

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

**Petition:** 76-010-09-1-5-00002  
**Petitioners:** George & Regiana Sistevaris  
**Respondent:** Steuben County Assessor  
**Parcel:** 76-10-28-230-292.000-010  
**Assessment Year:** 2009

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

**Procedural History**

1. George & Regiana Sistevaris filed a Form 130 petition contesting the subject parcel's March 1, 2009 assessment. On December 14, 2010, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Sistevarises the relief they had requested.
2. The Sistevarises then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board's small claims procedures.
3. On September 5, 2012, the Board held a hearing through its administrative law judge, Patti Kindler ("ALJ").
4. The following people testified under oath:
  - a) George Sistevaris
  - b) Marcia Seevers, Steuben County Assessor  
Phyl Olinger

**Facts**

5. The subject property is a vacant platted lot located at 100 Lane 280C Hamilton Lake in Hamilton, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the subject parcel's March 1, 2009 assessment to be \$155,500.
8. The Sistevarises' requested an assessment of \$1,600.

## Summary of the Parties' Contentions

9. The Sistevarises offered the following evidence and arguments:
- a. The subject parcel should be assessed at the developer's discount rate of \$1,600—the same rate at which it was assessed before the Sistevarises bought it from Hamilton Lake Investments, LLC. The Sistevarises bought the parcel as part of a joint venture with Sistevaris Builders, LLC. They did not buy the parcel to use as their residence; they bought it for the same reason as the previous owner—to build a “spec home” on it and sell it for profit. *Sistevaris testimony*.
  - b. The Sistevarises bought the parcel on March 25, 2008, for \$133,000. They titled it in their own name for “protection and collateral” because the parcel was their investment into the joint venture. *Sistevaris testimony*. Mr. Sistevaris has been an attorney for 25 years. Sistevaris Builders—a family business operated by Mr. Sistevaris's brother—is a general contractor that holds real estate and either re-sells the real estate or builds a custom or spec home on it. Although Sistevaris Builders operates out of Fort Wayne, it has built three or four homes on Hamilton Lake. *Id.*; *Pet'rs Ex. 131-B at 6*; *Pet'rs Ex. 131-D at 1-2*.
  - c. The PTABOA removed the developer's discount from the subject parcel for two reasons, neither of which was proper. First, according to Ms. Olinger, the PTABOA believed that the Sistevarises could not have been in a joint venture with Sistevaris Builders because Sistevaris Builders had been administratively dissolved on July 7, 2009. *Sistevaris argument (citing I.C. 32-1-46-3)*; *see also, Pet'rs Ex. 131-E at 4* (screenshot from Indiana Secretary of State's office showing Sistevaris Builders, LLC as administratively dissolved and listing “inactive date” of July 7, 2009). But Sistevaris Builders has since been reinstated, and that reinstatement relates back to the administrative dissolution. *Sistevaris testimony*; *see also, Pet'rs Ex. 131-F*.
  - d. Second, the PTABOA explicitly based its denial of the Sistevarises' appeal on their failure to timely provide a copy of Ind. Code § 6-1.1-4-12. The Sistevarises did provide a copy of that statute, albeit five days after the PTABOA's deadline. Regardless, the statute is not evidence; the PTABOA's members are charged with knowledge of the laws under which the PTABOA operates and no person appearing before a governmental agency or tribunal is required to provide copies of those laws. *Sistevaris argument*; *Pet'rs Ex. 131-E at 2*.
  - e. The Assessor should have assessed the subject parcel in the same manner as she assessed a comparable adjacent lot. That lot, owned by Hamilton Lake Investments, was assessed as land “held in inventory” under the developer's discount at \$1,600. *Sistevaris testimony*; *Pet'rs Ex. 131-B at 18-20*.

