

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

Petition No.: 71-003-06-1-5-07281
Petitioner: Lynette Jones Revocable Trust
Respondent: St. Joseph County Assessor
Parcel No.: 02-2019-038830
Assessment Year: 2006

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

Procedural History

1. On June 19, 2007, Lynette Jones¹ filed a Request for Preliminary Conference with Township Assessor (“Preliminary Conference Request”) contesting the subject property’s March 1, 2006 assessment. *Board Ex. A.* On October 4 and 5, 2007, Ms. Jones and the Clay Township Assessor signed Section VI of the Preliminary Conference Request indicating the following: “PETITIONER IS A DEVELOPER. LAND TAKEN BACK TO DEVELOPER’S DISCOUNT.” *Board Ex. A.* They list \$600 as the agreed value. *Id.*
2. Despite that agreement, the PTABOA scheduled Ms. Jones’s appeal for a hearing, and on October 28, 2008, the PTABOA issued a determination fixing the subject property’s assessment at \$12,200—the amount for which it was originally been assessed. *Board Ex. A.*
3. Ms. Jones then timely filed a Form 131 petition with the Board, electing to have her appeal heard under the Board’s small claims procedures.
4. On June 9, 2010, the Board held an administrative hearing through its Administrative Law Judge (“ALJ”) Jennifer Bippus.
5. The following people were sworn in and testified:
 - a) Lynette Jones,

¹ Ms. Jones is the trustee for the Lynette Jones Revocable Trust.

- b) For the Respondent:² David Wesolowski, St. Joseph County Assessor
Kevin Klaybor, PTABOA president

Facts

6. The subject property in an unimproved lot located at VL on Wallace Lane, in South Bend, Indiana.
7. Neither the Board nor the ALJ inspected the subject property.

Parties' Contentions

8. Ms. Jones offered the following evidence and arguments:
- a) According to Ms. Jones, the subject property should be assessed using the “developer’s discount” as agreed to by the Clay Township Assessor. *Jones argument*. Ms. Jones claims that she is a developer and a builder. Although Ms. Jones has worked as an appraiser since 2000, she has experience in the field of building and land development. *See Jones testimony*. From 1992-93, she worked as a cost accountant for a builder/developer. That position required her to work with subcontractors and visit subdivision development jobsites. *Id.* Ms. Jones has also been a member of the Home Builders Association, although she was no longer a member at the time of the Board’s hearing. *Id.*; *Pet’r Ex. 3*. She has even received mail addressed to “Lynette Jones, Builder, Lynette Jones, Developer,” although the PTABOA did not give her back those envelopes after she presented them in the proceedings below. *Jones testimony*. In 2005, Ms. Jones hired contractors to build her own garage. And in 2009, she served as a consultant for her daughter’s home. *Id.*
- b) In 2005, Ms. Jones bought the subject parcel and an adjacent parcel³ intending to develop them and build new homes. *Jones testimony*. Unfortunately, the economy worsened and she has been unable to sell the parcels. *Id.* Ms. Jones did not buy any other property because she was “cash poor at the moment.” *Id.* She has relied on “word of mouth” marketing. *Id.* She also had a “for sale” sign at the property. *Pet’r Ex. 8*. The properties are still for sale—Ms. Jones had fielded calls about buying the subject property as recently as the week before the Board’s hearing. *Id.*
- c) The Assessor has been inconsistent in assessing vacant land. *Id.* For example, lots owned by Buckley Land Transfer, LLC, and John Boettcher, and by James and Michael Wallace have been given developer’s discount rates even though the owners are not developers. *Jones testimony; Pet’r Exs. 5-6, 8*. Mr. Buckley is a part-owner of a restaurant while Mr. Boettcher is a sewer and excavating contractor. Neither one has built a house. The Wallaces are both retired. Except for a house that Michael

² Frank Agostino appeared as counsel for the Respondent. PTABOA members Ross Portolese and Dennis Dillman also attended the hearing.

³ The adjacent parcel is the subject of a separate appeal under pet. no. 71-003-06-1-5-07282. The Board will issue a separate findings and conclusions in that appeal.

Wallace built for a family member in 2004, the Wallaces have not actively built a house for at least eight years. *Jones testimony*. In fact, Ms. Jones bought the subject parcel from the Wallaces, who had received a developer's discount for the property. *Id.*

9. The Assessor offered the following evidence and arguments:
- a) Ms. Jones was not entitled to a developer's discount. To qualify as a developer under Ind. Code § 6.1-1-4-12, a person must hold land for sale in the ordinary course of her trade or business. *Agostino argument*. Ms. Jones works as an appraiser and holds no land for sale other than the subject property, which is adjacent to her home. *Id.*; *Klaybor and Wesolowski testimony*. She has never filed business personal property returns identifying herself as a developer. Similarly, Ms. Jones does not have advertising brochures and she has not prepared a site plan for the subject property. *Jones testimony on cross examination*.

