

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

Petitions: **29-015-06-1-5-00071**
 29-015-06-1-5-00072
 29-015-06-1-5-00073
 29-015-06-1-5-00076

Petitioner: **Quality Homes by Brian Hayes, Inc.**

Respondent: **Washington Township Assessor (Hamilton County)**

Parcels: **0810170010030000**
 0810170010010000
 0810170010006000
 0810080003027000

Assessment Year: **2006**

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

Procedural History

1. The Petitioner initiated four assessment appeals with the Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 29, 2007.
2. The Petitioner received notices of the decisions of the PTABOA on May 23, 2007.
3. The Petitioner filed appeals to the Board by filing Form 131s with the county assessor on May 29, 2007. The Petitioner elected to have these cases heard according to the small claim procedures.
4. The Board issued notices of hearing to the parties dated July 26, 2007.
5. The Board held an administrative hearing on October 10, 2007, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:

- a. For Petitioner: John L. Johantges, Property Tax Group 1, Inc.
- b. For Respondent: Thomas Thomas, Washington Township Deputy Assessor

Marilyn Meighen appeared as counsel for the Washington Township Assessor, Hamilton County Assessor and the PTABOA.

Facts

- 7. The properties under appeal are four vacant lots located in the Bridgewater Club subdivision, Carmel, Washington Township, in Hamilton County, Indiana.
- 8. The ALJ did not conduct an on-site inspection of the subject property.
- 9. The PTABOA determined the assessed values of the vacant lots to be \$207,400 for the land for Parcel No. 0810170010030000 (Petition No. 29-015-06-1-5-00071), \$183,000 for land for Parcel No. 081017001001000 (Petition No. 29-015-06-1-5-00072), \$183,000 for land for Parcel No. 0810170010006000 (Petition No. 29-015-06-1-5-00073), and \$186,000 for land for Parcel No. 0810080003027000 (Petition No. 29-015-06-1-5-00076). There are no improvements on the subject properties.
- 10. The Petitioner requested the assessments for all four properties be \$600 per lot pursuant to the “developer’s discount.”

Issue

- 11. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a. The Petitioner contends the four land parcels should be valued using the “developer’s discount.” *Exhibit 9; Johantges testimony*. The Petitioner argues it is a builder in the Bridgewater subdivision and the lots it owns were assessed from \$183,000 to \$207,400. The lots should have been assessed \$600 per lot pursuant to the “developer’s discount.” *Petitioner Exhibit 5 – 9; Id.*
 - b. The Petitioner further argues that it has been assessed much higher than its direct competitors located in the same subdivision. *Petitioner Exhibits 1 – 4 and 9; Id.* According to the Petitioner, the subject properties are being assessed from \$183,000 to \$207,400. *Petitioner Exhibit 5 – 9; Id.* Its competitors, Throgmartin Henke Development LLC, Paul E. Estridge Corp. and W. Gerald Throgmartin, however, are being assessed on a value of \$600 per lot. *Petitioner Exhibit 1 – 4 and 9; Johantges testimony.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent argues that the properties are subdivided lots that have changed ownership and therefore should be valued as vacant lots rather than valued using the "developer's discount." *Meighen argument*. According to the Respondent, the properties transferred ownership between February 2004 and February 2005. *Thomas Testimony; Meighen argument; Respondent Exhibits B – I*. Thus, the Respondent contends, the subject properties are not entitled to the "developer's discount." *Meighen argument*. See also Ind. Code § 6-1.1-4-12 (2005). In support of this contention, the Respondent submitted the Indiana Tax Court decision in *Howser Development LLC v. Vienna Township Assessor*, Cause No. 49T10-0408-TA-39 (Ind. Tax Ct. 2005).¹ *Respondent Exhibit J*.
- b. The Respondent also contends that the Petitioner failed to properly raise a uniformity argument. *Meighen argument*. According to the Respondent, the Petitioner must establish the market value-in-use of the subject properties and then compare the market value-in-use of the properties to the market value-in-use of comparable properties in order for the Petitioner to claim the subject properties are not being treated uniformly and equitably to neighboring properties. *Id.* In support of this contention, the Respondent submitted the Indiana Tax Court opinion in *Westfield Golf Practice Center, LLC v. Washington Township Assessor, Hamilton County Assessor and Hamilton County Property Tax Assessment Board of Appeals*, Cause 49T10-0507-TA-54 (Ind. Tax Ct. 2007). *Respondent Exhibit M*.
- c. Finally, the Respondent argues that the properties' assessments reflect their respective market values-in-use. *Meighen argument*. In support of this contention, the Respondent submitted the sales disclosure forms for the subject properties showing that the 2004 sale prices are slightly higher in three of the four sales, than the March 1, 2006, assessed values. *Respondent Exhibits B, D, F & H; Thomas testimony; Meighen argument*.

