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

Petition Nos.:	**03-005-16-1-4-00012-17**
	03-005-17-1-4-00787-17
Petitioner:	**Dwight Grooms**
Respondent:	**Bartholomew County Assessor**
Parcel No.:	**03-96-21-310-000.500-005**
Assessment Yrs.:	**2016 and 2017**

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

Procedural History

1. Dwight Grooms claims his 2016 and 2017 assessments are incorrect because the Assessor improperly reclassified and reassessed his land, denying him the benefits of what is commonly referred to as the "developer's discount." Grooms appealed the assessments to the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA").

2. For 2016, the PTABOA issued a determination upholding the assessment. For 2017, Grooms and the PTABOA agreed to waive a hearing and submit the appeal directly to the Board. Thus, Grooms appeals from the following assessment for both years:

   Land: $53,100 Improvements: $43,400 Total: $96,500

3. Grooms responded by timely filing Form 131 petitions with the Board alleging that his property was entitled to the developer's discount. He elected to proceed under our rules for small claims. On October 3, 2018, our designated administrative law judge, Jeremy Owens ("ALJ"), held a hearing on Grooms' petitions. Neither he nor the Board inspected the property. The following people were sworn in and testified: Bartholomew County Assessor Gordon Wilson; Virginia Whipple; and Milo Smith, Grooms' certified tax representative.

Record

4. The parties offered the following exhibits:

Petitioner's Exhibit 1:	2015 Property Card ("PRC") for the subject property
Petitioner's Exhibit 2:	2016 PRC for the subject property
Petitioner's Exhibit 3:	2017 PRC for the subject property
Petitioner's Exhibit 4:	Copy of Ind. Code § 6-1.1-4-12
Petitioner's Exhibit 5:	Hege Affidavit

Petitioner's Exhibit 6:	Map and 2018 PRCs for five parcels owned by Westlake Hills Development, LLC
Petitioner's Exhibit I1:	2011 Real Property Assessment Guidelines ch. 2. pp. 80-81
Petitioner's Exhibit Q1:	Horizon West Major Subdivision aerial map
Petitioner's Exhibit Q2:	Subdivision Cost Worksheet
Respondent's Exhibit A:	Wilson/Whipple resumes
Respondent's Exhibit B:	Statement of Professionalism
Respondent's Exhibit C:	2015 PRC for the subject property
Respondent's Exhibit D:	2016 PRC for the subject property
Respondent's Exhibit D1:	2017 PRC for the subject property
Respondent's Exhibit E:	Aerial parcel map of subject property
Respondent's Exhibit F:	Zoning map
Respondent's Exhibit G:	Copy of Ind. Code § 6-1.1-4-12

5. The record also includes the following: (1) all petitions, motions, briefs, and documents filed in these appeals, (2) all orders and notices issued by the Board or our ALJ, and (3) a digital recording of the hearing.

Objections

6. The Assessor objected to Petitioner's Exhibits I1, Q1, and Q2 because Grooms did not exchange them five days prior to the hearing as required by our procedural rules for small claims. The Assessor is correct that, if requested more than ten business days before a hearing, a party must give all other parties copies of any documents it intends to offer and names and addresses of any witnesses it intends to call at least five business days before the hearing. 52 IAC 3-1-5(d). If a party fails to comply, we may exclude evidence on those grounds. 52 IAC 3-1-5(f). But we generally will not exclude evidence absent some showing of prejudice.

7. On September 18, 2018, the Assessor filed a "Request for Information" with the Board. He directed that request to Grooms, cited to the relevant rule, and asked for copies of Grooms' documentary evidence and the names and addresses of his witnesses. The face of the request also indicated that the Assessor served it on Grooms' certified tax representative via electronic and regular mail.

8. With that in mind, we turn to the exhibits themselves. Exhibit I1 is an excerpt from the 2011 Real Property Assessment Guidelines. That document is not evidentiary; rather, it is part of a duly promulgated administrative rule. Grooms was free to cite to the rule without offering a copy. We therefore overrule the Assessor's objection to that exhibit.

9. We sustain the objections to the other two exhibits: a map of Horizon West subdivision together with property record cards for four parcels owned by a different developer (Q1), and a document from the National Association of Home Builders entitled "Construction

Costs Worksheet" (Q2). Both exhibits relate to Grooms' claim that the Assessor does not assess infrastructure to properties that receive the developer's discount.

