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

Petition: **48-003-07-1-1-07545**
Petitioner: **Burkett Development LLC**
Respondent: **Madison County Assessor**
Parcel: **18 10-12AZ**
Assessment Year: **2007**

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 regarding the subject property by filing a Form 130 petition with the Madison County Property Tax Assessment Board of Appeals (PTABOA) on February 9, 2009.

2. The PTABOA issued notice of its decision for the 2007 assessment on March 31, 2009.

3. The Petitioner appealed to the Board by filing a Form 131 on April 20, 2009. 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 June 24, 2009.

5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on August 11, 2009. He did not inspect the property.

6. Robert Burkett, managing member of Burkett Development LLC, represented the Petitioner. Cheryl Heath, County Assessor, represented the Respondent. Deputy Assessor Jennifer Robbins was sworn and testified as a witness for the Respondent.

Facts

7. The subject property is a vacant parcel (24.778 acres) located on West 8th Street in Anderson.

8. The PTABOA determined the assessed value is $28,800.

9. The Petitioner contended the assessed value should be $22,300.

Record

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

    a. Petition for Review of Assessment (Form 131) with attachments,

    b. Notice of Hearing,

    c. Digital recording of the hearing,

    d. Petitioner Exhibit 1 – Indiana Code 6-1.1-4-12,
    Petitioner Exhibit 2 – Certificate of organization,
    Petitioner Exhibit 3 – Current internet information (in.gov/sos) establishing the Petitioner's standing with the Indiana Secretary of State,
    Petitioner Exhibit 4 – Articles of Organization,
    Petitioner Exhibit 5 – Quitclaim deed,
    Petitioner Exhibit 6 – Board Final Determination for Burkett Builders, LLC, dated December 3, 2008,
    Respondent Exhibit 1 – Property record card,
    Board Exhibit A – Form 131 Petition with attachments,
    Board Exhibit B – Notice of Hearing on Petition,
    Board Exhibit C – Hearing Sign In Sheet,

    e. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

    a. Indiana Code § 6-1.1-4-12(h), the developer's discount, prohibits increasing the assessed value for the subject property unless the land is transferred to a person who is not a land developer, or construction of a structure begins on the parcel, or a building permit is issued for construction on the parcel. *Burkett testimony; Pet'r Ex. 1*.

    b. The Petitioner is a land developer. *Burkett testimony; Pet'r Ex. Exs. 2 - 6*.

    c. The Petitioner acquired the subject property through a Quitclaim Deed from Herman Burkett in 1997. *Burkett testimony; Pet'r Ex. 5*.

    d. Based on the developer's discount, the assessment for the subject property should remain at the 2006 assessment of $22,300. It should not have increased. *Burkett testimony; Pet'r Ex. 1*.

12. Summary of the Respondent's case:

a. The property received the developer's discount and was assessed using the agricultural land base rate. The base rate for agricultural land went up for 2007, causing the assessment to increase. *Heath testimony*.

b. For 2006, the agricultural land base rate was $880 per acre. State officials raised the base rate to $1,140 per acre for 2007. *Robbins testimony; Resp't Ex. 1*.

Analysis

13. Both parties agree the subject parcel satisfies the requirements for the developer's discount and should be assessed according to Ind. Code § 6-1.1-4-12.

14. The most pertinent parts of Ind. Code § 6-1.1-4-12 provide:

> (d) Except as provided in subsections (h) and (i), if:
> (1) land assessed on an acreage basis is subdivided into lots; or
> (2) land is rezoned for, or put to, a different use;
> the land shall be reassessed on the basis of its new classification.
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> (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 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.
> (i) Subsection (h) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.

15. The issue is about how this statute applies. More specifically, the determinative question is the meaning of the phrase "may not be reassessed" as used in subsection 12(h).

16. The parties offer conflicting interpretations of that phrase. In the Petitioner's view, it means the actual amount of the assessment cannot be increased until one of the specified

events occurs.[1] In the Respondent's view, the provision means the classification cannot be changed and the property must continue to be assessed as agricultural land, but it does not mean that the amount of the assessment must remain unchanged.

17. Statutes that are not ambiguous are not subject to being construed. *See Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001); *City of Evansville v. Zirkelbach*, 662 N.E.2d 651, 653 (Ind. Ct. App. 1966). Where a statute is susceptible to more than one interpretation—as it is in this case—the statute is ambiguous.[2] In such a case, the intent of the legislature must be ascertained and the statute interpreted to effectuate that intent. *Aboite*, 762 N.E.2d at 257. "[I]n construing Indiana Code § 6-1.1-4-12, this Court will interpret the statute as a whole, and not overemphasize a strict liter or selective reading of its individual words." *Id. (citing Gen. Motors Corp. v. Indiana Dep't of Workforce Dev.*, 671 N.E.2d 493, 497 (Ind. Ct. App. 1996)). Furthermore, where a statute is susceptible to more than one interpretation, it is appropriate to consider the consequences of a particular construction. *Herff Jones v. State Bd. of Tax Comm'rs,* 512 N.E.2d 485, 490-91 (Ind. Tax Ct. 1987).

