

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

Petition #: 48-030-06-1-5-07068
48-030-06-1-5-07068A
48-030-06-1-5-07068B
48-030-06-1-5-07068C
Petitioner: Burkett Builders, LLC
Respondent: Madison County Assessor
Parcel #: 20-4030-1-014
20-4030-1-012
20-4030-1-026
20-4030-1-024
Assessment Year: 2006

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

Procedural History

1. On December 7, 2007, Burkett Builders, LLC appealed its properties’ assessments to the Madison County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its determination on February 13, 2008.
2. Burkett timely filed Form 131 petitions with the Board. Burkett elected to have its appeals heard according to the Board’s small claims procedures.
3. On September 9, 2008, the Board held a consolidated administrative hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) For Burkett Builders: Robert Burkett, Managing Member
 - b) For the Assessor: Cheryl Heath, Madison County Assessor
Jennifer Robbins, Madison County Deputy Assessor
Lori Farris, Anderson Township Deputy Assessor

Facts

5. The properties are unimproved lots, numbered 14, 12, 26, and 24, located at Lake Clearwater, Anderson, Indiana.
6. Neither the Board nor the ALJ inspected the properties.
7. The PTABOA determined following assessed values for the properties:

Parcel 20-4030-1-014:	\$25,200
Parcel 20-4030-1-012:	\$21,000
Parcel 20-4030-1-026:	\$20,900
Parcel 20-4030-1-024:	\$20,500
8. Burkett requested an assessment of \$400 for each parcel.

Parties' Contentions

9. Burkett offered the following evidence and arguments:
 - a) Burkett is entitled to a “developer’s discount” for the lots. Burkett Builders is a “land developer” under Indiana Code § 6-1.1-4-12(a) because it holds land for sale in the ordinary course of its business. Burkett Builders has been developing land and building homes in the Geist area since 1986. Burkett Builders purchases lots, holds title to them, and sells them in the ordinary course of business. *Burkett testimony.*
 - b) Because it is entitled to the developer’s discount, Burkett Builders’ lots should be assessed at their pre-2006 values of \$400 each. *Burkett argument; Pet’r Ex. 11.*
 - c) Burkett Builders purchased the lots from another developer in 2004. It paid \$49,000 for each lot. *Pet’r Ex. 9.*
10. The Assessor argued that it applied a 50% negative influence factor to each lot, which lowered the lots’ values to an average of \$22,500—well below what Burkett Builders paid for them.

Record

11. The official record for this matter is made up of the following:
 - a) The Form 131 petition
 - b) A digital recording of the hearing
 - c) Exhibits:

Burkett Builders offered the following exhibits for petition numbers 48-030-06-1-5-07068, 48-030-06-1-5-07068B, and 48-030-06-1-5-07068C:

- Petitioner Ex. 1: Summary of contentions
- Petitioner Ex. 2: Copy of Indiana Code § 6-1.1-4-12
- Petitioner Ex. 3: Certificate of Organization
- Petitioner Ex. 4: Copy of information from <https://secure.in.gov/sos/bus> showing Burkett Builders' status
- Petitioner Ex. 5: Articles of Organization
- Petitioner Ex. 6: Copy of Builders Association Plaque 1989
- Petitioner Ex. 7: Copy of Builders Association Plaque 1991
- Petitioner Ex. 8: Copies of purchase contracts for Lots 14, 24, and 26
- Petitioner Ex. 9: Copies of purchase closing statements for Lots 14, 24, and 26
- Petitioner Ex. 10: Copies of warranty deeds Lots 14, 24, and 26
- Petitioner Ex. 11: Copy of Real Estate Tax Statements 2005 payable 2006 for Lots 14, 24, and 26

Burkett offered the following exhibits for petition number 48-030-06-1-5-07068A:

