

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

**Petition #:** 72-007-02-1-4-00004  
**Petitioner:** Howser Development LLC  
**Respondent:** Vienna Township Assessor (Scott County)  
**Parcel #:** 051930002400107  
**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 an assessment appeal with the Scott County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated October 20, 2003.
2. The PTABOA mailed notice of its decision to the Petitioner on November 19, 2003.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on December 18, 2003. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 8, 2004.
5. The Board held an administrative hearing on April 22, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Scott Howser, Petitioner  
Milo Smith, Petitioner’s Representative
  - b) For Respondent: Teresa Rigsby, Scott County Assessor  
Richard Schultz, Vienna Township Representative

## **Facts**

7. The property is classified as commercial, as is shown on the property record card for parcel #051930002400107.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The Petitioner and the Respondent submitted witness and evidence lists, along with copies of documentary evidence, to each other prior to the hearing.
10. Assessed Value of subject property as determined by the Scott County PTABOA: Land Only - \$ 500,800
11. Assessed Value requested by Petitioner: Land \$ 12,600

## **Issues**

12. Summary of the Petitioner's contentions in support of the alleged error in the assessment:
  - a) The Petitioner presented a warranty deed showing the property belonging to Howser Development, an Indiana Partnership, since March 19, 1997. The Petitioner also presented warranty deeds indicating the partnership sold 1.751 acres and 1.361 acres respectively to Scottsburg Hospitality Associates, LLP from the subject parcel's original acreage.
  - b) The Petitioner contended that the developer's discount<sup>1</sup> should be applied to the property and that the commercial pricing schedule should not be used until the property is sold.
  - c) The Petitioner presented the property record card from the 1995 reassessment showing his property valued using agricultural pricing. The Petitioner contends that this is the proper pricing schedule for the subject property because it has not been developed yet.
  - d) The Petitioner's representative cited Ind. Code § 6-1.1-31-6(c) and Ind. Code § 6-1.1-31-7(d) as further defining True Tax Value: "True tax value does not mean fair market value." The Petitioner's representative further explained that the 2002 Real Property Manual, Page 2, defines true tax value as: "The market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property, less that portion of use value representing subsistence housing for its owner."
  - e) The Petitioner presented a signed lease agreement as of April 22, 2002, for a company to erect a sign on the property for advertising purposes. The sign generates \$5,000 per year. The Petitioner also submitted a page from his Federal Income Tax Return, indicating that the \$5,000 is included in the gross rents line of the Form 8825.

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<sup>1</sup> Valuing land on an acreage basis under Ind. Code § 6-1.1-4-12 is commonly referred to as the "developer's discount."

13. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent contended that all of the land in the area is priced according to the land order. The base rates are according to market value for the each site in the county. A copy of the land order was submitted as Exhibit 3.
  - b) The Respondent submitted a copy of the zoning change made on October 11, 1995, zoning the property from R-1 One-family Residential to GB – General Business. A copy of the zoning resolution is submitted as Exhibit 5.
  - c) The Respondent provided several sales disclosures from the area with the sales prices ranging from \$150,000 to \$700,000, including the subject property at \$300,000. The Respondent also submitted the Vienna Township sales data sheet used to determine the commercial values for Vienna Township, along with a copy of the Commercial Neighborhood Valuation Form.

### **Record**

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

- a) The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR #5862.
- c) Exhibits:
  - Petitioner Exhibit 1: Signed statement granting Milo Smith the authority to represent Howser Development, LLC.
  - Petitioner Exhibit 2: Warranty Deed conveying the land on September 19, 1995 to Charles Ray, Scott Allen, H. Patrick, and John Paul Howser, as tenants in common ¼ each.
  - Petitioner Exhibit 3: Warranty Deed conveying the land to Howser Development LLC, an Indiana Partnership, on March 19, 1997.
  - Petitioner Exhibit 4: Warranty Deed conveying 1.751 acres of the subject land to Scottsburg Lodging Associates, LLP on March 19, 1997.
  - Petitioner Exhibit 5: Warranty Deed conveying 1.361 acres to Scottsburg Lodging Associates, LLP on December 16, 1999.
  - Petitioner Exhibit 6: Copy of Page 2 from the 2002 Real Property Manual defining True Tax Value.
  - Petitioner Exhibit 7: Copy of the 1995 property record card with the land being priced from the agricultural pricing schedule.
  - Petitioner Exhibit 8: Copy of Form 8825 showing that \$5,000 is the gross rent received for the advertising sign placed on the subject property after March 1, 2002.
  - Petitioner Exhibit 9: Copy of lease for the advertising sign.

