

REPRESENTATIVE FOR PETITIONER:

Michael L. White, Appraisal Management Research Company

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Meighen & Associates, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Bryant Investments LP,	)	Petition No:	29-013-06-1-4-00228
)		
Petitioner	)	Parcel No:	1111180000011006
)		
v.)		
	)	County:	Hamilton
Hamilton County Assessor,	)	Township:	Noblesville
)		
Respondent.	)	Assessment Year:	2006

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

March 20, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (the 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

ISSUE

1. The issue presented for consideration by the Board is whether the land should not have been re-assessed according to the “developer’s discount” under Ind. Code § 6-1.1-4-12.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, Michael L. White, Appraisal Management Research Company on behalf of Bryant Investments, LP (Petitioner) filed a Form 131 Petition for Review of Assessment on September 25, 2007, petitioning the Board to conduct an administrative review of the above petition. The Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on August 13, 2007.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on January 30, 2008, in Noblesville, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Thomas Bryant, Owner
Michael L. White, Appraisal Management Research Company

For the Respondent:

Terry McAbee, Hamilton County Deputy Assessor

5. The Petitioner presented the following evidence:

Petitioner Exhibit A – The Petitioner’s objections,
Petitioner Exhibit B – Senate Enrolled Act No. 260 amending Ind. Code § 6-1.1-4-12,
Petitioner Exhibit C – Copy of a memorandum from Sandy Bickel and Beth Henkel, Ice Miller LLP to Rick Wajda, Chief Executive Officer, Indiana Builders Association,
Petitioner Exhibit D – Property record cards for Bryant Investments, LP and NBP, LLC.

6. The Respondent presented the following evidence:

Respondent Exhibit 1 – Senate Enrolled Act No. 260,
Respondent Exhibit 2 – Property record card for Bryant Investments, LP,
Respondent Exhibit 3 – Sales Disclosure Form from NBP, LLC, to Bryant Investments, LP, dated April 18, 2005,
Respondent Exhibit 4 – Letter of Certification from Robin Mills, Hamilton County Auditor, dated January 9, 2008, Real Property Maintenance Report for Bryant Investments, LP, and Special Warranty Deed from NBP, LLC, to Bryant Investments, LP, dated April 18, 2005,
Respondent Exhibit 5 – *Howser Development LLC v. Vienna Township Assessor*, Cause No. 49T10-0408-TA-39 (Ind. Tax Ct. 2005),
Respondent Exhibit 6 – Indiana Board of Tax Review final determination for *Quality Homes by Brian Hayes, Inc. v. Washington Township Assessor*, Petition Nos. 29-015-06-1-5-00071, 00072, 00073 and 00076 (January 8, 2008),
Respondent Exhibit 7 – Letter from Robin Ward to Michael White, dated April 5, 2007.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated November 15, 2007,
Board Exhibit C – Hearing sign-in sheet,

8. The subject property is 2.50 acres of undeveloped usable commercial land located at North Point Boulevard, Noblesville, Noblesville Township in Hamilton County.

9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2006, the PTABOA determined the assessed value of the property to be \$337,500.
11. For 2006, the Petitioner requested the assessment for the property to be \$1,050 per acre pursuant to the “developer’s discount.”

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, and (3) property tax exemptions, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN

13. 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).
14. 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. Wash. 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”).
15. 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.

PARTIES' CONTENTIONS

16. Summary of Petitioner's contentions:

A. The Petitioner's witnesses testified that the Petitioner purchased the subject property from the original developer NBP, LLC, with the intent of developing the land at a later date. *Petitioner Exhibit D; White and Bryant testimony.*

B. The Petitioner argues that Senate Enrolled Act No. 260 amended Indiana Code § 6-1.1-4-12 to allow the transfer of legal or equitable title from the original developer to a "successor developer" without the "developer's discount" being removed.¹ *Petitioner Ex. B and C; White testimony.* Thus, the Petitioner argues, the subject property should be valued using the "developer's discount" and the assessed value of the property should be changed from \$337,500 to \$1,050 per acre. *Petitioner Ex. A; White testimony.*

C. The Petitioner also argues that it is being assessed much higher than a direct competitor located adjacent to the subject property. *Petitioner Exhibit D; White and Bryant testimony.* According to the Petitioner, the subject property is being assessed at \$337,500. *Id.* Its competitor's property is being assessed at a value of \$1,050 per acre. *Id.*

17. Summary of Respondent's contention:

¹ The Petitioner argues that Jim Hemming from the Department of Local Government Finance (DLGF) and Sandy Bickel and Beth Henkel, Attorneys from Ice Miller have taken the position that land must transfer to a "non-developer" before the assessor can remove the "developer's discount" and start the process of assessing the property at its market value. *Id.*