Record

10. The official record for this matter is made up of the following:
- a) The Form 131 petition,
 - b) The digital recording of the hearing.
 - c) Exhibits:⁴

Petitioner's Exhibit 1:	Form 131 petition for subject property
Petitioner's Exhibit 2:	Form 131 petition for parcel 02-2019-038828,
Petitioner's Exhibit 3:	Page 20 of HBA membership book,
Petitioner's Exhibit 4:	Memorandum from Sandy Bickel and Beth Henkel to Rick Wajda,
Petitioner's Exhibit 5:	Property tax information for Buckley Land Transfer, LLC and John Boettcher,
Petitioner's Exhibit 6:	Property tax information for James and Michael Wallace,
Petitioner's Exhibit 7:	Form 115 determination,
Petitioner's Exhibit 8:	Photographs of parcels owned by Jones, Wallace, and Buckley/Boettcher,
Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Assessor's witness list,
Board Exhibit D:	Notice of Appearance by Frank Agostino,
Board Exhibit E:	Notice of Appearance by David Wesolowski and Kevin Klaybor,

⁴ The Assessor did not offer any exhibits.

d) These Findings and Conclusions.

Analysis

11. The parties argued at length about whether Ms. Jones was a developer. The Board, however, need not decide that issue, because the PTABOA lacked the authority to issue its determination fixing the subject property's assessment at \$12,200.
12. At the times relevant to Ms. Jones's appeal, Ind. Code § 6-1.1-15-1 required a taxpayer to begin the appeal process by timely filing a written notice asking for a preliminary conference with the local official that made the disputed assessment. Ind. Code § 6-1.1-15-1(b) (2006 repl. vol.). The official and taxpayer were required to complete and sign a prescribed form specifying the results of that conference, including the items of agreement and disagreement. I.C. § 6-1.1-15-1(f)-(g) (2006 repl. vol.). If there were no items of disagreement, the official was required "to give notice to the taxpayer, the county property tax assessment board of appeals, and the county assessor of the assessment in the amount agreed to by the taxpayer and the [assessor]" and the county PTABOA could "reserve the right to change the assessment under IC 6-1.1-13." I.C. § 6-1.1-15-1(h) (2006 repl. vol.). If, on the other hand, there was any disagreement, the PTABOA was required to hold a hearing and prepare a written statement of its findings and decision. I.C. § 6-1.1-15-1(i) and -(k)-(l) (2006 repl. vol.).
13. Ms. Jones alleged in her Form 131 petition that the Clay Township Assessor had "approved the vacant land to be returned back to developer discount." *Board Ex. A*. Ms. Jones also attached a copy of a form from the preliminary conference, signed by her and the Clay Township Assessor, showing that agreement and specifying an assessment of \$600. *See id.* Similarly, Section IV of the PTABOA's Form 115 determination provides a space for describing the resolution reached by an assessor and taxpayer at their preliminary conference. The following language is written in that space: "Petitioner is a developer. Land taken back to Developer discount." *Pet'r Ex. 7*.
14. Given the agreement between Ms. Jones and the Clay Township Assessor, the PTABOA did not have the authority to enter a different determination in Ms. Jones's appeal. While the PTABOA could have acted under Ind. Code § 6-1.1-13 to change the property's valuation, the PTABOA's authority under that statute is significantly limited:

The powers granted to each county property tax assessment board of appeals under this chapter *apply only to the tangible property assessments made with respect to the last preceding assessment date*. Before a county property tax assessment board of appeals changes any valuation or adds any tangible property and the value of it to a return or the assessment rolls under this chapter, *the board shall give prior notice by mail to the taxpayer*. The notice must state a time when and place where the taxpayer may appear before the board. The

time stated in the notice must be at least ten (10) days after the date the notice is mailed.

I.C. § 6-1.1-13-1 (emphasis added).

15. Although Ms. Jones conceded having received notice that the PTABOA would hold a hearing, there is nothing in the record to show how far in advance of that hearing the notice was mailed. Similarly there is nothing to show whether the notice specified that the PTABOA was exercising its authority under Ind. Code § 6-1.1-13. On the other hand, it is not apparent from the face of the statute that the notice would necessarily have to spell that out. But that is a question for another day. Even if the PTABOA complied with Ind. Code § 6-1.1-13-1's notice requirements, the PTABOA's determination could only have affected the "last preceding assessment date." I.C. § 6-1.1-13-1. And the PTABOA did not issue its Form 115 determination until October 28, 2008—more than two years after the March 1, 2006 assessment date at issue in this appeal.

Conclusion

16. Because the PTABOA lacked authority to issue a determination assessing the subject property for \$12,200, the Board finds for Ms. Jones and orders that the subject property's assessment be changed to \$600—the amount agreed to by Ms. Jones and the Clay Township Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that the subject property's assessment be changed to \$600.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>