18. The Tax Court has explained that under the assessment system that was in place in 1992 Indiana assessed land as either "agricultural" or "non-agricultural." *Aboite*, 762 N.E.2d at 258.[3] The current system provides for land valuation based on the several classifications and sub-classifications, including agricultural, industrial, commercial, and residential. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 30-33 (incorporated by reference at 50 IAC 2.3-1-2).

19. Clearly, identifying a parcel with an agricultural land classification constitutes a major part of how its assessed value is determined. The Department of Local Government Finance is required to establish annual base rates for agricultural land. Ind. Code § 6-1.1-4-4.5(e); 50 IAC 21-6-1. For the 2002 general reassessment, the base rate for agricultural land was set at $1,050 per acre. GUIDELINES, ch. 2 at 100. It was reduced to $880 per acre before being increased to $1,140 per acre for the 2007 assessment year. Consequently, the value of the subject property was $26,500 for the 2003 and 2004 assessments.[4] For the 2005 and 2006 assessments, however, the assessed value was only $22,300 as a result of the reduced agricultural base rate of $880 per acre. The Petitioner benefitted from the lower adjusted base rate on its 2005 and 2006 assessed valuations. But in this case the Petitioner objects to a similar base rate adjustment for the 2007 assessment that caused the assessed value to go up.

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[1] Although the Petitioner argues that the assessment cannot be increased, the substance of that argument actually would mean there could be no change (up or down).

[2] Under the developer's discount, the requirement to reassess land when it is rezoned is explicit. *Howser Dev. v. Vienna Twp. Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005). But that requirement is based on subsection 12(d): "if … land is rezoned for, or put to, a different use the land shall be reassessed on the basis of its new classification." The decision in *Howser* does not conflict with our determination that subsection 12 (h) contains an ambiguity. To the contrary, the inconsistent language about when reassessment is required and when reassessment is prohibited demonstrates the ambiguity of subsection 12(h).

[3] In 1992 the agricultural land base rate was $495 per acre. *Id.* at 257 n.2.

[4] The property record card for the subject property, Respondent Exhibit 1, shows the assessments for 2003 through 2007. There is no evidence about what the assessed value was for other years.

20. The legislature has expressed its intent for the assessed value of real property to be adjusted annually. Ind. Code § 6-1.1-4-4.5. While no category of real property is exempt from annual trending, agricultural land base rates are specifically identified as being subject to the annual adjustments. 50 IAC 21-6-1. Failing to adjust the base rate for the subject property (as suggested by the Petitioner's interpretation of the developer's discount) would frustrate the intent of the legislature to provide for uniform and equal assessments with a more current valuation date (January 1 of the year preceding the assessment date). Ind. Code § 6-1.1-4-4.5(c)(1); 50 IAC 21-3-3. If the Petitioner's position about the developer's discount were to be accepted, land values protected by that provision might be frozen at amounts that are grossly out-of-date for an indefinite period. It is difficult to believe that the legislature intended such an absurd result.

21. In addition, the Tax Court's discussions about the developer's discount also make it clear that the statute covers when land must be, or cannot be, reassessed on the basis of its new classification. *Howser*, 833 N.E.2d 1108, *Aboite*, 762 N.E.2d 254. Nothing in either of these cases supports the Petitioner's argument that appropriate, updated valuation amounts are prohibited where the use classification remains unchanged.

22. The Petitioner's proposed interpretation is inconsistent with earlier versions of the developer's discount. Indiana Code §6-1.1-4-12 was amended in 2006. P.L. 154-2006 §1. The substance of the amendment is not particularly relevant to the Petitioner's claim, but at the same time the statute was divided into separate subsections. In its older form it was probably clearer that the statute is directed toward reassessment on the basis of classification:

> 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. *** 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.

23. The Petitioner's proposed interpretation is wrong because it fails to put the meaning of "reassessed" into the context of the entire statute. The meaning of the developer's discount statute as a whole requires that the prohibition against reassessment established in subsection (h) be consistent with the mandate for reassessment established in subsection (d)—and that both subsections are concerned with *reassessment on the basis of a new classification*, not simply determining an updated value based on an existing classification.

24. When a taxpayer fails to provide probative evidence supporting his 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

25. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: _____

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Commissioner, 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, 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>