10. Grooms did not offer a reason for failing to exchange Exhibit Q1. As for Exhibit Q2, Grooms argued that he did not anticipate Smith being asked whether a retaining wall is part of a property's infrastructure. Thus, he did not believe he needed to disclose the exhibit. We disagree. Parties must exchange known and anticipated exhibits regardless of whether a party offers them in its case-in-chief or for purposes of rebuttal. *See Evansville Courier Co., Inc. v. Vanderburgh Cnty. Ass'r,* 78 N.E.3d 746, 752 (Ind. Tax Ct. 2017). Grooms clearly anticipated that the issue of whether the retaining wall should be treated as part of infrastructure might be raised. He therefore knew of, and anticipated the need for, both exhibits.

11. In any case, admitting the exhibits would not change our determination. Exhibit Q1 was cumulative—Whipple admitted on cross-examination that the Assessor did not assess various items to those properties because they received the developer's discount. And Exhibit Q2 is beside the point: we decide whether the retaining wall must be assessed as an improvement based on how the 2011 Real Property Assessment Guidelines treat such walls rather than how industry sources characterize them.

Contentions

Assessor's Contentions

12. The subject property is located at 45 N in Columbus. It is vacant except for a retaining wall that was built sometime between 2004 and 2011. The wall showed up on aerial photographs in 2011. Even if the land had been entitled to the developer's discount, it should have been reclassified when the retaining wall was built. The developer's discount statute calls for land to be reclassified and reassessed when a structure is built on it. Under the guidelines issued by the Department of Local Government Finance, retaining walls are assessable improvements. *Resp't Ex. G; Whipple testimony.*

13. Even if the developer's discount applies, the Assessor believes he assessed the land correctly. According to Virginia Whipple, the land has been zoned for commercial use since the 1930s and has always been commercial. The previous assessor therefore erred in assessing it as agricultural. Whipple testified that that the Assessor simply corrected the error in 2016 when he changed the classification to commercial. The property record cards, however, show that the property's classification was changed from agricultural to residential in 2012 and from residential to commercial in 2016. *Resp't Exs. C-D.1; Whipple testimony.*

14. Although Grooms correctly points out that the Assessor has not assessed things like sewers and other infrastructure to properties that are eligible for the developer's discount, the Assessor contends that the 2011 Real Property Assessment Guidelines include those items in the base rate for land. Retaining walls, by contrast, are assessed as improvements. *Whipple testimony.*

Grooms' Contentions

15. In Grooms' view, the wall is not a "structure" as contemplated by the developer's discount statute. The wall is needed to prevent erosion, and it did not require a building permit. Thus, building the wall should not have caused him to lose the benefit of that discount. *Pet'r Exs. 4-5; Smith testimony and argument.*

16. The Assessor does not assess infrastructure, such as sewers and streets, to properties that receive the developer's discount. The retaining wall is necessary infrastructure that should not have been assessed as long as the subject property qualified for the discount. *Smith argument*.

Conclusions of Law

17. The parties dispute whether subject land was entitled to the developer's discount. The developer's discount is not a discount in price, but rather a prohibition on certain land being re-classified and assessed on the basis of that new classification absent certain criteria being met:

> (a) As used in this section, "land developer" means a person that holds land for sale in the ordinary course of the person's trade or business. . . .
>
> (b) As used in this section, "land in inventory" means:
>
> (1) a lot; or
>
> (2) a tract that has not been subdivided into lots;
>
> to which a land developer holds title in the ordinary course of the land developer's trade or business.
>
> . . . .
>
> (e) Except as provided in subsections (i) and (j), 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.
>
> (f) If improvements are added to real property, the improvements shall be assessed.
>
> (g) An assessment or reassessment made under this section is effective on the next assessment date.
>
> . . . .
>
> (i) Subject to subsection (j), 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.

(j) Subsection (i) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.

I.C. § 6-1.1-4-12.

18. The general rule is that, where acreage is divided into lots or land is re-zoned for, or put to, a different use, the land must be reclassified and assessed based on its new classification. But the "developer's discount," as codified in subsections (i) and (j), creates an exception to that rule. Under the developer's discount, an assessor may not reclassify land in inventory held by a developer unless one of three triggering events occurs: (1) the developer transfers the property to someone who is not a developer; (2) the developer builds a structure on the land; or (3) local officials issue a permit for a building or structure.

