REPRESENTATIVE FOR PETITIONERS: Stanley Gamso, Attorney

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

WENDY H. ELWOOD TRUST,	)	
	)	Petition Nos.: 03-024-21-1-5-00068-24
Petitioner,	)	03-024-22-1-5-00069-24
	)	03-024-23-1-5-00070-24
v.	)	03-024-21-1-5-00065-24
	)	03-024-22-1-5-00066-24
BARTHOLOMEW COUNTY	)	03-024-23-1-5-00067-24
ASSESSOR,	)	03-024-21-1-5-00071-24
	)	03-024-22-1-5-00072-24
Respondent.	)	03-024-23-1-5-00073-24
	)	03-024-21-1-5-00074-24
	)	03-024-22-1-5-00075-24
	)	03-024-23-1-5-00086-24
	)	
	)	Parcel Nos.: 03-95-32-140-000.115-024 (Lot 8A)
	)	03-95-32-140-000.116-024 (Lot 9A)
	)	03-95-32-140-000.128-024 (Lot 19)
	)	03-95-32-140-000.129-024 (Lot 20)
	)	
	)	Assessment Years: 2021-2023
	)	

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and having considered the issues, now finds, and concludes the following:

INTRODUCTION

1. The Wendy H. Elwood Trust appeals the 2021-2023 assessments for four vacant parcels, arguing that the Assessor inappropriately denied those parcels the benefit of the "developer's discount" under Ind. Code § 6-1.1-15-12. The Bartholomew County Assessor, however, moved for summary judgment because the Trust had previously

appealed the parcels' 2021 assessments on the same grounds and lost. Because we agree with the Bartholomew County Assessor that the doctrine of res judicata bars the Trust from relitigating its claims for that assessment year, we grant summary judgment for the Assessor on the Trust's 2021 appeals.

2. As for the parcels' 2022 and 2023 assessments, the developer's discount operates to prohibit "land in inventory" held by a "land developer" from being reclassified and reassessed based on its new classification until certain triggering events have occurred. Because the parcels were not reclassified, the developer's discount does not apply. Finally, the totality of the evidence shows each parcel's true tax value was $350,000 for both assessment years, and we order that the assessments be changed accordingly.

PROCEDURAL HISTORY

3. The Trust has appealed the assessments for the parcels (and predecessor parcels) that are the subject of these appeals every year since buying them in 2018. We discuss the relevant history for the Trust's previous appeals in our findings of fact. For now, we lay out the procedural history for the appeals currently before us.

A. Appeal petitions

4. The Trust appealed the 2021-2023 assessments of four vacant land parcels, which correspond to Lots 8A, 9A, 19, and 20 of Tipton Pointe Major Subdivision, Phase I in Columbus. It filed its petitions for 2022 and 2023 on June 14, 2022, and May 22, 2023, respectively. Several months later, on September 14, 2023, the Trust filed its petitions for 2021. As discussed in more detail below, the Trust had previously appealed the parcels' 2021 assessments. We will refer to those earlier appeals as the Trust's original 2021 appeals and to the appeals at issue here as the current 2021 appeals.

5. In its 2022 petitions, the Trust filled out Section II of the form, which is reserved for appeals of the current year's assessment. The Trust alleged that "[l]and assessments

should be based on ag pricing." In its petitions for 2023, the Assessor filled out Section III of the form, which is reserved for "Correction of Error Per IC 6-1.1-15-1.1(a) and (b), and claimed an error in the legality or constitutionality of the assessment. In both the 2022 and 2023 petitions, the Trust indicated it was preserving its appeal rights pending our determination of its original 2021 appeals.[1] In its current 2021 appeals, which were filed after we issued a determination unfavorable to the Trust on its original 2021 appeals, the Trust again claimed an error in the legality or constitutionality of the assessment. We will discuss the allegations from the Trust's current 2021 appeals in more detail below, when we rule on the Assessor's motion for summary judgment.

6. On January 2, 2024, the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") issued determinations denying the Trust's appeals and making no change to the assessments, which were as follows:

	2021	**2022**	**2023**
Lot 8A	$350,000	$298,800	$298,800
Lot 9A	$350,000	$391,100	$391,100
Lot 19	$350,000	$245,200	$245,200
Lot 20	$350,000	$209,600	$209,600
Total	$1,400,000	$1,144,700	$1,144,700

7. Disagreeing with the PTABOA's determinations, the Trust timely filed Form 131 petitions with us. In each petition, the Trust both appealed the parcel's assessed value and claimed an error in the legality or constitutionality of the assessment.

