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

Petitions:	**03-009-14-1-4-00125-16**
	03-009-15-1-4-00345-15
	03-009-16-1-4-02141-16
	03-009-17-1-4-00792-17
Petitioner:	**Tom's Commercials, LLC**
Respondent:	**Bartholomew County Assessor**
Parcel:	**03-05-22-000-002.602-009**
Assessment Year:	**2014, 2015, 2016, & 2017**

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

Procedural History

1. The Petitioner initiated its 2014, 2015, 2016, and 2017 assessment appeals with the Bartholomew County Assessor. For the 2014 assessment year the Petitioner initiated the appeal on November 17, 2014. On January 6, 2016, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner relief. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board on January 21, 2016.

2. The Petitioner initiated its 2015 appeal on August 10, 2015. On November 17, 2015, the PTABOA issued its determination denying the Petitioner relief. The Petitioner filed a Form 131 with the Board on December 31, 2015.

3. The Petitioner initiated its 2016 appeal on June 30, 2016. On October 28, 2016, the PTABOA issued its determination denying the Petitioner relief. The Petitioner filed a Form 131 with the Board on December 12, 2016.

4. The Petitioner initiated its 2017 appeal on May 8, 2017. The Petitioner signed a Standard Form Agreement to forego the PTABOA hearing on May 25, 2017, and filed a Form 131 directly with the Board on June 15, 2017.

5. The Petitioner elected the Board's small claims procedures for each year under appeal. On August 10, 2018, the Board's designated administrative law judge (ALJ) Patti Kindler held a consolidated hearing. She did not inspect the property.

6. Certified tax representative Milo Smith appeared for the Petitioner. County Assessor Lew Wilson appeared for the Respondent. Tom Wetherald was a witness for the Petitioner. Local government representative Virginia Whipple was a witness for the Respondent. All of them were sworn.

7. The property under appeal is a vacant 4.2-acre lot located on Highway U.S. 31 North in Columbus.

8. For 2014, 2015, and 2016 the PTABOA determined a total land value of $44,100 for each year. The parties agree the total land assessment for 2017 was also $44,100.

9. The Petitioner did not request a specific value, only that the "developer's discount" be reinstated for each year.

Record

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

a) A digital recording of the hearing,

b) Exhibits:

Petitioner Exhibit 1:	2011 and 2012 subject property record cards,
Petitioner Exhibit 2:	2016 subject property record card,
Petitioner Exhibit 3:	2017 subject property record card,
Petitioner Exhibit 4:	Copy of a memorandum issued by the Department of Local Government Finance (DLGF) on February 12, 2008,
Petitioner Exhibit 5:	2009 subject property record card,
Petitioner Exhibit 6:	Copy of Ind. Code § 6-1.1-4-12,
Petitioner Exhibit 7:	Copy of a plat map from Premier Ag Co-op, Inc.,
Petitioner Exhibit 8:	Copy of a photograph of a realty sign,
Petitioner Exhibit 9:	Copy of the Skotzke Minor Subdivision re-plat of the subject property,
Petitioner Exhibit 10:	2018 property record card for Skotzke Minor Subdivision "part of lot 2,"
Petitioner Exhibit 11:	2018 property record card for Skotzke Minor Subdivision "lot 1,"
Petitioner Exhibit 12:	2018 property record card for Heflin-Lockhart Minor Subdivision "lot 1B."
Respondent Exhibit A:	Curricula Vitae for Virginia Whipple and Lew Wilson,
Respondent Exhibit B:	"Statement of Professionalism,"
Respondent Exhibit C:	2014 subject property record card,
Respondent Exhibit D:	2015 subject property record card,
Respondent Exhibit D1:	2016 subject property record card,
Respondent Exhibit D2:	2017 subject property record card,
Respondent Exhibit E:	Aerial map of the subject property,
Respondent Exhibit F:	Aerial "overview" map of the subject property,

