

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

Petition #s: 46-022-02-1-5-00018 46-022-02-1-5-00019
 46-022-02-1-5-00020 46-022-02-1-5-00022
 46-022-02-1-5-00023 46-022-02-1-5-00024
 46-022-02-1-5-00025 46-022-02-1-5-00026
 46-022-02-1-5-00027

Petitioner: Dunewood Shores, LP

Respondent: Michigan Township Assessor (LaPorte County)

Parcel #s: 42-01-21-353-015 42-01-21-353-016
 42-01-21-355-004 42-01-21-353-017
 42-01-21-353-018 42-01-21-353-019
 42-01-21-355-001 42-01-21-355-002
 42-01-21-355-003

Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated assessment appeals with the LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated January 23, 2004.
2. The Petitioner received notices of the decisions of the PTABOA on September 17, 2004
3. The Petitioner filed appeals to the Board by filing Form 131s with the county assessor on October 15, 2004. Petitioner elected to have these cases heard in small claims.
4. The Board issued notices of hearing to the parties dated May 19, 2006.¹

¹ Eight of the notices of hearings scheduled the hearings for July 24, 2006, the ninth notice scheduled a hearing for Petition No. 46-022-02-1-5-00024 on July 17, 2006. The parties agreed to have all the petitions heard on the same day.

5. The Board held an administrative hearing on July 25, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Thomas J. Moss, General Partner of Dunewood Shores LP
 - b) For Respondent: Terry Beckinger, Michigan Township Assessor
Carol McDaniel, LaPorte County Assessor

Marilyn Meighen appeared as counsel for both the Michigan Township Assessor and the LaPorte County Assessor.

Facts

7. The properties under review consist of nine vacant lots located in the Lakeview and Washington Park subdivisions, Michigan City, Michigan Township, in LaPorte County, Indiana.
8. The ALJ did not conduct an on-site visit of the properties.
9. The PTABOA determined the assessed values of the vacant lots to be \$17,300 for the land for Parcel No. 42-01-21-353-015 (Petition No. 46-022-02-1-5-00018); \$21,500 for the land for Parcel No. 42-01-21-353-016 (Petition No. 46-022-02-1-5-00019); \$25,000 for the land for Parcel No. 42-01-21-355-004 (Petition No. 46-022-02-1-5-00020); \$67,800 for the land for Parcel No. 42-01-21-353-017 (Petition No. 46-022-02-1-5-00022); \$46,800 for the land for Parcel No. 42-01-21-353-018 (Petition No. 46-022-02-1-5-00023); \$21,100 for the land for Parcel No. 42-01-21-353-019 (Petition No. 46-022-02-1-5-00024); \$33,500 for the land for Parcel No. 42-01-21-355-001 (Petition No. 46-022-02-1-5-00025); \$20,000 for the land for Parcel No. 42-01-21-355-002 (Petition No. 46-022-02-1-5-00026); and \$15,400 for the land for Parcel No. 42-01-21-355-003 (Petition No. 46-022-02-1-5-00027). There are no improvements on the subject properties.
10. The Petitioner requested that the assessments for all nine properties be based on \$1,050 per acre valuation pursuant to the “developer’s discount.”

Issue

11. Summary of Petitioner’s contentions in support of an error in the assessment:
 - a. The Petitioner contends that the subject properties are raw lands that have not been subdivided and should be valued using the “developer’s discount”. *Moss testimony*. The Petitioner further contends that the transfer of ownership for the properties should not affect their value and that the purpose of ownership by a developer is for future development when the market permits. *Id.*

- b. The Petitioner testified that the properties were planned for development in the early 1900s, but the area had not actually been developed since that time. *Moss testimony*. The Petitioner also testified that the platting of land is not developing the land. *Id.* The Petitioner agreed with the Respondent that the ownership of the properties may have been transferred but contends that this transfer of ownership alone does not indicate that development had taken place. *Id.*
- c. Finally, the Petitioner contends that Ind. Code § 6-1.1-4-12, refers to subdivided lands and not raw land and the correct value that should be applied to the vacant parcels is \$1,050 per acre. *Moss testimony*.

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the properties are subdivided lots that have changed ownership and therefore should be valued as vacant lots rather than valued using the "developer's discount." *Meighen argument*. See also Ind. Code 6-1.1-4-12. In support of this contention, the Respondent submitted the Indiana Tax Court determination for *Howser Development LLC v. Vienna Township Assessor*, Cause No. 49T10-0408-TA-39 (Ind. Tax Ct. 2005). *Respondent Exhibit I*.
- b. The Respondent further contends that the properties were subdivided into lots in the early 1900s and that title has passed through multiple owners since the subdividing. *Meighen argument*. In support of this contention, the Respondent submitted the recorded plats for Lakeview Park (recorded in 1927) and Washington Park (dated 1911). *Respondent Exhibits A and D*. The Respondent also submitted real estate cards and warranty or quitclaim deeds for each of the nine properties that showed multiple transfers of ownership since the time the land was subdivided into lots. *Respondent Exhibits B, C, E, F, G and H*.