10. The Assessor offered the following evidence and arguments:
- a. Both the Assessor and the PTABOA followed Ind. Code § 6-1.1-4-12's requirements in removing the subject parcel's developer's discount. When they did that and priced the parcel as a vacant residential lot, the parcel's assessment jumped from \$1,600 to \$155,500. *See Olinger testimony; see also, Resp't Ex. 4.*
  - b. The parcel was no longer entitled to the developer's discount because, unlike Hamilton Lake Investments, the Sistevarises were not land developers. And the Sistevarises, not Sistevaris Builders, hold title to the subject parcel. In any case, Sistevaris Builders was dissolved with an inactive date of July 7, 2009, and its status after that date is irrelevant to this appeal. *Olinger testimony.* Also, at the time the PTABOA made its determination, the Assessor checked to see if Sistevaris Builders was an "established" builder in Steuben County and it was not. According to the Assessor "you have to file for your building permits and at that time you have to have a license ... or certification or something, I don't remember the exact term, to build in Steuben County." *Seevers testimony.*
  - c. The PTABOA actually requested additional evidence from both parties. While the Assessor complied with the PTABOA's request, the Sistevarises did not submit the evidence requested from them until five days after the PTABOA's deadline. Contrary to Mr. Sistevaris's contentions, the statute that the PTABOA requested is evidence. PTABOA members have a thankless job; they are paid little and they are not attorneys. Thus, a taxpayer must provide the evidence that the PTABOA needs to make a determination. *Olinger argument.*
  - d. Sale prices for comparable properties support the \$2,700-per-front-foot base rate used to assess the subject parcel. Ms. Olinger analyzed six sales of comparable parcels in the subject parcel's Crystal Bay neighborhood. For the three sales that included improvements, she abstracted a land value by subtracting the assessed value of the improvements from the property's total sale price. The average value for the comparable sales was \$3,500 per front foot, which is more than the \$2,700 per front foot used to assess the subject parcel. *Olinger testimony; Resp't Ex. 2; Resp't Exs. 9-10*

### **Record**

11. The official record contains the following:
- a. The Form 131 petition,
  - b. A digital recording of the hearing,

Petitioners Exhibit 131-A: Petitioner's Statement of the Facts and Case,  
Petitioners Exhibit 131-B: Form 130 petition, May 7, 2010 letter from George Sistevaris to Larry May, March 25, 2008 purchase

agreement, subject property record card, property record card for Hamilton Lake Investments parcel, Beacon property data for the subject and the Hamilton Lake Investments parcels,

Petitioners Exhibit 131-C: Petitioner's Evidence Request Form from the PTABOA,

Petitioners Exhibit 131-D: November 30, 2011 letter from Mr. Sistevaris to the Assessor, Petitioner's Evidence Request Form, Copy of I.C. § 6-1.1-4-12, Copy of I.C. § 23-1-46-3(a) - (c),

Petitioners Exhibit 131-E: Form 115 determination, screenshot from Indiana Secretary of State regarding Sistevaris Builders' status,

Petitioners Exhibit 131-F: Copy of page from Secretary of State's website regarding Sistevaris Builders' status,

Respondent Exhibit 1: Respondent Exhibit Coversheet,

Respondent Exhibit 2: Summary of Respondent Testimony,

Respondent Exhibit 3: Power of Attorney Certification and attached power of attorney

Respondent Exhibit 4: Property record card for the subject parcel,

Respondent Exhibit 5: Form 115 determination,

Respondent Exhibit 6: November 30, 2010 letter from Mr. Sistevaris to the Assessor, with the Petitioner's Evidence Request Form, copy of I.C. § 6-1.1-4-12 and I.C. § 23-1-46-3,

Respondent Exhibit 7: Copy of the Warranty Deed transferring the subject parcel to the Sistevarises

Respondent Exhibit 8: Copy of the Assessor's Evidence Request Form attached to a page from Secretary of State's website showing Sistevaris Builders' status,

Respondent Exhibit 9: Property record cards and Beacon property data for the Assessor's six comparable sales,

Respondent Exhibit 10: Aerial map of the subject parcel's neighborhood showing the location of the subject parcel and the Assessor's comparable sales,

Respondent Exhibit 11: Aerial map of Crystal Bay with parcel numbers and assessments for 21 parcels,

Respondent Exhibit 12: Respondent Signature and Attestation Sheet,

Board Exhibit A: Form 131 petition,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet,

d. These Findings and Conclusions.

### **Analysis**

12. The subject parcel's assessment increased from \$1,600 in 2008 to \$155,500 in 2009. The Assessor claims that she increased the parcel's assessment because the parcel no longer

qualified for the “developer’s discount.” The Sistevarises, on the other hand, claim that the parcel continued to be eligible for the developer’s discount.

13. Indiana Code § 6-1.1-4-12, which contains the provisions that are commonly called the “developer’s discount,” provides the following:

Sec. 12. (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) As used in this section, “title” refers to legal or equitable title, including the interest of a contract purchaser.