Respondent Exhibit G:	Zoning map,
Respondent Exhibit H:	E-mail from the Senior Planner for the City of Columbus Emilie Pinkston to Dean Layman dated August 8, 2018,
Respondent Exhibit I:	Screenshots of the subject property's transfer history,
Respondent Exhibit J:	Copy of page 65 from the Real Property Assessment Guidelines.

c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Contentions

11. Summary of the Petitioner's case:

a) The subject property's assessment is too high. When the Assessor removed the "developer's discount" in 2012 the assessment increased from $6,200 to $44,100. It was also at this time the pricing of the land was changed from agricultural to commercial. *Smith argument; Pet'r Ex. 1, 2, 3, 5.*

b) The property qualifies for the "developer's discount." The Petitioner purchased the property from a land developer and the use "has never changed." The Petitioner is considered a "land developer." The Petitioner buys and sells real estate to develop and resell "to make a living." And owns "probably close to fifty properties" in Bartholomew County. The Petitioner owns a lot located on Second Street that was re-platted in 2017 indicating "he is developing it." *Smith argument* (*citing* Ind. Code § 6-1.1-4-12)*; Wetherald testimony; Pet'r Ex. 5, 6, 7, 8.*

c) When he purchased the property, the Petitioner received his "financial encouragement" through the "developer's discount" to buy the undeveloped land and develop it but "has had that financial encouragement taken from him."[1] Here the Petitioner re-platted the subdivision that includes the subject property and sold "lot 1" to Heartland Dream, "lot 2" was sold to Dollar General, and "lot 1B" was sold to Wexford of Taylorsville. Wexford of Taylorsville built 32 apartments that would not have been built if the Petitioner had not "stuck his neck out and taken a chance to develop" the property. *Smith argument; Pet'r Ex. 9, 10, 11, 12.*

d) At this time, the Petitioner has no current plans for developing the subject property because it is "low land." For this reason, the property is not marketable. When the Petitioner attempted to develop the property in 2017, county planning officials informed him that he had to "build it up a minimum of two feet" to "put anything" on the property. It is not financially feasible to "build the property up." This issue has

[1] The Petitioner purchased the land in 2005 and benefited from the "developer's discount" from 2007 until it was removed for the 2012 assessment year.

delayed the property's development. *Smith argument; Wetherald testimony.*

12. Summary of the Respondent's case:

    a) The subject property is correctly assessed as commercial usable undeveloped land. *Whipple argument; Resp't Ex. C, D, D1, D2.*

    b) The Respondent does not "contest" that the Petitioner is a land developer. However, the Respondent argues that according to the 2005 legislative rules it did not matter if the Petitioner was a developer, once the land transferred to a new owner the "developer's discount" was "lost." The "developer's discount" should have been removed in 2005 when the Petitioner purchased the property because he did not qualify for the discount.[2] After January 1, 2006, land could transfer from one developer to another without the new developer losing the "developer's discount," but the subject property's sale occurred in 2005. The Assessor did not realize the Petitioner was erroneously receiving the "developer's discount" until the 2012 assessment year and it was removed at this time. *Wilson testimony; Whipple testimony; Resp't Ex. I.*

    c) The Respondent also discovered the subject property was erroneously priced as agricultural land. This classification was changed to "commercial usable undeveloped" land. The land has been "zoned commercial since 1958" and it should have been priced as "commercial land" even when it was owned by the former owners. According to the DLGF, the controlling factor that determines whether land is to be assessed as agricultural is "whether the land was purchased for an agricultural use" and "whether the land is currently used and zoned for agricultural purposes." Agricultural land "must produce an income" to benefit from agricultural pricing. *Whipple argument (referencing Pet'r Ex. 4); Resp't Ex. C, G, H, J.*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 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). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

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

[2] The 2009 subject property record card does not indicate the former owner was receiving a "developer's discount" in 2003 or 2006. There is no entry for the 2005 assessment year. According to the property record card, the "developer's discount" was not applied until 2007, two years after the Petitioner purchased the property.

board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

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 IC 6-1.1-15." Under those circumstances, "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). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

16. Here, the parties agree the assessed value of the property did not increase by more than 5% from 2013 to 2014. In fact, the assessment was the same in 2013 as it was in 2014. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner. Assigning the burden for the remaining years depends on how the Board resolves the prior year's appeal.

