

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 02-070-02-1-5-03059
Petitioner: East Michigan Financial Trust
Respondent: Adams Township Assessor (Allen County)
Parcel: 65-2029-0206
Assessment Year: 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

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 its decision on March 18, 2005.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on April 21, 2005. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 6, 2007.
5. The Board held an administrative hearing before Paul Stultz, the duly appointed Administrative Law Judge, on April 17, 2007.
6. The following persons were sworn as witnesses:
For the Petitioner - Neil Wingate,
For Respondent - Debbie Thomas, Township Assessor,
Teresa West, Deputy Township Assessor.
7. The Respondent is represented by Attorney F. John Rogers.

Facts

8. The property is a residential dwelling located at 4502 Werling Drive in Fort Wayne.
9. The Administrative Law Judge did not conduct an inspection of the property.

10. The total assessed value determined by the PTABOA is \$30,500 (land \$7,600 and improvements \$22,900).
11. The Petitioner contends the total assessed value should be \$20,000.

Contentions

12. Summary of the Petitioner's contentions in support of alleged error in the assessment:
 - a. The subject property was one of twenty parcels purchased for investment purposes on or about May 15, 2002, for a total price of \$396,924. *Wingate testimony; Pet'r Ex. 2.* Dividing the total purchase price by twenty provides an average value-in-use for each parcel of approximately \$20,000. *Wingate testimony; Pet'r Ex. 3.* The value of the subject two bedroom home should be less than the average value because some of the other nineteen parcels are three and four bedroom homes. *Wingate testimony.*
 - b. The Petitioner's proposed value is supported by sales of six comparable properties on Werling Drive. These sales range in price from \$12,000 to \$20,000. *Wingate testimony; Pet'r Ex. 4.*
 - c. The subject property has a value between \$11,592 and \$15,456 using the gross rent multiplier method. *Wingate testimony; Pet'r Ex. 6.* The annual rent of \$3,864 is calculated using monthly rental income figures from the previous owner and subtracting a vacancy factor of eight percent. The vacancy factor was supplied by Midtown Rental, which rents similar property in the same area. A gross rent multiplier of three to four is typical for this type of neighborhood. *Wingate testimony.*
13. Summary of the Respondent's contentions in support of the assessment:
 - a. Four comparable property sales support the assessment. *West testimony; Resp't Exs. 5 - 7.* Three of the four comparable properties are located a few houses from the subject and one is on the other side of the block. Sales of these four homes ranged from \$33,900 to \$47,000. *Id.* The current assessed values of these homes range from \$28,100 to \$38,100. *Resp't Ex. 7.*
 - b. The current assessment is correct and should not be reduced. *West testimony.*
 - c. The Petitioner's bulk purchase of twenty properties is not a valid indication of value. The Petitioner's purchase price from 2002 was not trended to January 1, 1999. *Rogers argument.*

Record

14. The official record for this matter is made up of the following:
- a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 - Form 131 Petition for Review of Assessment,
Petitioner Exhibit 2 - Sales contract that includes subject property,
Petitioner Exhibit 3 - Letter from Michael Radabaugh dated April 7, 2005,
Petitioner Exhibit 4 - List of properties with address, zip code, land assessed value, improvement assessed value, and sales price,
Petitioner Exhibit 5 - Lease agreement of subject property,
Petitioner Exhibit 6 - Gross rent multiplier valuation,
Petitioner Exhibit 7 - Power of Attorney,
Petitioner Exhibit 8 - Page one of Form 115, Notification of Final Assessment Determination,
Petitioner Exhibit 9 - Subject property record card (PRC),
Petitioner Exhibit 10 - Written request for review of assessment by township assessor,
Petitioner Exhibit 11 - Notice of Assessment for 2006,
Respondent Exhibit 1 - Notice of Hearing,
Respondent Exhibit 2 - Form 115,
Respondent Exhibit 3 - Radabaugh Contract,
Respondent Exhibit 4 - Subject property record card,
Respondent Exhibit 5 - Aerial photograph of the subject parcel and surrounding parcels,
Respondent Exhibit 6 - Plat map of comparable parcels,
Respondent Exhibit 7 - Property record cards of comparable parcels,
Respondent Exhibit 8 - PTABOA Findings and Conclusions,
Board Exhibit A - Form 131,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Hearing Sign In Sheet,
Board Exhibit D - Notice of Appearance,
 - d. These Findings and Conclusions.