B. Pre-hearing motions

8. After granting several continuances as well as the Assessor's motion to remove the appeals from our small-claims docket, we set a hearing for March 27, 2025. On January 25, 2025, the Assessor filed the Assessor's Motion to Dismiss or Alternatively, Motion

[1] In two of its 2022 petitions, the Trust referred to pending appeals from 2018-2020 in addition the pending 2021 appeals.

for Summary Judgment ("summary judgment motion"), which addressed the Trust's 2021 appeals for all four parcels. In support of her motion, she designated the following evidence:

Exhibit A	*Wendy H. Elwood Trust v. Bartholomew Cty. Ass'r,* pet. Nos. 03-024-21-1-5-00025-22 etc. (IBTR July 7, 2023),
Exhibit B1	Form 130 for Lot 8A,
Exhibit B2	Form 130 for Lot 9A,
Exhibit B3	Form 130 for Lot 19,
Exhibit B4	Form 130 for Lot 20,
Exhibit C1	Form 115 for Lot 8A,
Exhibit C2	Form 115 for Lot 9A,
Exhibit C3	Form 115 for Lot 19,
Exhibit C4	Form 115 for Lot 20,
Exhibit D1	Form 131 for Lot 8A,
Exhibit D2	Form 131 for Lot 9A,
Exhibit D3	Form 131 for Lot 19,
Exhibit D4	Form 131 for Lot 20.

9. The Trust neither filed a response to the Assessor's motion nor requested an extension of time within which to do so.

10. The Assessor also filed a motion asking us (1) to convert the scheduled hearing on the merits to an oral argument on her summary judgment motion, and (2) to stay the proceedings pending our decision on that motion. On March 18, 2025, we issued an order denying the Assessor's requests and indicating that we would hear all pending matters at the scheduled hearing on the merits.

C. Hearing on the merits

11. Our designated administrative law judge, Erik Jones ("ALJ"), held a telephonic hearing on the Trust's appeals as scheduled. Neither he nor we inspected the subject parcels. The following people testified under oath: Smith, Bartholomew County Assessor Ginny Whipple, and Jonathan Scheidt, who the Assessor had hired to appraise the parcels.

12. The Trust submitted the following exhibits at the hearing:

Exhibit 1	IBTR final determination, dated July 7, 2023,
Exhibit 2	IBTR final determination, dated Dec. 12, 2022,
Exhibit 3	GIS photographs of subject property,
Exhibit 4	I.C. § 6-1.1-4-12,
Exhibit 6	I.C. § 6-1.1-15-20,
Exhibit 7	I.C. § 6-1.1-15-17.2,
Exhibit 8	2018 Property Record Card ("PRC") for Lot #8,
Exhibit 9	2018 PRC for Lot #9,
Exhibit 10	2018 PRC for Lot #10,
Exhibit 11	2018 PRC for Lot #11,
Exhibit 12	Statement of No Building Permits,
Exhibit 13	I.C. § 6-1.1-13-13,
Exhibit 14	Indiana Tax Court ruling, Case #23T-TA-0004,
Exhibit 15	IBTR determination in Lexington Square appeals, dated Mar. 24, 2022,
Exhibit 20	2021 Form 130 petition (Lot 8A),
Exhibit 21	2021 Form 131 petition (Lot 8A),
Exhibit 22	2022 Form 130 petition (Lot 8A),
Exhibit 23	2022 Form 131 petition (Lot 8A),
Exhibit 24	2023 Form 130 petition (Lot 8A),
Exhibit 25	2023 Form 131 petition (Lot 8A),
Exhibit 26	2021 Form 130 petition (Lot 9A),
Exhibit 27	2021 Form 131 petition (Lot 9A),
Exhibit 28	2022 Form 130 petition (Lot 9A),
Exhibit 29	2022 Form 131 petition (Lot 9A),
Exhibit 30	2023 Form 130 petition (Lot 9A),
Exhibit 31	2023 Form 131 petition (Lot 9A),
Exhibit 32	2021 Form 130 petition (Lot 19),
Exhibit 33	2021 Form 131 petition (Lot 19),
Exhibit 34	2022 From 130 petition (Lot 19),
Exhibit 35	2022 Form 131 petition (Lot 19),
Exhibit 36	2023 Form 130 petition (Lot 19),
Exhibit 37	2023 Form 131 petition (Lot 19),
Exhibit 38	2021 Form 131 petition (Lot 20),
Exhibit 39	2021 Form 131 petition (Lot 20),
Exhibit 40	2022 Form 130 petition (Lot 20),
Exhibit 41	2022 Form 130 petition (Lot 20),
Exhibit 42	2023 Form 130 petition (Lot 20),
Exhibit 43	2023 Form 131 petition (Lot 20).

13. The Assessor submitted the following exhibits:[2]

Exhibit 1	Assessor's Motion to Dismiss, or in the alternative, Motion for Summary Judgment,
Exhibit 2	Brief in support for Motion to Dismiss, or in the alternative, Motion for Summary Judgment,
Exhibit 3	Assessor's designation of evidence,
Exhibit 4	List of cases transferred weekly to Indiana Tax Court for 2023 and 2024,
Exhibit 5	Sales disclosure form, dated Dec. 11, 2017,
Exhibit 6	Warranty deed, dated June 26, 2023,
Exhibit 7	Warranty deed, dated Sep. 15, 2023,
Exhibit 8	PRCs for subject lots,
Exhibit 9	2021 appraisal report, prepared by Jonathan Scheidt,
Exhibit 10	2022 appraisal report, prepared by Jonathan Scheidt,
Exhibit 11	2023 appraisal report, prepared by Jonathan Scheidt.