Analysis

17. The Petitioner presented probative evidence that the subject property is eligible for the "developer's discount" for the 2014, 2015, 2016, and 2017 assessment years. The Board reaches 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." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

    b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2005); *see also Long v. Wayne Twp. Ass'r,* 841 N.E.2d 466, 471 (Ind. Tax Ct. 2006). For the 2014 and 2015 assessments, the valuation date was March 1 of each respective year. *See* Ind. Code § 6-1.1-4-4.5(f). For the 2016 and 2017 assessments, the valuation date was January 1 of each respective year. *See* Ind. Code § 6-1.1-2-1.5.

    c) The record is silent as what a more accurate market value-in-use for the subject property might be. The Petitioner merely claims to be entitled to the "developer's

discount" for each year under appeal.

d) The parties do not dispute the relevant facts. The parties do not "contest" the property has been owned by a "land developer" as defined by Ind. Code § 6-1.1-4-12(a) at all relevant times and the property is "land in inventory" as defined by Ind. Code § 6-1.1-4-12(b). However, the Respondent argues the property is not eligible for the "developer's discount" because it changed hands from developer to developer prior to the promulgation and effective date of Ind. Code § 6-1.1-4-12 (2006) and that the property is correctly zoned commercial because it is not used for farming purposes.

e) Here, the Board will address the Respondent's first contention. The Board must decide which version of Ind. Code § 6-1.1-4-12 should apply to these appeals. The Petitioner believes the 2006 statute is controlling, while the Respondent considers the 2005 version to be the relevant statute.

f) Prior to an amendment effective January 6, 2006, Ind. Code § 6-1.1-4-12 read in pertinent part:

> 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 reassessment 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 equitable title to that lot.

Under this version of the statute, land was reassessed on the basis of its new classification upon the occurrence of three events: when land was subdivided into lots, when land was rezoned, or when land was put to a different use. *Howser Dev. v. Vienna Twp. Ass'r,* 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005). An exception to this general rule was that if land assessed on an acreage basis was subdivided into lots, the lots could not be reassessed "until the next assessment date following a transaction which results in a change in legal title or equitable title to that lot." Indiana Code § 6-1.1-4-12 (2005). This exception is commonly known as the "developer's discount." *See Howser Dev.,* 833 N.E.2d at 1110.

g) The legislature amended Ind. Code § 6-1.1-4-12, effective January 1, 2006, to apply to assessment dates after December 31, 2005. The 2006 version of Ind. Code § 6-1.1-4-12 provides in part:

> (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.

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(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.

Ind. Code § 6-1.1-4-12.

h) The term "developer's discount" is somewhat misleading. The statute was amended in 2006, but the intent as explained by the Tax Court remains the same, encouraging developers to buy farmland, subdivide it into lots, and resell the lots. *See Howser Dev.*, 833 N.E.2d 1108; and *Aboite Corp. v. State Bd. of Tax Comm'rs,* 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001). 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. *See* Ind. Code § 6- 1.1-4-12(i). Agricultural land values tend to be lower. Consequently, where land was previously assessed with a lower agricultural land value, allowing it to retain that lower valuation for a longer time generally is an encouragement or benefit. 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. Rather than specifying agricultural land value, subsection 12(i) provides a limitation on when qualifying land is allowed to be reassessed and, until one of the specified events happens, the prior assessment classification is maintained.

i) Under the "developer's discount," amended in 2006, only three events trigger an assessor's authority to reassess a property on the basis of a new classification: transferring title to someone who is not a land developer, beginning construction of a structure, or getting a building permit. None of these apply to the subject property.

