

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

Petition Nos.: 34-002-10-1-5-00020
34-002-10-1-5-00021
Petitioners: Paul B. and Mirella A. Markiewicz Revocable Living Trust¹
Respondent: Howard County Assessor
Parcel Nos.: 34-03-27-406-014.000-002
34-03-27-406-013.000-002
Assessment Year: 2010

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

Procedural History

1. The Petitioner's representative appealed the assessments of the Petitioner's properties for 2010 with the Howard County Property Tax Assessment Board of Appeals (the PTABOA) by filing "Request for Review" forms dated July 21, 2010.
2. The PTABOA issued notices of its decisions on August 24, 2011.
3. The Petitioner's representative filed Form 131 petitions with the Board on October 3, 2011. The Petitioner's representative elected to have the Petitioner's cases heard according to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated January 5, 2012.
5. The Board held an administrative hearing on March 6, 2012, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Paul B. Markiewicz, trustee

¹ While the Petition was filed in the name of Paul B. and Mirella A. Markiewicz, the Petitioners' warranty deed shows the property is owned by the Paul B. Markiewicz and Mirella A. Markiewicz Revocable Living Trust, dated August 31, 2009. *Petitioner Exhibit 7.*

- b. For Respondent:² Jamie Shepherd, Howard County Assessor
Brian Thomas, Ad Valorem Solutions

Facts

7. The properties under appeal are two vacant lots located at 2715 War Admiral Trail and 2711 War Admiral Trail, Kokomo, in Howard County.
8. The ALJ did not conduct an on-site inspection of the properties under appeal.
9. For 2010, the PTABOA determined the assessed value of 2715 War Admiral Trail to be \$26,400 for the land; and the PTABOA determined the assessed value of 2711 War Admiral Trail to be \$26,400 for the land. There are no improvements on either lot.
10. For 2010, the Petitioners' representative requested an assessed value of \$10,000 for 2715 War Admiral Trail and \$10,000 for 2711 War Admiral Trail.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in its properties' assessments:
 - a. The Petitioner's representative contends that the properties located at 2715 War Admiral Trail and 2711 War Admiral Trail are over-valued based on their purchase price. *Markiewicz testimony*. According to Mr. Markiewicz, the Petitioner purchased the two lots under appeal at an auction for \$6,000 on September 17, 2009. *Id.* In support of this contention, Mr. Markiewicz offered the settlement statement, a warranty deed, and two flyers advertising the auction, property information sheets, and the restrictive covenants for Fredrick Farms. *Petitioner Exhibits 3, 4, 6 and 7*. Mr. Markiewicz, however, admitted that the Petitioner purchased the subject properties at a "depressed price" as a result of a foreclosure. *Markiewicz testimony*. Therefore, Mr. Markiewicz argues, the market value-in-use of the two vacant lots should be \$12,000 to \$14,000. *Id.*
 - b. Mr. Markiewicz also testified that there has only been one house constructed on a lot purchased at the auction. *Markiewicz testimony*. According to Mr. Markiewicz, prior to the auction the last home constructed in the neighborhood was five years ago. *Id.* Mr. Markiewicz argues that this shows the area is "very depressed." *Id.*; *Petitioner Exhibit 5*.
 - c. Additionally, the Petitioner's representative contends that the values of the properties were over-stated compared to the listing prices of other vacant lots in

² Ms. Shelia L. Pullen, Center Township Assessor, was also in attendance but was not sworn in as a witness to give testimony.

the Fredrick Farms neighborhood. *Markiewicz testimony*. According to Mr. Markiewicz, he spoke with three realtors who said that some of the lots sold at the auction in the Petitioner's neighborhood have been listed for sale from \$5,000 to \$19,900 per lot, but none of the lots have sold.³ *Id.* If the lots are not selling for \$5,000, Mr. Markiewicz argues, the Petitioner's properties are assessed too high at \$26,400 each for the 2010 assessment.⁴ *Id.*

- d. Finally, the Petitioner's representative contends that the subject properties are over-valued based on the general decline in property values. *Markiewicz testimony*. According to Mr. Markiewicz, since 1971, property values have declined all over the country. *Id.* In support of this contention, Mr. Markiewicz presented an article from USA Today, dated August 19, 2011, reporting that the average rate on a 30 year fixed mortgage had fallen to the lowest level on record since 1971. *Petitioner Exhibit 2*. While the average rate on a 30 year fixed mortgage has been below 5%, Mr. Markiewicz argues, prices and sales remain unhealthy and are holding back the overall economy. *Id.* Accordingly, Mr. Markiewicz concludes, the properties under appeal are over-valued for the 2010 assessment year.