- A. The Respondent contends that Indiana Code § 6-1.1-4-12 should be applied as it existed on April 18, 2005, when the property was purchased by the Petitioner. *Meighen argument.* According to the Respondent, the amendment in Senate Enrolled Act No. 260 did not take effect until January 1, 2006, and applies only to assessment dates after December 31, 2005. *See* Ind. Code § 6-1.1-4-12(2006). *Respondent Ex. 1.* Because the subject property changed ownership prior to the amendment, the Respondent argues, the change in the statute was not applicable to the subject property. *Id.*
- B. The Respondent argues that under the statute as it existed in 2005 it did not matter who bought the property. *Meighen argument.* Therefore, because the property was bought by the Petitioner from its original developer, the Respondent argues, the subject property is not entitled to the “developer’s discount.” *Id.* Accordingly, the Respondent contends, the property was properly valued as undeveloped usable commercial land rather than valued using the “developer’s discount.” *Id.*
- C. According to the Respondent, Indiana Code § 6-1.1-4-12 as it existed in 2005 was clear and unambiguous. *Meighen argument.* As a result, the Respondent argues, the statute can not be limited or extended and the intent of the legislature need not be discerned to apply the statute. *Id.* In support of this contention, the Respondent submitted the Indiana Tax Court decision in *Howser Development LLC v. Vienna Twp. Assessor*, 833 N.E.2d 1108, 1111 (Ind. Tax Ct. 2005) and the Indiana Board of Tax Review decision in *Quality Homes by Brian Hayes, Inc. v. Washington Twp. Assessor (Hamilton County)*, Petition Nos. 29-015-06-1-5-00071 – 00073 and 29-015-06-1-5-00076. *Respondent Ex. 5 and 6.*
- D. Finally, the Respondent contends that the subject property’s assessment reflects its market value-in-use. *McAbee testimony; Meighen argument.* In support of this contention, the Respondent submitted the sales disclosure form for the subject property showing that the Petitioner purchased the property on April 15, 2005, for an

amount slightly higher than its March 1, 2006, assessed value. *Meighen argument; Respondent Ex. 3.*

ANALYSIS

18. The Petitioner raised a prima facie case for a reduction in value. Board reached this decision for the following reasons:
 - A. The Petitioner purchased the subject property from another developer on April 18, 2005, for the purpose of future development. At the time of the transfer from the former owner, the lot was assessed for \$1,050 per acre. In 2006, the property was reassessed for \$337,500.
 - B. At the time that the Petitioner purchased the subject property, Indiana Code § 6-1.1-4-12 provided that “land must be reassessed upon the occurrence of any of three events: when land is subdivided into lots, when land is rezoned, or when land is put to a different use.” *Howser Development LLC v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005). The exception to this reassessment rule was that if land assessed on an acreage basis was subdivided into lots, the lots would not be reassessed “until the next assessment date following a transaction which results in a change in legal or equitable title to that lot.” Indiana Code § 6-1.1-4-12 (2005). “This exception is commonly referred to as the ‘developer’s discount.’” *Howser Development*, 833 N.E.2d at 1110.
 - C. Under the former Indiana Code § 6-1.1-4-12, a property purchased for development was entitled to the “developer’s discount” until the property was transferred from the developer to another person. The sale of a property from one developer to another, however, was still a transaction resulting in a change in legal title. Thus, a purchasing developer lost the low assessment rate even if its intentions were to develop the property. The legislature addressed this situation in Senate Enrolled Act No. 260,

which amended Indiana Code § 6-1.1-4-12 effective January 1, 2006, to apply to assessment dates after December 31, 2005.

- D. The amendment in SEA 260 provided in part that “land in inventory may not be reassessed until the next assessment date following the earliest of: (1) the date on which title to the land is transferred by (A) the land developer or (B) a successor land developer that acquires title to the land; to a person that is not a land developer; (2) the date on which construction of a structure begins on the land; or (3) the date on which a building permit is issued for construction of a building or structure on the land.” Thus, under the amended Indiana Code § 6-1.1-4-12, title could pass to a “successor land developer” without reassessment. In essence, the property could be sold to from one developer to another developer without losing the “developer’s discount.”
- E. The Petitioner contends it is a “successor land developer” and therefore the subject property should not have been reassessed until the property is sold to another person that is not a land developer. *White testimony*. The Petitioner argues that the subject property should remain valued at \$1,050 per acre pursuant to the “developer’s discount.” *Id.*; *Petitioner Ex. A*. The Respondent argues that the amendment that allowed for a property to transfer to a “successor land developer” without reassessment was promulgated after the Petitioner purchased the property. *Meighen argument*. Therefore, the Respondent argues, the property is correctly assessed because the property lost the developer’s discount when the Petitioner purchased the property from its original developer. *Id.*
- F. There is no dispute that under the provisions of Indiana Code § 6-1.1-4-12 in existence at the time of the purchase, when title to a property transferred from the original developer, regardless of the nature of the purchaser, the property was to be reassessed at its true tax value. If the language of that statute effected a change in the status of the property at the time of the transfer, there would be no issue - the property

would have properly lost the “developer’s discount.” The former language of Indiana Code § 6-1.1-4-12, however, dictated that “the lots may not be reassessed until the next assessment date following” the transaction. Thus, the property could not be reassessed until March 1, 2006, and at that time the amended version of Indiana Code § 6-1.1-4-12 was in effect.² The question, therefore, is whether we apply the 2005 version of Indiana Code § 6-1.1-4-12 to the March 1, 2006, assessment of the property because the property was purchased in 2005 or whether we apply the 2006 amendments to the March 1, 2006, assessment because the amendments were effective January 1, 2006.³