- Petitioner Ex. 1: Summary of contentions
- Petitioner Ex. 2: Copy of Indiana Code § 6-1.1-4-12
- Petitioner Ex. 3: Certificate of Organization
- Petitioner Ex. 4: Copy of information from <https://secure.in.gov/sos/bus> showing Burkett Builders' status
- Petitioner Ex. 5: Articles of Organization
- Petitioner Ex. 6: Copy of Builders Association Plaque 1989
- Petitioner Ex. 7: Copy of Builders Association Plaque 1991
- Petitioner Ex. 8: Copy of purchase closing statement
- Petitioner Ex. 9: Copy of Lot 12 warranty deed
- Petitioner Ex. 10: Copy of Real Estate Tax Statement 2005 payable 2006 for Lot 12

The Assessor offered the following exhibits

- Respondent Exhibit 1: Property record cards for each lot

The Board recognizes the following documents as part of the record and marks them as Board Exhibits:

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Notice of hearing
- Board Exhibit C: Hearing sign-in sheet

Board Exhibit D: Notice of Township Assessor as Additional Party¹
Board Exhibit E: Notice of Township Assessor Representation

- d) These Findings and Conclusions.

Analysis

12. The following describes the party's burden of proof:
- a) A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should 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 petitioner must explain how each piece of evidence relates to its 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); *Meridian Towers*, 805 N.E.2d at 479.
13. Burkett Builders proved that each lot's assessment should be reduced to \$400. The Board reached this conclusion for the following reasons:
- a) Burkett Builders claims that the lots were entitled to a “developer's discount,” which prevented their assessments from being raised above their pre-2006 levels of \$400 each. The Board agrees.
 - b) Indiana Code 6-1.1-4-12(h)(2006) contains the most recent version of what has come to be called the “developer's discount.” That statute prohibits assessors from changing the assessment of a developer's “land in inventory” until the next assessment date after one of three triggering events has occurred:
 - (h) Subject to subsection (i), land in inventory may not be reassessed until the next assessment date following the earliest of:
 - (1) The date on which the title to the land is transferred by:
 - (A) the land developer; or

¹ The body of that document simply restates the County Assessor's desire to have the Anderson Township Assessor represent her. It says nothing about the Anderson Township Assessor seeking to intervene as a party. We therefore do not address whether the Anderson Township Assessor had a right to intervene as a party.

- (B) a successor land developer that acquires title to the land;
to a person that is not a land developer;
- (2) the date upon 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.

Ind. Code § 6-1.1-4-12(h).

- c) There is no evidence that any of those triggering events occurred. Burkett Builders owned all of the lots on the March 1, 2006, assessment date and there is nothing in the record to show that it either began building structures on those lots or had received permits to do so. Thus, if the lots meet the definition of “land held in inventory,” Burkett Builders was entitled to the developer’s discount and the lots’ assessments should not have been changed from their pre-2006 values.
- d) The lots were “land in inventory.” The statute defines that term as “(1) a lot; or (2) a tract that has been subdivided into lots; to which a land developer holds title in the ordinary course of the land developer’s trade or business.” I.C. § 6-1.1-4-12(b). And it defines a “land developer” as “a person that holds land for sale in the ordinary course of that person’s trade or business.” I.C. § 6-1.1-4-12(a). Mr. Burkett testified without dispute that Burkett Builders engaged in the business of buying and selling land. The Board further infers from his testimony that Burkett Builders held title to the lots under appeal as part of that business.
- e) The Assessor pointed to the fact that the lots are assessed well below their respective market values-in-use. That may be true, but Indiana Code § 6-1.1-4-12(h) prohibits changing their assessments until one of the statutory triggering events occurs. Because none of those events had occurred, those assessments should have remained at \$400.

Conclusion

- 14. Burkett Builders established a prima facie case that the parcels should be assessed at \$400 each. The Assessor failed to rebut Burkett Builders’ evidence. The Board therefore finds for Burkett Builders.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review determines that all four parcels should be assessed at \$400.

ISSUED: _____

Commissioner,
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, 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>