Analysis

15. The most applicable governing cases are:
- a. 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).

- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the 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”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
16. The Petitioner did not provide sufficient evidence to support its contention. This conclusion was arrived at because:
- a. 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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. Additionally, Indiana’s assessment regulations for the 2002 general reassessment provide that an assessment must reflect value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). If a party presents evidence of value relating to a different time, there must also be some explanation of how that value demonstrates, or is relevant to, the value as of January 1, 1999. *Id.*
 - b. The Petitioner divided the total 2002 purchase price for twenty parcels by twenty to arrive at the proposed value of the parcel under appeal. The Petitioner failed to establish that such a methodology is in accordance with generally accepted appraisal principles. The Petitioner failed to demonstrate the average sales price of the twenty parcels is a reliable indicator of the subject property’s value. For example, the Petitioner acknowledged the value of the twenty individual homes

would vary based on the number of bedrooms, but Petitioner's methodology would result in them getting the same assessed value. Additionally, the Petitioner offered no explanation as to how the May 15, 2002, sale is relevant to the valuation date, January 1, 1999. Evidence of the 2002 purchase price of the twenty parcels is not probative.

- c. The Petitioner relied on six sales of alleged comparable properties. *Wingate testimony; Pet'r Ex. 4*. Conclusory statements that a property is "similar" or "comparable" do not constitute probative evidence of comparability. *Long*, 821 N.E.2d at 470. A party seeking to rely on comparable properties is responsible for explaining the characteristics of the subject property, how those characteristics compare to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. *Id.* at 471. The record lacks such explanation.
- d. Both parties identified the homes at 4510 Werling and 4511 Werling as properties that are comparable to the subject parcel. *Pet'r Ex. 4; Resp't Ex. 7*. The parties disagreed about what these properties prove. The home at 4510 Werling sold for \$12,000 on December 21, 2000, and sold again for \$47,000 on August 9, 2002. *Resp't Ex. 7*. The home at 4511 Werling sold for \$18,500 on December 20, 2002, and sold for \$44,000 on February 13, 2003. *Id.* The Petitioner claimed the lower sale prices reflected the value of the property under appeal. The Respondent claimed the higher sales prices show the value. Neither party related these sales to January 1, 1999, as required. *Long*, 821 N.E.2d at 471. Neither party provided any discussion or evidence to explain the differences in prices. Additionally, the Petitioner did not explain how sales of \$12,000 and \$18,500 support the proposed \$20,000 assessment. Similarly, the Respondent failed to explain how sales of \$47,000 and \$44,000 support the current assessment.
- e. The Petitioner failed to provide a meaningful comparison for the other four purported comparables. Furthermore, the Petitioner did not prove the dates of sale or relate those sales to value as of January 1, 1999. While one of those properties sold for the \$20,000, the remaining three sale prices range from \$13,000 to \$17,002. The Petitioner failed to explain how these sales support the contention that the correct assessment should be \$20,000.
- f. Dividing a property's sale price by its annual income (rent) derives a gross income multiplier. GUIDELINES, app. F at 11. Completing this calculation for all comparable sales within an area will yield a range of gross income multipliers. The typical gross income multiplier for the area can be determined from that range. *Id.*
- g. The Petitioner claims a gross rent multiplier of three to four is typical for the neighborhood. *Wingate testimony*. The Petitioner did not present documentation supporting this conclusion. The Petitioner did not identify the properties used to develop the proposed gross rent multiplier. Petitioner did not explain how these

unidentified properties are comparable to the parcel under appeal. Accordingly, this evidence is not probative. *Long*, 821 N.E.2d at 470 – 471.

- h. 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).

Conclusion

- 17. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

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>.