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

Petition No.: **64-029-14-1-4-20467-15**
Petitioner: **Redbow 100, LLC**
Respondent: **Porter County Assessor**
Parcel No.: **64-10-29-252-009.000-029**
Assessment Year: **2014**

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

Procedural History

1. Redbow 100, LLC ("Petitioner") filed a Form 130 with the Porter County Property Tax Assessment Board of Appeals ("PTABOA") on September 12, 2014. The PTABOA issued notice of its final determination on August 10, 2015.

2. Petitioner timely filed its Form 131 petition, electing to have its appeal heard under the Board's small claims procedures. Respondent did not elect to have the appeal removed from those procedures.

3. Ellen Yuhan, the Board's Administrative Law Judge ("ALJ"), held a hearing on July 12, 2016. Neither the ALJ nor the Board inspected the property.

4. Gerald Stout appeared as counsel for Petitioner. Christopher Buckley appeared as counsel for Respondent. Russell Gower, Porter County Hearing Officer, was sworn and testified for Respondent.

Facts

5. The property under appeal is a vacant parcel located at 1150 Loudermilk Lane in Valparaiso.

6. For 2014, the subject property was classified as commercial and the assessed value was $167,600.

7. Petitioner requests that the developer's discount be applied for 2014.

Record

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

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioner Exhibit 1:	Notice of Appearance for Gerald L. Stout
Petitioner Exhibit 2:	Form 131 Petition to the IBTR for Review
Petitioner Exhibit 3:	Form 115 Notification of Final Assessment Determination
Petitioner Exhibit 4:	Form 130 Notice to Initiate Appeal
Petitioner Exhibit 5:	Certificate of Organization and Articles of Organization
Petitioner Exhibit 6:	Operating Agreement of Redbow 100, LLC
Petitioner Exhibit 7:	Property record card ("PRC") and parcel record information for subject parcel, Lot #2
Petitioner Exhibit 8:	PRC and parcel record information for improved parcel, Lot #1
Petitioner Exhibit 9:	PRC and parcel record information for Lot #3
Petitioner Exhibit 10:	PRC and parcel record information for Lot #4
Petitioner Exhibit 11:	Aero Center Development Plat of Survey
Petitioner Exhibit 12:	Memo to the IBTR
Petitioner Exhibit 13:	List of witnesses
Respondent Exhibit A:	2007 PRC for parcel 64-10-29-252-006.000-029
Respondent Exhibit B:	2008 PRC for parcel 64-10-29-252-006.000-029
Respondent Exhibit C:	2009 PRC for parcel 64-10-29-252-009.000-029 (Lot #2, subject property)
Respondent Exhibit D:	2010 PRC for parcel 64-10-29-252-009.000-029
Respondent Exhibit E:	2011 PRC for parcel 64-10-29-252-009.000-029
Respondent Exhibit F:	2012 PRC for parcel 64-10-29-252-009.000-029
Respondent Exhibit G:	2013 PRC for parcel 64-10-29-252-009.000-029
Respondent Exhibit H:	2014 PRC for parcel 64-10-29-252-009.000-029
Respondent Exhibit J:	Building Permit
Respondent Exhibit K:	Certificate of Inspection for Use and Occupancy
Respondent Exhibit L	Aerial view of the improvements under construction[1]
Board Exhibit A:	Form 131 petition and attachments
Board Exhibit B:	Notice of hearing
Board Exhibit C:	Hearing sign-in sheet

[1] Respondent did not submit an Exhibit I.

c. These Findings and Conclusions.

Objections

9. Petitioner objected to Respondent Exhibits A-H because the PRCs contain dates later than the purported assessment dates. For example, the 2010 PRC shows an "as of" date of August 2, 2013. As a result, Petitioner contends it is difficult to say whether the PRCs are in substantially the same form as when they were generated. Petitioner's objection goes to the weight of the evidence rather than its admissibility. Thus, the Board admits Respondent Exhibits A-H over Petitioner's objection.

10. Petitioner objected to Respondent Exhibit L because the exhibit was not authenticated by the company that took the photograph and because Respondent failed to exchange the exhibit prior to the hearing.

