

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

Petition No.: 64-004-14-1-4-00121-15
Petitioner: Golden Gate Development Corp.
Respondent: Porter County Assessor
Parcel No.: 64-09-14-152-004.000-004
Assessment Year: 2014

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

Procedural History

1. Petitioner filed its appeal with the Porter County Property Tax Assessment Board of Appeals (“PTABOA”) which issued its final determination on August 7, 2015. Petitioner then filed its Form 131 with the Board, electing to have the matter heard under the Board’s small claims procedures. Respondent did not elect to have the proceeding removed from those procedures.
2. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on March 29, 2016. Neither the ALJ nor the Board inspected the property.
3. Greg Schafer, President, was sworn and testified for Petitioner. Jon Snyder, Porter County Assessor, and Russell Gower, Hearing Officer, were sworn and testified for Respondent.

Facts

4. The property under appeal is a single-family home located at 2002 Emmett Court in Valparaiso.
5. For 2014, the PTABOA determined the assessed value of the property to be \$93,100 for the land and \$273,500 for the improvements, for a total assessed value of \$366,600.
6. For 2014, Petitioner requested an assessed value of \$700 for land only, claiming entitlement to the developer’s discount.

Record

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

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit A:	Construction cost summary,
Petitioner Exhibit B:	Summary of Appeal,

Respondent Exhibit 1:	Property record card (PRC) for 2013,
Respondent Exhibit 2:	PRC for 2014,
Respondent Exhibit 3:	Subject property building permit,
Respondent Exhibit 4:	Copy of the Form 131 petition,

Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

Objections

8. Mr. Snyder objected to Petitioner Exhibit A because Petitioner failed to exchange the exhibit prior to the hearing after Respondent had requested copies of Petitioner's exhibits ten business days before the hearing.
9. 52 IAC 3-1-5(d) provides "If requested not later than 10 business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five business days before the small claims hearing.." Failure to comply with that provision may serve as grounds to exclude evidence or testimony that has not been timely provided. 52 IAC 3-1-5(f).
10. Petitioner failed to comply with the Board's procedural rules regarding the exchange of evidence which were included with the notice of hearing. The Board, therefore, excludes Petitioner Exhibit A but notes that the exclusion of the exhibit does not affect the outcome of the Board's determination.

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to the rule.

12. First, Ind. Code § 6-1.1-15-17.2 (a) “ applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Under Ind. Code § 6-1.1-15-17.2(b), “the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.”
13. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The assessed value increased from \$250,400 to \$366,600 between 2013 and 2014. In 2013 the property was assessed as 40% complete. For March 1, 2014, the property was 66% complete. Thus, Respondent was not assessing the same improvements. Because there was a change in improvements, Petitioner has the burden of proof.

Contentions

16. Summary of Petitioner’s case:
 - a. Petitioner notes that, in 2008, Indiana eliminated the inventory tax, established the “tax caps,” and increased the sales tax. He argues that taxes on homes that were not primary residences more than doubled and taxes on many commercial properties, including his warehouse building, tripled. At the same time, all the materials purchased for the construction of new homes and development of residential lots were subject to the increased sales tax. *Schafer testimony; Pet’r Ex. B.*
 - b. Petitioner contends that the United States Constitution, along with the Indiana Constitution, guarantees due process and equal protection to all of its citizens. He believes that the current Indiana Code clearly discriminates against builders. A builder must pay sales tax on the materials he buys to build a home. Alternatively, a company like Home Depot is not required to pay an inventory tax on the materials it sells to the public. Furthermore, improvements are taxed at various tax rates. Consequently, the tax structure does not offer the builder equal protection and due