- G. Amending a prior statute indicates a legislative intention that the meaning of the statute has changed. *United Nat'l Ins. Co. v. DePrizio*, 705 N.E.2d 455, 460 (Ind. 1999). Here, under the clear language of the amendment, the legislature intended that, contrary to the prior provisions of Indiana Code § 6-1.1-4-12, property could transfer from one developer to another without the loss of the “developer’s discount.” Thus, the situation at issue here is the very situation which the legislature sought to address by its amendment. To effectuate that intent, we should resolve this ambiguity in favor of the application of the amendment to the Petitioner’s property.
- H. Further, the former statute did not require reassessment upon the transfer of the property. It required reassessment on the “next assessment date following a transaction...” Ind. Code § 6-1.1-4-12 (2005). Thus, nothing happened at the time of the transfer of the property. The change in assessment occurred at the time of the next reassessment. This, again, suggests that the code provision in place at the time of the assessment, rather than the code that existed at the time of the transfer, is the proper code provision to apply.

² Arguably, the subject property was “land in inventory” as that term is used in the amendments for the Petitioner at the time of its March 1, 2006, assessment.

³ This ambiguity exists only for properties purchased prior to the effective date of the 2006 amendment to Indiana Code § 6-1.1-4-12, but whose assessment would occur after the effective date of the new provisions – specifically, properties purchased between March 2, 2005, and December 31, 2005.

- I. Finally, Senate Enrolled Act No. 260 states on its face that it applies to “assessment dates after December 31, 2005.” *See* Ind. Code § 6-1.1-4-12(2006). Therefore, because the statutory provision applies to the assessment of property rather than to the transfer of property, we hold that the statute in place at the time of the assessment rather than the statute that existed at the time of the property’s purchase governs the assessment at issue here.
- J. The Respondent argues that the former provisions of Indiana Code § 6-1.1-4-12 apply because the property was purchased prior to its amendment. *Meighen argument*. According to the Respondent, the Indiana Tax Court in *Howser Development* held that if land is subdivided into lots it falls out of the developer’s discount category and is reassessed at the next reassessment date following a change in legal or equitable title. *Meighen argument*. That decision, however, simply did not address the amendment to the “developer’s discount” statute. We are, therefore, not persuaded that the Tax Court decision in *Howser* applies to the circumstances of this case.
- K. The Respondent also presented the Board’s decision in *Quality Homes by Brain Hayes* in which the Board declined to apply the amended statute to the purchase of property by a developer. The *Quality Homes* case is similarly unpersuasive. In that case, the properties transferred and were reassessed *prior* to the effective date of the amendment. The only claim the Petitioner could make there was that the amendment was in effect at the time of its appeal. That is not the case at issue here.
- L. Finally, the Respondent argues that the property is properly assessed at its true tax value. *Meighen argument*. In support of this argument, the Respondent presented the sales disclosure form between the Petitioner and NBP, LLC, dated April 15, 2005, documenting that the property was sold for \$341,000. *Respondent Ex. 3*. While generally evidence that the assessed value of the subject property reflects the property’s market value-in-use is persuasive rebuttal evidence, here the legislature

chose to abrogate the requirement that the property's assessed value reflect its market value-in-use. According to the Tax Court in *Howser Development*, the exception to the rule that property be assessed at its true tax value embodied in the "developer's discount" was "designed to encourage developers to buy farmland, subdivide it into lots, and resell the lots." *Howser Development LLC v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005) (citing *Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001)). Thus, evidence of the property's market value does not override the statutory exception that allows a property to remain at its former unplatted, undeveloped assessment despite any increase in value related to its potential development.

M. For the reasons set forth above, the Board finds that the amended version of Ind. Code § 6-1.1-4-12 applies to the 2006 assessment of the Petitioner's property.⁴ Thus, the "developer's discount" continues to apply and the property should remain assessed at \$1,050 per acre.

SUMMARY OF FINAL DETERMINATION

19. The Board finds in favor of the Petitioner and holds that the assessment of the property for the March 1, 2006, assessment date is \$1,050 per acre.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

⁴ The Petitioner also contends that its direct competitor, NBP, LLC, is being assessed on a developer's discount" value of \$1,050 per acre therefore the subject property is at a disadvantage. The Board need not reach a determination on the issue of Petitioner's uniformity issue because it rules in the Petitioner's favor on other grounds.

- 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>