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent argues that the statute shifting the burden of proof from a taxpayer to the assessor when an assessment increases by more than five percent does not apply in this case. *Shepherd testimony*. According to Ms. Shepherd, the Petitioner's properties' values increased due to the removal of the "developer's discount." *Id.* Ms. Shepherd argues that pursuant to Indiana Code § 6-1.1-4-12, if legal or equitable title to real estate is no longer held by a land developer or a successor land developer, who holds the land for sale in the ordinary course of the person's trade or business, then the land is reassessed on the next assessment date following the transfer of the property. *Id.*; *citing* Indiana Code § 6-1.1-4-12.
- b. Ms. Shepherd contends that on September 22, 2009, the Petitioner purchased its two vacant lots from Old Jefferson Woods, LLC. *Shepherd testimony*; *Respondent Exhibit A*. Because the Petitioner is not a successor land developer, the county removed the developer's discount for the March 1, 2010, assessment

³ Ms. Shepherd objected to Mr. Markiewicz's testimony regarding his conversations with three realtors about vacant lots in Fredrick Farms because, she argued, the realtors were not present to explain the listings or answer questions about the properties. Pursuant to 52 IAC 3-1-5(b), "hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence: (1) is properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence." The Board, therefore, overrules the Respondent's objections and admits Mr. Markiewicz's testimony.

⁴ Mr. Markiewicz testified that one of the realtors had a person interested in purchasing a vacant lot in Fredrick Farms for \$5,000 in the fall of 2011; however, once they checked the property taxes for the lot, they withdrew their offer to purchase. *Markiewicz testimony*.

date – which was the next assessment date following the transfer of the properties. *Shepherd testimony; Respondent Exhibit A.* According to Ms. Shepherd, for 2010, the Petitioner’s two vacant lots were assessed at the \$600 land base rate established by the Howard County Land Order for the Fredrick Farms neighborhood.⁵ *Shepherd testimony; Respondent Exhibits A and C.*

- c. The Respondent’s witness, Mr. Thomas, contends that the Petitioner’s properties’ assessments were correct for the March 1, 2010, assessment date. *Thomas testimony.* Mr. Thomas testified that the accuracy of the county’s 2010 assessments were measured using aggregate data by comparing properties’ assessments to their sale prices to determine the median assessment ratio for defined areas in Howard County. *Id.* According to Mr. Thomas, although the ratio study shows land and improvement values separately, the study is a means by which to measure whether properties in a given area are assessed uniformly and equal. *Id.* The trending factor, Mr. Thomas testified, was calculated by finding the contributory value between land and improvements through sales of vacant and/or improved parcels to establish the median level of sale prices within a defined neighborhood in Howard County. *Id.*
- d. The Respondent argues that sales in Fredrick Farms prior to and immediately following the auction sale of the vacant lots in 2009, show that Howard County has consistently assessed properties in Fredrick Farms close to their sale prices. *Thomas testimony.* In support of this contention, Respondent offered a spreadsheet, two sales disclosure forms and thirty-three property record cards for properties located in the same neighborhood as the Petitioner’s properties. *Id.; Respondent Exhibits B, C, D and E.* For example, Mr. Thomas testified, the property located at 639 Bridle Way sold on April 26, 2011, for \$169,900; while the property’s March 1, 2011, assessed value was \$160,700. *Thomas testimony; Respondent Exhibits C and D.* Similarly, the property located at 619 Bridle Way sold on August 2, 2010, for \$158,500; while the property’s March 1, 2010, assessed value was \$144,200. *Id.; Respondent Exhibits C and E.* Mr. Thomas argues that lowering the assessed values of the vacant lots sold at the auction would cause an inequitable distribution of the tax burden in Fredrick Farms between vacant lots and properties with homes on the lots. *Thomas testimony.*
- e. Finally, the Respondent argues that the Petitioner’s purchase price of \$6,000 for the two vacant lots under appeal does not represent an arms-length transaction because it was a distress sale. *Shepherd testimony.* In support of this contention, the Respondent submitted a sales disclosure form. *Respondent Exhibit A.* According to Ms. Shepherd, the seller indicated on the sales disclosure form that the transaction was compulsory, as a result of a foreclosure or express threat of

⁵ Ms. Shepherd testified that the \$250 per front foot land base rate for a standard size lot 70 feet x 140 feet in Fredrick Farms as shown on Respondent Exhibit B is the land base rate established for the March 1, 2012, assessment date. *Shepherd testimony; Respondent Exhibit B.*

foreclosure, divorce, court order, judgment, condemnation, or probate. *Shepherd testimony; Respondent Exhibit A*. Because of the circumstances of the sale, the Respondent concludes, the Petitioner's purchase price was too low. *Shepherd testimony*.