11. Considering the second part of the objection, Petitioner opted to proceed under the Board's small claims procedures. Those procedures do not automatically require parties to exchange witness and exhibit lists or copies of their exhibits in advance of a hearing. Instead,

> "*If requested* not later than ten (10) business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing."

52 IAC 3-1-5(d) (emphasis added). The Board has a long-standing rule that if a party wants to be provided with the opposing party's evidence in advance of a small claims proceeding, the party must request it. Mr. Stout admitted that he had not requested Respondent's exhibits before the hearing. Therefore, the objection is overruled.

12. Mr. Stout is essentially arguing a lack of foundation. While Respondent Exhibit L may not have been authenticated, it is dated 2007 and copyrighted by Pictometry. The Board admits the exhibit as there is no allegation that it misrepresents the image depicted. The Board notes, however, that this ruling does not affect the outcome of the appeal.

Burden of Proof

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving the assessment is wrong and 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). A burden-shifting statute creates two exceptions to the rule.

14. First, Ind. Code § 6-1.1-15-17.2 (a) " 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." Under Ind. Code § 6-1.1-15-17.2(b), "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."

15. 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 Ind. Code 6-1.1-15." Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of 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).

16. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

17. The assessed value increased from $165,100 in 2013 to $167,600 in 2014. This increase is less than 5%. Therefore, Petitioner has the burden of proof.

Contentions

18. Summary of Petitioner's case:

    a. In 2007, Petitioner was the owner of a parcel of vacant land consisting of approximately ten acres that was assessed under the developer's discount pursuant to Ind. Code § 6-1.1-4-12. During that year, the City of Valparaiso issued a building permit authorizing construction on the parcel. *Stout argument; Resp. Ex. J.*

    b. At the time of the 2008 assessment, construction of a building had begun on the ten acre parcel. Consequently, those improvements were added to the 2008 assessed value, the property was reclassified, and the developer's discount was removed. *Stout argument; Resp. Ex. B.*

    c. By the time of the 2009 assessment, Petitioner had subdivided the ten-acre parcel into four lots (Lots 1-4). Petitioner was developing Lot 1 and was holding Lots 2, 3, and 4 for future development or sale. The subdivided lots became subject to four individual assessments for 2009. The subject property is Lot 2. *Stout argument; Pet'r. Ex. 12.*

    d. Starting with the 2009 assessment, Respondent mistakenly listed the building located on Lot 1 on the PRC for Lot 2. Petitioner contends that at that time Lots 1, 3, and 4

were allowed the developer's discount, but Lot 2 was considered an improved lot and assessed without the developer's discount. *Stout argument; Pet'r. Exs. 7, 8, 9, 10, and 12.*

e. According to Petitioner, the error went unnoticed until the general reassessment for 2012. At that time, Respondent corrected the PRCs by showing the location of the building on Lot 1 rather than Lot 2 (and also removed the developer's discount for Lot 1). *Stout argument; Pet'r. Exs. 7, 8, 9, 10, and 12.*

f. According to Petitioner, Lot 2 continues to be assessed as a commercial parcel without the developer's discount; however, Lots 3 and 4 have continued to be assessed using the developer's discount since the time of the subdivision. *Stout argument; Pet's Exs. 7, 9, 10, and 12.*

g. Petitioner contends that but for Respondent's error regarding the building, Lot 2 would have been assessed using the developer's discount over the subsequent years including 2014, just as Lots 3 and 4 have been.

h. As a result, Petitioner contends that Respondent should be estopped from claiming the developer's discount does not apply to Lot 2 for 2014. And Petitioner contends that the correct assessed value for 2014 should be $6,900 (developer's discount rate of $2,050 x 3.37 acres = $6,908.50 rounded to $6,900). *Stout testimony; Pet'r Ex. 12*.

