

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

Petition: 40-004-07-1-4-00001
Petitioner: James R. Hudson
Respondent: Jennings County Assessor
Parcel: 40-09-33-120-002.000-004
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 by filing a Form 130 petition with the Jennings County Property Tax Assessment Board of Appeals (PTABOA) on August 25, 2008.
2. The PTABOA issued notice of its decision on October 17, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on November 25, 2008. 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 July 29, 2009. He did not inspect the property.
6. Milo Smith, a certified tax representative for the Petitioner, and County Assessor Linda Kovacich were sworn as witnesses at the hearing.

Facts

7. The property is usable undeveloped land (1.858 acres) located in or near North Vernon.
8. The PTABOA determined the assessed value is \$198,300.
9. The Petitioner contended the assessed value should be \$2,200.

Record

10. The official record contains 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(a) – Witness and exhibits list,
Petitioner Exhibit 1(b) – One page statement of the Petitioner’s position,
Petitioner Exhibit 1 – Indiana Code § 6-1.1-4-12,
Petitioner Exhibit 2 – Letter to Rick Wajda from Sandy Bickel and Beth Henkel dated June 5, 2006, regarding Ind. Code § 6-1.1-4-12,
Petitioner Exhibit 3 – Map of the subject property and six lots surrounding it with property record cards (PRCs) for the six lots attached,
Petitioner Exhibit 4 – PRC for the subject property,
Petitioner Exhibit 5 – Board Final Determination dated March 11, 2005, for Petition 40-013-04-1-4-00003,
Petitioner Exhibit 6 – Aerial view,
Respondent Exhibit 1(a) – Exhibit coversheet,
Respondent Exhibit 1 – PRC for the subject property,
Parcel 40-09-33-120-002.000-004,
Respondent Exhibit 2 – Real Property Assessment Guidelines, chapter 2, page 85,
Respondent Exhibit 3 – Commercial Area VI Neighborhood Valuation Form, page 6 of 7,
Respondent Exhibit 4 – Board Final Determination (undated) for Petition 72-007-02-1-4-00004,
Respondent Exhibit 5 – PRC for Russell property,
Parcel 40-09-28-400-070.004-004,
Respondent Exhibit 6 – PRC for Perino property,
Parcel 40-09-28-400-074.000-004,
Respondent Exhibit 7 – Aerial view of the subject area,
 - e. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner’s case:
 - a. Ind. Code § 6-1.1-4-12(h) prohibits a county assessor from reassessing a parcel as developed land until it is transferred to a person who is not a land developer, or until construction of a structure begins on the parcel, or until a building permit is issued for construction on the parcel. This provision is known as the developer’s discount. *Smith testimony; Pet’r Exs. 1, 2.*

- b. The subject parcel is owned by a developer and it is undeveloped. It should be assessed using the developer's discount rate of \$1,140 per acre. *Smith testimony*.
 - c. A license is not required to be a land developer. Anyone who inherits or purchases land for commercial development can be a land developer. The Petitioner developed at least six parcels in the same neighborhood. *Smith testimony; Pet'r Ex. 3*.
 - d. During an appeal of the 2004 assessment for the same parcel, the Respondent asserted that "the subject property is being held for future development and the County has valued it as usable undeveloped land." *Smith testimony; Pet'r Ex. 5*.
 - e. A portion of the subject parcel is a gravel-covered access area that lies between two businesses. The Petitioner can't stop third parties from crossing that area to get from one business to the other. *Smith testimony; Pet'r Ex. 6*.
12. Summary of the Respondent's case:
- a. The Petitioner's father, James M. Hudson, was a developer in the area. The Petitioner, James R. Hudson, inherited the subject parcel in 1996. Most of the area was already developed before the Petitioner got the property. There is no evidence of what the Petitioner's "ordinary course of business" is. And there is no evidence showing the Petitioner is a land developer. *Kovacich testimony*.
 - b. The developer's discount is intended to apply to farm land acquired for future development. When the Petitioner acquired the subject property it was not farm land—it was undeveloped commercial land. *Kovacich testimony*.
 - c. Usable undeveloped land is defined as "[t]he amount of acreage that is vacant and held for future development." GUIDELINES, ch. 2 at 85. The subject property is zoned commercial and is being held for future commercial development. It is assessed as usable undeveloped land according to the definition contained in the Assessment Guidelines. *Kovacich testimony; Resp't Ex. 2*. The rate applied is taken from the land order for the area. *Kovacich testimony; Resp't Exs. 1, 3*.
 - d. The Russell property, parcel 40-09-28-400-070.004-004, and the Perino property, parcel 40-09-28-400-074.000-004, are comparable to the subject property. The sale prices of those properties when they were vacant land and classified as usable undeveloped support the fact that the land order rate for the neighborhood is based on market value. *Kovacich testimony; Resp't Exs. 5, 6*.
 - e. Customers at businesses on either side use part of this property for ingress and egress. *Kovacich testimony*.