14. When the parties had finished offering their evidence, the ALJ heard arguments both on the merits of the appeals and on the Assessor's summary judgment motion. The Assessor did not ask us to increase the parcels' assessments at that time.

15. Later that same day, however, the Assessor filed her "Clarification," indicating that she had offered Scheidt's appraisals as a request to increase the parcels' assessments. The Trust responded by moving to strike the Assessor's Clarification on grounds that the ALJ had not requested additional filings, and it asked us to award attorney fees as a sanction.

16. The record includes the following: (1) the parties' exhibits, (2) all petitions, motions, briefs, and other documents filed in these appeals, (3) all orders and notices issued by the Board or our ALJ, and (4) an audio recording of the hearing.

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[2] The Assessor offered four sets of exhibits, one for each parcel on appeal. Although the general description of the documents contained in Exhibits 6 through 11 are the same in each packet, the documents are parcel specific. For example, Exhibit 8 from each packet is a property record card for the parcel to which the packet corresponds. Where we are citing to parcel-specific exhibits, we will indicate that fact parenthetically (i.e.. "Ex 8 (Lots 8A, 9A, and 20)").

THE ASSESSOR'S DISPOSITIVE MOTION FOR THE 2021 APPEALS

17. If successful, the Assessor's summary judgment motion will dispose of the Trust's 2021 appeals. We therefore address that motion first.

A. Summary judgment standard

18. Our procedural rules allow parties to move for summary judgment "pursuant to the Indiana Rules of Trial Procedure." 52 IAC 4-7-3(a)(2).

19. Summary judgment is appropriate only where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake Cty. Prop. Tax Assessment Bd. of App.* 782, N.E. 2d 483, 487 (Ind. Tax Ct. 2002). The party moving for summary judgment must make a prima facie showing of both those things. *Coffman v. PSI Energy, Inc.,* 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest on its pleadings but instead must designate sufficient evidence to show a genuine issue exists for trial. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). In determining whether summary judgment is appropriate, we must construe all facts and reasonable inferences in favor of the non-movant. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).

20. As explained above, the ALJ heard arguments on the Assessor's summary judgment motion after the parties presented their evidence during the hearing on the merits. But that does not mean we may consider the evidence offered at the hearing in ruling on the Assessor's motion. On the contrary, because the Trust neither responded to the Assessor's motion nor sought an extension of time within which to do so, we are limited to considering the materials the Assessor designated in support of her motion. *See Homeq Servicing Corp. v. Baker*, 883 N.E.2d 95, 98-99 (Ind. 2008) (*citing Borsuk v. Town of St. John*, 820 N.E.2d 118, 123 n.5 (Ind. 2005)) (adopting "bright line" rule prohibiting consideration of responsive filings where a party doesn't file a response,

request an extension of time, or file an affidavit under Ind. Trial Rule 56(F) within 30 days of a summary judgment motion being filed).

21. That said, a court is not required to grant an unopposed summary judgment motion. *Murphy v. Curtis*, 930 N.E.2d 1228, 1233 (Ind. Ct. App. 2010). Instead, "summary judgment is awarded on the merits of the motion, not on technicalities." *Id.* (*quoting Parks v. State*, 789 N.E.2d 40, 48 (Ind. Ct. App. 2003). Thus, while the Trust's failure to timely respond to the Assessor's summary judgment motion precluded it from designating any evidence in opposition, that lack of response did not preclude the Trust from arguing that the Assessor failed to meet her initial burden of showing the absence of a genuine issue of material fact and her entitlement to judgment as a matter of law. With that in mind, we turn to the merits of the Assessor's motion.

B. Undisputed facts

22. Based on the Assessor's designations, we find the following undisputed facts.

23. On June 15, 2021, the Trust filed Form 130 petitions in its original 2021 appeals. In each petition, the Trust alleged that the parcel's assessment "should be based on the developer's discount." *Ex. A*. The PTABOA denied the Trust's appeals and determined values for the parcels ranging from $219,000 to $416,100. The Trust responded by filing a Form 131 petition for each parcel with us. *Id.*

24. At our April 11, 2023, hearing on the merits of the Trusts' original 2021 appeals, the parties disputed whether the parcels were entitled to the "developer's discount" under I.C. § 6-1.1-4-12(i). The Assessor also offered appraisals of the four parcels and asked us to change each parcel's assessment to $350,000. *Ex. A at 1*.