19. Summary of Respondent's case:

a. According to Respondent, in 2007 the subject property was assessed using the developer's discount when it was part of the original ten acre parcel. The City of Valparaiso issued a building permit on June 4, 2007. In 2008 the building was assessed as partially complete and at that time the developer's discount was not applied to any of the ten acre parcel. *Gower testimony; Resp't Exs. B and J.*

b. As of March 1, 2009, the ten acre parcel had been subdivided. Respondent claims that since that time any parcels created from the original parcel are no longer entitled to the developer's discount. *Buckley argument.*

c. Respondent cites Ind. Code § 6-1.1-4-12(e), which states "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 assessed on the basis of its new classification." *Buckley argument.*

d. Respondent cites three cases as support for the premise that once land has been subdivided it is no longer entitled to the developer's discount: *Hamilton County v. Allisonville Road Development*, 988 N.E.2d 820 (Ind. Tax Ct. 2013); *Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E. 2d 254 (Ind. Tax Ct. 2001); and *Howser Development v. Vienna Twp. Assessor*, 833 N.E.2d 1108 (Ind. Tax Ct. 2005). Respondent contends that these cases all stand for the proposition that once a

developer takes any substantial step towards development, a property is no longer entitled to the developer's discount. *Buckley argument.*

e. Respondent admits that Lot 2 was assessed incorrectly from 2009 until 2011. Specifically, the improvements located on Lot 1 were incorrectly attributed to Lot 2. Meanwhile, the other parcels were assessed using the developer's discount (albeit erroneously because they resulted from the subdivision of the original ten acre parcel which was the subject of a building permit and on which improvements had been erected). In 2012, when it was discovered that the building was actually located on Lot 1, Respondent attributed the building to Lot 1 going forward. For 2012 and subsequent years, Lot 2 was assessed for just the land at the market rate. *Gower testimony; Resp't Exs. C-H.*

f. But for error regarding the building, the developer's discount probably would have been applied on Lot 2, but that would have been a mistake. *Buckley argument.*

g. According to Respondent, the subject property was not entitled to the developer's discount for 2014. Because a building permit had been issued and construction had begun prior to subdividing the original ten acre parcel, the developer's discount was properly removed in the 2008 assessment. It should not be reinstated based on Petitioner's estoppel claim. *Buckley argument.*

Analysis

20. Petitioner failed to make a case for any change to the existing assessment. The Board reached this decision for the following reasons:

a. Real property is assessed based on its "true tax value", which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471

(Ind. Tax Ct. 2005). The valuation date for a 2014 assessment was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

c. The record, however, contains no substantial evidence about what a more accurate market value-in-use for the subject property might be. Petitioner merely claims to be entitled to the developer's discount. The developer's discount is based on Ind. Code § 6-1.1-4-12, which provides in part:

> (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.

d. The term "developer's discount" is somewhat misleading. More accurately, this statute speaks about changing land classifications. Land must be reclassified and reassessed based on its new classification when it is subdivided into lots or when it is rezoned for, or put to, a different use. Subsection (i) recognizes an exception to that general rule: "land in inventory" held by a "land developer" cannot be reclassified and reassessed based on its new classification until (1) the land is transferred to someone who is not a land developer, (2) someone begins building a structure on the land, or (3) a building permit is issued for a structure on the land.

e. Evidence indicates that Petitioner obtained a building permit in 2007 and then erected a structure on the ten acre parcel of land. For 2008, the improvements were added to the assessment, the developer's discount was removed, and the land was assessed. The record contains no indication that the 2008 reassessment of the entire 10 acres was not proper and in accord with the new classification of the land. Similarly, there is no indication that the 2008 changes did not properly follow Ind. Code § 6-1.1-4-12. By the time of the 2009 assessment, the original property had been subdivided into four lots (including the subject property), but Ind. Code § 6-1.1-4-12 contains no provision for reinstating a classification after that classification was changed properly.

f. Petitioner contends that but for the error made by Respondent in assessing the improvements on the wrong lot, the subject parcel would have continued to benefit from the developer's discount. That contention is irrelevant because there is no indication the classification was changed for the 2014 assessment. The subject property has not qualified for the developer's discount since 2008, the first assessment date after the building permit was issued and construction began. Even if the Petitioner is correct that Lots 3 and 4 have still been getting the benefit of the developer's discount, we will not compound that error by requiring the same for Lot 2.

CONCLUSION

21. Petitioner failed to establish a prima facie case that the developer's discount should be applied to the subject property for 2014. Accordingly, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2014 assessed value should not be changed.

ISSUED: October 11, 2016

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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, 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>.