j) According to the Respondent, the subject property was assessed as agricultural acreage from 2005 when the Petitioner purchased it until the Respondent removed the "developer's discount" in 2012 and changed the land classification to undeveloped usable commercial pricing. However, the 2009 property record card offered into evidence by the Petitioner does not indicate that. Instead, this property record card indicates the subject property only benefited from the "developer's discount" after the PTABOA lowered the assessment via the "developer's discount" in 2007, two years

after the Petitioner purchased it, through a Correction or Error (Form 133) appeal. The subject property continued to benefit from the "developer's discount" until the 2012 assessment year when the Respondent removed the "developer's discount" and changed the property's classification to commercial. However, both parties offered extensive testimony that the property was previously priced using the "developer's discount" when the Petitioner purchased it and neither party addressed the 2009 property record card.

k) The Respondent argues the property's reclassification from agricultural to commercial acreage in 2012 was proper. According to the Respondent, Ind. Code § 6-1.1-4-13 allows for land to be assessed as agricultural land only when it is devoted to agricultural use. The Respondent argues the subject property has not been devoted to agricultural purposes because it is not farmed for a profit. The Petitioner did not dispute the property has not been recently farmed but did argue it was farmed when the former developer owned it.[3]

l) The Respondent's argument has some merit. The Board has frequently issued decisions determining that land was not entitled to be assessed as agricultural land when the property was not "devoted to agriculture." *See e.g., Neukum v. Hall Twp. Ass'r*, Petition No. 19-006-06-1-5-00019 (Ind. Bd. Tax Rev. 2008) stating:

> [H]ere the Petitioner admitted that, while he arranged to have hay cut, it was not his intention in 2006 to grow hay on the property. The Petitioner planted no crop. He pastured no animals. He simply chose to have the existing vegetation cut on the parcel. This falls well below the burden to show that the property is 'devoted' to agricultural use.

m) However, the Board has also noted in many circumstances that specific legislation trumps general assessment principles. *See e.g., JDPHD Investment Group v. Monroe Co. Ass'r*, Petition No. 53-005-07-2-4-00083 (Ind. Bd. Tax Rev. 2010) stating:

> [T]his is not a case where an assessor's valuation of a property according to the Assessment Guidelines is presumed to be accurate. And this is not a case where an assessor has discretion to choose among the cost method, the comparable sales method, the income capitalization method, or any other general accepted appraisal principles to determine the assessed value of the subject property because Ind. Code § 6-1.1-3-39(a) specifies how the assessed value must be determined.

n) The Tax Court in *Aboite* determined that the "developer's discount" statute is designed to encourage developers to buy farmland, divide it into lots, and resell the lots. *Aboite Corp.*, 762 N.E.2d at 258. In fact, the Court noted, "assuming arguendo

[3] The Petitioner testified that a neighboring farmer cuts the grass and bales "hay" to save on mowing expenses. According to the Petitioner, he is "bartering" the cost to mow the grass by allowing the farmer to bale hay.

that *Aboite* merely decided to 'hold off' in selling its vacant lot until a later date, the intent of the exception would prevail, and the land would continue to be assessed on its original agricultural acreage basis." *Id.* However, "because *Aboite* converted the vacant lot into an income-producing property," the Court found "the intent of the exception is frustrated." *Id.* Here, the Petitioner did not sell or build on the subject property; rather the property remained vacant and the use did not change.

o) As stated above, there is nothing in the record that disqualifies the Petitioner from the "developer's discount." The Petitioner is a developer holding vacant undeveloped land in inventory for future development. The Petitioner presented probative evidence that the "developer's discount" should not have been removed. Under the language of the "developer's discount" statute the pre-existing land classification cannot be changed unless certain events occur, and those events did not occur here. Therefore, based on *Aboite* we are not persuaded the prior classification can be changed.

Conclusion

18. The Board finds for the Petitioner. The subject property is entitled to keep its classification as agricultural land based on the "developer's discount" statute.

Final Determination

In accordance with these findings and conclusions, the 2014, 2015, 2016, and 2017 assessments must be changed to comply with these findings.

ISSUED: 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 of 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>.