Respondent Exhibit 1: Letter of Authorization for Richard Schultz.  
Respondent Exhibit 2: Letter of Authorization for Teresa Rigsby.  
Respondent Exhibit 3: Land Order for Vienna Township.  
Respondent Exhibit 4: Sales Disclosure.  
Respondent Exhibit 5: Change in Zoning.  
Respondent Exhibit 6: Property Photographs.  
Respondent Exhibit 7: Howser Property Record Card, March 1, 2000.  
Respondent Exhibit 8: Howser Property Record Card, March 1, 2002.  
Respondent Exhibit 9: Howser Property Record Card, March 1, 2002, after Form 130 changes.  
Respondent Exhibit 10: Howser Property Record Card, March 1, 2004.  
Respondent Exhibit 11: Area 05-19 Old Map.  
Respondent Exhibit 12: Area 05-19 Current Map.  
Respondent Exhibit 13: Comparable Sales-Sales Disclosures w/PRC's.

d) These Findings and Conclusions.

### Analysis

15. At the hearing the Petitioner presented certain rebuttal documents that were not exchanged five days prior to the hearing. The evidence will be admitted over the objection of the Respondent.
16. The most applicable governing law:
- a) Ind. Code § 6-1.1-4-12: 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. If improvements are added to real property, the improvements shall be assessed. An assessment or reassessment made under this section is effective on the next assessment date. However, if the 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. No petition to the State Board of Tax Commissioners is necessary with respect to an assessment or reassessment made under this section.
  - b) 2002 Real Property Assessment Manual, Page 2: "True Tax Value, therefore, is defined as: The market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property."
  - c) A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would 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).
  - d) 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. Wash. Twp. 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”).

17. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner contended that the developer’s discount should be applied to the subject property as the land had not been sold, was priced as agricultural land in the past assessment, and was not being used in a commercial capacity at the time of the 2002 reassessment.
  - b) There is no evidence in the records indicating the subject property has been subdivided into lots, as seems to be required by Ind. Code §6-1.1-4-12 to apply. Without evidence showing the subject property was subdivided into lots, there can be no developer’s discount applied.
  - c) In any case Ind. Code §6-1.1-4-12 further states: “If land is rezoned for, or put to a different use, the land shall be reassessed on the basis of its new classification.”
  - d) Evidence indicated the Petitioner requested in 1995 that the property be rezoned from one-family residential to General Business. Respondent’s Exhibit 5. Additionally, the Respondent introduced a photograph with a sign describing the property as “Howser Development [sic] Comm. Lots.” Respondent Exhibit 6. Clearly, the new classification of the land since the rezoning is commercial/industrial, as assessed.
  - e) The Petitioner further contended that the True Tax Value of the property was established by the rental income of \$5,000 generated by an advertising sign on the property.
  - f) However, the Respondent introduced a sales disclosure form indicating the parcel originally sold for \$325,000 in 1995. (Respondent’s Exhibit 4). The Respondent submitted two additional sales disclosure forms from 2003. These forms indicate the Petitioner sold one acre of this parcel for \$300,000. The Petitioner also sold an additional 2.75 acres from this parcel for \$750,000. (Respondent’s Exhibit 13).
  - g) The property is currently assessed at a base rate of \$150,000 per acre.<sup>2</sup> Market evidence of actual sales by the Petitioner therefore supports the current assessment and refutes the Petitioner’s claim for a lesser value.

### **Conclusion**

18. The Petitioner did not present probative evidence indicating an error in the assessment. Therefore, there is no change in the assessment as the result of this appeal.

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<sup>2</sup> One acre of the parcel used as a retention pond is currently assessed at a base rate of \$5,000.

## **Final Determination**

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

ISSUED: \_\_\_\_\_

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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.**