

REPRESENTATIVE FOR PETITIONER:  
John P. Scott, BAKU JPS LLC

REPRESENTATIVE FOR RESPONDENT:  
Karen Mannix, Jefferson County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

BAKU JPS LLC (John P. Scott), <sup>1</sup>	)	Petition No.:	39-006-15-1-4-00707-19
	)		
Petitioner,	)	Parcel No.:	39-08-14-000-030.000-006
	)		
v.	)		
	)	County:	Jefferson
Jefferson County Assessor,	)		
	)		
Respondent.	)	Assessment Year:	2015

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

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**December 14, 2020**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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. Petitioner BAKU JPS LLC is a real estate developer that owns undeveloped property in Jefferson County. It contends that it is entitled to a “developer’s discount” for the 2015

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<sup>1</sup> Mr. Scott listed himself as the Petitioner on the Form 131 petition. On the Form 130 petition, Mr. Scott listed his company, BAKU JPS LLC, as the property owner. At hearing, Mr. Scott requested that BAKU JPS LLC be recognized as the Petitioner.

assessment because no triggering event occurred on the property. Accordingly, the issue before us is whether to apply the “developer’s discount” to the subject property’s 2015 assessment. We find that it should, and the property assessed as agricultural land for the 2015 assessment year.

### PROCEDURAL HISTORY

2. BAKU initiated its 2015 assessment appeal with the Jefferson County Assessor on May 1, 2019, requesting a correction of error under Ind. Code § 6-1.1-15-1.1(a) and (b). Two months later, the Jefferson County Property Tax Assessment Board of Appeals (PTABOA) denied BAKU any relief. BAKU then timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On September 15, 2020, Joseph Stanford, the Board’s designated administrative law judge (ALJ), held a telephonic hearing. Neither he nor the Board inspected the subject property.

### HEARING FACTS AND OTHER MATTERS OF RECORD

4. BAKU JPS LLC owner John P. Scott and Jefferson County Assessor Karen Mannix both appeared *pro se* and were sworn as witnesses.
5. BAKU offered the following exhibits:<sup>2</sup>

Petitioner Exhibit P1:	Email correspondence between Mr. Scott and Ms. Mannix,
Petitioner Exhibit P2:	First page of Form 130,
Petitioner Exhibit P3-P6:	Email correspondence between Mr. Scott and Ms. Mannix,
Petitioner Exhibit P7:	Affidavit of Mark Wynn,
Petitioner Exhibit P8:	Tax sale notification for the subject property,
Petitioner Exhibit P9:	Indiana Code § 6-1.1-4-12,
Petitioner Exhibit P10-P11:	Jefferson County Assessor’s Standard Operating Procedure (SOP) for developer’s discount claims,
Petitioner Exhibit P12:	2006-pay-2007 Real Property Maintenance Report for the subject property,

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<sup>2</sup> Mr. Scott also submitted a “cover sheet to explain what the evidence meant,” which was not labeled as an exhibit.

Petitioner Exhibit P13: 2008-pay-2009 Real Property Maintenance Report for the subject property,  
 Petitioner Exhibit P14: Subject property record card showing 2009-2014 assessments,  
 Petitioner Exhibit P15: Copies of portions of property record cards,  
 Petitioner Exhibit P16-P18: Subject property's tax bill history,  
 Petitioner Exhibit P19: Notification of \$50 penalty,  
 Petitioner Exhibit P20-P21: PTABOA hearing transcript.

6. The Assessor offered the following exhibits:

Respondent Exhibit A: 2015 subject property record card,  
 Respondent Exhibit B: Letter from Ms. Mannix to Mr. Scott dated March 13, 2017,  
 Respondent Exhibit C: Memorandum from Department of Local Government Finance (DLGF) titled *Classification and Valuation of Agricultural Land* dated February 12, 2008,  
 Respondent Exhibit D: Indiana Code § 6-1.1-4-12,  
 Respondent Exhibit E: Jefferson County Assessor's SOP for developer's discount claims,  
 Respondent Exhibit F: 2017 property record card for Detmer Enterprises LLC before application of the developer's discount,  
 Respondent Exhibit G: 2018 property record cards for Detmer Enterprises LLC after parcel split and application of the developer's discount,  
 Respondent Exhibit H: Indiana Statutes Annotated – 2008: Ind. Code § 6-1.1-4-12,  
 Respondent Exhibit I: Page 9 of 2002 Real Property Assessment Guidelines – Version A,  
 Respondent Exhibit J: Aerial photograph and 2015 property record cards for the subject and surrounding properties,  
 Respondent Exhibit K: 2014<sup>3</sup> Forms 115 and 130.