(d) Except as provided in subsections (h) and (i), 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.

(e) If improvements are added to real property, the improvements shall be assessed.

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

(g) No petition to the department of local government finance is necessary with respect to an assessment or reassessment made under this section.

(h) Subject to subsection (i), 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.

(i) Subsection (h) 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.

14. 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 (h), 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 (1) the land is transferred to someone who is not a land developer, (2) someone

begins building a structure on the land, or (3) a building permit is issued for a structure on the land.

15. The Assessor has not alleged that anyone began building a structure on the parcel or that a building permit had been issued. Thus, the dispositive question is whether the Sistevarises were land developers. To qualify as a land developer, a person must hold land for sale in the ordinary course of the person's trade or business. Mr. Sistevaris claims that he and Ms. Sistevaris qualified as land developers because they bought the parcel as part of a joint venture with Sistevaris Builders to develop the parcel, build a spec home, and then re-sell the parcel. And Sistevaris Builders holds land for sale in the ordinary course of its business. Although Mr. Sistevaris did not offer much detail, he did testify regarding the existence and purpose of the joint venture and offered at least some evidence, albeit unsworn and somewhat self-serving, that Sistevaris Builders holds land for sale in the course of its business. Thus, the Sistevarises made a prima facie showing, if only barely, that they qualified as land developers under Ind. Code § 6-1.1-4-12. Indeed, the Assessor's witness, Phyl Olinger, agreed that the investors in a joint venture to develop a property normally would be entitled to the developer's discount.
16. The Assessor did little to impeach or rebut the Sistevarises' admittedly thin evidence about their status as land developers. She did not cross-examine Mr. Sistevaris about the nature of the joint venture, the nature of Sistevaris Builders' participation in the joint venture, or the frequency with which Sistevaris Builders actually held land for sale in the course of its business. Instead, the Assessor mainly relied on the fact that Sistevaris Builders had been administratively dissolved. But the company was not dissolved until July 7, 2009—more than three months after the March 1, 2009 assessment date under appeal. And the Assessor offered nothing to show the basis for that dissolution. On those facts, the administrative dissolution does little or nothing to impeach Mr. Sistevaris's testimony that he and Sistevaris Builders were engaged in a joint venture to develop and sell the subject parcel. The same is true for the Assessor's vague testimony about Sistevaris Builders not having been an "established builder" in Steuben County at the time the PTABOA made its determination.
17. Thus, the Assessor should have based the subject parcel's March 1, 2009 assessment on the same classification as its previous assessments. Unfortunately, the parties did not offer much evidence to show how the property was classified and assessed in earlier years. They both offered property record cards showing that the parcel was valued as a platted residential lot as of March 1, 2009. Although the card has columns showing that the parcel was assessed for \$2,000 from 2002 to 2005 and for \$1,600 from 2006 to 2008, there is little to show the mechanics of how those assessments were computed or how the property was classified in those years. The card, however, does contain a reference to "AG LD" above the column for the 2005 assessment. *See Pet'rs Ex. 131B; Resp't Ex. 4.* The card also contains the following notation: "Previous parcel id: 036020214692 INFO: TO PLAT 1/16/2002 D/R 02-01-686 ANNEXATION ORD#2003-04, 11/20/03, 0311-0689." *Id.*

19. Based on those notations, the Board infers that the subject parcel was subdivided and platted out of a larger agricultural tract in 2002. Under the developer's discount statute, however, the Assessor continued to classify and assess the land as agricultural acreage through 2008 while Hamilton Lake Investments, LLC—an entity that the parties agree is a land developer—held the parcel. Because the transfer to the Sistevarises did not permit the Assessor to reclassify the parcel, she should have assessed the parcel as agricultural land on March 1, 2009, as well.

### **Conclusion**

19. The subject parcel was entitled to the developer's discount and therefore should not have been reclassified from agricultural acreage to a platted lot for the March 1, 2009 assessment date. The parcel's classification for the March 1, 2009 assessment date must therefore be changed back to agricultural and its valuation must be changed to reflect that agricultural classification.

### **Final Determination**

In accordance with the above findings and conclusions, the Board orders that the subject parcel be classified and assessed as agricultural land for the March 1, 2009 assessment date.

ISSUED: February 21, 2013

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.