25. On July 7, 2023, we issued a final determination in the Assessor's favor. In reaching our determination, we found that the Trust had the burden of proof, even though each parcel's assessment had increased by more than 5% between 2020 and 2021. We recognized that

I.C. § 6-1.1-15-17.2 (repealed effective March 21, 2022), as interpreted by the Tax Court, operated to shift the burden of proof to an assessor where the challenged assessment represented an increase of more than 5% over the prior year. It also required the assessment to revert to the prior year's level if the assessor failed to offer probative evidence that "exactly and precisely" concluded to the challenged assessment. *Southlake Ind., LLC v. Lake Cty. Ass'r*, 181 N.E.3d 484, 489 (Ind. Tax. Ct. 2021). But we found that the statute did not apply because it had been repealed before our hearing on the Trust's appeals. After considering the parties' evidence, we found that the Trust had failed to meet its burden of proving it was entitled to the developer's discount. We further found that the appraisals were probative of the parcels' true tax values and ordered each parcel's assessment changed to $350,000. *Ex. A at 12.*

26. On September 14, 2023, the Assessor initiated the current 2021 appeals by filing four new Form 130 petitions, once again addressing the subject parcels' 2021 assessments. The Trust pointed to the Indiana Tax Court's September 1, 2023, decision in *Elkhart Cty. Ass'r v. Lexington Square, LLC*, for the proposition that "[t]he Assessor bore the burden of proving the Petitioner did not qualify for the developer's discount." *Exs. B1-B4.* In *Lexington Square*, the Tax Court held that I.C. § 6-1.1-15-17.2 applied to all appeals that were filed before the statute's repeal, and that remained pending after its repeal. *Elkhart Cty. Ass'r v. Lexington Square, LLC*, 219 N.E.3d 236, 244 (Ind. Tax Ct. 2023).

27. The PTABOA issued determinations denying the Trust relief. In doing so, the PTABOA summarized the parties' evidence and arguments, which addressed whether the parcels qualified for the developer's discount. The Trust then filed the Form 131 petitions that are now before us, once again citing to *Lexington Square* and claiming that the Assessor has the burden of proving the Trust does not qualify for the developer's discount. *Exs. D1-D4.*

C. Because the Trust's 2021 appeals are barred by the doctrine of res judicata, we grant the Assessor's summary judgment motion.

28. The Assessor argues that the doctrine of res judicata bars the Trust from relitigating the subject parcels' 2021 assessments. We agree.

29. Res judicata is a legal doctrine designed to "prevent repetitious litigation of disputes that are essentially the same, by holding a prior final judgment binding against both the original parties and their privies." *Becker v. State*, 992 N.E.2d 697, 700 (Ind. 2013). It applies to those cases "where there has been a final adjudication of the merits of the same issue between the same parties." *Gayheart v. Newman Foundry Co., Inc.*, 393 N.E.2d 163, 167 (Ind. 1979).

30. Res judicata may take two forms: claim preclusion, also known as estoppel by verdict, and issue preclusion, also known as collateral estoppel. *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1123 (Ind. Tax Ct. 1991). There are four elements that must be met to apply claim preclusion: (1) the former judgment must have been rendered by a court of competent jurisdiction; (2) the former judgment must have been rendered on the merits; (3) the matter now in issue was, or might have been, determined in the former suit; and (4) the controversy adjudicated in the former suit must have been between the parties to the present action or their privies. *T.R .v. A.W.*, 470 N.E.2d 95, 96 (Ind. Ct. App. 1984).

31. Principles of res judicata can be applied to administrative proceedings where (1) the issues sought to be estopped are within the agency's statutory jurisdiction, (2) the agency acts in a judicial capacity, (3) both parties have a fair opportunity to litigate the issues, and (4) the agency's decision can be appealed to a judicial tribunal. *Lindemann v. Wood*, 799 N.E.2d 1230, 1233 (Ind. Tax Ct. 2003).

32. As for application to our proceedings, we hold that (1) the Trust's claims fell within our jurisdiction under I.C. § 6-1.5-4-1(a)(1), (2) we acted in a judicial capacity in hearing the

Trust's claims, (3) the Trust fairly and fully litigated the claims at the hearing, and (4) the Trust had the right to appeal our decision to the Tax Court. As for whether the claims should be precluded, there is no dispute that the current 2021 appeals contest the subject parcels' 2021 assessments on grounds that the parcels are entitled to the developer's discount, which is the same claim raised and decided in the original 2021 appeals.

33. The Trust argues that our final determination of the original 2021 appeals was not on the merits because we erred in determining that I.C. § 6-1.1-15-17.2 did not apply and therefore wrongly assigned the burden of proof to the Trust instead of to the Assessor. Thus, the Trust contends that "irrespective of res judicata and issue preclusion," it did not have a fair and equitable hearing on the merits. The Trust also argues that the Assessor lacked authority to remove the developer's discount from the parcels. In short, the Trust contends that res judicata should not apply because our final determination of the original 2021 appeals was wrong.