- f. In an appeal of the 2004 assessment of this parcel, the property was described as being held for future development and it was assessed as usable undeveloped land. *Kovacich testimony; Pet'r Ex. 5.*
- g. The Final Determination for Howser Development, appeal 72-007-02-1-4-00004, presents a similar issue and did not allow the developer discount. *Kovacich testimony; Resp't Ex. 4.*

Analysis

13. The “developer’s discount” is based on Ind. Code § 6-1.1-4-12, which provides:
- (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.
 - (c) As used in this section, "title" refers to legal or equitable title, including the interest of a contract purchaser.
 - (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.
 - (e) If improvements are added to real property, the improvements shall be assessed.
 - (f) An assessment or reassessment made under this section is effective on the next assessment date.
 - (g) No petition to the department of local government finance is necessary with respect to an assessment or reassessment made under this section.
 - (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.

14. This statute was amended in 2006, but the intent as explained in *Howser Development v. Vienna Twp. Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005), and *Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001), remains the same: encouraging developers to buy farmland, subdivide it into lots, and resell the lots. The encouragement comes by providing that a land developer's land in inventory is not to be reassessed until after title is transferred to somebody who is not a developer, or construction begins on the land, or a building permit is issued for construction on the land. Ind. Code § 6-1.1-4-12(h). Agricultural land values tend to be lower. Consequently, where land previously was assessed with a lower agricultural land value, allowing it to retain that lower valuation for a longer time generally is an encouragement or benefit. Contrary to the Petitioner's claim, however, Ind. Code § 6-1.1-4-12 does not dictate agricultural land value for a property where the prior assessment was not based on agricultural land value.
15. The Petitioner did not prove that the developer discount statute, Ind. Code § 6-1.1-4-12, applies to the subject property.
 - a. The term "land developer" is specifically defined as "a person that holds land for sale in the ordinary course of the person's trade or business." Ind. Code § 6-1.1-4-12(a). The term "land in inventory" is specifically defined as a lot or 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." Ind. Code § 6-1.1-4-12(b). The fact that this statute starts by defining these two terms is an indication of their importance. Furthermore, there is nothing ambiguous about these definitions. The Indiana Tax Court has stated that "[w]hen faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, this Court has no power to construe the statute for the purpose of limiting or extending its operation." *Joyce Sportswear Co. v. State Bd. of Tax Comm'rs*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997).
 - b. Both definitions relate to the Petitioner's "ordinary course of trade or business." Nevertheless, here the Petitioner failed to introduce any probative evidence on that point. The Petitioner did not testify himself—his claim rests on Mr. Smith's conclusory statement that the Petitioner is a developer. Such a conclusory characterization is not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - c. The Petitioner owns other commercial properties in the same area. Undisputed testimony established that years ago the Petitioner's father was a land developer and the Petitioner inherited several properties from him. The property record card for the subject property shows that it was transferred from James M. Hudson (father) to James R. Hudson (the Petitioner) on November 22, 1996. *Pet'r Ex. 4*. Property record cards for three other commercial properties in the area also show a transfer from James M. Hudson to James R. Hudson on November 22, 1996. *Pet'r Ex. 3*. The fact that his father was a developer, however, does not prove that

the Petitioner is one. And merely owning several commercial properties in the same area does not prove the Petitioner is a land developer. These property record cards are insufficient evidence to establish what the Petitioner's trade or business might be.

- d. Consequently, the evidence does not prove that the Petitioner is a land developer or that the subject property is land in inventory as those terms are used in the developer discount statute.
16. Assuming, *arguendo*, that the Petitioner is a land developer and the subject property is land in inventory, Ind. Code § 6-1.1-4-12 does not specify or support the use of agricultural land value as the Petitioner contends. Rather than specifying agricultural land value, subsection 12(h) provides a limitation on when qualifying land is allowed to be reassessed and until one of the specified events happens the prior assessment is maintained. Of course, if the prior assessment was based on agricultural land valuation, that would be the value to be maintained.
17. But in this case there is no evidence that the subject property was previously classified and assessed as agricultural land. To the contrary, the property record card shows that at least back to 2002 the subject property was not assessed as agricultural land and the assessed values for those years greatly exceeded the requested assessment.¹
18. There was no change between the 2006 and the 2007 assessed values, which were both \$198,300. *Pet'r Ex. 4; Resp't Ex. 1*. Therefore, in this case the Petitioner's claim that Ind. Code § 6-1.1-4-12 prohibits reassessing the subject property for 2007 is ultimately a moot point.
19. 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

20. The Petitioner failed to make a prima facie case to support his claim. The Board finds in favor of the Respondent.

¹ In contrast to the requested valuation of \$2,200 as agricultural land for 2007, the assessed value for 2006 was \$198,300. The 2005 assessed value had been \$165,100. The 2003 assessed value had been \$133,800. None of these would have been agricultural land values for the subject property. *Pet'r Ex. 4; Resp't Ex. 1*.

Final Determination

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

ISSUED: **October 15, 2009**

Commissioner, Indiana Board of Tax Review

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- 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>>