the appraisal reports as hearsay, her witness, Williamson, also noted that the reports valued a leased-fee, rather than a fee-simple interest in the properties. Of course, the Board ultimately relies on the properties' sale price instead of the hearsay appraisal reports. In any case, all of the witnesses agreed that the value of a leased-fee interest in a given property might differ from the value of a fee-simple interest in the same property if the property is encumbered by unfavorable leases. But Williamson acknowledged that the Assessor had not offered any evidence to show that Executive Center or Pointe Inverness were encumbered by such leases. *See Williamson testimony.* Thus, there is no probative evidence in the record to suggest that the price Fort Wayne Portfolio paid for Executive Center and Pointe Inverness reflects anything other than the inherent value of a fee-simple interest in those properties.

Board makes no finding regarding how the Assessor should allocate that total between the parcels.

SUMMARY OF FINAL DETERMINATION

45. Based on what it paid for the four parcels under appeal, Fort Wayne Portfolio proved that the parcels have a combined true tax value of \$5,100,000. The Assessor must therefore reduce the parcels' assessments so that the combined total does not exceed that amount.

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>>.