34. Both the United States Supreme Court and Indiana courts have rejected similar arguments. *E.g., Federated Dept't Stores v. Moite*, 452 U.S. 394, 101 S.Ct. 2424, 2428, 69 L.Ed.2d 103 (1981); *Perry v. Gulf Stream Coach, Inc.*, 871 N.E.2d 1038, 1050 (Ind. Ct. App. 2007). As the Supreme Court explained, the res judicata effect of a final un-appealed judgment on the merits is not "altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case." *Moite*, 101 S.Ct. at 2428. On the contrary, "[a] judgment merely voidable because based on an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause of action." *Id.* (quoting *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 325 (1927)). To hold otherwise would defeat the very purpose of res judicata. *Id.*

35. We hold that (1) we were competent to decide the original 2021 appeals, (2) the decision was rendered on the merits after a full hearing, (3) the right to the developer's discount was determined in the original 2021 appeals, and (4) the same parties are involved in both

appeals. Because the undisputed facts show that the Trust's original 2021 appeals bar the current 2021 appeals, we grant summary judgment to the Assessor on those current appeals.[3]

THE TRUST'S 2022 AND 2023 APPEALS

FINDINGS OF FACT

A. History of the subject land's ownership, classification, and assessment

36. In December 2013, Carr Road Development, LLC bought approximately 60 acres of land located along Carr Hill Road. The purchase included Lots 2-5 of the Tipton Lakes – Southwest Administrative Subdivision, which in turn included what are now the subject parcels. *Whipple testimony.*

37. The land composing the subject parcels was classified as residential when Carr bought it. The Assessor did not change the classification, but she "valued the ground as developer's discount." *Whipple testimony.* She did not explain what she meant by the last part of that statement, but as discussed in more detail below, we find that she used the base rate for residential land and applied a negative influence factor to arrive at her assessments.

38. In August 2017, Carr subdivided Lot 5 into 18 separate lots and two common areas. These 18 lots and common areas became known as Tipton Pointe Major Subdivision Phase I. *Whipple testimony.*

39. To develop the lots for resale as residential properties, Carr invested roughly $1.5 million to excavate roads; install sidewalks and curbs; and install septic, sewer, electrical, and water hookups. *Whipple testimony.*

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[3] Our grant of summary judgment moots the Assessor's alternative motion to dismiss the Trust's 2021 appeals.

40. Sometime in 2017, Mark and Wendy Elwood verbally agreed to buy four lakefront lots (Lots 8 through 11) in Tipton Pointe for $1,550,000. Because the Elwoods planned to build a home on the lots, they asked Carr to combine and re-plat them into two lots. Carr obliged, and they were re-platted as Lots 8 and 9. These two lots would ultimately become the four subject parcels. Carr later sold two lots designated as Lots 10 and 11 to Janeen Sprague in August 2018. Presumably, Carr had subdivided a larger lot and re-platted it as Lots 10 and 11 after Carr combined the original Lots 8 through 11 into Lots 8 and 9 at the Elwoods' request. *Whipple testimony; Pet'r Exs. 8-11; Resp't. Ex. 5 (Lots 8A, 9A, 19, and 20).*

41. Before closing on the purchase of Lots 8 and 9, the Elwoods bought an existing home elsewhere. Given Carr's reliance on the verbal agreement, however, the Elwoods nevertheless proceeded with buying Lots 8 and 9. The sale closed in December 2017, with Carr transferring title to the Trust. *Smith testimony; Whipple testimony; Resp't Ex. 5.*

42. The Elwoods had Carr subdivide and re-plat the two lots back into four smaller lots (Lots 8A, 9A, 19, and 20) to make them easier to sell. In August 2020, the Assessor followed suit and split the existing two tax parcels into four parcels corresponding to the subdivided lots. *Smith testimony; Whipple testimony; Resp't Ex. 8 (Lots 8A, 9A, 19, and 20).*

43. At no time before or after the Trust's purchase did the Assessor reclassify the land, which continued to be classified as "500 Vacant—Platted Lot"—a residential classification. But some of the property record cards include the following notation: "18 p 19 Developer's discount removed from land." *Smith testimony; Whipple testimony; Pet'r Ex. 9; Resp't Ex. 8 (Lots 8A, 9A, 19, and 20).*

44. On May 27, 2020, the Trust appealed its 2018-2020 assessments arguing that it was entitled to the "developer's discount." The PTABOA voted to "envoke (sic) DD" and set

the 2018-2019 assessments for the two parcels (Lots 8 and 9) at $1,900 and $1,800, respectively. It set the 2020 assessment for each lot at $5,200. *Pet'r Exs. 2, 8.*

45. The Assessor accomplished that directive by applying a -99% influence factor to the value derived from using the adjusted front-foot base rate for residential platted lots in the assessment neighborhood. That is the same way she determined the 2018 assessments for the two lots Sprague later bought from Carr. *See Pet'r Exs. 2, 8-11.* We therefore find that the Assessor applied that influence factor to land she determined was held by a developer, regardless of how the land was classified.