- f. In response to the Petitioner's representative's question, Ms Shepherd agreed that normally bare land sells for less than land with a house. *Shepherd testimony*. According to Ms. Shepherd, the county discounted the value of the vacant lots for their lack of a well and septic hook-up by applying a negative influence factor to the land's assessed value. *Id.* For example, Ms. Shepherd testified, the Petitioner's lots are receiving a negative 15% influence factor because they are vacant lots. *Id.; Respondent Exhibit A*. The Petitioner's properties are both 0.31 acres in size and are assessed at \$26,400 each; whereas a neighboring property located at 1206 Canterview Way, which is a 0.19 acre lot with a house, a well and septic hook-up, is assessed at \$31,100, for March 1, 2010. *Id.; Respondent Exhibit C*. Thus, Ms. Shepherd argues, the Petitioners' properties were not over-assessed. *Shepherd testimony*.

Record

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

- Petitioner Exhibit 1 – DLGF “Frequently Asked Questions” and “Notice of Property Tax Assessments,”
- Petitioner Exhibit 2 – USA Today article “Mortgage rates sink to lows not seen since ’71,”
- Petitioner Exhibit 3 – Two flyers for the Fredrick Farms auction sale prepared by Halderman Real Estate Services,
- Petitioner Exhibit 4 – “Property Information” and “Restrictive Covenants” flyer for Frederick Farms,
- Petitioner Exhibit 5 – Howard County Request for Review, dated July 23, 2010,
- Petitioner Exhibit 6 – U.S. Department of Housing and Urban Development Settlement Statement, dated September 17, 2009,
- Petitioner Exhibit 7 – Warranty Deed, dated September 17, 2009,
- Petitioner Exhibit 8 – Compliance Agreement, dated September 17, 2009,

Petitioner Exhibit 9 – Notice of Assessment of Land and Structures – Form 11 R/A – C/I for 2715 War Admiral Trail,
 Petitioner Exhibit 10 – Notice of Assessment of Land and Structures – Form 11 R/A – C/I for 2711 War Admiral Trail,
 Petitioner Exhibit 11 – Request for Review, dated July 23, 2010,
 Petitioner Exhibit 12 – Notice of Assessment of Land and Structures – Form 11 R/A – C/I for 2715 War Admiral Trail,
 Petitioner Exhibit 13 – U.S. Department of Housing and Urban Development Settlement Statement, dated September 17, 2009,
 Petitioner Exhibit 14 – Notice of Assessment of Land and Structures – Form 11 R/A – C/I for 2711 War Admiral Trail,
 Petitioner Exhibit 15 – Compliance Agreement, dated September 17, 2009,
 Petitioner Exhibit 16 – Real Property Maintenance Report for 2711 War Admiral Trail,
 Petitioner Exhibit 17 – Three pages of minutes from the PTABOA meeting, dated August 19, 2011,

Respondent Exhibit A – Sales Disclosure Form and property record cards for 2711 War Admiral Trail and 2715 War Admiral Trail,
 Respondent Exhibit B – 2010 and 2011 assessed values and sales in the Fredrick Farms Subdivision,
 Respondent Exhibit C – Property record cards for thirty-five properties located in the Fredrick Farms Subdivision,
 Respondent Exhibit D – Sales Disclosure Form for 639 Bridle Way,
 Respondent Exhibit E – Sales Disclosure Form for 619 Bridle Way,
 Respondent Exhibit F – Sales Disclosure Form for 1206 Canterview Way,

Board Exhibit A – Form 131 petitions with attachments,
 Board Exhibit B – Notices of Hearing,
 Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been

repealed and re-enacted as Indiana Code § 6-1.1-15-17.2. That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

Ind. Code § 6-1.1-15-17.2.

15. According to the property record cards, the assessed value of 2715 War Admiral Trail increased from \$300 in 2009 to \$26,400 in 2010 and the value of 2711 War Admiral Trail likewise increased from \$300 in 2009 to \$26,400 in 2010. *Respondent Exhibit A*. The Respondent did not dispute these increases. However, the Respondent argues that, in 2009, Old Jefferson Woods, LLC, a real estate developer owned and held the properties under appeal as inventory for sale. *Shepherd testimony*. According to Ms. Shepherd, under Indiana Code § 6-1.1-4-12, a property purchased for development is entitled to the “developer’s discount” until the property is transferred from the developer to another person. *Id.* Because the properties under appeal transferred to the Petitioner in 2010, the county was required to reclassify the properties according to their new use. *Id.*
16. Indiana Code § 6-1.1-4-12(d) states that “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.” Subsection (h) is an exception to the requirement. That section states “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.” *See* Ind. Code § 6-1.1-4-12(h). Subsection (i) adds that “Subsection (h) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.” *See* Ind. Code § 6-1.1-4-12(i). This “exception is commonly referred to as the ‘developer’s discount.’” *Howser Development LLC v. Vienna Township Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005). According to the Tax Court in *Howser Development*, the “developer’s discount” was “designed to encourage developers to buy farmland, subdivide it into lots, and resell the lots.” *Id.*, citing *Aboite Corp. v. State Bd. of Tax Comm’rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001). Thus, during the period of time that the developer held the property, subdivided the land into lots, and developed the property for residential use, the

developer enjoyed the protection of the developer's discount and the property remained assessed as if it were agricultural land. Despite the fiction embodied in the developer's discount, however, the land was developed, infrastructure was built, and the properties' use changed from agricultural to residential property.

