

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

Petition Nos.: 34-002-10-1-5-00149
34-002-10-1-5-00151
Petitioners: Richard R. and Patricia A. Norris
Respondent: Howard County Assessor
Parcel Nos.: 34-03-27-328-001.000-002
34-03-27-328-002.000-002
Assessment Year: 2010

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

Procedural History

1. The Petitioners appealed the 2010 assessments of their properties with the Howard County Property Tax Assessment Board of Appeals (the PTABOA) by filing their “Request for Review” forms on August 24, 2010.
2. The PTABOA issued notices of its decisions on April 7, 2011.
3. The Petitioners filed Form 131 petitions with the Board on April 21, 2011. The Petitioners elected to have their 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 Petitioners: Richard R. Norris, property owner
 - b. For Respondent:¹ Jamie Shepherd, Howard County Assessor
Brian Thomas, Ad Valorem Solutions

¹ Ms. Shelia L. Pullen, Center Township Assessor, was also in attendance but was not sworn in as a witness to give testimony.

Facts

7. The properties under appeal are two vacant lots located at 714 Silver Charm Drive and 2729 Sea Biscuit Lane, 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 714 Silver Charm Drive to be \$32,800 for the land; and the PTABOA determined the assessed value of 2729 Sea Biscuit Lane to be \$38,200 for the land. There are no improvements on either lot.
10. For 2010, the Petitioner requested an assessed value of \$2,000 for 714 Silver Charm Drive and \$2,500 for 2729 Sea Biscuit Lane.

Issue

11. Summary of the Petitioners' contentions in support of an alleged error in their properties' assessments:
 - a. The Petitioners contend that the assessor has the burden to prove that the assessed values of 714 Silver Charm Drive and 2729 Sea Biscuit Lane are correct because the properties' 2010 assessments increased by more than 5% from their 2009 assessments. *Norris testimony; Petitioner Exhibit 3*. According to Mr. Norris, Indiana Code § 6-1.1-15-17 states that if the assessment that is the subject of the review or appeal increased by more than 5% over the assessed value determined by the county assessor or township assessor 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.² *Id.*
 - b. To the extent that they have the burden to prove the assessment is incorrect, the Petitioners contend that the properties are over-valued based on their purchase prices. *Norris testimony*. According to Mr. Norris, the lot at 2729 Sea Biscuit Lane was purchased for \$2,500 and the lot at 714 Silver Charm Drive was purchased for \$2,000, for a total of \$4,500 on August 4, 2009. *Id.* In support of this contention, Mr. Norris offered a purchase agreement from Halderman Real Estate Services. *Id.; Petitioner Exhibit 4*. The Petitioners admit that the lots were purchased from an auction sale. *Norris testimony*. However, Mr. Norris testified that due to the economic decline in Howard County, any property that sold in the last four years would be considered a distress sale. *Id.*

² Indiana Code § 6-1.1-15-17 has been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2. HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

- c. Mr. Norris testified that, prior to the economic decline in Howard County, the Petitioners purchased a lot located at 812 Silver Charm Drive from Old Jefferson Woods, LLC, in the Frederick Farms Subdivision for \$35,900. *Id.* According to Mr. Norris, Old Jefferson Woods, LLC, advertised additional vacant lots in the Frederick Farms subdivision for sale at prices in the \$20,000 to \$30,000 dollar range, but none of the properties sold. *Id.* In 2009, Old Jefferson Woods could no longer meet their financial obligations, so they auctioned the 144 vacant lots at prices ranging from \$800 to \$4,500 per lot. *Id.* Citing a Department of Local Government Finance “Statewide General Reassessment Fact Sheet”, Mr. Norris argues that the assessed value of a property should reflect the amount a willing buyer would pay for the property at the time of assessment. *Norris testimony; Petitioner Exhibit 5.* Because the purchase of the lots in 2009 was between a willing buyer and willing seller, Mr. Norris contends, the Petitioners’ purchase of the two lots at issue in this appeal were fair market sales. *Id.*
- d. In response to the Assessor’s arguments, the Petitioners contend that properties should not be valued by their listing prices. *Norris testimony.* In support of their position, the Petitioners submitted eighteen multiple listing sheets and two Howard County property record reports showing that vacant lots in the county sold in 2008 through 2011. *Petitioner Exhibit 8.* Mr. Norris argues that properties do not sell for their listing prices. *Norris testimony.* For example, Mr. Norris testified, the property located at 2867 Red Oak Court was listed for \$19,900 and sold for \$15,000 on November 22, 2010. *Petitioner Exhibit 8.* Similarly, 1652 Wynterbrooke Drive was listed for \$21,000 but sold for only \$17,500 on August 12, 2008. *Id.*
- e. Finally, Mr. Norris testified that the Petitioners listed the properties under appeal for sale in 2011. *Norris testimony.* According to Mr. Norris, they received and accepted a tentative offer of \$14,000 for the two lots; however, the potential buyer was unable to obtain financing and the transaction was never completed. *Norris testimony; Petitioner Exhibit 9.* Thus, even if the listing price or offer was considered relevant, Mr. Norris concludes, the county’s assessed values for the properties are in excess of the properties’ market values. *Norris testimony.*