- process as compared to other businesses that manufacture and sell products. *Schafer testimony; Pet'r Ex. B.*
- c. Petitioner argues that Indiana law provides for a developer's status for those who are in the business of developing properties. The developer is not subject to the taxation of an improved lot, as a private owner would be, until a lot has been transferred and sold to a third party that is not in the business of development and building. With the developer's status, the developer is able to install curbs, streets, sewers, water lines, plant trees and grass, and make improvements necessary to meet the requirements for a viable lot on which to build a home or building. *Schafer testimony; Pet'r Ex. B.*
 - d. As of March 28, 2016, the construction costs totaled \$229,086.30. Also, Petitioner claims he has invested approximately 1,126 hours of labor that is not reflected therein. He argues that these costs are the actual expenditures and should fall under the developer status because they have not sold the house or, in fact, received any offers for it. *Schafer testimony; Pet'r Ex. A.*
 - e. Petitioner contends that the developer should maintain the developer's status through the entire construction process until the finished product is recognized as a residence by the county government, through the required inspections, and until it is ultimately sold. *Schafer testimony; Pet'r Ex. B.*
17. Summary of Respondent's case:
- a. Respondent contends that, based on his field work, the property was assessed as 40% complete for 2013 and 66% complete for 2014. *Gower testimony; Resp't Exs. 1 & 2.*
 - b. Respondent contends that when analyzing building costs, those costs are based on state cost tables, not the builder's costs. In the cost approach, he claims that one needs to include all direct and indirect costs, plus any profit the builder expects to receive from building the property. *Gower testimony.*
 - c. The building permit was granted in November of 2012. Respondent's understanding is that once a building contract is granted, the land will be assessed at market value on the next assessment date rather than at the agricultural rate that it was assessed at previously. *Gower testimony; Resp't Ex. 3.*

Analysis

18. Petitioner failed to establish a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
- a. Real property is assessed based on its "true tax value", which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-

1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

- b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2014 assessment was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. Petitioner contends the property should be entitled to the developer's discount.
- d. The developer's discount is based on Ind. Code § 6-1.1-4-12, which provides:
 - (a) As used in this section, "land developer" means a person that holds land for sale in the ordinary course of the person's trade or business....
 - (b) As used in this section, "land in inventory" means:
 - (1) a lot; or
 - (2) a tract that has not been subdivided into lots; to which a land developer holds title in the ordinary course of the land developer's trade or business....
 - (c) 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.
 - (d) If improvements are added to real property, the improvements shall be assessed.
 - (e) An assessment or reassessment made under this section is effective on the next assessment date.
 - (f) No petition to the department of local government finance is necessary with respect to an assessment or reassessment made under this section.
 - (g) 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.
- e. Thus, land must be reclassified and reassessed based on its new classification when it is subdivided into lots or when it is rezoned for, or put to, a different use. Subsection (i), however, recognizes an exception to that general rule: “land in inventory” held by a “land developer” cannot be reclassified and reassessed based on its new classification until the land is transferred to someone who is not a land developer, someone begins building a structure on the land, or a building permit is issued for a structure on the land.
- f. Here, Petitioner contends not only the land but the improvements should be entitled to the developer’s discount. The statute, however, allows the discount only for the land. The land must be reassessed when someone begins building a structure on the land or a building permit is issued for a structure on the land. Both of these events occurred on the subject property before the March 1, 2014, assessment. According to the evidence, the building permit was issued on November 14, 2012, and the house was 66% complete on the assessment date. Consequently, the property is not entitled to the developer’s discount.
- g. Petitioner correctly argues that Indiana no longer assesses or taxes inventory. Ind. Code. § 6-1.1-2-7(b)(6). However, only personal property qualifies as inventory. A home is generally considered real property. See Ind. Code. § 6-1.1-1-15 (defining real property as, among other things, “a building or fixture situated on land located within this state.”).
- h. To the extent Petitioner’s appeal is a constitutional challenge, the Board can offer no remedy. See *Bielski v. Zorn*, N.E 2d 880, 887-888 (Ind. Tax Ct. 1994). The Board’s limited statutory authority to adjudicate property tax appeals prevents the Board from declaring a statute unconstitutional. More specifically, Ind. Code § 6-1.5-4-1(a) confers limited authority on the Board to conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, property tax exemptions and property tax credits.
- i. Petitioner contends the assessed value should be the sum of his actual construction costs. As noted previously, Petitioner failed to exchange the construction cost summary before the hearing as requested. However, the summary was not probative evidence of the market value of the property. The costs were not reflective of the appealed assessment date and, further, did not include all of the costs associated with the construction. Petitioner’s labor was not included nor was there any estimate of profit.
- j. Petitioner argues that the market value of the land is the purchase price. He purchased the property in 2010, four years before the valuation date. He failed to relate the purchase price to the relevant valuation date. Consequently, Petitioner failed to make a prima facie case for a reduction in the assessed value.

- k. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

19. Petitioner failed to establish a prima facie case for a reduction in the assessed value. The Board finds for Respondent.

FINAL DETERMINATION

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

ISSUED: June 27, 2016

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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.