Record

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

- a. The Petition,
- b. The tape recording of the hearing labeled BTR # 6153,
- c. Exhibits:

Petitioner: No exhibits were submitted for review,

Respondent Exhibit A – Plat map of Lakeview Park,

Respondent Exhibit B – Real estate cards and warranty deed for parcel nos. 42-01-21-353-015 and 42-01-21-353-016 (Petition Nos. 42-022-02-1-5-00018 and 42-022-02-1-5-00019),

Respondent Exhibit C – Real estate card and quitclaim deeds for parcel no. 42-01-21-353-018 (Petition No. 42-022-02-1-5-00023),
Respondent Exhibit D – Plat map of Washington Park,
Respondent Exhibit E – Real estate card and deed for parcel no. 42-01-21-353-017 (Petition No. 42-022-02-1-5-00022),
Respondent Exhibit F – Real estate card for parcel no. 42-01-21-353-019 (Petition No. 42-022-02-1-5-00024),
Respondent Exhibit G – Real Estate cards and warranty deed for parcel nos. 42-01-21-355-003 and 42-01-21-355-004 (Petition Nos. 42-022-02-1-5-00027 and 42-022-02-1-5-00020),
Respondent Exhibit H – Real estate cards and quitclaim deed for parcel nos. 42-01-21-355-001 and 42-01-21-355-002 (Petition Nos. 42-022-02-1-5-00025 and 42-022-02-1-5-00026),
Respondent Exhibit I – *Howser Development v. Vienna Township Assessor*, Cause No. 49T10-0408-TA-39 (Ind. Tax 2005),

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Notice of Appearance for Marilyn Meighen,
Board Exhibit D – Hearing Sign in Sheet.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

- a. The Petitioner contends that the properties should be valued at \$1,050 per acre due to the “developer’s discount.”
- b. Indiana Code § 6-1.1-4-12, provides in part that “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. . . . An assessment or reassessment made under this section is effective on the next assessment date. 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.” As the Indiana Tax Court observed, “under this statute, land must be reassessed upon the occurrence of any of three events: when land is subdivided into lots, when land is rezoned, or when land is put to a different use.” *Howser Development v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005). The exception to the rule is “if the land is subdivided into lots *only*, the reassessment may not occur until the next assessment date following a change in title to the land.”² *Id.* (emphasis in original).
- c. “When faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997) (original emphasis) (internal quotation marks omitted), *review denied*. The plain language of Ind. Code § 6-1.1-4-12 is unambiguous. First, the land must be subdivided into lots. Second, the statute clearly states that the land that has been subdivided into lots may be reassessed on the “next assessment date following a transaction which results in a change in legal or equitable title.” Ind. Code § 6-1.1-4-12. Here, the Petitioner does not dispute that the properties have been subdivided and that there have been multiple changes in equitable titles over the years. Thus, the Petitioner is not entitled to the “developer’s discount” under the clear language of the statute.³ See *Howser Development*, 833 N.E.2d at 1110 (developer that rezoned land but did not subdivide property was not entitled to “developer’s discount.”).
- d. More importantly, the statute and resulting “developer’s discount” simply do not apply here. The “developer’s discount” restricts the time in which a larger property

² “This exception is commonly referred to as the ‘developer’s discount.’” *Howser Development v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005).

³ The Petitioner argues that the statute was enacted to encourage development and, therefore, it should apply to the properties at issue. Even if, however, we could somehow read the statute to require a certain assessment, the Petitioner still does not meet the requirements established by the legislature for a property to qualify for the “developer’s discount.” As the Indiana Tax Court observed “[t]he Court cannot simply turn a blind eye to the[] facts. To do so would be to ignore the express requirements of Indiana Code § 6-1.1-4-12. Although [the Petitioner] may, indeed, be achieving the result the Indiana General Assembly intended when enacting that statute, it is not using the means required by the legislature.” *Howser Development*, 833 N.E.2d at 1111.

may be reassessed as single lots when the property is being developed. Here, the subject properties were subdivided long ago and have been assessed as single lots for decades. Further, the statute only restricts reassessment of the land until a change occurs in the title to the land. Here, again, the properties have changed ownership many times. Finally, Indiana Code § 6-1.1-4-12 does not provide for any certain value to be assessed to “undeveloped” property and the Petitioner has failed to cite to any authority for its claim that it is entitled to a \$1,050 per acre valuation on the property it holds for development. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- e. Thus, the Petitioner has not presented a prima facie case that the assessing officials improperly valued the subject properties on March 1 2002, and March 1, 2003, pursuant to Ind. Code § 6-1.1-4-12. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: **October 17, 2006**

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE
- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.