Record

13. The official record for this matter is made up of the following:

- a. The Form 131 petitions and related attachments.

¹ According to the Respondent, the "developer's discount" statute was amended by Senate Enrolled Act 260. *Meighen argument*. That amendment, however, did not take effect until January 1, 2006, and applies only to assessment dates after December 31, 2005. See also Ind. Code § 6-1.1-4-12 (2006) *Respondent Exhibit A; Meighen argument*. Therefore, the Respondent argues, the change in the statute was not applicable to the subject properties. *Id.*

b. The digital recording of the hearing.

c. Exhibits:

Petitioner Exhibit 1 – Property record card for W. Gerald Throgmartin (Parcel No. 0810080011005000),

Petitioner Exhibit 2 – Property record card for Paul E. Estridge Corp. (Parcel No. 0810080011007000),

Petitioner Exhibit 3 – Property record card for W. Gerald Throgmartin (Parcel No. 0810080011005000),

Petitioner Exhibit 4 – Property record card for Paul E. Estridge Corp. (Parcel No. 0810080011007000),

Petitioner Exhibit 5 – Property record card for Quality Homes by Brian Hayes, Inc. (Parcel No. 0810170010030000),

Petitioner Exhibit 6 – Property record card for Quality Homes by Brian Hayes, Inc. (Parcel No. 0810080003027000),

Petitioner Exhibit 7 – Property record card for Quality Homes by Brian Hayes, Inc. (Parcel No. 0810170010006000),

Petitioner Exhibit 8 – Property record card for Quality Homes by Brian Hayes, Inc. (Parcel No. 0810170010010000),

Petitioner Exhibit 9 – Letter from John L. Johantges, Property Tax Group 1, Inc. to Indiana Board of Tax Review, dated October 10, 2007,

Petitioner Exhibit 10 – Petitioner’s Exhibit & Witness list,

Respondent Exhibit A – Excerpt from Senate Enrolled Act No. 260, section 1; Ind. Code § 6-1.1-4-12,

Respondent Exhibit B – Sales disclosure form for 4202 Pete Dye Blvd., dated November 10, 2004,

Respondent Exhibit C – Warranty Deed from Throgmartin-Henke Development LLP to Quality Homes by Brian Hayes, dated February 17, 2005,

Respondent Exhibit D – Sales disclosure form for 3702 Pete Dye Blvd., dated October 26, 2004,

Respondent Exhibit E – Warranty Deed from Throgmartin-Henke Development LLP to Quality Homes by Brian Hayes, Inc., dated January 14, 2005,

Respondent Exhibit F – Sales disclosure form for 3582 Pete Dye Blvd., dated October 26, 2004,

Respondent Exhibit G – Warranty Deed from Throgmartin-Henke Development LLP to Quality Homes by Brian Hayes, Inc., dated December 6, 2004,

- Respondent Exhibit H – Sales disclosure form for 4119 Sterling Bluff Ct., dated January 27, 2004,
- Respondent Exhibit I – Partnership Warranty Deed from Throgmartin-Henke Development LLP to Quality Homes by Brian Hayes, Inc., dated February 2, 2004,
- Respondent Exhibit J – Tax Court decision, *Howser Development LLC v. Vienna Township Assessor*, Cause No. 49T10-0408-TA-39 (Ind. Tax Ct. 2005),
- Respondent Exhibit K – Letter from Marilyn S. Meighen, Meighen & Associates, P.C. to John Johantges, Property Tax Group 1, Inc., dated August 14, 2007.
- Respondent Exhibit L – Letter from Marilyn S. Meighen, Meighen & Associates, P.C. to John Johantges, Property Tax Group 1, Inc., dated October 3, 2007,
- Respondent Exhibit M – Tax Court decision, *Westfield Golf Practice Center, LLC v. Washington Township Assessor, Hamilton County Assessor and Hamilton County Property Tax Assessment Board of Appeals*, Cause No. 49T10-0507-TA-54 (Ind. Tax Ct. 2007),