7. The record also includes the following:

- (1) all pleadings and documents filed in this appeal,
- (2) all orders and notices issued by the Board or ALJ, and
- (3) the digital recording of the hearing and these findings and conclusions.

8. The land under appeal is located at 3333 Bevcher Drive in Madison.

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<sup>3</sup> The Assessor's exhibit coversheet lists these exhibits as 2017 Forms 115 and 130. While BAKU's filing and the PTABOA's determination occurred in 2017, both were regarding the 2014 assessment.

9. The PTABOA determined the 2015 assessment was \$430,700; BAKU requested an assessment of \$11,500.

#### **PETITIONER'S CONTENTIONS**

10. BAKU argues that the Assessor failed to hold an informal meeting prior to the PTABOA hearing, and therefore neither the Assessor nor the PTABOA considered all BAKU's evidence in their decisions.
11. The "developer's discount" should apply to the subject property's 2015 assessment. The property was the subject of an "illegal reassessment" in 2008 "based on trending," when its classification changed from agricultural to commercial, though no qualifying event triggered the change. *Scott testimony; Pet'r Ex. P12, P13.*
12. The subject parcel "has been left in a tract since 2004." It was receiving the developer's discount at that time, and the discount never should have been removed. A clarification of the developer's discount rule, effective December 31, 2005, provides that the land's classification cannot be changed unless title transfers to a non-developer, construction begins, or a building permit is issued. Because none of those things have happened, the property should have remained with an agricultural classification. *Scott testimony; Pet'r Ex. P9* (citing Ind. Code § 6-1.1-4-12(h) and (i)).
13. Bevcher Development still owned the property when the "illegal reassessment" occurred in 2008, and never appealed the change. In April 2016, BAKU, a successor developer, bought the property from Bevcher. BAKU was responsible for the taxes resulting from the 2015 assessment, and therefore has standing to appeal that assessment and claim a refund. *Scott testimony; Pet'r Ex. P7, P14-P18.*
14. Because no event triggering a classification change ever happened, the assessment should have been "capped" at \$11,500. Thus, the Assessor should have the burden to show what

triggered the classification change, and why the assessment increased in 2008 and remained in error through 2015. *Scott testimony.*

#### **RESPONDENT'S CONTENTIONS**

15. The subject property's assessment is correct. The developer's discount was never applied to the property's assessment until 2017, and it is too late for BAKU to go back and correct a 2008 land classification change. *Mannix testimony.*
  
16. First, the "illegal assessment" alleged by BAKU occurred in 2008, yet BAKU is appealing the 2015 assessment. In 2008, Ms. Mannix was not the Assessor and BAKU did not own the property. Though a 2009 courthouse fire destroyed all the records, the Assessor believes it never removed developer's discount from the property's assessment in 2008 because it had never been applied in the first place. The Assessor at that time simply followed the rules and guidelines for land classification changes that were in effect in 2008, as commercial development had started to occur all around the subject property, and "land was being sold off as commercial." Bevcher Development, the property's owner at that time, never appealed the change. *Mannix testimony; Resp't Exs. C, H-J.*
  
17. BAKU did not buy the property until 2016. The land classification remained unchanged from 2008 to 2016. The property had a commercial classification when BAKU bought it, and it remained commercial, with no change in the assessed value, after the purchase. The Assessor did apply the developer's discount to the property's 2017 assessment. *Mannix testimony; Resp't Ex. A, D.*
  
18. In any event, BAKU filed the appeal after the deadline to contest a change in the 2008 assessment. A taxpayer may only go back three years with a correction of error petition. *Mannix testimony.*

## **BURDEN OF PROOF**

19. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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 burden-shifting statute creates two exceptions to that rule.
  
20. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
  
21. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances:  
  
if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject for an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.  
  
Ind. Code § 6-1.1-15-17.2(d).
  
22. Here, the assessment did not change from 2014 to 2015. Thus, the burden-shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply. The burden rests with BAKU.