17. Indiana Code § 6-1.1-15-17.2 applies where “the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property.” Ind. Code § 6-1.1-15-17.2. “When faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997), *review denied*. Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than five percent.
18. In 2009, the lots were still owned by a developer and despite the land being subdivided into lots and infrastructure for the residential neighborhood being constructed, the assessor continued to assess the properties as agricultural land pursuant to the requirements of Indiana Code § 6-1.1-4-12(h). However, after the lots were sold to the Petitioner at auction and the lots were no longer entitled to the protections of the developer's discount, the assessor was required to assess the property for its new use as residential property. Thus, the assessor was assessing agricultural property in 2009 and residential property in 2010. Because the assessor was not assessing the “same property” in 2010 as she assessed in 2009, the Board finds that the Petitioner has the burden to prove its properties' assessed values were incorrect in this case.
19. The Petitioner's representative provided sufficient evidence to establish a prima facie case for a reduction in the assessed values of the Petitioner's properties for 2010. The Board reached this decision for the following reasons:
 - a. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *See id.* A market-value-in-use appraisal prepared according to USPAP often will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b. Here, the Petitioner's representative contends that the Petitioner's properties were over-valued in 2010 based on the Petitioner's purchase price of \$6,000 for both

parcels at an auction on August 4, 2009. *Markiewicz testimony; Petitioner Exhibits 3 and 6*. The purchase price of a property can be the best evidence of a property's value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). However, a sale does not necessarily indicate the market value of a property unless the sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. "Fair market value" is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell." *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977).

- c. While the Petitioner's representative testified that the developer was under financial distress, which led to the auction sale, the Board recognizes that there may be situations where enough properties in an area are sold in forced sales or are otherwise sold under duress as to effectively constitute the market. According to the Petitioner, there had only been one house built in the neighborhood in five years – and that house was constructed on one of the lots purchased in the auction. *Markiewicz testimony*. Further, 144 lots were being auctioned in 2009. *Petitioner Exhibit 3*. Thus, because the developer had been unable to sell a single lot for construction in five years and because 144 lots were offered at auction, there is sufficient evidence to conclude that the purchase price of the parcels sold at the August 4, 2009, auction reflected the market in that neighborhood. Moreover, the Petitioner's representative testified that three brokers had listed lots in the neighborhood for sale for as little as \$5,000, but none of the lots had sold. While Mr. Markiewicz's hearsay testimony cannot form the sole basis for the Board's decision,⁶ it tends to support the Petitioner's \$6,000 purchase price for two lots. Given the totality of the circumstances, the price that the Petitioner paid for the subject properties is some evidence of the properties' market value-in-use.
- d. Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent claimed that the properties' assessments were valid because (1) the assessment/sale ratios of other properties fell within statistically acceptable ranges and (2) all properties in the Petitioners' neighborhood were assessed consistently. But the Respondent offered no support for her underlying premise—that an assessment is correct even if it exceeds a property's market value-in-use as long as assessments in general are within acceptable statistical ranges for measuring the overall uniformity, equality, and accuracy of mass appraisals. To the contrary, an individual taxpayer has the right to

⁶ "Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence: (1) is properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence." 52 IAC 2-7-3.

appeal his or her property's assessment on grounds that the assessment does not accurately reflect the property's market value-in-use. *See* MANUAL at 5 (allowing a taxpayer to offer evidence of a property's market value-in-use to rebut assessment and to show property's actual true tax value). And that right exists independently of any constitutional or statutory requirements for uniform and equal assessments.

Conclusion

20. The Petitioner established a prima facie case that the subject properties were over-valued for the March 1, 2010, assessment year. The Respondent failed to rebut or impeach that evidence. The Board finds in favor of the Petitioner and holds that the value of Petitioner's properties in 2010 were \$3,000 per lot.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed values of the Petitioner's properties should be reduced to \$3,000 for 2715 War Admiral Trail and \$3,000 for 2711 War Admiral Trail for the March 1, 2010 assessment.

ISSUED: May 31, 2012

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 pursuant to 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 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/bills/2007/SE0287.1.html>.