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

Analysis

14. 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 Township 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 Township 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.
15. At the hearing the Respondent's counsel objected to the Petitioner's submission of evidence regarding purportedly comparable properties. *Petitioner Exhibit 1 – 4 and 9*. According to Ms. Meighen, she requested the Petitioner's documentary evidence and a list of witnesses in two separate letters, dated August 14, 2007, and October 3, 2007, respectively. *Respondent Exhibits K and L; Meighen argument*. The Petitioner admitted that it did not provide the requested documents to the Respondent. *Johantges testimony*. The Board's small claims procedural rules state "parties shall make available to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be present at least five (5) days before the day of a small claims hearing." 52 IAC 3-1-5 (f). The Petitioner's exhibits are therefore struck from the record.
16. Ms. Meighen also objected to the Petitioner's attempt to raise a uniformity argument because the issue was not presented at the PTABOA hearing and the Township did not become aware of the new issue until October 9, 2007, one day prior to hearing. *Petitioner Exhibit 9; Meighen argument*. The Board's small claims rules state that "by accepting the small claims procedure, the parties agree that the issues contained in the appeal petition are substantially the same as those presented to the PTABOA and agree that no new issues will be raised before the Board." 52 IAC 3-1-2 (b). The Petitioner's letter to the Board, dated October 10, 2007, attempts to introduce the issue of uniformity and equitability in assessments that was not raised at the PTABOA contrary to the Board's small claims rules.² Further, such legal issues may not be raised by a tax representative such as Mr. Johantges. 52 IAC 1-2-1(b)(3) and (b)(4). Thus, the Respondent's objection is sustained.
17. To the extent the Petitioner raised an issue that its properties were over-assessed, the Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioner contends that the properties should be valued at \$600 per lot due to the "developer's discount." *Petitioner Exhibit 9; Johantges testimony*.

² The Petitioner could have chosen to opt out of small claims, but did not. Thus, the Petitioner was bound by the rules governing those small claims proceedings.

- b. Indiana Code § 6-1.1-4-12 (2005),³ provides in part that “If land assessed on an acreage basis is subdivided into lots, the land shall be reassessed on the basis of lots. If land is rezoned for, or put to a different use, the land shall be reassessed on the basis of its new classification ... An assessment or reassessment made under this section is effective on the next assessment date. However, if land assessed on an acreage basis is subdivided into lots, the lots may not be reassessed until the next assessment date following a transaction which results in a change in legal or equitable title to that lot.” As the Indiana Tax Court observed, “under this statute, 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 v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005). The exception to the rule is “if the land is subdivided into lots *only*, the reassessment may not occur until the next assessment date following a change in the title to the land.”⁴ *Id.* (emphasis in original).
- c. “When faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997), *review denied*. The plain language of Ind. Code § 6-1.1-4-12 (2005) is unambiguous. The statute clearly states that land that has been subdivided into lots may be reassessed on the “next assessment date following a transaction which results in a change in a legal or equitable title.” Ind. Code § 6-1.1-4-12. Here, the Petitioner does not dispute that the properties have been subdivided and have changed in equitable title. Thus, the Petitioner is not entitled to the “developer’s discount” under the clear language of the statute.⁵

³ Senate Enrolled Act No. 260 amended Indiana Code § 6-1.1-4-12 to provide 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.” According to the amendment, it “applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.” The amendments to Indiana Code § 6-1.1-4-12, however, was effective January 1, 2006, and applied only to assessment dates after December 31, 2005.

⁴ “This exception is commonly referred to as the ‘developer’s discount’.” *Howser Development v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005).

⁵ The Petitioner testified that the statute was enacted to encourage developers and, therefore, it should be applied to the properties at issue. Even if, however, the Board could somehow read the statute to require a certain assessment, the Petitioner still does not meet the requirement established by the legislature for a property to qualify for the “developer’s discount.” As the Indiana Tax Court observed “[t]he Court cannot simply turn a blind eye to the [] facts. To do so would be to ignore the express requirements of Indiana Code § 6-1.1-4-12 (2005). Although [the Petitioner] may, indeed, be achieving the result the Indiana General Assembly intended when enacting the statute, it is not using the means required by the legislature.” *Howser Development*, 833 N.E.2d at 1111.

See Howser Development, 833 N.E.2d at 1110 (developer that rezoned land but did not subdivide property was not entitled to “developer’s discount.”)

- d. The Petitioner also contends that its “direct competitors” are being assessed on a “developer’s discount” value of \$600 per lot therefore the subject properties are at a disadvantage. However, Indiana Code § 6-1.1-4-12, clearly defines the requirements established to qualify for the “developer’s discount.” The Petitioner failed to identify any authority to support the contention that, because its “direct competitors” have met the requirements to receive the “developer’s discount” rate, the subject properties would also qualify for the “developer’s discount” rate.
- e. Finally, Indiana Code § 6-1.1-4-12 does not provide for any certain value to be assessed to “undeveloped” property and the Petitioner has failed to cite to any authority for its claim that it is entitled to \$600 per lot valuation on the property it holds for development. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- f. The Petitioner failed to present a prima facie case that its properties were assessed in error. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 18. The Petitioner failed to establish 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 assessments 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>.