46. The Assessor appealed the PTABOA's determination for the 2018-2020 assessments, and we found, among other things (1) that the Trust raised only subjective errors, and (2) that its Form 130 petitions for the 2018 and 2019 assessment dates were not timely to contest such errors. We therefore concluded that the PTABOA lacked authority to reduce those assessments. *Pet'r Ex. 2 at 10.*

47. As for the 2020 assessment date, we found that the Trust's Form 130 petition was timely and that the Assessor, who had the burden of proof, failed to prove the parcels did not qualify for the developer's discount. The parties focused their arguments on whether the Trust was a "land developer" within the meaning of Ind. Code § 6-1.1-4-12. Although we assumed the parcels had been reclassified in 2018, we did not make a specific finding to that effect. We also explained that even if the Assessor had negated the parcels' eligibility for the developer's discount, she still might not have been entitled to relief because she failed to offer probative market-based evidence of the parcels' market value-in-use.[4] *Pet'r Ex. 2.*

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[4] The Indiana Tax Court affirmed our determination on judicial review. *Wendy Elwood Trust v. Bartholomew Cty. Ass'r*, 217 N.E.3d 1286 (Ind. Tax Ct. 2023).

48. While the 2018-2020 appeals were pending, the Trust filed its original 2021 appeals. As already explained in discussing the undisputed facts from the Assessor's summary judgment motion, we determined the Trust failed to meet its burden of showing that the Assessor had improperly denied the parcels the developer's discount. While the record in that case showed the predecessor parcels (Lots 9 and 10) were classified as residential in 2020, it was silent as to how the land was classified before then. *Pet'r Ex. 1.*

49. In July 2023, after the last valuation date on appeal, the Trust transferred the four parcels to Chase & Jake Holdings, a company managed by Mark Elwood. In September 2023, Chase & Jake sold the parcels to Booher Development, LLC. *Smith testimony; Whipple testimony; Pet'r Ex. 12; Resp't. Ex. 7 (Lots 8A, 9A, 19, 20).*

50. Since 2018, neither the Trust nor either of the Elwoods has bought any vacant land aside from the subject parcels. And there is no evidence showing that either the Trust or the Elwoods intended to buy any other land to hold for resale. *Whipple testimony.*

B. Scheidt appraisals

51. The Assessor hired Jonathan Scheidt, an Indiana certified residential appraiser, to appraise the market value-in-use for each parcel as of the January 1, 2021, 2022, and 2023 valuation dates. He certified that his appraisals complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Scheidt testimony*; *Resp't Exs. 9-10 (Lots 8A, 9A, 19, and 20).*

52. Scheidt initially considered all three approaches to value: the sales-comparison, income, and cost approaches. Because he found the cost and income approaches inapplicable to the Trust's unimproved lots, however, he developed only the sales-comparison approach. Scheidt looked for sales of nearby waterfront lots. Although he would have preferred to rely on sales from within one year of each valuation date, the limited amount of sales data forced him to expand that search parameter. He settled on four waterfront lots that sold

between May 2017 and January 2021. *Scheidt testimony; Resp't Ex. 9 (Lots 8A, 9A, 19, and 20).*

53. Scheidt then considered adjusting the sale prices to account for transactional differences between his four comparable sales and the posited sale of the subject property, as well as for differences in property characteristics. He did not make any adjustments for differences in market conditions, pointing to the lack of overall sales in the area and to the fact that the Trust bought the land at issue for $1,550,000 in 2017, and sold it for the same price nearly seven years later. *Scheidt testimony; Resp't Ex. 9 (Lots 8A, 9A, 19, and 20).*

54. Turning to property characteristics, Scheidt explained that location is the primary driver of value for lake properties. Three of the comparable lots were on a canal or cove. According to Scheidt, those locations provide an inferior view of the lake in comparison to the subject parcels, which are on the main body of the lake. He therefore adjusted the sale prices for those three lots upward by $125,000. He based his adjustment partly on his analysis of two sets of paired sales in which one sale involved a lot on the main body of the lake and the other involved a lot on a canal or cove. Because Scheidt found that the remaining comparable lot had a similar lake view as the subject parcels, he did not adjust its sale price. *Scheidt testimony; Resp't Ex. 9 (Lots 8A, 9A, 19, and 20).*

55. The adjusted sale prices ranged from $345,000 (Sale 3, which Scheidt did not adjust for view) to $375,000. Scheidt reconciled those adjusted prices to a value of $350,000 for each subject parcel as of all three assessment dates. *Scheidt testimony; Resp't Ex. 9 (Lots 8A, 9A, 19, and 20).*

56. Scheidt based his appraisals on objective market data and applied generally accepted appraisal principles. We find his valuation opinions credible. We further find that his opinions more likely than not represent the parcels' true tax values.

CONCLUSIONS OF LAW AND ANALYSIS

A. The preponderance of the evidence shows that the Assessor did not improperly deprive the parcels of the developer's discount.

1. In the 2022 appeals, the Assessor has the burden of proof for Lot 9A, but not for the rest of the parcels. Assigning the burden of proof is not outcome-determinative, however.

57. Generally, a taxpayer has the burden of proof when challenging a property tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal the property's true tax value. I.C. § 6-1.1-15-20(a) (effective March 21, 2022).

58. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b). Subject to certain exceptions, none of which apply here, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.*

59. If the burden has shifted, and the "totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).

60. We begin with the assumption that I.C. § 6-1.1-15-20 applies to these appeals. On its face, the statute addresses only valuation issues. Although the Trust's Form 131 petitions challenged the legality or constitutionality of the subject parcels' assessments, they also purported to challenge the parcels' assessed values. And as explained below, the developer's discount, the correct application of which is the focus of the Trust's claims, governs how vacant land is classified and assessed. It therefore necessarily implicates a property's assessed value.

61. That leads to the next question: should we view the subject parcels separately or together for purposes of applying I.C. § 6-1.1-15-20? That matters because the parcels' combined assessment, as well as the individual assessments of Lots 8A, 19, and 20, decreased between 2021 and 2022, while Lot 9A's assessment increased by 11.7%. If we view the parcels together, we must start with the presumption that the 2022 assessment reflects the property's true tax value. If we view them separately, however, that presumption applies only to Lots 8A, 19, and 20, and the Assessor has the burden of proof for Lot 9A.

62. We find that the parcels should be viewed separately. We begin by recognizing that parcel numbers are simply administrative tools used by assessing officials. *Cedar Lake Conference Ass'n v. Lake Cty. Prop. Tax Assessment Bd. of App.*, 887 N.E.2d 205, 208-09 (Ind. Tax Ct. 2008). The mere fact that an assessor has divided a property into multiple parcels, therefore, does not govern how we apply I.C. § 6-1.1-15-20 or how we should view a property's value. Instead, we have typically avoided piecemeal approaches to those questions. Where multiple parcels are bought together and used as a single economic unit, we consider them together.

63. Applying those principles to these appeals, we find that the Trust treated the parcels as separate properties rather than as a single economic unit. We are persuaded by the fact that the Trust had Carr subdivide the land into four parcels to make them easier to sell. The fact that the parcels sold in a single transaction after the last assessment date on appeal does not change our conclusion. Without additional information, that fact says more about how the buyer intended to treat the parcels than about how the Trust treated them. Finally, the only valuation evidence in the appeals—Scheidt's appraisal opinions—supports treating the parcels individually.

64. We therefore find that for the 2022 appeals, we must presume the challenged assessments for Lots 8A, 19, and 20 are correct, but the Assessor has the burden of proof for Lot 9A. Determining who has the burden of proof for the 2023 appeals necessarily depends on our value determinations for 2022. That said, determining who has the burden of proof is

not outcome-determinative in these appeals. We are the trier of fact in property tax appeals, and our charge is to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence" before us. I.C. § 6-1.1-15-20(f). As discussed below, the preponderance of the evidence shows that the developer's discount does not apply to any of the parcels, and the totality of the evidence shows that each parcel's true tax value was $350,000 for both the 2022 and 2023 assessment dates.

2. The developer's discount does not apply because the Assessor did not reclassify the parcels and reassess them based on their new classification.

65. As shown by I.C. § 6-1.1-4-12, the "developer's discount" is a misnomer and does not represent a discounted price. Instead, it prohibits certain land from being reclassified and assessed based on its new classification absent specific triggering events:

> (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.* . . . . The determination of whether a person qualifies as a land developer shall be based upon whether such person satisfies the requirements contained in this subsection, and no consideration shall be given to either the person's industry classification, such as classification as a developer or builder, or any other activities undertaken by the person in addition to holding 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.
>
> . . .
>
> (e) Except as provided in subsections (i), (j), and (k), 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 the real property, the improvements shall be assessed.

(g) An assessment or reassessment made under this section is effective on the next assessment date.

. . .

(i) Except as provided in subsection (k) and 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. . . .

I.C. § 6-1.1-4-12 (emphasis added).

66. The statute "promotes commercial development by allowing a developer's land to be assessed on the basis of its original (i.e., its pre-purchase) classification until an objective event signaling the commencement of development occurs." *Hamilton Cty. Ass'r v. Allisonville Rd. Dev., LLC*, 988 N.E.2d 820, 823 (Ind. Tax Ct. 2013). Generally, where acreage is divided into lots or land is rezoned for, or put to, a different use, the land must be reclassified and assessed based on its new classification. Subsection (i), which is commonly referred to as the "developer's discount," creates an exception to that rule. The developer's discount prohibits "land in inventory"—i.e., land that a "land developer" holds for sale in the ordinary course of its trade or business—from being reclassified and reassessed until one of three additional triggering events occurs: (1) the land developer transfers the property to someone who is not a land developer; (2) a structure is built on the land; or (3) a building permit is issued. Generally, both the developer's discount and the larger statute of which it is a part, were "designed to encourage developers to buy farmland, subdivide it into lots, and resell the lots." *Allisonville Rd. Dev.*, 998 N.E.2d at 823 (quoting *Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001).

67. Even if we assume the Trust qualified as a land developer and the subject parcels qualified as land in inventory, the Assessor did not reclassify the parcels and reassess them based on their new classification. The land at issue has been classified as residential as far back as her records go. It was classified as residential when it was part of a larger platted lot that Carr bought in 2013, and it retained that classification when Carr sold the land to the Trust. Thus, while the Assessor changed the land's assessed value after the Trust bought it, she did not reassess the land based on a new classification.