## ANALYSIS

**a. Because the Board reviews matters *de novo*, BAKU was not prejudiced when no informal meeting was conducted prior to the PTABOA hearing.**

23. As an initial matter, we review BAKU's assertion that the Assessor's failure to hold an informal meeting prevented BAKU from having the Assessor and PTABOA consider all relevant evidence. We find this argument to be largely irrelevant. Because the Board hears all matters *de novo*, BAKU had a full and fair opportunity to – and in fact did – present all its evidence to the Board, including evidence the PTABOA did not consider.

**b. BAKU's 2019 appeal was not filed within the required 45-day period, and its claims are therefore untimely.**

24. In July 2017, the Indiana legislature amended the property tax appeal statutes, consolidating all claims into a single appeals process. Because of this, the caselaw surrounding the prior correction of error statute is no longer binding. Any relief BAKU seeks must come under the current statute, Ind. Code § 6-1.1-15-1.1(a) and (b):

(a) . . . [A]n appeal under this section may raise a claim of an error related to the following:

- (1) The assessed value of the property.
- (2) The assessment was against the wrong person.
- (3) The approval, denial, or omission of a deduction, credit, exemption, abatement, or tax cap.
- (4) A clerical, mathematical, or typographical mistake.
- (5) The description of real property.
- (6) The legality or constitutionality of a property tax or assessment.

Ind. Code § 6-1.1-15-1.1(a)(1)-(a)(6).

25. For the 2015 assessment, a taxpayer may appeal an error in the *assessed value* of its property no later than 45 days after either the notice of assessment or tax statement is mailed, whichever is earlier. For the remaining enumerated errors, a taxpayer must file no later than three years after the taxes were first due. *See* Ind. Code § 6-1.1-15-1.1(b)(1)-

(b)(2)(B). As BAKU filed its appeal in 2019, the petition is untimely if the challenge is a question of the property's *assessed value*.

26. The term “developer’s discount” is somewhat misleading. It is intended to encourage developers to buy farmland, subdivide it into lots, and resell those lots. *See Howser Dev. v. Vienna Twp. Ass’r.*, 833 N.E.2d 1108 (Ind. Tax Ct. 2005); *Aboite Corp. v. State Bd. of Tax Comm’rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001). The encouragement comes from delaying a change in classification on a land developer’s land-in-inventory. *See* Ind. Code § 6-1.1-4-12(i). Agricultural land values tend to be lower than developed properties, thus providing a lower, or “discounted,” assessed value.
27. The developer’s discount is not a deduction, credit, exemption, abatement, or tax cap under a Ind. Code § 6-1.1-15-1.1(a)(3). The developer’s discount merely compels a particular method of assessing a certain type of property, and thus falls squarely within Ind. Code § 6-1.1-15-1(a)(1). *See Lake Cty. Prop. Tax Assessment Bd. of App. v. BP Amoco Corp.*, 820 N.E.2d 1231, 1237 (Ind. 2005)
28. Even if BAKU had attempted to reframe its argument as a challenge to the 2015 assessment’s constitutionality or legality (which it did not), and receive the longer filing period, its claim still fails. *See* Ind. Code 6-1.1-15-1(a)(4), (b)(2)(b). We narrowly construe the scope of (a)(4) and require that a taxpayer demonstrate a more specified challenge than a mere dispute over its assessed value. Otherwise, a broad construction of constitutionality or legality would effectively consume the legislature’s intended shorter assessed value deadline and render it a nullity. *See N. Ind. Bank & Trust Co. v. State Bd. of Fin.*, 457 N.E.2d 527, 532 (Ind. 1983) (“[i]t is a rule of statutory interpretation that courts will not presume the legislature intended to do a useless thing or enact a statute that is a nullity.”). This is consistent with the Indiana Supreme Court’s interpretation of the appeal statute’s predecessors. *See Lake Cty. Prop. Tax Assessment Bd. of App. v. BP Amoco Corp.*, 820 N.E.2d 1231, 1237 (Ind. 2005) (holding that the failure to challenge an

assessment under the shorter Form 130 deadline “foreclosed” filing under the longer Form 133 deadline).

29. We find that BAKU failed to file its appeal disputing the assessed value within the 45-day period and waited until 2019 – nearly three years later – to initiate its challenge. Its claims are accordingly barred by the statute of limitations.

#### **SUMMARY OF FINAL DETERMINATION**

30. We find for the Assessor, and the 2015 assessment should remain unchanged.

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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 of 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>>.