19. The statute as a whole—not just the developer's discount—"promotes commercial development by allowing a developer's land to be assessed on the basis of its original (i.e., its pre-purchase) classification until an objective event signaling the commencement of development occurs." *Hamilton Cnty. Ass'r v. Allisonville Rd. Dev., LLC*, 988 N.E.2d 820, 823 (Ind. Tax Ct. 2013). The Assessor does not identify which of the specified events that would generally allow reclassification occurred in this case. Whipple testified the property was always zoned commercial. So there is no evidence it was re-zoned for a different use. Similarly, Whipple's testimony that she has never seen the land being farmed does not mean its use changed for purposes of the statute. As the Tax Court explained, "the cessation of farming activity and the non-use of land does not necessarily evidence the imminence of commercial development." *Allisonville Rd. Dev.*, 988 N.E.2d at 824. But it does appear that, at some unidentified point in time, a larger tract of land that included what is now the subject property was subdivided into lots and platted.

20. That is where the developer's discount comes into play. Before Ind. Code § 6-1.1-4-12 was amended in 2006, the developer's discount prohibited assessors from reclassifying and reassessing land where the only basis for doing so was that the land had been subdivided into lots. I.C. § 6-1.1-4-12 (2002); *Allisonville Rd. Dev.*, 988 N.E.2d at 822. In its current form, the statute delays such reclassification and reassessment of property that qualifies as "land in inventory," regardless of which general signaling event has occurred, until one of three enumerated triggering events happens. The evidence clearly rules out two of those potential triggering events: the Assessor does not allege the property was transferred to a non-developer, and Smith testified that no building permit was issued. That leaves one possibility—Grooms built a retaining wall on the land. If that wall constitutes a "structure" within the meaning of the developer's discount, the Assessor was entitled to reclassify the land. Otherwise, he was not.

21. The statute does not define the term "structure." Where a statute is ambiguous, we must construe it to carry out the legislature's intent. *Aboite Corp, v. State Bd. of Tax Comm'rs,* 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001). As explained above, the entire statute

promotes commercial development by allowing land to be assessed based on its original classification until an objective event signals development is imminent. The developer's discount allows a developer to maintain that classification even after those signaling events occur, until the developer (1) transfers the property to someone outside the class of people the legislature is trying to incentivize through the discount (non-developers), or (2) begins a more advanced stage of the development process.

22. Keeping that legislative intent in mind, we find that the retaining wall is not a "structure" within the meaning of the developer's discount. Its construction was not an objective event signaling development was imminent, much less the beginning of a more advanced stage of the development process, such as building (or obtaining a permit to build) a home or commercial building. Instead, building the wall was necessary to prevent erosion so the land could be developed sometime in the future. The Assessor therefore erred by reclassifying the land from agricultural to residential in 2012 and from residential to commercial in 2016.

23. Grooms argues that the developer's discount statue also prohibited the Assessor from assessing the retaining wall itself.[1] We disagree. The limitation on reclassification and reassessment applies only to land. Indeed, the statute expressly provides, "[i]f improvements are added to real property, the improvements shall be assessed." I.C. § 6-1.1-4-12(f).

24. The 2011 Real Property Assessment Guidelines treat retaining walls as improvements that must be separately assessed—not as items included in determining the value of land. Grooms characterizes the retaining wall as infrastructure akin to water lines and septic systems, which he claims are not separately assessed when land is entitled to the developer's discount. But as the Assessor correctly points out, those items are included as part of valuing land. Under the 2011 Guidelines, "[o]n-site utility piping, such as sanitary and storm sewers, potable water and fire prevention lines, and gas lines are considered on-site development costs and are included in the base rate when calculating the value of land." 2011 GUIDELINES, ch. 1 at 7. *See also* 2011 GUIDELINES, ch. 2 at 66 (explaining that the base rate for primary land includes the value of the vacant land plus various costs associated with developing the land, such as water and gas lines, sewers, and septic systems). By contrast, "real property improvements" are "those improvements extraneous to site, which are placed on land to improve the parcel." They are normally considered "yard items" when calculating replacement cost, and they include retaining walls. *Id.*

Final Determination

25. We find for Grooms and order the Assessor to classify the subject land as agricultural and compute its 2016 and 2017 assessments accordingly. We order no change to the improvements component of the assessments.

[1] Grooms did not affirmatively dispute the Assessor's valuation of the retaining wall. He instead simply contested whether the developer's discount statute prohibited the Assessor from assessing the improvement at all.

Date: February 6, 2019

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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 after 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>.