68. We have never found otherwise. Based on the posture of the 2018-2020 appeals, where the PTABOA had voted to ""[e]nvoke the developer's discount" in lowering the assessments and the Assessor had the burden of proving those assessments were wrong, we assumed the land had been reclassified. But we did not make a finding to that effect. And in the Trust's original 2021 appeals, we found that there was no evidence to show how the parcels had been classified before 2020.

69. The parties appear to labor under a mistaken understanding of what the developer's discount is. They seem to believe that it either (1) represents a literal discount, as reflected by the Assessor's application of a -99% influence factor to the subject parcels following the PTABOA's determination in the Trust's 2018-2020 appeals and to other parcels she believed qualified for the discount, or (2) requires land in inventory to be assessed as agricultural.

70. Neither is true. Subsection (i) does not provide a discount: it simply delays certain land—i.e. land that has been subdivided, re-zoned, or put to a different use—being reclassified and reassessed under the new classification until one of the specified triggering events occurs. In the classic case, which the Tax Court has recognized as the impetus behind the statute's adoption, if a "land developer" buys "land in inventory" that is classified as agricultural and then rezones the land as residential, the land must continue to be assessed as agricultural until one of the triggering events listed in subsection (i) occurs. The statute does not freeze the assessment at a given value. On the

contrary, if the agricultural base rate increases or decreases, so will the assessment. Nor does the statute mandate agricultural classification:[5] if land is classified as residential before being bought by a land developer, it cannot be reclassified and reassessed as something else until one of the triggering events occurs. That includes a prohibition on reclassifying and reassessing the land as agricultural.

B. We find that each parcel's 2022 and 2023 assessment must be changed to $350,000.

71. But that is not the end of our analysis. As explained above, the Trust's Form 131 petitions put the parcels' assessed values at issue. We must therefore determine whether the totality of the evidence proves that the property's true tax value differs from the challenged assessments (or the prior year's assessment for Lot 9A, where the Assessor had the burden of proof for at least the 2022 assessment date).

1 The totality of the evidence shows that each parcel's true tax value was $350,000 for both assessment dates.

72. We therefore turn to the Assessor's valuation evidence. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. 6-1.1-31-6(c), (e). Instead, it is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value-in-use," which it in turn defines as "[t]he 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." MANUAL at 2. Evidence in an assessment appeal should be consistent with that standard. For example, a market value-in-use

[5] There is one exception. Subsection (k) mandates an agricultural assessment when land is acquired by a developer from a school corporation or a local unit of government that acquired the land in a tax sale and has held the land for less than three years. I.C. § 6-l. l-4-12(k). The Trust did not acquire the subject parcels from either a school corporation or a local unit of government. Thus, this subsection does not apply.

appraisal prepared in accordance with USPAP will often be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

73. The Assessor offered Scheidt's USPAP-compliant appraisals for each parcel. Scheidt used a generally accepted methodology—the sales-comparison approach—to estimate the parcels' market values-in-use as of the relevant valuation dates. And he supported both his selection of comparable properties and his adjustments to their sale prices. The Trust did nothing to impeach or rebut Scheidt's appraisals.

74. We therefore find that the totality of the evidence proves the true tax value of each parcel was $350,000 for 2022 and 2023, as reflected by Scheidt's probative USPAP-compliant appraisals.

2. We order the assessments changed to reflect each parcel's true tax value, which means the assessments for Lots 8A, 19, and 20 will increase and the assessments for Lot 9A will decrease.

75. Our determination of the parcels' true tax value for each year represents a decrease from the PTABOA's determinations for Lot 9A, but an increase over the PTABOA's determinations for the other three parcels. Although the Assessor's Clarification was the first time she asked us to increase the assessments for Lots 8A, 19, and 20, our authority to raise those assessments does not arise from that post-hearing request. On the contrary, we are statutorily compelled to weigh the totality of the evidence to determine a property's true tax value, which may be higher or lower than the assessment proposed by the parties or witnesses. I.C. § 6-1.1-15-20(f). Where, as here, we determine that the totality of the evidence proves a property's true tax value is higher than its assessed value, we may order that the assessment be raised regardless of a specific request to do so.[6]

[6] We therefore deny the Trust's Motion to Strike and Motion for Attorney's Fees as moot.

76. We therefore order that each parcel's assessment be changed to $350,000 for the 2022 and 2023 assessment dates.

CONCLUSION

77. We grant summary judgment against the Trust on its appeals of the subject parcels' 2021 assessments. For the 2022 and 2023 assessment years, we find against the Trust on its claim that the Assessor impermissibly denied it the benefit of the developer's discount. Finally, because the totality of the evidence proves the parcels' true tax value was $350,000 for each year, we order that the 2022 and 2023 assessments be changed to $350,000.

DATE: SEPT. 23, 2025

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.