12. Summary of the Respondent’s contentions in support of the properties’ assessments:

- a. The Respondent argues that the new 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 Petitioners’ 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 21, 2009, the Petitioners purchased their two vacant lots from Old Jefferson Woods, LLC. *Shepherd testimony; Respondent Exhibit A*. Because the Petitioners are not successor land developers, the county removed the developer's discount for the March 1, 2010, assessment date, which is the next assessment date following the transfer of the property. *Shepherd testimony; Respondent Exhibit A*. According to Ms. Shepherd, the Petitioners' two vacant lots were assessed at the \$250 land base rate established by the Howard County Land Order for Fredrick Farms.³ *Shepherd testimony; Respondent Exhibits B and C*.
- c. The Respondent's witness, Mr. Thomas, contends that the Petitioners' 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 the total values of 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, shows that Howard County has consistently assessed properties in Fredrick Farms close to their sales 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 Petitioners' 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 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 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*.

³ Ms. Shepherd testified and Respondent Exhibit B shows that the Fredrick Farms land base rate for a standard size lot 70 feet x 140 feet is \$250 per front foot. *Shepherd testimony*. However, Respondent's Exhibit C is thirty-five property record cards from Fredrick Farms submitted by the Respondent that show the land is being assessed at a base rate of \$600 per front foot. *Id.; Respondent Exhibits B and C*.

- e. Finally, the Respondent argues that the Petitioners' purchase price of \$4,500 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 foreclosure, divorce, court order, judgment, condemnation, or probate. *Shepherd testimony; Respondent Exhibit A*. Because of the circumstances of the sale, the Respondent concludes, the Petitioners' purchase price was too low. *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 – Notice of Hearing on Petition for 714 Silver Charm Drive,
 - Petitioner Exhibit 2 – Notice of Hearing on Petition for 2729 Sea Biscuit Lane,
 - Petitioner Exhibit 3 – Copy of Indiana Code § 6-1.1-15-17,
 - Petitioner Exhibit 4 – Purchase agreement for the subject properties, dated August 4, 2009,
 - Petitioner Exhibit 5 – DLGF “Statewide General Reassessment FACT SHEET,” dated July 2010,
 - Petitioner Exhibit 6 – Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment, for 714 Silver Charm Drive and 2729 Sea Biscuit Lane,
 - Petitioner Exhibit 7 – Notice of Assessment of Land and Structures – Form 11 R/A – C/I and Howard County Request for Review form for 714 Silver Charm Drive and 2729 Sea Biscuit Lane,
 - Petitioner Exhibit 8 – Multiple listing sheets for eighteen vacant lots in Howard County and two Howard County property summary sheets for Moors of Chippendale lot 92 and lot 56,
 - Petitioner Exhibit 9 – An email receipt dated December 17, 2011, for earnest money received from Robert Mihelic,

- Respondent Exhibit A – Sales Disclosure Form and property record cards for 714 Silver Charm Drive and 2729 Sea Biscuit Lane and a property record card for 812 Silver Charm Drive,
- 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,

- 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. The Petitioners contend that their property at 714 Silver Charm Drive increased from \$500 in 2009 to \$32,800 for the 2010 assessment. *Norris testimony; Respondent Exhibit A*. Similarly, their property located at 2729 Sea Biscuit Lane increased from \$600 in 2009 to \$38,200 for the 2010 assessment. *Id.* 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 Petitioners 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 fact that the land was subdivided into lots and infrastructure for the residential neighborhood was 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 Petitioners 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 Petitioners have the burden to prove their properties' assessed values were incorrect in this case.

19. The Petitioners provided sufficient evidence to establish a prima facie case for a reduction in the assessed values of their 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 Petitioners contend that their properties were over-valued in 2010 based on the Petitioners' purchase price of \$4,500 for both parcels at an auction on August 4, 2009. *Norris testimony; Petitioner Exhibit 4.* 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 sales disclosure form indicated the Petitioners' purchase was as a result of a "compulsory transaction" such as a foreclosure, 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 Petitioners, the developer had not sold a single lot in three years. *Norris testimony.* Further, 144 lots were being auctioned in 2009. *Id.* Thus, because the developer had been unable to sell a lot for three 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 Petitioners listed the properties under appeal for sale in 2011 and received and accepted an offer of \$7,000 per lot. *Norris testimony; Petitioner Exhibit 9*. While the sale was never closed and the offer was a year removed from the relevant valuation date, the transaction is some evidence that the properties' purchase prices better reflected the properties' values in 2010 than \$32,800 assessed value of 714 Silver Charm and the \$38,200 assessed value of 2729 Sea Biscuit Lane.

- 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 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 Petitioners 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 Petitioners and holds that the value of Petitioners' properties in 2010 was \$4,500 together.

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 Petitioners' properties should be reduced to \$2,000 for 714 Silver Charm Drive and \$2,500 for 2729 Sea Biscuit Lane 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>.